



## **Strategic initiative SI/5/2023/MHZ on how the European Commission intends to guarantee respect for human rights in the context of the EU-Tunisia Memorandum of Understanding**

Case opened

**Case SI/5/2023/MHZ - Opened on 13/09/2023 - Institution concerned** European Commission |

Ms Ursula von der Leyen

President

European Commission

Dear President,

As you are aware, concerns have been raised about the Memorandum of Understanding (MoU) between the EU and Tunisia, which was signed by the Commission on 16 July 2023. [1] Amongst other issues, these concerns cover the 'Migration and mobility' section of the MoU and the actions that are expected to result from this.

The longstanding view of the European Ombudsman is that good administration encompasses observance of and respect for fundamental rights. Where fundamental rights are not respected, there cannot be good administration. As I found in my decision concerning the EU-Turkey Statement [2] and other agreements with non-EU countries [3], there should be a prior and explicit evaluation of the human rights impact of relevant policies and actions, ideally before these actions start and policies are adopted, for obvious reasons. In the context of such an evaluation, where human rights risks are identified, measures should be proposed to mitigate them.



Against this background, I would be grateful if the Commission could reply to the following questions by 13 December 2023:

1) Did the Commission carry out a human rights impact assessment (HRIA) of the MoU before its conclusion and consider possible measures to mitigate risks of human rights violations, notably in the context of the envisaged 'Migration and mobility' actions? If yes, could the Commission make this impact assessment public, along with the mitigating measures? If not, please set out the rationale for this.

2) Does the Commission intend to carry out a periodic, systematic and effective HRIA of actions undertaken in the course of the implementation of the MoU? If so, could the Commission please provide details as to how it intends to ensure this will be done in a transparent and inclusive manner? If not, please set out the rationale for this.

3) According to Regulation (EU) 2021/947 of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe [4], EU funding under the Instrument shall not support actions or measures, which may result in violations of human rights in partner countries. [5] How does the Commission plan to ensure that actions undertaken by Tunisia under the Migration and mobility pillar of the MoU and financed using EU funds will comply with the applicable human rights standards? Has the Commission defined criteria for the potential suspension of funds due to non-respect for human rights? [6]

In the course of this inquiry, I would like to publish the Commission's reply (with confidential information withheld) on my website. I may also give interested stakeholders the opportunity to make observations.

Should you require any further information or clarifications concerning this inquiry please do not hesitate to contact Marta Hirsch-Ziembinska, Principal adviser on Charter compliance, who is responsible for the inquiry.

Yours sincerely,

Emily O'Reilly European Ombudsman

Strasbourg, 13/09/2023

[1] See, by way of example:

<https://www.coe.int/en/web/commissioner/-/european-states-migration-co-operation-with-tunisia-should-be-s>



[https://www.amnesty.eu/news/eu-tunisia-agreement-on-migration-makes-eu-complicit-in-abuses-against-asyl](https://www.amnesty.eu/news/eu-tunisia-agreement-on-migration-makes-eu-complicit-in-abuses-against-asylum-seekers/)

[https://www.rescue.org/eu/press-release/irc-eus-migration-agreement-tunisia-risks-driving-migrants-and-refu](https://www.rescue.org/eu/press-release/irc-eus-migration-agreement-tunisia-risks-driving-migrants-and-refugees-back-to-danger)

[2] Decision of the European Ombudsman in the joint inquiry into complaints 506-509-674-784-927-1381/2016/MHZ against the European Commission concerning a human rights impact assessment in the context of the EU-Turkey Statement  
<https://www.ombudsman.europa.eu/en/decision/en/75160>

[3] See, by way of example, Decision of the European Ombudsman in 1409/2014/MHZ on the European Commission's failure to carry out a prior human rights impact assessment of the EU-Vietnam free trade agreement (  
<https://www.ombudsman.europa.eu/en/decision/en/64308> )

[4] Available at: <https://eur-lex.europa.eu/eli/reg/2021/947/oj>

[5] Article 29.a of Regulation 2021/947 establishing *Neighbourhood, Development and Internal Cooperation Instrument-Global Europe* . Also Preamble, Recitals 28 and 42, as well as Annex II(3)(i) 'Migration, forced displacements and mobility'.

[6] Recital 40 of Regulation 2021/947: '*As the respect for democracy, human rights and the rule of law is essential for sound financial management and effective Union funding as referred to in the Financial Regulation, assistance could be suspended in the event of degradation in democracy, human rights or the rule of law in third countries .*'