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Investigation of a post-mandate agreement above suspicion: the July 2018 MoU on readmission between Belgium and Tunisia

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ABSTRACT

In July 2018, Belgium and Tunisia signed a Memorandum of Understanding (MoU) aimed at dealing with the expulsion of irregular migrants. The MoU would have been unnoticed had it not been stipulated after the Council granted the European Commission the exclusive mandate to negotiate a European Readmission Agreement (EURA) with Tunisia. This article examines the factors that have been conducive to the post-mandate conclusion of the bilateral MoU. Approaching informalization as a systemic and evolving process in European and international relations, this article makes four contributions. First, it questions the assumption that informal deals can be equated with a political act that is unimportant or legally non-binding. Second, the article argues that the July 2018 MoU is symptomatic of unprecedented deviations, at the EU level, that today consolidate the drive for informalization. Third, the analysis shows that the MoU has been, as it were, above suspicion, for its existence has been silently tolerated as a result of broader policy developments that normalize the use of informal instruments, especially in the EU–Africa context. Fourth, beyond the official rhetoric about flexibility and informalization, the case study reveals the limits of international cooperation on readmission.

KEYWORDS

Informalization; intergovernmentalism; international cooperation; readmission; supranationalism; Tunisia

On 17 July 2018, Tunisia and Belgium stipulated a Memorandum of Understanding (MoU).[1] One of the objects of this MoU was the readmission – and, respectively, the expulsion – of the nationals of both countries who are found in an irregular situation. The reciprocal obligations contained in the MoU, as well as the detailed modalities for identifying and expelling the nationals of the contracting parties, denote the explicit intentions of the signatories to improve their bilateral cooperation on readmission. This is a core priority mentioned in the arrangement. The conclusion of an MoU which epitomises flexibility and informality is far from being novel in International Relations studies. Often, states opt for such an instrument in order to reduce uncertainty (Abbott & Snidal, 2000; Aust, 1986; Koremenos, 2005; Lipson, 1991) as well as the unequal costs and benefits stemming from the bilateral cooperation.

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What is troubling, however, is that the July 2018 MoU was stipulated four years after the Council granted the European Commission the exclusive mandate to negotiate a European (or supranational) readmission agreement (EURA) with Tunisia. The mandate dates back to December 2014 (European Council, 2014, p. 4).[2] It is exclusive insofar as no EU member state can challenge the negotiations of a EURA when the Commission is dealing with a given non-EU (or third) country. Rather, member states are expected, though not obliged, to support the bargaining power of the Commission. Nor can any member state conclude any bilateral agreement dealing with readmission with the same non-EU country once the mandate is granted to the Commission. The mandate follows negotiating directives that detail the scope of this exercise of competence.

Moreover, in accordance with the Treaty Establishing the Union (TEU), 'the member states shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives' (Article 4(3) TEU). In a similar vein, Article 2(2) of the Treaty on the Functioning of the European Union (TFEU) mentions that 'the member states shall exercise their competence to the extent that the Union has not exercised its competence. The member states shall again exercise their competence to the extent that the Union has decided to cease exercising its competence'. In other words, the member states will not exercise their competence on readmission when the Union is negotiating or has concluded an EU readmission agreement with a given non-EU country. This does not mean, however, that member states will not exercise their competence on readmission as a whole. There is a plethora of agreements linked to readmission, be they formal or informal, which have been concluded by the member states with non-EU countries, at a bilateral level (Cassarino, 2007).

Long before the entry into force of the Treaty of Amsterdam in 1999, member states' bilateral cooperation on readmission with non-EU countries had developed significantly. The exclusive competence of the Commission only applies when the Council adopts a decision authorizing the opening of negotiations of a EURA with a given non-EU country. The mandate granted to the Commission has to be respected in accordance with the Treaties, including the duty of sincere cooperation (Coleman, 2009, p. 83; García Andrade, 2019; Molinari, 2021; Ott, 2020).

Both the EU and its member states share a competence in the field of readmission. However, once the Council has granted a mandate to the Commission to negotiate a EURA with a given non-EU country, this mandate takes precedence. The mandate of negotiation granted to the Commission thus supersedes any *future* bilateral attempt by a member state to conclude an agreement on readmission with a given non-EU country. It does not, however, supersede earlier bilateral agreements concluded by the member states with the non-EU country as long as such agreements are deemed *compatible* with the terms of the new EURA concluded with a given non-EU country. These preliminary considerations are critical for understanding the conditions under which the Commission shares its competence with the member states in the field of readmission and exercises its exclusive power to negotiate EURAs.

In this light, the July 2018 MoU acquires its full analytical relevance. Consequently, this article focuses on the factors that have affected the post-mandate occurrence of the deal. How has the informal deal been motivated and addressed from a political point of view? What does it tell us about the drive for informalization and its effects on intergovernmentalism and supranationalism[3]? Interviews with stakeholders involved in the negotiations of

the MoU, as well as the collection and analysis of internal documents communicated by public officials, were crucial for gaining a sense of the complex factors conducive to its negotiations and final conclusion.

The above questions will be investigated by analysing, first, the attributes of the MoU, then its origins and finally, its implications. Attributes refer to the terms and objectives mentioned in the MoU concluded between Belgium and Tunisia, including the reciprocal obligations, the modalities of the bilateral cooperation and the intentions of the parties. Origins pertain to the causes that have been conducive to the conclusion and adoption of the MoU at this particular time, namely years after the Commission was mandated to negotiate a EURA with Tunisia. Implications are analysed with reference to the potential consequences of the MoU on intergovernmentalism (namely, effects of the cooperation between Tunisia and Belgium, course of conduct of the state actors involved) and supranationalism (namely, effects on the EU institutions and their responsiveness).

1. Attributes

International agreements on readmission, be they formal or not, are invariably conducive to unequal costs and benefits, despite their being based on reciprocal obligations. Actually, experiences have shown that cooperation on readmission can hardly thrive if reciprocities turn out to be too unbalanced (Cassarino, 2007). Uncertainties arise when one of the parties realises that the costs of implementation have become unsustainable financially, institutionally, or politically. Commitments can be suspended unilaterally or simply reneged lest no accompanying measures or compensation be provided.

Informality in international politics and international law has unquestionably contributed to the expansion of the 'deportation machines' (Fekete, 2005; see also De Genova & Peutz, 2010; Kanstroom, 2007; Walters, 2002), across all continents. For many decades, informality has been a cornerstone of the cooperative patterns on deportation, especially between those involving European and African countries.

Informal arrangements have already been studied by International Relations scholars. They can be easily renegotiated and adapted to changing circumstances (Guzman 2005, p. 591). They also tend to lower contracting costs (Abbott & Snidal, 2000, p. 434). They mitigate the cost of defection or renege. They do not require ratification procedures as they are often stipulated without parliamentary scrutiny and beyond public purview (Cassarino, 2007; Slominski & Trauner, 2020). Informality has been examined to demonstrate how the signatories can easily deny the existence of the treaty or water down its scope and legal effects by arguing that it is 'just political'. Such attributes – invisibility, limited cost of defection, flexibility and deniability – have been extensively addressed in the seminal works of Anthony Aust (1986), Charles Lipson (1991), Kenneth Abbott and Duncan Snidal (2000), to account for the use of informal instruments by states.

These attributes would not, however, suffice to explain the reasons for which an MoU was stipulated between Belgium and Tunisia in July 2018. When a key Belgian negotiator of the MoU was interviewed, he cited other elements to justify the conclusion of the informal deal:

> For starters, as I am sure you know, the EU's negotiations on readmission with North African countries have been at a standstill for a very long time. We [i.e. Belgium] had no other option

> but to propose an informal deal, owing to the exclusive mandate of the Commission in negotiating a readmission agreement with Tunisia. We couldn't sign a formal bilateral treaty detailing all the procedures for readmitting Tunisian nationals from Belgium. Secondly, we decided to place the bilateral negotiations with our [Tunisian] counterparts into a broader framework of cooperation. Negotiations started in early 2015. […] At the beginning, a debt swap was on the table of negotiations. But this idea was quickly abandoned following the terror attacks in Tunisia[4]. […] We understood that they [Tunisian negotiators] expected more technical assistance from us, in the field of domestic security, police cooperation and mass surveillance. That's why we negotiated an MoU with Tunisia on the readmission of irregular migrants which could also include security matters in order to respond to their expectations.[5]

Nonetheless, the MoU extensively details the objectives it seeks to achieve, as well as the procedures aimed at expelling Tunisian nationals from Belgium. The language reflects reciprocities that are typical of a readmission treaty. Chapter 4, for example, details the reciprocal commitments of the contracting parties to readmit their own nationals. Article 9 of the MoU enumerates the means of evidence regarding a person's nationality. Prima facie evidence of nationality can be furnished through passports, identity cards or *laissez-passers*, even if their period of validity has expired. If none of the documents can be presented, identification will be based upon the examination of fingerprints collected by the Belgian authorities and submitted to the Tunisian consular authorities for verification. The Tunisian consular authorities may interview the persons to be readmitted if evidence based on fingerprints turns out to be unconclusive. Time limits for the reply to a readmission application (art. 9.5) and for the validity of a *laissez-passer* (art. 10) are specified in the text of the MoU. Modalities of transfer and possible use of escorts are clearly defined (art. 11). The MoU also mentions the creation of a monitoring committee jointly presided over by the Tunisian Foreign Office and the Belgian Ministry of the Interior (*Service Public Fédéral Intérieur*). This committee makes an annual assessment of the MoU and addresses issues arising from its interpretation (art. 13). Finally, as specified in article 23, termination can take effect following a six-month period of notice, although the apparent informal status of the MoU suggests that there is no legal obstacle to give immediate notice.

The abovementioned details demonstrate that the July 2018 MoU cannot be categorized as an informal deal having no legally binding effect on the signatories. Being informal and beyond public purview, it was not discussed in Parliament. As a Belgian interviewed official explained: 'Only some questions were asked in Parliament, by a few Members. But no parliamentary debate took place'.[6]

With reference to the lack of parliamentary oversight, Joost Pauwelyn rightly argued that 'the lack of certain formalities, not lack of legally binding character per se' (2012, pp. 15–16), is where scholarly attention should be. Decades earlier, Anthony Aust (1986) explained that investigating the empirical practice of the signatories may clarify whether some of the provisions contained in an MoU can be regarded as binding in international law. To understand whether an informal instrument is 'just political' or an agreement having legal implications, we must look at the signatories' *intentions* to create reciprocal obligations and commitments. In other words, if an MoU appears inferior, this does not mean in effect that it has *de facto* and *de jure* no impact on the signatories' behaviours, let alone on the fate of the persons targeted by the MoU (Vitiello, 2020, p. 136). Parliamentary oversight would allow the 'gap in democratic scrutiny' (Ott, 2020, p. 586) to be bridged, although it may not prevent the executive power from adopting

informal agreements in foreign affairs. However, it has to be said, reinforced parliamentary supervision would foster broader and more informed legislative and policy debates about the utility of an informal deal and its compliance with human rights standards. In other words, the executive power would be confronted with a *duty of notification and justification*. This double-edged duty would challenge the executive to explain why an informal deal was stipulated with a given third country, its policy-making rationale as well as its financial and legal implications. To be sure, lack of parliamentary oversight is tantamount to informalization, be it at a national or EU level, just like informalization is tantamount to lack of justification on the part of the executive. Crucially, these considerations acquire a democratic significance which goes well beyond the spurious debates about whether or not an agreement is formal or informal. In this connection, Charles Lipson demonstrated long ago that the formal-informal distinction rests on:

> The implicit claim that international agreements have a status similar to domestic contracts, which *are* binding and enforceable. This claim is seriously misleading. It is a faulty and legalistic characterization of international agreements in practice and is also a poor guide to why states sometimes use treaties and other times use informal means to express agreements. (Lipson, 1991, pp. 502–503)[7]

I too question the established formal-informal distinction as well as the assumption that an informal deal can be equated with a political act that is unimportant or legally non-binding. Moreover, if 'only the degree of precision of the individual provision can serve to determine the legal relevance' (Münch, 1969, p. 9), one can argue that there is a substantial degree of precision in the July 2018 MoU when it comes to defining the terms and modalities of cooperation on readmission. Chapter 4 of the MoU is a case in point. The same degree of precision is noticeable in the various incentives that the Belgian authorities have offered to their Tunisian counterparts, including the facilitated delivery of multi-entry visas to certain Tunisian nationals (art. 5) as well as enhanced police cooperation, techniques of mass surveillance (art. 18), and cooperation on antiterrorism (art. 19). These matters were prioritized by the Tunisian negotiators, as reported by the interviewed Belgian official.

Another specific attribute of the July 2018 MoU is its apparent intergovernmental scope. At first sight, the MoU involves chief executives of the Tunisian and Belgian governments. However, it also involved officials of different bureaucracies, both in Belgium and in Tunisia, due to long-standing contacts between state agencies and ministerial bodies. Such 'transgovernmental' contacts (Keohane & Nye, 1974) date back to early 2015, namely a few months after the creation of the federal government headed by Prime Minister Charles Michel. His government was based on a fragile coalition including the Reformist Movement (MR), the Flemish Liberal-Democratic Party (OVLD), the Christian Democratic and Flemish political party (CD&V) and the New Flemish Alliance (N-VA). Jan Jambon, Minister of the Interior, and Theo Francken, State Secretary for asylum and migration, both members of the populist and nationalist N-VA, were keen to boast their political credentials in the reinforced control of migration flows by reinvigorating Belgium's externalization policies. Additionally, the N-VA has constantly criticized the EU institutions and the supranational method to negotiate European readmission agreements with non-EU countries. The negotiations of the Belgium-Tunisian MoU started against this background, which was also marked by rising populism in Belgium and

Europe more generally, as well as by resilient tensions between intergovernmentalism and supranationalism. Importantly, this was the time when intra-Schengen controls (with military patrols) were re-introduced with a view to stemming the flows of persons in need of international protection (Moreno-Lax, 2015). Yet, as the following section demonstrates, other unprecedented policy developments, at the EU level also, contributed to turning the conclusion of a bilateral MoU on readmission with Tunisia into an acceptable option for the Belgian authorities, despite the exclusive mandate granted to the Commission.

2. Origins

Until the mid-2010s, Belgium's cooperation on readmission with third countries was seldom based on informality. It usually opted for formal bilateral treaties, especially with third countries located in the Balkans and Eastern Europe. Since the mid-2010s, Belgium's patterns of cooperation have changed markedly together with the geographical expansion of its own cobweb of bilateral agreements. The reasons underlying this shift cannot be analysed with reference to domestic policy developments only. If they could, Belgium's *modus operandi* in the field of readmission would be a *sui generis* case study. It is not. Rather, as I will show, the July 2018 MoU, including its negotiation and conclusion after the European Commission was mandated to negotiate a EURA with Tunisia, embodies the logic of informalization that has gradually gained momentum in the EU's external relations.

Obviously, informal patterns of cooperation on readmission are not new. Long before the EU was empowered by the 1999 Treaty of Amsterdam to negotiate and conclude EU readmission agreements with third countries, some member states (e.g. France, Greece, Italy, Spain and the United Kingdom) had already stipulated informal deals based on memoranda of understanding, exchanges of letters, administrative arrangements and bilateral police cooperation agreements including a clause on readmission (for a more detailed discussion, see Cassarino, 2007, 2018). The competence in the field of readmission, shared between the EU and its member states, has been conducive to a hybrid system of readmission where intergovernmentalism and supranationalism have coexisted and, at times, collided. Tensions have ritually emerged following the arrival of large number of migrants in Europe, together with recurrent official calls for more policy action, at the level of the EU, against irregular migration.

In theory, the existence of a shared competence between the Union and its member states in the field of readmission should not be problematic, especially when the newly acquired competence of the EU is expected to strengthen the leverage of individual member states in their negotiations with non-EU countries, by speaking with one voice. Moreover, the need for common and harmonized rules and procedures justified a supranational competence with a view to expelling irregular migrants in accordance with the EU Treaties and international law, with due regard to human rights standards and international obligations. Such standards and obligations are contained in the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Charter of Fundamental Rights of the European Union (Giuffré, 2020). Moreover, the shared competence between the Union and its member states in the field of readmission has always been guided by the added-value criterion. This key

aspect was made clear in 2002 by the General Secretariat of the Council by stating that when the EU 'signs a readmission agreement with a third country, this should involve added value for member states in bilateral negotiations' (European Council, 2002, p. 3).

In practice, however, sharing the same competence presupposes three preconditions which, to date, have been unmet. Firstly, adding value to the action of the member states would logically require the collection and knowledge of existing bilateral patterns of cooperation on readmission. In other words, member states should communicate to the Commission the list of their existing bilateral readmission agreements, be they standard or not, stipulated with third countries. Secondly, supranational monitoring mechanisms should be established in order to assess whether member states' action is compliant with their international obligations and the EU treaties. Thirdly, there should be a convergence of contingencies and priorities between member states, on the one hand, and the Union, on the other. Contingencies pertain to the factors and conditions shaping patterns of cooperation on readmission (namely why the cooperation on readmission has developed this way and not otherwise), whereas priorities refer to the drivers of cooperation (namely which factors motivated the contracting parties). When convergence is optimal, member states would entrust or be fully supportive of the Union in the field of readmission while recognizing the added value and effectiveness of its action. This optimal degree of convergence has never been reached, leading to a contingency gap. Convergence of contingencies and priorities is essential to capturing the difficulty with which the European Commission has tackled the added-value criterion since it was mandated to negotiate and conclude EU readmission agreements.

These three unmet preconditions speak volumes about the tricky circumstances under which the European Commission has attempted to consolidate and defend its own supranational guidance, at a time when its credibility was challenged both internally and externally. Internally, a number of member states were calling into question the utility of the exclusive mandate granted to the EU. Externally, some strategic non-EU countries, especially those located in North Africa, while being aware of the tensions between intergovernmentalism and supranationalism in Europe, were expressing their preferences for intergovernmental patterns of cooperation on readmission over supranational ones (Zardo & Loschi, 2020), arguably in an attempt to protect their bargaining power.

These elements explain why the negotiations of EURAs have been extremely lengthy and difficult.[8] More than ten years following its first mandate to negotiate EURAs, the European Commission called on the member states to 'support its readmission negotiating efforts more wholeheartedly and not lose sight of the overall interest that a concluded EURA represents for the entire EU' (2011, p. 8). Member states' lack of wholehearted support may be symptomatic of the solidarity gap (Maiani, 2020) that has so far hindered the reform of the Common European Asylum System. It may also result from interstate rivalry within the EU on how migration and asylum should be managed. Last but not least, the aforementioned lack of support may also stem from some member states' growing exposure to the explicit claims of some empowered non-EU countries (El Qadim, 2015; Wolff, 2014). Such internal and external factors combine together rendering the chances for a coordinated action, at the level of the EU, more difficult.

The EU drive for informalisation gained more momentum following the political declaration of the Valletta Summit (11–12 November 2015). In its action plan five priority domains on migration management with African countries were identified including the

need for 'mutually agreed *arrangements* [emphasis mine] on return and readmission'. Since then, under the umbrella of a new Partnership Framework, various EU-wide informal arrangements or compacts have been stipulated or are being negotiated with third countries. Compacts became officially favoured over EURAs in order to 'avoid the risk that concrete delivery is held up by technical negotiations for a fully-fledged formal [readmission] agreement' (European Commission, 2016b, p. 3). Compacts are EU-wide tailor-made informal arrangements whose core objective is to promote and prioritize mechanisms on readmission. Dialogues, mutual understandings and informal arrangements are at the heart of the Partnership Framework. The latter cannot be coined European readmission agreements. However, whether these arrangements take the form of a joint declaration or a political statement or a common agenda or a joint way forward, they are no less EU-wide agreements based on clear reciprocal commitments between the EU and its member states, on the one hand, and a third country, on the other. More importantly, patterns of cooperation stemming from a partnership framework are aimed at dealing with readmission and with readmission-related issues, in the short- to long-term.

Table 1 gives a clear overview of the state of play. Since 2015, numerous EU-wide arrangements have proliferated involving non-EU countries located in Africa and Asia. Bilateral arrangements on readmission, on the one hand, and the new EU-wide arrangements resulting from the Partnership Framework, on the other, share three common denominators.

Firstly, they both mystify the capacity of law-enforcement authorities and decision-makers to control migration while showing to constituencies that policy measures aimed at stemming irregular migration are or can be taken. Secondly, their rationale lies in making cooperation on readmission more flexible while avoiding lengthy ratification procedures and, consequently, parliamentary oversight. Thirdly, they tend to respond to emergencies and external shocks (e.g. arrivals of large numbers of irregular migrants and asylum-seekers), whether or not their response is adequate.

There is no question that the proliferation of such EU-wide informal arrangements reflects a subtle alignment of the European Commission with the long-established bilateral practices of some EU member states (Cassarino, 2018). More problematically, 'the paramount priority set by the EU to achieve fast and operational returns, and not necessarily formal readmission agreements' (European Commission, 2016a, p. 7) starkly reflects a reconsideration of the EU approach to a *common* readmission policy which has progressively veered from a normative approach towards a flexible one (Cassarino, 2018; Carrera, 2019; Santos Vara 2019; Casolari, 2019; Strik, 2019; Wessel, 2021).

To use a musical metaphor, there has been a transition from a monophonic texture whereby the EU was expected to speak about readmission with one dominant voice in its external relations to a polyphonic texture with simultaneous lines of independent melodies. Under these circumstances, achieving harmony is a daunting challenge. Actually, this unprecedented variation, at the EU level, has been conducive to dissonant vibrations jeopardizing the initial project of consolidating a European common readmission policy in line with the EU treaties and international law. As Sergio Carrera rightly remarked, such a reconsideration may 'increase the inconsistencies and, arguably, further undermine the credibility of the EU's readmission policy' (2016, p. 47) in its claim to build common and harmonized procedures. All the more so when realizing

Table 1. EURAs and EU-wide informal agreements linked to readmission, March 2022.

Third countries	EURAs		EU-wide informal agreements linked to readmission
	Entered into force	Mandate granted to the Commission	
Afghanistan			JWF (02/10/2016); JDMC (26/04/2021)
Albania	01/05/2006	Nov. 2002	
Algeria		Nov. 2002	
Armenia	01/01/2014	Dec. 2011	MP (27/10/2011)
Azerbaijan	01/09/2014	Dec. 2011	MP (05/12/2013)
Bangladesh			SOP (25/09/2017)
Belarus	01/07/2020	March 2011	MP (13/10/2016)
Bosnia-Herzegovina	01/01/2008	Nov. 2006	
Cape Verde	01/12/2014	June 2009	MP (05/06/2008)
Cote d'Ivoire			GP (01/12/2018)
Ethiopia			CAMM (11/11/2015); AP 05/02/2018
Ghana			JDM (16/04/2016)
Georgia	01/03/2011	Nov. 2008	MP (30/11/2009)
Guinea			GP (24/07/2017)
Hong Kong	01/03/2004	April 2001	
India			CAMM (29/03/2016)
Jordan		March 2016	MP (09/10/2014)
Macao	01/06/2004	April 2001	
Mali			JDM (11/12/2016)
Moldova	01/01/2008	Dec. 2006	MP (05/06/2008)
Montenegro	01/01/2008	Nov. 2006	
Morocco		Sept. 2000	MP (07/06/2013)
Niger			JDM (03/05/2016)
Nigeria		Sept. 2016	CAMM (12/03/2015)
North Macedonia	01/01/2008	Nov. 2006	
Pakistan	01/12/2010	Sept. 2000	
Russia	01/06/2007	Sept. 2000	
Serbia	01/01/2008	Nov. 2006	
Sri Lanka	01/05/2005	Sept. 2000	
The Gambia			GP (16/11/2018)
Tunisia		Dec. 2014	MP (03/03/2014)
Turkey	01/10/2014	Nov. 2002	JS (07/03/2016)
Ukraine	01/01/2008	June 2002	

Source: Inventory of the Bilateral Agreements linked to Readmission, https://doi.org/10.7910/DVN/VKBCBR, Harvard Dataverse.

Note: MP = Mobility Partnership; CAMM = Common Agenda on Migration and Mobility; JWF = Joint Way Forward; JDMC = Joint Declaration on Migration Cooperation; JS = Joint Statement; SOP = Standard Operating Procedure for the identification and return of persons without an authorization to stay; JDM = Joint Declaration on Migration; GP = Good Practices for the efficient operation of the return procedure; AP = Admission Procedures for the return of foreign nationals from European Union member states.

that the drive for flexibility turns the EU into a facilitator (not a conductor) who lays the groundwork for variegated bilateral cooperative patterns (Vitiello, 2020, pp. 159–160).

The MoU stipulated in July 2018 between Belgium and Tunisia is no exception to these variegated cooperative patterns. It has been informed by the gradual EU drive for informalization analysed in this section. Arguably, it is symptomatic of the informalization hit that EU policy-makers are now praising at both bilateral and supranational levels in their quest for 'operability'. The adoption of the new Partnership Framework, including the proliferation of compacts, have turned the July 2018 MoU into an audible sound, despite its glaring dissonance with the exclusive mandate granted in 2014 by the Council to the European Commission.

3. Policy implications and findings

Having analysed the factors that have affected the conclusion of the MoU in July 2018, namely years after the Commission was mandated to negotiate a EURA with Tunisia, we need to address the concrete implications stemming from the cooperation between Tunisia and Belgium.

Informal instruments are often justified in official discourses by the need for 'more effectiveness' (Pauwelyn, 2012, p. 15). The conventional wisdom is that they are designed to sustain a modicum of international cooperation despite uncertainties. They also avoid lengthy ratification procedures and, consequently, bypass parliamentary oversight, at both national and European levels. At a national level, the July 2018 MoU has never been publicly debated, let alone ratified, by members of the Belgian and Tunisian Parliaments. In a similar vein, at the EU level, the various informal arrangements stemming from the new Partnership Framework detailed above do not fall within the scope of Article 218 of the Treaty on the Functioning of the European Union (TFEU) which regulates the adoption of international agreements in accordance with the ordinary legislative procedure (or co-decision procedure shared between the European Parliament and the Council) and with the Treaties (García Andrade, 2018; Giuffré, 2020; Ott, 2020).

By all accounts, the lack of parliamentary oversight in the field of readmission constitutes a key democratic challenge to ensure the rule of law and due process (Carrera, 2019; Giuffré, 2020; Strik, 2019), especially when it comes to complying with rules of identification and redocumentation of migrants, interagency cooperation, the protection of personal data, responsibility sharing (Roman, 2022), exchange of information between each member state and a cooperative third country and, last but not least, with procedural safeguards (Basilien-Gainche, 2020).

However, informal agreements, be they EU-wide or bilateral, do not solve the ubiquitous problem of unequal costs and benefits that invariably characterizes cooperation on readmission. Nor do they tackle the uncertainties that hinder the *full* implementation of the signatories' commitments. Article 3 of the July 2018 MoU stipulated between Belgium and Tunisia foresees enhanced cooperation between the administrations of Tunisia and Belgium on the identification and readmission of irregular nationals as well as mutual technical assistance. In practice, however, these commitments have not been conducive to higher numbers of Tunisian nationals expelled from Belgium, as admitted by an interviewed official of the Belgian Ministry of the Interior:

- I checked online the EUROSTAT statistics and I saw that the return rate[9] between Belgium and Tunisia was around 4 per cent in 2019.
- I know, this is disappointing. So much energy, so many efforts are mobilised to get an MoU and, then, this is the result. […] We have some problems with Tunisian consulates: identification takes too long a time. Some of them seem reluctant to deliver laissez-passers. Otherwise, when they do so, the delivery takes place beyond the time limit.[10]

Has Tunisia's poor compliance with its commitments produced a loss of reputational capital in international politics? In other words, has the lack of compliance had any implications for bilateral relations?

Being beyond public purview and secret, informal agreements have by definition a low reputational impact (Lipson, 1991, p. 509). They are hardly observable and outsiders know little about them. With reference to the July 2018 MoU, Tunisia's lack of responsiveness is unlikely to be discussed, let alone denounced in domestic politics, for it would necessarily imply disclosing the initial intentions of the signatories, as well as the detailed contents of the secret MoU. Like a boomerang effect, public denouncing would expose the action of the Belgian government (especially the nationalist and conservative political party, the N-VA, which was behind the negotiations of the MoU with Tunisia) to discredit and criticisms from opposition parties.

Moreover, African countries have little reasons to believe that lack of compliance would impair their reputation in international politics. Cooperation on the control of migration flows, including readmission, is negatively laden with the past colonialization of the African continent by former European colonial powers. This skilful reappropriation of the colonial repertoire matters in EU-Africa relations (Gabrielli, 2016; Hansen & Jonsson, 2014; Perrin, 2020; Savio Vammen et al., 2021), although it is far from explaining, in a comprehensive manner, the diverse perceptions, subjectivities and positions of the actors involved (Acharya, 2004; Bayart & Bertrand, 2006). Against this background, and with specific reference to readmission, defection or lack of compliance is rarely conducive to loss of reputation in international relations. Rather, it may be presented as a form of 'post-colonial resentment' as stated by Amitav Acharya and Barry Buzan (2019, p. 283), or be motivated by emancipation and self-affirmation (Grovogui, 1996, p. 196). In sum, 'such forms of resistance can be entangled in rather than opposed to the state' (Cold-Ravnkilde, 2021, p. 5).

There are additional explanatory factors that mitigate implications for reputation. EU officials are well aware of the abovementioned asymmetry of costs and benefits, just as they have learned that readmission cannot be isolated from other geopolitical questions of high politics on which various African countries, including Tunisia, have skilfully capitalized. Use of incentives (not coercive conditionalities) has been motivated by the perceptible empowerment of some third countries as a result of their proactive involvement in the reinforced control of the EU external borders. Bringing pressure to bear on uncooperative third countries must be cautiously evaluated lest other issues of high politics be jeopardized. For this reason, exerting pressures on uncooperative third countries may even turn out to be a risky or counterproductive endeavour, especially when these countries are prone to capitalize on their empowered position in other strategic domains (Adam et al., 2020; Cassarino, 2007; Del Sarto, 2021; El Qadim, 2015). Nor can bilateral cooperation on readmission be viewed as an end in itself, for it has often been grafted onto a broader framework of interactions including other strategic issue-areas,[11] such as police cooperation on the fight against international terrorism, intelligence, energy security, border control and other diplomatic and geopolitical concerns. This grafting generates additional incentives to interact frequently because different issues are clustered together (Keohane, 1984, p. 244). Grafting also makes the long-term benefit of cooperation ('the shadow of the future'; Axelrod, 1984) indefinite while ensuring (some degree of) cooperation on readmission, again despite its unequal costs and benefits.

These past lessons reveal the complex reasons for which the existence of an agreement does not automatically lead to its full implementation. Effective implementation is

contingent on an array of factors that codify the bilateral interactions between two contracting parties. Consequently, it would be misleading to argue that the conclusion of a readmission agreement, be it standard or non-standard, is conducive to higher numbers of readmitted aliens. A bilateral agreement just facilitates the readmission of irregular migrants and rejected asylum seekers. Specific conditions and powerful incentives are needed to overcome the asymmetry of costs and benefits.

Using an oxymoron, it is possible to argue that, over the past decades, various EU member states, including Belgium, have learned that bilateral cooperation on readmission constitutes a central priority which, at the same time, remains peripheral to other strategic issue-areas. Readmission is central in official rhetoric because European governments must show to their constituencies that they have the means to respond to external shocks, irrespective of their effectiveness. Readmission is peripheral in member states' external relations because of the aforementioned broader framework of strategic interactions in which cooperation on readmission is inextricably embedded. Arguably, the July 2018 MoU between Belgium and Tunisia has been informed by this 'peripheral centrality' axiom.

4. Conclusion

Investigating the attributes, origins and implications of the July 2018 MoU is necessary to capture the reasons for which it has been stipulated despite the exclusive mandate of the Commission to negotiate a fully-fledged formal European readmission agreement (EURA) with Tunisia. This is the core issue considered in this article. Such reasons do not lie necessarily in the informal dimension of the instrument, nor in its secrecy. Rather, this bilateral agreement, which has so far avoided parliamentary oversight, exhibits an array of technical details, reciprocities, obligations and legal consequences that are akin to a formal readmission agreement. These attributes were addressed in Section One. Its existence may constitute a critical test to the Commission's prerogative to build a common readmission system in line with the EU Treaties and international law. As to whether or not the July 2018 MoU may be in breach of EU law or may overlap the exclusive mandate granted by the Council to the Commission, further legal investigations are needed to thoroughly examine this critical matter.

The origins of the MoU were also important to show that the July 2018 MoU was adopted at a time when the drive for informalization at the EU level was already consolidated. This drive started in the mid-2000s and was powerfully reinforced ten years later following the launch of the new Partnership Framework. The EU drive for informalization has crystallized practices which were unprecedented in the history of the EU's external relations. Characterized by a plurality of unorthodox EU-wide arrangements (see Table 1) and officially justified by the need 'to achieve fast and operational returns, and not necessarily formal readmission agreements' (European Commission, 2016a, p. 7), the EU drive for informalization starkly contrasts with the normative approach to readmission that the EU had defended in its external relations until the mid-2010s (Cassarino, 2018; Wessel, 2021). Belgium's recent inclination to cast an MoU has been informed by this tectonic shift which invariably gives rise to significantly different methods in dealing with readmission, while exacerbating tensions between intergovernmentalism and supranationalism.

The July 2018 MoU was stipulated between Belgium and Tunisia in the wake of these developments. So far, the MoU has been, as it were, above suspicion or unnoticed. Not because it is coined as being 'just political'. Rather, its existence has been silently tolerated as a result of broader policy developments that have been conducive to the EU drive for informalization, as explained in Section Two. This drive has contributed to normalizing an array of informal instruments that side-line democratic accountability, weaken human rights observance and bypass parliamentary scrutiny.

Finally, calls for more 'effectiveness' and 'practical cooperation' have been legion to account for the use of informal instruments in international cooperation systems. Such developments stem from a social and political context marked by rising populism, the ascent of radical political parties and resilient tensions between intergovernmentalism and supranationalism. Against this background, European governments (and the EU by the same token) have been urged to act with a view to showing to their electorates that something is being done to respond to external shocks, whether or not their response has been adequate. To be sure, informalization in the field of readmission is a practice that is gaining momentum in the external relations of the EU and its member states. At the same time, however, the pervasiveness of informal instruments, added to their controversial ordinariness in EU policy-making, reveals the limits of international cooperation on readmission.

Notes

1. The original title of the July 2018 MoU is *Mémorandum d'entente entre le gouvernement de la République tunisienne et le gouvernement fédéral du Royaume de Belgique portant sur la coopération dans le domaine de la migration concertée, de développement solidaire et de la sécurité* [Memorandum of understanding between the government of the Republic of Tunisia and the federal government of the Kingdom of Belgium on cooperation in the field of joint migration management, development and security]. Access to the text of the MoU results from field research carried out in Tunisia by the author in early 2020. The MoU is beyond public purview.
2. The mandate followed a request made in July 2014 by the European Commission to the Council to open negotiations for an agreement between the European Union and the Republic of Tunisia on readmission.
3. For the sake of clarity, intergovernmentalism and supranationalism are defined as follows. Intergovernmental cooperation 'takes place when the policies actually followed by one government are regarded by its partners as facilitating realization of their own objectives, as the result of a process of policy coordination' (Keohane, 1984, pp. 51–52). In this perspective, intergovernmental cooperation occurs as a result of a policy coordination between sovereign states. The latter remain the principal actors in decision-making.

   Supranationalism refers to an integration process involving various states under the responsibility or control of an authority or body. The latter stands above states' sovereign decision-making process. In this perspective, supranationalism implies a delegation of power to a supranational body. It also 'involves some loss of national sovereignty' (Nugent, 2017, p. 436).
4. In 2015, two terror attacks occurred in Tunisia. The first one took place in March 2015 at the Bardo National Museum (Tunis) and the second one in June 2015, in a tourist resort at Port El Kantaoui, near the city of Sousse.
5. Interview with an official of the Belgian Alien Office, Ministry of the Interior. 29 October 2021.
6. Interview with an official of the Belgian Alien Office, Ministry of the Interior. 29 October 2021.

7. In a similar vein, Anthony Aust remarked that 'the distinction between a treaty which contains legal rights and obligations, and an informal instrument which can give rise to legal consequences, is admittedly rather fine' (Aust, 1986, p. 811).
8. As of March 2022, 18 EURAs entered into force with Albania (2006), Armenia (2014), Azerbaijan (2014), Belarus (2020), Bosnia and Herzegovina (2008), Cape Verde (2014), North Macedonia (2008), Georgia (2011), Hong Kong (2004), Macao (2004), Moldova (2008), Montenegro (2008), Pakistan (2010), Russia (2007), Serbia (2008), Sri Lanka (2005), Turkey (2014), and Ukraine (2008). Put together, the total time, elapsed between the negotiating mandates conferred on the European Commission and the entry into force of all the 18 EURAs, amounts to 75.8 years: an average of 4.2 years per EURA.
9. In the parlance of the European Commission, the return rate is the ratio between the number of irregular foreigners ordered to leave the territory of a Member State and the number of irregular foreigners who effectively left the territory of a Member State.
10. Interview with an official of the Belgian Ministry of the Interior. 27 September 2021.
11. Issue-areas are defined as 'sets of issues that are dealt with in common negotiations and by the same, or closely coordinated, bureaucracies, as opposed to issues that are dealt with separately and in uncoordinated fashion' (Keohane, 1984, p. 61).

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