Cash for Migration Control: The EU-Egypt Strategic and Comprehensive Partnership

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The European Union has been accused of betraying its own values by rewarding the “abysmal repression” of the Egyptian regime (Francavilla, 2024, para. 8). On 17 March 2024, the EU and Egypt signed a Joint Declaration establishing a “strategic and comprehensive partnership” whereby the EU commits to the disbursement of €7.4 billion in financial assistance, aiming to enhance cooperation with Egypt in the areas of political relations, macroeconomic stability, investment, trade, and development, in exchange for Egypt’s “full dedication to control illegal immigration” (European Commission, 2024c; Directorate-General for Neighbourhood and Enlargement Negotiations, 2024c, para. 6). The Strategic and Comprehensive Partnership (hereinafter “the Partnership”) is not presented as such by the EU, but has drawn harsh criticism from members of the European Parliament and human rights organizations, for providing billions of euros to outsource migration control to a country that repeatedly perpetrates “abuses against and forced refoulement of refugees and asylum seekers” in contravention of several international agreements (Pineda, 2024; Picierno et al., 2024, para. 2). The Partnership thereby enables the Egyptian regime to continue its violations of human rights without consequences (Amnesty International, 2024a).

Migration has been ascribed a “top political priority” by the EU (European Council, 2003, para. 9). At the height of the ‘migrant crisis’ in 2015 and 2016, EU Member States experienced a record influx of migrants, receiving more than 1.2 million asylum applications in each respective year (Eurostat, 2017). Similarly, the European Border and Coast Guard Agency (Frontex) reported more than 1.8 million illegal border crossings in 2015, and more than half a million in 2016 (Frontex, 2017). The outflow of refugees occurred primarily because of the Syrian civil war, a corollary of the Arab Spring, resulting in the displacement of around 11 million Syrians as of 2016, of whom 4.8 million fled to neighboring countries, including Turkey, Egypt, Jordan, Lebanon, and Iraq (Peters et al., 2023). These developments, and the subsequent unilateral measures taken by Member States in response, risked a near total collapse of the Common European Asylum System (CEAS) and the Schengen area (Maiani, 2018). Consequently, the European Council (2015) aspired to develop a strategy aimed at curbing “the unprecedented migratory flows” facing Europe, maintaining that regaining control over the external border is imperative (para. 1). Additionally, within the EU and Member States, the perception of migrants and refugees as a security threat arose, namely as a threat to cultural identity, public order, and internal stability, resulting in its securitization (Abderrahim, 2018; Huysmans, 2000). Domestic and EU-level policies were deemed insufficient in deterring the purported security threat of migration (Karamanidou, 2015). Therefore, policies and agreements that outsource migration control to third countries, termed *externalization*, were realized—their objectives being to preclude migrants and refugees from entering European soil by securing the external border (Frelick et al., 2016).

The Partnership with Egypt is one such agreement that aims to externalize migration control and management. Besides the fact that externalization measures often entail human rights violations (Pijnenburg, 2024; see also Lighthouse Report, 2024), concerns have been raised about the apparent tendency within the external dimension of EU migration policy to resort to soft law instruments that are not legally binding, as opposed to formal international treaties that impose legal obligations, since informal instruments operate outside the institutional principles and decision-making procedures codified in the Lisbon Treaty concerning cooperation with third countries (Carrera et al., 2019; Fernando-Gonzalo, 2023). The *informalization* of migration cooperation has been alleged to undermine parliamentary and judicial scrutiny (Strik, 2023).

Therefore, the objective of the present research is, first, to provide a delineation of the political context in which the Partnership was concluded, namely the EU's securitization of migration and the externalization of its management to third countries. Second, to ascertain the legal nature of the Partnership, the procedural rules followed for its adoption, and whether the principles of institutional balance and sincere cooperation were impinged upon. Third, to assess the human rights concerns regarding the conclusion of the Partnership with Egypt, and subsequently establish (in)compatibility with international and EU law. Hence, the research question is as follows: *What are the legal implications of the EU's securitization of migration and the externalization of its management to Egypt through the Partnership?*

To provide a coherent answer to the research question, this research will first draw on the insights on the Paris School of security studies to understand the process of securitization in relation to the external dimension of EU migration policy, after which a socio-legal case study will be conducted to analyze the legal framework of the Partnership, whereafter the implications for human rights.

Presently, there is no research that has systematically investigated the Partnership as an instrument of extra-treaty cooperation on migration control that materialized as a result of the securitization of migration and the externalization of its management. It is imperative to assess what role the various EU institutions (the Commission, Parliament, Court, European Council, and Council of the EU) have played in the negotiation and conclusion of an agreement that will have serious implications for migrants and their rights. Therefore, it contributes to the discussion that aims to establish whether we are witnessing a trend of "de-constitutionalizing" of EU migration policy (Carrera et al., 2019, p. 11).

This research operates at the intersection of politics and law. It seeks to make salient that the political and legal aspects of EU migration policy are inextricably linked. The politics of securitization has led to the adoption of soft law instruments that entail externalization, which can possibly be declared unconstitutional under EU law and incompatible with international human rights law.

The structure of the research is as follows: First, the theoretical framework and the pertinent literature, concerning the securitization of migration and the externalization of its management through soft-law instruments, will be delineated. Second, the procedure followed for the adoption of the Partnership and the roles played by the EU institutions will be outlined. Third, the implications for human rights the Partnership entails will be described in depth.

Theoretical Framework and Literature Review

Securitization theory as articulated by the Copenhagen and Paris Schools of Security Studies will be outlined below, whereafter the theory will be connected to the pertinent literature, explicating the securitization of migration and the externalization of its management through soft law instruments.

Securitization Theory

The securitization framework as articulated by the Copenhagen School of Security Studies aligns with the constructivist approach in international relations (Stępka, 2022). The Copenhagen School posits that securitization occurs when a securitizing actor asserts that an issue poses an existential threat in reference to an object in need of protection, thereby removing this issue from the realm of normal politics (Buzan et al., 1998). The process of securitization is a speech act, meaning that by framing a phenomenon as a security issue, it is dramatized and designated as "an issue of supreme priority," permitting a securitizing actor to claim justification for treating it by extraordinary measures (Buzan et al., 1998, p. 26). However, a speech act merely constitutes a "securitizing move"—successful securitization of an issue occurs exclusively if and when a target audience recognizes and approves it as such, meaning its success is not determined by the securitizing actor (Buzan et al., 1998, p. 25). Additionally, the existential threat should not be conceptualized objectively, but rather securitization is to be understood as an intersubjective process—and therefore the existential threat is also socially and discursively constructed (Buzan et al., 1998). In short, security threats are not given but are constructed by securitizing actors through speech acts (van Munster, 2009). The Copenhagen School's approach to securitization thus prioritizes

speech acts as the object of study, but this discursive approach provides an inadequate image of what constitutes a threat (Léonard & Kaunert, 2019; Balzacq, 2008).

The greatest revision of securitization theory has been propounded by the Paris School of security studies, distancing itself from the discursive emphasis of the Copenhagen school (Stępka, 2022). Balzacq (2008) argues that focusing on the functions and ramifications of policy tools aimed at tackling public issues is more apposite than examining threat construction at the level of discourse. Therefore, the Paris School emphasizes the role of security practices, which are enacted principally through policy instruments (C.A.S.E. Collective, 2006; Balzacq, 2011). Securitizing practices are actions that convey the notion that the confronted issue constitutes a security threat (Léonard & Kaunert, 2019). Accordingly, it is necessary to extend the study of securitization to non-discursive practices, by investigating acts such as the development of public policy instruments and their procedural implementation, and the inception, functioning, and performance of bureaucratic structures (Léonard & Kaunert, 2019). Bigo (2000) claims that securitization of certain problems is possible without speech or discourse. Hence, securitization does not always involve existential threats and departure from the realm of normal politics. Rather, securitization is institutionalized through the repeated actions and interactions of securitizing actors operating in the security field (Stępka, 2022). Additionally, the Paris School contends that securitization sometimes transpires and generates political and social consequences without the explicit consent of a relevant audience (Balzacq, 2008; cf. Buzan et al., 1998).

The approach of the Paris School, meaning emphasizing practices as opposed to discourse, is more apposite when investigating securitization processes in EU migration policy, although discourse remains relevant. In cases where there is an incessant and recurrent security threat, which will be shown below is the case with the EU and its conceptualization of migration as a security threat, a new drama aimed at securitization becomes unnecessary, as securitization has been institutionalized over time, meaning priority and urgency is implicitly assumed when speaking of a particular issue (Léonard & Kaunert, 2019; Buzan et al., 1998).

Securitization of Migration and Externalization through Soft Law

In the EU Strategic Agenda for 2019-2024, the European Council asserts that to ensure territorial integrity, guarantee security, and uphold law and order, it is indispensable to effectively control the external borders, declaring that the EU needs to know and be the one to decide who enters its territory (European Council, 2019). To accomplish this, the EU has intensified cooperation with third countries to combat illegal immigration and guarantee effective return of migrants through readmission arrangements and other informal instruments (Andrade, 2023).

As is discernible from the above, the construction of migration as a security threat has been normalized in prevailing political discourse at the domestic and EU levels, especially since the ‘migration crisis’ of 2015 (Moreno-Lax, 2018; Panebianco, 2020). It has been increasingly construed and framed as posing a threat to public order, domestic society, and cultural and national identity—therefore, migration has been securitized in Europe (Huysmans, 2000). Migration has been securitized through a discursive process that articulates a dominant truth, which casts unauthorized migrants as enemies, who imperil “the homogeneity of the State” (Bigo, 2002, p. 67). This process has been extant since the ratification of the Lisbon Treaty, which has promoted a notion of migration control that revolves around both precluding inflows and increasing outflows of “risky migrants” (Stępka, 2022, p. 68). The Lisbon Treaty and the Schengen acquis are “constitutional securitizing moves,” generating an inextricable nexus between migration and security, while also laying the groundwork for the necessary political and institutional frameworks that permit the expansion of securitizing moves in the migration policy domain (Stępka, 2022, p. 65; Huysmans, 2006).

However, van Munster (2009) argues that the securitization of migration in the EU does not operate through the explicit discursive staging of an existential threat, in contrast to the framework of the Copenhagen School. Security practices have in fact become increasingly de-dramatized and integrated within bureaucratic apparatuses, whose function is to contain and control mobility into the EU, rather than waging a war against an ‘enemy’ (van Munster, 2009). Therefore, the EU does not securitize migration through “dramatic speech acts” or “panic politics” which engender discourses of resentment and fear towards migrants (Stępka, 2022, p. 65). The Paris School more appositely conceptualizes the EU’s mode of securitization concerning migration as the capacity to manage threats,

maintain control over its external borders, and to define imperiled identities (C.A.S.E. Collective, 2006). Securitization in the EU thus primarily occurs through the deployment of particular security practices, rather casting migrants as existential threats through speech acts (Léonard & Kaunert, 2019). The EU's securitization of migration is usually dependent on technocratic practices, operating on a logic of "threat management" (Stępka, 2022; Bigo, 2002, p. 68). Securitization in the EU therefore works through technologies that are commonplace, through continual effects of power, through political contestation, and through inter-institutional competition over what is to count as the legitimate truth (Bigo, 2002). The EU has constructed a convoluted and distinct mode of securitization, encompassing a multiplicity of actors, policies, practices, interests, and discourses, which all have exerted significant effects on migration's conceptualization as a security issue. Therefore, securitizing moves and frames constructed by the EU are not confined to one particular institution (Stępka, 2022).

The construction of migration as a security threat has inexorably generated policy instruments where control of the external border and return take precedence over asylum and development—thereby EU migration governance has become more a case of containment, control, and management (Longo & Fontana, 2022). Whereas EU (external) migration policy has strong securitizing aspects, it also constitutes a sphere in which "the notions of protection, care and security become closely entwined" (Stępka, 2022, p. 75). There is internal conflict between EU discourse and practice on detention and return policy—securitized policies are presented as "caring for" or "saving" migrants by providing shelter and addressing their needs during detention, while simultaneously designating them as endangering security and public order (Mountz et al., 2012, p. 529; Stępka, 2022). Human rights issues and ethical concerns have become secondary to security issues due to the EU's formation of boundaries between Europeans and others, and between inside and outside (Buonfino, 2004).

Migration discourse and practices have thus been contentious towards third country nationals, typically based on the concept of "Fortress Europe"—referring to securitized migration practices and policies, their purpose being to avert entry of undesired migrants and asylum seekers, and to protect "material and symbolic Europeanness" (Geddes & Taylor, 2015; Stępka, 2022, p. 64). Accordingly, the EU proposed that the security issue of migration should be addressed at its roots, namely through the extraterritorialization of border controls, outside the formal jurisdiction of the EU (Menz, 2015). Consequently, the EU developed migration policies that outsource migration control and management to third countries—termed *externalization* in the literature.Moreno-Lax & Lemberg-Pedersen (2019) define the externalization of European border controls as "the range of processes whereby European actors and Member States complement policies to control migration across their territorial boundaries with initiatives that realize such control extra-territorially and through other countries and organs rather than their own" (p. 5). The purpose of externalizing migration control is to ensure unwanted migrants are unable to trigger the legal jurisdiction of the EU or its Member States, and designating them as legally inadmissible without evaluating the merit of their protection claims (Spijkerboer, 2017; Frelick et al., 2016). To achieve this, externalized migration policy instrumentalizes and deputizes third countries to function as "enforcement agents," tasked with precluding the inflow of irregular migrants to Europe, often based on the contentious assumption that these are safe third countries (STC), which permits the EU to claim compatibility with international human rights and EU law (Spijkerboer, 2017, p. 231; Frasca & Roman, 2023).

External migration policies are not necessarily unlawful from the perspective of international law, but they frequently entail violations of the right to seek asylum, since they prevent migrants from arriving in Europe, and the principle of non-refoulement, by incentivizing third countries to preclude the departure of migrants through funding, especially considering cooperation with the EU is increasingly made conditional upon performances of border control (Amnesty International, 2017; Strik, 2023). However, situations also occur in which third countries leverage the EU's dependency to further their own interests, termed "reversed conditionality" (Strik, 2023, p. 926). Third countries instrumentalize migrants, and thereby take advantage of the EU's desire to avert their inflow, in an attempt to either blackmail the EU by seeking financial and development aid, or to induce the withdrawal of human rights criticism (Strik, 2023).

The precariousness of cooperation on migration management with third countries has led to a proliferation of the use of soft law instruments in the external dimension of EU migration policy, as opposed to formal international treaties (Andrade & Frasca, 2024). Soft law is traditionally understood as norms that are not legally binding, but that might

have legal relevance in practice (Vara, 2019). Whereas no formal EU readmission agreements have been signed since 2011, the number of soft law instruments has substantially increased in the past years (Frasca & Gatta, 2022; Vara, 2019). Therefore, informality has become part and parcel of EU migration policy, especially in its external dimension (Frasca & Roman, 2023). Despite the fact that the European Parliament (EP) and civil society organizations have criticized informal arrangements for their potential impact on migrants' human rights and their "lack of transparency," the European Court of Auditors (ECA) recommended increasing the use of non-binding instruments (NBIs) due to the "greater flexibility" they infuse in agreeing to mutual objectives with third countries, since complications often arise surrounding the conclusion of formal international agreements (European Court of Auditors, 2021, paras. 37(e)—38). Additionally, NBIs are more suitable to the political sensitivity of the purported threat that migration poses, enhancing the margin of discretion in the fulfilment of commitments by signatories (Vara, 2019; Andrade, 2016).

However, as also noted by the EP, NBIs can potentially be problematic considering they pose difficulties for the enforcement of human rights and the lack of legal certainty inherent to such international commitments (Andrade, 2016). Besides this, the informalization of external migration policies has also raised questions pertaining to what rules and procedures govern their adoption, due to the fact that in practice non-binding agreements entail a clear tendency to operate outside the institutional principles and decision making rules enshrined in the Lisbon Treaty concerning the advancement of cooperation with third countries on migration management and control (Vara, 2019; Carrera et al., 2019). Extra-Treaty cooperation in the form of informal agreements in the domain of migration pose serious constitutional challenges to the legal order of the EU and have serious implications for the rights and freedoms of migrants, refugees, and asylum seekers, since they might contravene various EU principles and the distribution of powers between the EU institutions (Carrera et al., 2019).

Methodology

This research will employ a case study approach, incorporating the theory and literature as outlined above. It will first be scrutinized whether the Partnership constitutes a securitizing policy instrument, and subsequently its internal and external dynamics will be investigated through a socio-legal case study.

A case study can be conceptualized as "the intensive study of a single case where the purpose of that study is—at least in part—to shed light on a larger class of cases" (Gerring, 2006, p. 20). A case study examines a phenomenon in context, where context and findings cannot be disentangled. Moreover, the case study design investigates how actors generate, interpret, and understand phenomena, such as law, policy, and procedure. This facilitates comprehension in how and why actors understand, (mis)apply, comply with, subvert, or reject laws, which in turn can flow back into legal and policy making processes (Webley, 2016).

More specifically, the present research employs a socio-legal case study. Socio-legal research can be conceptualized as law placed in its social and political context, from which it is inextricable (Langford, 2017). Therefore, it is "the study of the interactions between the law and the social, historical and economic context within which it operates" (Peck, 2023, p. 3). Socio-legal research is not attached to any particular social science discipline, despite what its name might suggest. Sociological understanding of legal ideas is "transdisciplinary understanding", but it is rightly termed sociological because it persistently and perpetually recognizes the necessity to interpret and reinterpret law both empirically and systemically as a social and political phenomenon (Cotterrell, 1998, p. 183). Socio-legal research can be summarized as "law in context" (Cownie, 2004, p. 35). Its objective is to widen and deepen understanding from the particular to the general, and to gauge the significance of that particular in a broader perspective (Cotterrell, 1998). One of the aims of the present research is therefore to establish whether the Partnership corresponds to the general discernible trend of informalization—the increasing reliance on non-binding instruments in EU external migration policy—thus whether it is similar to agreements such as the EU-Turkey Statement, the Joint Way Forward with Afghanistan, the EU-Tunisia Memorandum of Understanding, and various Mobility Partnerships, which all externalize migration control to third countries to preclude the influx of migrants. Therefore, the research accomplishes external validity, particularly considering the assertion that one cannot generalize from a single case is erroneous—matters can in fact be settled by analysis of a single case (Flyvbjerg, 2006).

In human rights research, the indivisibility and interdependence of law and its political context are especially conspicuous (Peck, 2023). The complicated issues presented by international human rights law cannot be solved within the confines of a single discipline (Langford, 2017). Mono-disciplinary research cannot provide answers for the questions it poses (Peck, 2023). Therefore, socio-legal research is more apposite, comprising two main elements—the first being a doctrinal step, consisting of locating pertinent legal sources. The second step is where law and policy are viewed and interpreted through the lens of the theoretical framework, in the present research this entails capturing the intricate relationship between law and politics concerning the EU-Egypt Partnership (Peck, 2023). Through within-case analysis the internal dynamics (the roles of EU institutions in the adoption of the Partnership) are made conspicuous, achieving internal validity.

To achieve the aims described above, the research paper will analyze relevant EU law, primarily the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) concerning migration and the role of the EU institutions in governing this matter, but also pertinent case law generated by the CJEU. The present research also relies on publicly inaccessible documents of the Council that pertain to the Partnership. Access to these documents has been requested by contacting the General Secretariat of the Council and the Transparency Unit of the Directorate-General for Communication (DG COMM) via electronic form. Subsequently, out of four requested documents, complete access was granted to two, partial access to one, and access to one was denied, based on Regulation (EC) No 1049/2001 and Council Decision 2009/937/EU. The above (legal) sources will be used to analyze the legal nature of the Partnership and the role played by the EU institutions in its negotiation and conclusion, whereafter it seeks to establish whether the Partnership is compatible with EU and international human rights law. This part of the analysis relies primarily on international human rights treaties and conventions, and reports of human rights organizations.

Analysis

Legal Nature, Procedure, and the Role of EU Institutions

To elucidate the legal nature of the EU-Egypt Partnership and the procedure the institutions followed for its adoption, it is necessary to state the stipulations of the Lisbon Treaty (TEU and TFEU) concerning the allocation of powers among EU institutions regarding the negotiation and conclusion of agreements in the external dimension of migration policy, and the principles of institutional balance and sincere cooperation.

The Legal Basis of the Partnership

The legal basis for external (and internal) asylum and migration policy can be found in Title V of the Treaty on the Functioning of the European Union (TFEU), concerning the Area of freedom, security and justice (AFSJ). Art. 78(2) states that, in accordance with the ordinary legislative procedure, the European Parliament and the Council “shall adopt measures for a common European asylum system” and subparagraph (g) notes that this shall comprise cooperation and partnerships with third countries “for the purpose of managing inflows of people applying for asylum.” Art. 79(1) states that to ensure the effective management of migratory flows and the preclusion of illegal immigration, the EU shall develop and formulate a common immigration policy. Moreover, Art. 79(3) articulates the external dimension of return policy, stating that for the readmission of third-country nationals to their countries of origin, the EU may negotiate and conclude agreements with third countries. Any such agreements with third countries are subject to the procedure as formulated in Art. 218 TFEU, implying that the Council must obtain the consent of Parliament before the adoption of asylum and migration agreements since co-decision applies (Art. 218(6)(a)(v) TFEU). Additionally, during all stages of the procedure, the Parliament “shall be immediately and fully informed” (Art. 218(10) TFEU). In practice, the exceedingly limited reliance on these legal grounds clearly contrasts with the rapid increase in soft law instruments that externalize migration control (Strik, 2023). However, it must be noted that formally, the legal order does not proscribe the adoption of informal agreements by the EU (Strik, 2023). However, it is conceivable that the deliberate choice to use soft law instruments in migration matters is contrary to Art. 296 TFEU, stipulating that the Parliament and the Council should “refrain from adopting acts not provided for by the relevant legislative procedure in the area in question.”

Regardless, the Partnership is one such informal agreement. It is rather arduous to argue that it constitutes a formal treaty under international law, which is understood by the CJEU as "any undertaking entered into by entities subject to international law which has binding force, whatever its formal designation" (Opinion 1/75, 1975, section A). The ECJ has held that "the intention of the parties must in principle be the decisive criterion" in determining whether an agreement is binding (*France* v. *Commission*, C-233/02, para. 42). The same line of argument as presented by Andrade and Frasca (2024) in their analysis of the EU-Tunisia Memorandum of Understanding holds in the case of the Partnership. Whereas the text of the Partnership does not include any explicit clause by which it is stipulated that the EU and Egypt do not intend to assume legally binding obligations, it seems evident from its title—"Joint Declaration"—and its non-mandatory terminology—the word 'will' is used as opposed to 'shall'—that the intention was to adopt a non-legally binding instrument. Although, it must be noted that the Vienna Convention on the Law of Treaties (VCLT) of 1969 provides that the designation of an instrument does not determine its legal status (Art. 2(1)(a)). The Permanent Representatives Committee (COREPER), which prepares the work of the Council as per Art. 240(1) TFEU, discussed the Partnership during a meeting on 18 January 2024, where it was clarified that the Partnership is in fact a non-binding instrument (Document ST 5584/24).

Additionally, the Partnership has neither been ratified by the Parliament nor was it informed previously to its adoption, indicating that it does not entail legally binding obligations, since otherwise it would entail a flagrant violation of Art. 218 TFEU and arrogation of authority by the signatory of the Partnership, namely the Commission, risking almost certain annulment by the CJEU. Hence, rather than an international treaty, the Partnership reflects a "concurrence of wills" in the form of guidelines to be adhered to (*Council* v. *Commission*, C-660/13, para. 67, Opinion of AG Sharpston). Therefore, the provisions of Art. 218 TFEU are not applicable to the Partnership since they only apply to formal international treaties between the EU and third countries, which the CJEU has established in its case law on non-binding instruments (*Council* v. *Commission*, C-660/13; *France* v. *Commission*, C-233/02, para. 45). Instead, the negotiation and conclusion of non-binding instruments on behalf of the EU follow the competences and the distribution of powers among EU institutions as formulated in the Lisbon Treaty (Gatti & Ott, 2019).

Art. 13(2) of the Treaty on European Union (TEU) is valid for and applies to any agreement with third countries, irrespective of its legal nature (*Council* v. *Commission*, C-660/13, paras. 30—46), stating that each institution is to act "within the limits of the powers conferred on it in the Treaties, and […] the institutions shall practice mutual sincere cooperation." As per Art. 16(1) TEU, the Council and the Parliament shall jointly "exercise legislative and budgetary functions" and Art. 16(6) stipulates that it is the prerogative of the Foreign Affairs Council to "elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council," which according to Art. 15(1) defines "the general political directions and priorities" of the EU. The Commission is charged with promoting "the general interest of the Union" and ensuring its external representation (Art. 17(1) TEU). The CJEU is to ensure that the law is adhered to "in the interpretation and application of the Treaties" (Art. 19 TEU), and concerning cooperation with third countries, it is to "review the legality of legislative acts […] intended to produce effects *vis-à-vis* third parties" (Art. 263 TFEU), conferring on it the authority to declare agreements it deems incompatible with EU law void (Art. 264 TFEU).

The Commission has recently given an enlarged interpretation of Art. 17(1) TEU, displaying an increasing tendency to negotiate and conclude non-binding agreements with third countries on behalf of the EU (Andrade, 2016). In the 2004 case *France* v. *Commission* (C-233/02), the ECJ did not uphold the Commission's argument that "the fact that a measure […] is not binding is sufficient to confer on that institution the competence to adopt it" (para. 40). Subsequently, in the 2016 case *Council* v. *Commission* (C-660/13), the ECJ confirmed the Council's policy-making prerogatives concerning the negotiation and conclusion of non-binding agreements with third countries (para. 33). The opinion of AG Sharpston (*Council* v. *Commission*, C-660/13) rightly asserts that the mere fact that the content of an agreement is in consonance with the negotiating mandate as provided by the Council "does not mean that the Commission can disregard the Council's powers under Article 16(1) TEU to decide whether or not to become a party to an agreement" (para. 113).

Thereafter, based on this case law, the Council, Commission, and European External Action Service (EEAS), clarified their respective roles in the adoption of non-binding instruments with third countries in a collective document (Council of the European Union, 2017a). In the preparatory phase, the negotiator—the Commission in the case of the

Partnership—will notify the Council sufficiently in advance, allowing the Council to assess whether the agreement aligns with the interests of the EU, by means of a written note of its intention to start negotiations to draw up a non-binding instrument (NBI) (Council of the European Union, 2017a). There is no formal evidence discernible in both the Commission and Council register of documents that indicates that the Commission has notified the Council of its intention to start negotiations for the adoption of the Partnership. Subsequently, prior to the intended signature or agreement of the proposed NBI, the negotiator must present the draft instrument to the Council, as provisionally agreed with the third side, whereafter the Council will decide on whether to authorize the signing of the instrument (Council of the European Union, 2017a).

The Commission presented the draft text of the Partnership to the Mashreq/Maghreb Working Party (MaMa) on 29 December 2023 (Document ST 5584/24), which deals with EU Common Foreign and Security Policy (CFSP) and cooperation regarding Egypt (Council of the European Union, 2024). After a few revisions, the Commission sought the endorsement of the Council as part of the procedure for the adoption of NBIs outlined above (Document ST 5584/24). For its part, MaMa agreed to the draft Partnership on 30 January 2024, whereafter COREPER was invited to confirm its agreement on the draft as expressed in Document ST 5582/24 on 1 February 2024, and to decide, considering the "urgency of the matter," that the Council is to use the written procedure, as per Art. 12(1) of the Council's Rules of Procedure (Council Decision 2009/937/EU), for authorizing the Commission to sign the Partnership on behalf of the EU (Document ST 5584/24). Therefore, the Commission has not derogated from proper procedure in its adoption of the Partnership on behalf of the EU. On 2 February 2024, COREPER (Part 1) decided to initiate the use of the written procedure (Document CM 1439/24). The written procedure ended on 5 February 2024, indicating the approval of the Council, as per document CM 1441/24 in the Council Register to which access was presently denied because "consultations are still ongoing" (Document 24/1541).

The Role of the Parliament and the Court

The fact that proper procedure has been followed, as per case law, in the adoption of the Partnership only satisfies that the first stipulation of Art. 13(2) TEU, namely that each institution is to act within the scope of powers conferred on it, but the principle of sincere cooperation can be considered to have been violated, as will be explicated below. The failure to consult the European Parliament during the negotiation and conclusion of the Partnership contravenes the principle of sincere cooperation, since its exercise of "political control and consultation" as expressed in Art. 14(1) TEU requires its intervention in the adoption of NBIs (Andrade & Frasca, 2024). Gatti and Ott (2019) and Vara (2019) argue that NBIs also preclude the possibility for Parliament to obtain the opinion of the CJEU "as to whether an agreement envisaged is compatible with the Treaties" (Art. 218(11) TFEU).

However, this contention might not hold true. The ECJ holds in *Parliament* v. *Council* (C-263/14) that "participation by the Parliament in the legislative process is the reflection […] of a fundamental democratic principle that the people should participate in the exercise of power through the intermediary of a representative assembly," and that the expression of that democratic principle is the information requirement as provided for by Art. 218(10) TFEU (para. 70). Additionally, the Court holds that the objective of the information requirement is to guarantee that the Parliament is capable of exercising democratic scrutiny and control over the external action of the EU, and to ensure that legal basis chosen for a decision on the adoption of an instrument "was made with due regard to the powers of the Parliament" (*Parliament* v. *Council*, C-263/14, para. 71). The Court also held in *Commission* v. *Council* (C-370/07) that the choice and indication of a proper legal basis is constitutionally significant, particularly for the preservation of the prerogatives of each institution. The prerogatives of the Parliament can only be ensured if it is involved both at the negotiation and conclusion phases of agreements with third countries, irrespective of their legal nature (Vara, 2019).

The Court thus contends that the Parliament possesses an element of democratic control, conferred on it by the Treaties, regardless of its formal rights of involvement in the adoption of agreements with third countries (Andrade & Frasca, 2024). Although the Partnership is devoid of legally binding effects, the opinion of AG Sharpston rightly contends in *Council* v. *Commission* (C-660/13) that even if an agreement is intended to be non-binding, and therefore does not fall under the scope of Art. 218 TFEU, it does not necessarily imply that "the contested decision is not intended to produce legal effects," therefore allowing for the possibility of judicial review (para. 69). Consequently, the EU is bound by the consequences that derive from an agreement, regardless of its legal nature.

NBIs are in fact capable of producing legal effects in the international legal order, on the basis of the principle of good faith, since they engender expectations between the parties regarding compliance with their stipulations (Andrade, 2016). Additionally, with respect to EU law, and despite the non-binding nature of the Partnership, it can "produce legal effects vis-à-vis other EU institutions and Member States" (*Council* v. *Commission*, C-660/13, Opinion of AG Sharpston, para. 71). Therefore, it is plausible that the Partnership constitutes an act open to judicial review under Art. 263 TFEU. In addition, the Court has jurisdiction to give preliminary rulings concerning the validity of acts by EU institutions (Art. 267(b) TFEU).

Therefore, it is conceivable that the Parliament, a privileged applicant before the CJEU, can bring annulment proceedings based on "an infringement of the Treaties" (Art. 263, para. 2, TFEU)—namely, a contravention of the principle of sincere cooperation by the Commission and the Council—although it currently lacks political will according to Fernando-Gonzalo (2023). The European Parliament (2017) has noted that it deplores that the EU has opted for the adoption of agreements with third countries in the migration policy domain, which preclude parliamentary scrutiny, also resulting in its inability to exercise its function of political control as per Art. 14(1) TEU. However, the Parliament is capable of more than merely expressing its disapproval with this development. An annulment action can be brought within a period of two months after the contested measure's announcement or publication (Mańko, 2019). Besides the fact that the principle of sincere cooperation is at stake, since the Parliament was sidelined completely during all stages of the procedure followed for the adoption of the Partnership, the human rights of migrants also risk being severely transgressed (Idriz, n.d.). A case brought by the Parliament would entail judicial review of the Partnership by the Court. Wessel (2021) is therefore right in asserting that non-binding does not necessarily imply non-justiciable. Individual members of the European Parliament (MEPs) are in fact planning to take the Commission and the Council to the Court over the Partnership. MEP Karen Melchior, also member of the Parliament's Committee on Legal Affairs (JURI), has stated that the Partnership is in breach of the Treaties, and MEP Strik contends that the Partnership is not formally based on any act (Fox, 2024a). However, any litigation will not start before September (Fox, 2024b).

Hitherto, it seems the Parliament has embarked upon a different path in expressing its disapprobation with the Commission and Council operating in tandem to preclude parliamentary oversight, namely by using its budgetary powers as declared in Art. 14(1) TEU. The €5 billion of macro-financial assistance (MFA) provided to Egypt as part of the Partnership comprises a short-term instalment of up to €1 billion, and a longer-term instalment of up to €4 billion (European Commission, 2024a). The legal basis of the short-term instalment is Art. 213 TFEU, which states that, based on a proposal from the Commission, the Council should approve the necessary measures when a third country is in a situation that calls for urgent financial assistance from the EU. Parliamentary consent is thus not required in approving the disbursement of short-term MFA to Egypt. The invocation of Art. 213 TFEU is justified by the Commission on the pretext that "Egypt's financing needs are particularly acute in the second half of 2024," and that it is impossible to ensure timely disbursement if the decision was adopted by the Parliament and the Council in accordance with the ordinary legislative procedure as per Art. 212(2) TFEU, due to the impending end of the legislative period of the Parliament and the time required thereafter to fully execute the disbursement of MFA (European Commission, 2024a, p. 4).

MEPs have raised questions about the justification for and necessity of the disbursement of short-term MFA to Egypt, since the country recently struck financial agreements with the United Arab Emirates, World Bank, and International Monetary Fund, totaling $46 billion in loans (Marquardt et al., 2024). Despite this, the Commission submitted the proposal to the Council on 18 March 2024, which approved it on 12 April 2024 (Council Decision (EU) 2024/1144). In contrast, the legal basis of the longer-term MFA instalment of €4 billion is Art. 212(1) TFEU, which stipulates that the EU shall enact "economic, financial and technical cooperation measures, […] in particular financial assistance, with third countries." In accordance with the ordinary legislative procedure, the Parliament and the Council are to adopt the measures necessary for the implementation of disbursement of MFA to Egypt (Art. 212(2) TFEU). The Commission formulated a proposal for a decision of the Parliament and the Council on providing the longer-term MFA to Egypt on 15 March 2024, but there is no evidence to suggest that this proposal has been approved (European Commission, 2024b). Therefore, it seems the Parliament is withholding consent to express its disapprobation concerning its exclusion from the Partnership negotiations and more generally, its concern about the situation of human rights in Egypt (Pineda, 2024; Fox, 2024; Picierno et al., 2024).

This strategy by the Parliament is also logical, since bringing an annulment action might prove arduous, considering the Court's position on external migration policy has been characterized as "non-interventionist" (Andrade, 2022, p. 121). The ECJ position might be driven by a desire not to intervene in a crucial policy field, such as migration in which there is often disagreement or ambiguity concerning the political direction of policy (Spijkerboer, 2017; Andrade, 2022). Thym (2019) asserts that there is a discernible trend in the Court's case law, namely to proceed with caution through deference to the position of the EU institutions, and therefore, the overall picture can be described as a move towards "judicial passivism" considering it has not issued a single judgment regarding EU external competences on migration policy (p. 140). The Court's passivism might be attributable to the unease of the Court feels regarding the constitutional deficiencies of the external dimension of migration policy (Andrade, 2022). EU primary law provisions governing EU external action in this policy domain remain equivocal, especially those codifying the Court's doctrine on implied external competences, namely Art. 3(2) & Art 216(1) TFEU (Andrade, 2022).

Additionally, in the external dimension of migration policy, the Court would be faced with two unattractive alternatives: it either asserts incompatibility with human rights—an "explosive political situation" for the Court, or it (re)interprets asylum and refugee law narrowly, which would be pernicious for migrant and their rights (Andrade, 2022, p. 117). Spijkerboer (2017) also notes that the Court insulates European law from application to the "huddled masses" (p. 232), despite the emphatic references to universal human rights in European law, such as in the Charter of Fundamental Rights (CFR), but also in the preamble of the TEU, asserting respect "for the inviolable and inalienable rights of the human person (para. 3). Deplorably, through its reservation of EU law for EU citizens, the Court normalizes policies that interfere with third countries without seeking the legitimacy that accompanies judicial scrutiny (Spijkerboer, 2017). Moreover, if the Court were to narrowly interpret the Partnership and assert that it does not produce legal effects, as per Art. 263 TFEU, it would effectively sideline itself by circumscribing its jurisdiction (Spijkerboer, 2017).

The Partnership with Respect to EU and Human Rights Law

This section further delves into the human rights concerns previously alluded to, aiming to establish whether the Partnership is compatible with EU and international human rights law, and the values espoused by the EU in the Lisbon Treaty. Agreements that aim to externalize migration to third countries with questionable human rights records have attracted much criticism from international human rights organizations, and the Partnership is no exception to this (European Council on Refugees and Exiles, 2024; Amnesty International; 2024b).

Applicable EU and International Law

Art. 21(1) TEU stipulates that EU external action should be guided by the principles of "democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, [..] equality and solidarity, and respect for the principles of the United Nations Charter and international law." Moreover, the EU shall aim to cultivate relations and develop partnerships with third countries that embrace these principles (Art. 21(1) TEU). Such partnerships are also to be founded on the values of the EU (Art. 8(1) TEU), namely democracy, equality, freedom, human dignity, respect for human rights, and the rule of law, as enshrined in Art. 2 TEU. Any partnership that contravenes these values and principles would diminish the EU's capacity to influence international developments and undermine its credibility according to a resolution of the European Parliament (2017).

Furthermore, Art. 14 of the Universal Declaration of Human Rights (UDHR) declares that "everyone has the right to seek and enjoy asylum from persecution in other countries." The EU fully embraces the significance of the UDHR, and purportedly uses it to guide external policies and set benchmarks for both international agreements and internal legislation (Zamfir, 2018). This right is also enshrined in the Charter of Fundamental Rights (CFR) of the EU in Art. 18, stipulating that the right to asylum is to be guaranteed. The principle of *non-refoulement* is also enshrined in the CFR (Art. 19), imposing that "no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment." This principle is further affirmed in Art. 78(1) TFEU, Directive 2011/95/EU (para. 3), and Directive 2013/32/EU (para. 3), which all state that common asylum policy must comport with the 1951 Convention Relating to

the Status of Refugees (Geneva Convention), as amended by the 1967 Protocol Relating to the Status of Refugees. The proscription of refoulement is also expressed in Art. 3 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

Additionally, the right to liberty is expressed in Art. 9 of the International Covenant on Civil and Political Rights (ICCPR), which all EU member states are party to. Art. 12 ICCPR states that "everyone shall be free to leave any country" and Art. 2 stipulates that each signatory State Party shall ensure effective remedy in the case of violations of the enumerated rights. The General Court (GC) has also held that the EU should avert situations where an agreement may "indirectly encourage" infringements of fundamental rights (*Front Polisario* v. *Council*, T-512/12, para. 231). In short, there is an abundance of law that rightly impose respect for the human rights of migrants and constraints on EU migration policy, especially in its external dimension. Below, it will be analyzed whether the Partnership can be considered a contravention of the aforementioned laws, values, and principles.

Egypt and Human Rights

Egypt is party to various refugee conventions—it has ratified the Geneva Convention and the 1969 African Union Convention. However, Egypt has expressed reservations on five clauses of the Geneva Convention, rendering access to the stipulated rights ineffective (al-Kashef & Martin, 2019). Moreover, Egyptian law proscribes unauthorized exits of the country—migrants require special permission, and crossing is forbidden at any other points than those officially designated as border-crossing points, in accordance with the Law of Entry and Residence, implying that Egypt does not abide by Art. 12 ICCPR, which it ratified in 1982 (al-Kashef & Martin, 2019). Art. 2 of this law precludes entry and exit without a valid legal document or passport. Violations of Art. 2 and 3 by refugees and asylum seekers can result in criminal charges, including imprisonment for up to six months, and according to a presidential decree, anyone convicted of illegal entry or exit can face imprisonment and a fine, regardless of proscriptions of such measures provided in the Geneva Convention (al-Kashef & Martin, 2019).

Egypt launched its National Human Rights Strategy (NHRS) in 2021, to conceal its abysmal human rights record according to Amnesty International (2022), with documented violations including mass arbitrary detention and extrajudicial killings. The United States Department of State (2024) also notes in its 2023 human rights report on Egypt that restrictions on freedom of movement and the right to exit the country remain significant. Additionally, the report states that authorities arbitrarily arrest and detain migrants, who might have had proper grounds for asylum claims, and either held them in police stations, sent them to regular prisons, or even deported them. The Office of the UN High Commissioner for Human Rights (2021) states that migrants should not be regarded as security threats or criminals, irregular entry and exit should not be considered a criminal offence, and the criminalization of irregular migrants is not a legitimate justification for their arrest and detention, which stands in stark contrast to the practices of the Egyptian authorities. Arbitrary detention is proscribed by Art. 9 UDHR, and its prohibition is also a peremptory norm of customary international law.

Human Rights Watch (2023) similarly notes that migrants, refugees, and asylum seekers in Egypt were subjected to refoulement and physical abuse. Likewise, Amnesty International (n.d.) states in its 2023 report on Egypt that refugees were banned from entry by authorities and that dozens were arrested by its security apparatus. Moreover, a recent investigation by the Refugees Platform in Egypt and The New Humanitarian revealed that Egyptian authorities detained thousands of Sudanese refugees fleeing the civil war in a network of covert military bases, and subsequently carried out mass deportations, denying them the right to apply for asylum (Creta & Khalil, 2024). Such practices entail flagrant violations of the principle of non-refoulement, and therefore a contravention of the Geneva Convention. Consequently, The Global Detention Project and Committee for Justice (2024) released an urgent appeal addressed to the Commission and MEPs among others, referring to the pushbacks and refoulements carried out by the Egyptian security apparatus, also noting that they are occurring at a time of increased support and funding by the EU, referencing the Partnership. The appeal further asserts that there was a significant increase in the number of detentions in 2023 compared to 2022, rising from 3,800 to 5,200 (42%), accompanied by an unparalleled increase in confirmed cases of refoulement, with at least 2,000 deportations to Sudan. The UN High Commissioner for Refugees (2023) similarly reported the deportation of 1,600 people in November 2023.

Furthermore, the European Parliament (2021) has stated that the EU must respect human rights in its external action, particularly in cooperation with third countries in the area of migration. It has also expressed disapprobation of the human rights situation in Egypt, denouncing the enduring "lack of basic political rights and freedoms" and reiterating its appeal for a comprehensive review of EU-Egypt relations considering Egypt's inadequate progress on respect for human rights and its suppression of dissent (European Parliament, 2022, para. 1). MEPs have also expressed concern specifically about the Partnership in parliamentary questions addressed to the Commission, regarding the Commission's justification for the disbursement of funds to a regime that is complicit in infringements on the rights and freedoms of migrants (Bricmont et al., 2024; Marquardt et al., 2024; Picierno et al., 2024; Pineda, 2024). MEP Satouri similarly stated that Egypt continues to commit human rights violations, and that a timeframe for reforms remains absent (Fox, 2024b).

Additionally, on 13 June 2024, a joint NGO letter addressed to the Commission urges it to uphold EU and international law to ensure that the disbursement of MFA to Egypt ensures "concrete, measurable, structural and timebound human rights progress and reforms" (Amnesty International, 2024b, para. 1). The NGOs cite the fact that, as per general policy and more specifically Council Decision (EU) 2024/1124, a prerequisite for the disbursement of MFA to Egypt is that it continues to make efforts aimed at guaranteeing respect for human rights. The Parliament has also requested the Commission to conduct ex-ante human rights impact assessments prior to the conclusion of an agreement with third countries, and MEPs have also inquired about how Egypt's compliance with the foregoing conditionality criteria will be assessed with respect to the Partnership (Strik, 2023; Picierno et al., 2024).

Compatibility with EU and Human Rights Law

The conclusion that can be drawn from the above is that the Partnership contravenes EU values, principles, and law, and international human rights law, since it seeks to externalize migration control to a country that does not abide by these. The Partnership strongly incentivizes Egypt to preclude migratory flows towards Europe through funding for migration management, and is based on the assumptions that Egypt constitutes a safe third country (STC), as per Art. 38 of Directive 2013/32/EU, and that it has taken the necessary steps to be eligible for EU funding with respect to human rights (European Commission, 2024a). However, the findings of various human rights organizations have proven these assumptions to be wholly erroneous, firmly establishing that Egypt continues to commit violations of the right to seek asylum and the principle of non-refoulement. Thereby, the EU circumvents the proscription of refoulement through the externalization of migration control to Egypt, constituting a case of "refoulement through remote control" (Longo & Fontana, 2022, p. 509). However, responsibility cannot be avoided by the EU outsourcing its obligations, under its own and international law, to Egypt (Goodwin-Gill, 2007).

Moreover, since responsibility for migration control is shifted outside of EU territory, legal recourse to human rights mechanisms within the EU becomes virtually impossible for migrants (Crépeau, 2013). The EU thereby evades accountability under international law, considering NBIs such as the Partnership do not envisage the possibility for migrants to seek judicial redress, raising the question as to whether the EU is culpable for human rights abuses committed by the Egyptian regime considering funding is provided unconditionally (Frasca & Roman, 2023). External migration policy is thus not accompanied by the "appropriate human rights guarantees" (Crépeau, 2013, para. 59). It is evident from the above that the EU tries to preserve external migration policy at the expense of human rights protection and the values it espouses (Strik, 2023). Gatti and Ott (2019) rightly assert that one might raise doubts about the EU's preference for pragmatism over concerns for human rights, the rule of law, and democracy. It could be argued that the Partnership constitutes an agreement in which "the fundamental rights of the persons concerned may be interfered with to such an extent" that parliamentary involvement becomes necessary, and the mere fact that the Partnership is non-binding cannot preclude this contention (*Parliament* v. *Council*, C-355/10, paras. 77—80).

Conclusion and Discussion

In conclusion, the Partnership exemplifies how the EU's securitization of migration has resulted in the externalization of its management to third countries, primarily through the (unconditional) provision of funding. The analysis has shown that the Partnership was negotiated and concluded with the intention that it does not provide for any legally binding obligations. The Commission and the Council deliberately avoided concluding a formal international

agreement, allowing them to preclude parliamentary consent and scrutiny. This strategy can be qualified as atransgression of the principle of sincere cooperation, although not necessarily an infringement on the principle of institutional balance as per the Court's case law. It is only partly true that in the adoption of NBIs, the Commission and the Council circumvent both judicial control by the Court and oversight by the Parliament. The Parliament has so far used its budgetary powers to preclude the disbursement of MFA to Egypt, although €1 billion in MFA has already been disbursed through mechanisms that do not require parliamentary approval. Moreover, it can bring an annulment action before the Court, contesting the Partnership's legality. The analysis has also demonstrated that the Partnership is not compatible with EU values, principles, and law, and international human rights law. The externalization of migration control to a country that commits repeated violations of the right to seek asylum and the principle of non-refoulement, as documented by various human rights organizations, does not comport with the foregoing. Consequently, Egypt should not be considered eligible for EU funding as per conditionality criteria, since it has not taken the necessary steps to be able to claim it respects human rights. Through externalization, the EU also evades accountability under international law, since the Partnership precludes migrants from seeking judicial redress within the EU.

The Partnership therefore serves as a perfect illustration of the informalization trend in the external dimension of migration policy, namely the increasing tendency of the EU to adopt NBIs, particularly with third countries that have questionable human rights records. It is thus similar in legal nature to agreements such as the following: the 2016 EU-Turkey Statement (arguably an NBI) (Gatti & Ott, 2019), the 2016 Joint Way Forward on migration issues between Afghanistan and the EU (European External Action Service, 2016), the Standard Operating Procedures with Mali and Bangladesh of 2016 and 2017 respectively (Molinari, 2019), the 2017 EU-Ethiopia readmission arrangement (Council of the European Union, 2017b), and the 2023 EU-Tunisia Memorandum of Understanding (Andrade & Frasca, 2024). Hence, the Partnership is one among many—a plethora of NBIs have been adopted in the last decade by the EU, at the expense of its credibility as a defender of human rights. As established with respect to the Partnership, NBIs do not fall perfectly into the legal order of the EU, with its institutions acting in absence of a proper constitutional framework that regulates their negotiation and conclusion. Consequently, calls have been made to repeal and replace NBIs with hard-law equivalents that full under Art. 218 TFEU in external migration policy, to ensure the Parliament can exercise its prerogatives and to guarantee compliance with EU and international law (Moreno-Lax, 2020). Additionally, in an area where judicial scrutiny is particularly important, it would serve the Court to take a more active stance (Andrade, 2022). It indeed remains peculiar, as Wessel (2021) notes, that an area as extensive as external migration has not been regulated particularly well.

However, it seems that the Commission and the Council are not planning on ceasing the use of NBIs anytime soon—the Commission has namely notified the Council of its intention to negotiate a "non-legally binding Joint Statement aiming to establish a Migration and Mobility Partnership" with Egypt on 23 April 2024, notably only a month after the Partnership was concluded. Thereafter, on 8 May 2024, COREPER discussed whether the Council should authorize negotiations. Regrettably, access to these documents was denied because they contain "politically sensitive information on enhanced cooperation on migration between the EU and Egypt" (Document 24/1593).

The present research synthesizes the legal and political dimensions of the Partnership. It has explicated not only the political reason for externalizing migration control, namely the securitization of migration, but also questions the legal basis of the Partnership, which constitutes a soft-law instrument adopted. The research employs a socio-legal case study to elaborate on the legal procedures that govern the negotiation and conclusion of NBIs and how institutions interact with these. It has shown that the increasing use of NBIs is a conscious political choice made by the Commission and the Council, to preclude democratic control by the Parliament, and to evade responsibility under international law by externalizing migration control to a regime that does not respect human rights.

Limitations of the research include restricted access to internal negotiations among EU institutions and actors. Even though access to some restricted documents was granted, the fact remains that these are only official documents and consequently, the underlying motivations and rationale of actors within the EU remain unarticulated. Additionally, due to the focus on EU institutions, the role of Member States is not discussed in this research, although their leaders are in fact present at the conclusion of agreements such as the Partnership (Directorate-General for Neighbourhood and Enlargement Negotiations, 2024c). Hence, the extent to which they are responsible for EU external action on

migration policy remains unclear, which can be examined more in depth by future research. Additionally, future research should keep up with subsequent developments in the constantly evolving field of migration policy, particularly potential judicial developments. If the Parliament is successful in its annulment action before the Court, it would likely entail a reverberating judgment that would exert significant influence on external migration policy.

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