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THE EU'S INFORMAL MIGRATION DEALS AND THEIR COMPLIANCE WITH THE RIGHTS OF MIGRANTS

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Abstract

The EU's usage of informal migration deals has been criticised because those deals bypass democratic and judicial control. However, the impacts it has on compliance with migrants' rights have not been the focus of the debate. To help fill that research gap, this paper investigates the question, *"To what extent does the EU's practice to conclude informal migration deals and partnerships with third countries respect the rights of migrants as codified in EU and international instruments?"* By conducting a hermeneutic textual analysis, the rights of migrants in the EU and the instruments available to the EU when cooperating with non-member states in the field of migration will be established and discussed. This is followed by a case study of three already existing informal migration deals, namely the Mobility Partnership with Morocco, the Joint Declaration on Migration Cooperation between Afghanistan and the EU and the Admission Procedures for the return of Ethiopians from EU member states. The study leads to the conclusion that informal migration deals do not respect the rights of migrants. Some of the rights are violated directly by the EU, while others are not sufficiently protected. Additionally, the violation of the rights depends on the type of informal deal used.

List of Abbreviations

AFSJ	Area of Freedom, Security and Justice
CFR	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
EP	European Parliament
EU	European Union
EURA	EU readmission agreement
HR	Human Rights
JDMC	Joint Declaration on Migration Cooperation
JWF	Joint Way Forward
LI	Liberal Intergovernmentalism
MP	Mobility Partnership
MS	Member State
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations

Table of Contents

1 Introduction

1.1 Introduction

The number of informal migration deals with third countries decided by the EU has increased significantly. The decision to use those deals is extraordinary as they lie outside the EU's instruments in the area of external cooperation. Moreover, they can be characterised as soft law and are thus only politically and not legally binding under international law (Ott, 2020). This increased use of these informal migration deals has not only been criticised by human rights organizations, but even the European Parliament (EP) (2021) has issued a statement in which it “highlights several worrying trends and the practical human rights implications stemming from such informal arrangements”.

The consequences of the EU's practice of concluding informal migration deals have already been discussed by various authors. One of the most frequently mentioned problems is that such deals exclude the EP (Molinari, 2022; Ott, 2020; Reslow, 2019; Wessel, 2021) and thus deprive it “of its role to exercise political control and legislative functions" (Vara, 2019, p. 36). These deals generally lead to less transparency by making it possible to circumvent publication requirements. Many of the deals, as well as important related information, such as their legal basis, are never made available to the public and "even when the deals are published, their publication might be delayed, to the point of seriously compromising democratic control" (Gatti, 2022, p. 101). The fact that the majority of deals are not published also means that public accountability is very low, and criticism of the deals by the public often has no fundamental basis and can thus be easily dismissed (Cassarino, 2007). By jeopardising the principles of democratic control and transparency and, at the same time attempting to circumvent judicial control, the deals also endanger the principle of the rule of law (Molinari, 2022). Soft law deals are outside the judicial control (Vara, 2019). Because of that, these deals can also deprive " individuals from exercising their rights, which makes it far more difficult to assess possible violations of fundamental rights" (Wessel, 2021, p. 85). Another criticism of the increased use of informal deals is that they can lead to disintegration within the EU. They are used in areas where the EU already has competencies or at least shared competencies (Carrera, Vara, & Strik, 2019). However, these are circumvented with the help of the deals.

There also is a consensus that the informal deals can significantly impact the respect of migrants' rights and can lead to “Leaving individuals affected by these instruments without legal protection, and ultimately weakening the global regime for the protection of rights of

refugees" (Idriz & Kassoti, 2020). However, in the discussion about the consequences of informal migration deals, the impact of these agreements on the respect of migrants' rights has not been studied so far in a holistic way. This is problematic because "The voice, interests, and rights of migrants must be kept at the centre of any negotiations regarding international mobility, if the core principles of the international legal system are to be preserved" (Moreno-Lax, 2017, p. 32). With migrants being one of the most vulnerable groups, ensuring their rights do not get hurt is especially important. Therefore, it is important to do an in-depth study on the potential impact different types of informal agreements can have on the respect of migrants' rights.

In order to help fill that research gap, this paper will conduct an in-depth analysis to answer the research question: *"To what extent does the EU's practice to conclude informal migration deals and partnerships with third countries respect the rights of migrants as codified in EU and international instruments?"*

1.2 Research Design

As the research question suggests, this bachelor's thesis looks at the compatibility of the EU's use of informal migration deals and the rights of migrants. Therefore, the rights of migrants as codified in EU and international instruments will be analysed. Furthermore, there will be an analysis of the instruments available to the EU to cooperate with non-member states in the field of migration and a discussion of a selection of already existing migration deals.

The research question is a mixture of an explanatory and an interpretative question. In order to answer it, a hermeneutic textual analysis will be used. This method enables the researcher to understand and interpret texts in a reflective way. The research design is well suited because it allows for an in-depth study of the documents needed to answer the research question. The main part of the data used consists of policy documents and legal documents. They will be accompanied by scientific articles discussing topics that are part of the research done in this paper or discuss articles or case law decisions relevant to this study.

In order to answer the main research question, the analysis is divided into three sub-questions which will each be answered using the above-stated research design and methodology.

1. What is the legal framework for the rights of migrants?

The first sub-question outlines the rights of migrants as codified in EU and international instruments. This constitutes an essential part of answering the research question because it is part of the foundation that will be used in the analysis. The rights of migrants need to be established so that it can be shown how informal migration deals can hurt them and so that they can be compared to the existing migration deals in a later step. The documents used to do this are the UN's Universal Declaration of Human Rights (United Nations, 1984), the European Convention on Human Rights (ECHR) (Council of Europe, 1950) and the Charter of fundamental rights of the European Union (CFR) (European Union, 2012a) as well as the TEU (European Union, 2012b) and the TFEU (European Union, 2012c).

2. What instruments are available to the EU when cooperating with third countries in the field of migration?

The second sub-question will discuss the different instruments the EU can use to cooperate with non-EU member states in the field of migration and how they can endanger compliance with migrants' rights. This is very important for the process of this paper because it analyses the options the EU has and establishes the rules that need to be followed according to the treaties. This will be essential to be able to analyse their compliance with migrants' rights. The main focus will lay on MPs and EURAs as they will also be relevant for chapter four.

To answer this question, the "New Pact on Migration" (European Commission, 2020), the "Global Approach to Migration and Mobility" (European Commission, 2011) as well as a study for the LIBE Committee on EU cooperation with third countries in the field of migration (Andare & Martin, 2015) will be used. However, most of the information on the instruments themselves will be drawn from the latter two. This is due to the fact that the New Pact on Migration and Asylum does not go into details on the instruments at display to reach the set-out goals. However, almost all the instruments are not new and can be already found in the other two documents (Andare, 2020). Additionally, the TFEU will be referenced.

3. What do the chosen informal migration deals entail, and in how far are they compatible with the rights of migrants?

The third sub-question discusses three informal migration deals and analyses their compliance with migrants' rights. One will be a Mobility Partnership (MP), while the others can be categorized as informal EURAs. The MP chosen is the one with Morocco (Council of the European Union, 2013). This decision is based on the vital role Morocco plays as a country of transit and origin (Abderrahim, 2019, p. 29). Moreover, of all the countries with which the EU has MPs, Morocco is one of the countries of origin from where the most refugees posed their first asylum applications to the EU in 2020 (Eurostat, 2022). The other two migration deals are the "Joint Declaration on Migration Cooperation between Afghanistan and the EU" (JDMC) (Council of the European Union, 2021) and the "Admission Procedures for the return of Ethiopians from EU MSs" (Council of the European Union, 2017). Both have been chosen because of the significant role the countries play concerning illegal migration. The Commission (2016) stated that "Afghanistan is a major source of irregular migrants and of refugees arriving to Europe. […] the EU should step up its engagement to ensure Afghanistan's cooperation on readmission." (p.16). It also stands out as the deal has been renewed very recently. Following the Commission (2016), "Ethiopia is a key country of origin and transit of irregular migration towards Europe" (p.15). Additionally, it has not been discussed extensively in the literature. Choosing different types of agreements that have been signed in different times and geographical locations ensures a wide variety of cases. The decision to look at dissimilar cases is based on the belief that this will help to obviate the chance that the findings will only be applicable to a very limited number of cases.

1.3 Body of Knowledge and Concepts

The supranationalisation of the policy area of migration has minimised the power the MS hold in the field and grants the EU more competencies. This development is seen in multiple policy areas and brings up the question to which extent the MS are willing to give up sovereignty and competencies to an international organisation in order to solve problems collectively. It also gives an insight into what can happen if the MS try to circumvent the existing procedures and laws to sustain their power.

The following sections are going to look at those questions. First, an insight into the laws and procedures in EU migration law will be given. This is followed by an explanation of when MS are willing to give up power and when they are trying to protect their sovereignty by

using the theory of Liberal Intergovernmentalism (LI). Lastly, a theoretical discussion of informalization follows.

1.3.1 EU competencies in migration Law

The policy field of migration is part of the Area of Freedom, Security and Justice (AFSJ). Following Art 4(2)(j) TFEU, the EU and the MS have shared competencies in the AFSJ. Nevertheless, the lines are not as clear-cut as in other fields due to the special status of the MS in this field. They not only play an instrumental role in implementing the EU law, but the MS also "remain competent to confer asylum, arrest, detain, and adjudicate family law disputes" (Matera, 2020, p. 404). The explicit objectives and available methods in the AFSJ can be found in Title V Part 3 TFEU (Neframi, 2011). The legal basis for immigration policy are Articles 79 and 80 TFEU.

The Lisbon Treaty not only reassured that the EU and the MS do have shared competencies in the field of immigration but also led to a lot of changes. It "introduced codecision and qualified majority voting on regular immigration and a new legal basis for integration measures" (European Parliament, 2018a, p. 10). This led to a co-legislation of the Parliament and the Council. It also brought new duties to the Court of Justice by giving the full jurisdiction of the field to it. Additionally, it installed the ordinary legislative procedure as the dominant one (European Parliament, 2018a). The shared competencies and the use of the ordinary legislative measures entail several consequences for both the EU and the MS. Article 2(2) TFEU lays down the ground rules for policy fields with shared competencies. It states that both the EU and the MSs have the right to adopt legally binding acts and that the concept of pre-emption applies. The procedure entailed by the ordinary legislative procedure is defined in article 294 TFEU. Following it, the Commission initiates legislation by proposing it to the Council and the EP. The Council and the EP act as co-legislators.

The shared competencies, as well as the usage of the ordinary legislative measures and qualified majority voting, have led the policy field of migration away from intergovernmentalism and towards supranationalism. This minimised the powers the MSs have in the area of immigration. In this context, it is important to remember that "The Union's priorities on migration issues do not coincide with those of its Member States." (Neframi, 2011, p. 7). While the EU's focus mainly lies in integrating the migrants into the EU, the MSs are often more focussed on the issues migration can cause on security and social policy. Additionally, the priorities and the willingness to take in migrants also change from MS to

MS. The fact that "In a sphere as sensitive as immigration, the Member States are reluctant to allow their competence to be lost" (Neframi, 2011, p. 6) also needs to be considered. MS generally try to bypass having to give up power to supranational institutions, as shown by the LI theory that will be discussed in the next chapter. However, keeping their power is not equally important for every policy field. The closer the field is to important national matters, and thus the sovereignty of the state, the higher the MSs will to protect their competencies. With migration being not only a very important national matter but also being intertwined with multiple other national policy fields like asylum, border controls or labour market regulations, MSs try to keep their power in the field to themselves. Especially legal migration is very important to MS, as shown in Article 79(5) TFEU.

1.3.2 Liberal Intergovernmentalism

The theory of LI thematises, among other things, the MS's will to hold onto their power and sovereignty. It consists of a three-stage model that explains how states try to implement their interests at the international level and the factors deciding the outcome of the negotiations.

In the field of European integration, the theory of LI has mainly been used to explain the big decisions that shaped the EU's future. It shows that decisions profoundly depend on the governments of nation-states and their interests. One of its underlying assumptions is that MSs do not want to give up their sovereignty to an international institution. The high political risk inherent in future unregulated and predictable decisions where there is a possibility of overruling makes nation-states critical of ceding authority to a supranational institution (Moravcsik, 1993). States are only willing to take that risk if big long-term gains are at stake and the goal is not likely to be achievable through other means. It also provides an insight into how crucial the bargaining power of the individual states are when concluding compromises (Moravcsik, 1993). The convergence of the interests of the MSs is essential for achieving cooperation. If there is little to non-convergence, achieving mutual EU policy activity is difficult. However, if the convergence is high, the chance for constructive cooperation is high (Buonanno & Nugent, 2021).

Rising transnational flows of goods and services, as well as the emergence of problems that cannot be solved at the national level, create incentives for transnational cooperation. However, it needs to be remembered that collective action problems can also be solved in other ways than the MSs giving up power to the EU. Following Moravcsik and Emmons (2021), one way is to develop informal instruments that will help to solve the problem without

having to formally agree within the given decision structure. The theory of informalization will be further discussed in the following chapter.

1.3.3 Informalization

The evolution of the EU has always been built partly on informal politics (Christiansen & Neuhold, 2013), so informal agreements and the use of soft law are not new tools. Ott (2020) states that "For over fifty years, we have witnessed a multiplication of instruments that escape the categorisation of binding international agreements in light of Article 2 of the Vienna Convention on the Law of Treaties" (p.572).

The explanations for why governments decide to use informal arrangements are manifold. One of the main arguments in favour of using informal governance is the flexibility it can provide (Ott, 2020). This flexibility has become very important, especially in recent years, as the problems the EU is confronted with are becoming more and more complex, making it more difficult to find solutions for them. Decisions often have to be made very quickly, which is particularly important in times of crisis (Ott, 2020). Informal arrangements can help with that because they help avoid lengthy legislative procedures. Informal governance can also help to ensure that decisions are made at all. If certain groups of the population speak out against a decision, it becomes much more difficult for the state to enforce it. These decisions within society can come very suddenly and lead to political uncertainty. To avoid that uncertainty in the EU context, „states collectively depart from the formal procedures to accommodate governments under exceedingly strong domestic pressure and they concede just enough to restore such governments' incentive to co-operate" (Kleine, 2014, p. 308). Informal agreements also help to facilitate negotiations between states. "Soft law bears lower legislative and sovereignty costs due to its non-binding character, which facilitate joint decision making" (Slominski & Trauner, 2021, p. 94). Especially when the topics of the discussion are very controversial, and a clear standpoint on them could lead to the disaprovement of the society, informal agreements tend to be used a lot (Slominski & Trauner, 2021).

Many of the above-mentioned benefits that informal arrangements can have for governments are also very important in migration matters for several reasons. For one, the problems connected to this topic are often very dependent on a quick and flexible solution. Additionally, migration matters are often very contested between different groups and states. This makes the usage of informal deals appealing because they lower the risk of objection

from society and give governments a possibility to bypass having to take a stance openly. Due to the supranationalisation of migration policies, the low legislative and sovereignty costs that informal deals promise also play a big part. Additionally, the preference of MSs to keep their sovereignty while at the same time profiting from cooperation with other states is an essential factor in the EU context. By using informal and soft migration deals, the MS are able to hold their power as they make it possible to circumvent the legal ways and procedures in place. These deals also help them keep the ECJ and the EP out of decisions on migration. This serves their interest as the ECJ is seen as advancing integration, and the parliament is known for pushing more liberal migration policies (Reslow, 2012).

2 The legal framework for the rights of migrants

The second chapter will discuss the first sub-question*: "What is the legal framework for the rights of migrants?"* For this purpose, the term migrant will be defined in section 2.1. This will be followed by a short description of the sources for human rights (HR) the migrants have. Section 2.3.1 till section 2.3.8 will discuss the fundamental rights of migrants most important for this paper.

2.1 Definition migrant

There is no universal nor a legal definition for the term migrant. The International Organization for Migration (2019) defines the term migrant as "the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons" (p.132). The European Commission (n.d.a) defines a migrant as "a person who is outside the territory of the State of which they are nationals or citizens and who has resided in a foreign country for more than one year irrespective of the causes, voluntary or involuntary, and the means, regular or irregular, used to migrate".

The definition of migrants used in this paper will be oriented on the above-mentioned definitions. It includes people who have left their place of usual residence for a longer period of time without taking the reasons for the decision to migrate nor the legal status of the person into account. It will be used as an umbrella term that includes all types of migrants, immigrants as well as asylum seekers. There will be a focus on cross-border migration as the migrants important for this paper are coming to the EU as third-country nationals. This definition has been chosen because it allows for the inclusion of a wide variety of people coming to the EU. This is crucial as this paper does not focus on a particular type of migrant but rather looks at fundamental rights that every human being should be granted despite the category they fall in. It also shows that independently from a specific status, there are certain rights that every migrant is entitled to.

2.2 Human rights

Most of the rights that migrants have are based on HR standards. Thus, this section will look at the different sources of HR important for migrants coming to the EU.

The Universal Declaration of Human Rights (UDHR) from 1948 was the first document on the universal protection of fundamental HR. It is not legally binding, "but the rights therein have gradually been codified in a series of international human rights conventions" (Zamfir, 2018, p. 1). The rights declared in UDHR are universal and are set out to apply to every individual, thus also migrants. This view got confirmed by the "General Comment No. 15: The position of aliens under the Covenant" by the UN Human Rights Committee (1986). However, there is an exception because some of the rights are only applicable to citizens. All MSs of the EU have signed the UDHR. Additionally, there are multiple Articles in which the EU refers to the UDHR, for example, Article 2 TEU.

One of the conventions codifying the rights set out in the UDHR is the ECHR. It has been in force since 3 September 1953, and all the MSs have signed it. The ECHR established an international judicial body with authority to punish states that fail to uphold their obligations in a legally binding way. By virtue of Article 6 TEU, the ECHR has a direct impact on HR protection in the EU. It states, "The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms." By becoming a member of the ECHR, the EU would allow individuals to let the European Court of Human Rights review acts of the EU. The EU's admission is required under the Treaty of Lisbon; however, the negotiations are still ongoing.

The core instrument for the protection of HR in the EU is the CFR. It was declared in 2000 and came into force in 2009 by the Treaty of Lisbon. Article 6, paragraph 1 TEU states that it "shall have the same legal value as the Treaties." The EU has used the UDHR and the ECHR as inspiration for its own declaration on HR and mentions them multiple times in its preamble. There can be found many similarities between the UDHR and the CFR. Nevertheless, the CFR contains additional rights that can be attributed to the EU's political structure, internal market, and technical advancements (Zamfir, 2018). The CFR is legally binding for all MSs and EU institutions. However, following article 51 CFR, it only applies to the MS "when they are implementing Union law", which means that the CFR cannot be used in areas where the EU has no competencies. In the area of the protection of migrants' rights, this does not play a very significant role as "the limitation on the Charter's scope of application should not be too restrictive given the transfer of several aspects of immigration policy from the national sphere to (shared) EU legal competence" (Merlino & Parkin, n.d., p. 3). As just a few of the rights displayed in the CFR are restricted to EU citizens or lawful residents, most of the charter is applicable to migrants (Merlino & Parkin, n.d.).

2.3 Migrants' rights

In the following sections, some of the most important rights for migrants will be presented. The selection is not only based on their importance for the migrants but also on their relation to this paper's topic.

2.3.1 Right to life

Article 2 ECHR codifies the right to life. This means that every individual has a right to live and that measures should be taken to ensure that the life of the individual is not endangered. It also entails that "Public authorities should also consider your right to life when making decisions that might put you in danger or that affect your life expectancy" (Equality and Human Rights Commission, 2021). By returning migrants to countries where their life is endangered, the EU thus also endangers this migrants' right.

2.3.2 Prohibition of Torture

The principle that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment" is codified in article 3 ECHR. This right is also endangered when migrants are sent back to countries where it cannot be ensured that they will not be tortured or treated inhumanly.

2.3.3 Non-refoulment

The principle of non-refoulment is laid down in article 19 CFR. Following Article 19(2) CFR, "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." The principle of non-refoulment has a long history and can be found in multiple other documents like Article 33(1) of the 1951 Convention relating to the Status of Refugees and Article 3 of the ECHR.

2.3.4 Right of access to documents

Article 42 CFR states that: "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium." However, this

right often gets dismissed when it comes to informal migration deals. Gatti (2022) concludes his research on transparency and informal agreements by stating that most of them are published after their conclusion and often times with a long delay which goes against the public's right to access documents before their application. He adds the aggravating fact that "individuals may be unaware of the existence of such deals and, consequently, may be incapable of making any requests in this respect." (p.104). He also found out that an individual's application for access to preparatory documents is often unsuccessful.

2.3.5 Right to transparency

The right of access to documents can also be seen as a part of the right to transparency which can be ascribed to multiple regulations and obligations. Article 15(1) TFEU states that "the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible", and Article 10(3) TEU clarifies that "Decisions shall be taken as openly and as closely as possible to the citizen." Based on these references, it can be said that transparency is not only a fundamental right but also among the democratic principles the EU is built on (Gatti, 2022). Article 297 TFEU codifies that all legal acts as well as "Regulations and directives which are addressed to all Member States, as well as decisions which do not specify to whom they are addressed, shall be published in the Official Journal of the European Union." Additionally, Regulation (EC) No 1049/2001 Article 13(f) (European Parliament & Council of the European Union, 2001) contains that international agreements also must be published in the official journal. However, there are some exceptions, like the undergoing of public interests or security matters, that the EU can use to prevent the provision of documents. A list of them can be found in the Regulation (EC) No 1049/2001. The informal migration deals do not fall under these categories. They can be categorized as instruments whose publication is not required but recommended (Gatti, 2022). It can therefore be said that by using informal deals, the EU is able to bypass the duty to publish the deals they would have to fulfil when using international agreements or other forms of regulations and directives.

2.3.6 Right to an effective remedy and a fair trial

Following Article 47 CFR, "Everyone is entitled to a fair and public hearing" and needs to "have the possibility of being advised, defended and represented." If someone lacks the resources to fund legal aid by themselves, it needs to be provided for them. The court confirmed the "right of right to an effective remedy before a tribunal" (Article 47 CFR) as a

general principle of EU law with several judgements. Following Molinari (2019), a few factors need to be given to ensure compliance with the right to an effective remedy. Firstly, the migrant needs to be able to access a court that has the jurisdiction to decide on the case. Additionally, the court needs to "be entitled to effectively address such violations, by guaranteeing interim relief or granting sufficient compensation, depending on the case" (p.6). Carrera and Sagrera (2009) conclude that when using soft law, it is not clear "that a person affected by abusive or illicit practices by the public authorities of a participating EU member state will have a right to seek an effective remedy" (p.30).

2.3.7 The rule of law

Very closely connected to the right to an effective remedy and a fair trial is the principle of the rule of law. The EU is based on the rule of law; thus, all EU measures are subject to judicial review. CJEC, Case 294/83 (Court of Justice of the European Union, 1986) states that "the Treaty established a complete system of legal remedies and procedures designed to permit the Court of Justice to review the legality of measures adopted by the institutions" (p.1365). If, however, the procedures in place are still sufficient today with all the new tools the EU has started to use is contested.

There do exist two main ways for individuals to challenge the legality of EU law in front of the Court of Justice of the European Union (CJEU), the preliminary ruling procedure that is anchored in Article 267 TFEU and the annulment procedure anchored in Article 263 TFEU. The preliminary ruling procedure can be useful when looking at soft law as it does say that the CJEU can "shall have jurisdiction to give preliminary rulings concerning" "the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union" (Art 267 TFEU). This does not exclude soft law deals right away. However, to follow this route, a national court first must agree that the measure should be taken. Additionally, "the people who are subject to the deal have limited resources, that is limited access to information, legal aid, and language interpretation facilities, which translates into extremely limited access to courts" (Fink & Idriz, 2022, p. 128). The annulment procedure hardly works in the cases of soft law agreements as it is only supposed to review acts that "intended to produce legal effects vis-à-vis third parties" (Art 263(1) TFEU). One of the main characteristics of soft law is that it does not establish legally binding effects and thus is not revisable under this procedure.

With all the possible ways to challenge the migration deals hardly working nor really being accessible to migrants, their right to have EU law reviewed does get hurt. It also leads to a situation in which the security and social protection of migrants are endangered because it "makes it difficult to ensure the certainty and legal security of the individual subject to these transnational policies" (Carrera & Sagrera, 2009, p. 3).

2.3.8 Legal Certainty

Legal certainty is one of the general principles of EU law. It "demands that individuals need to know the legal consequences of their actions and that the quality of the law is as high and objective as possible in order to prevent exceptionalism by public authorities beyond any remits of legality" (Carrera & Sagrera, 2009, p. 30). As a consequence of the breaching of the rights from sections 2.3.5, 2.3.6 and 2.3.7, the concept of legal certainty is endangered.

2.4 Conclusion

After having established a definition of a migrant and the legal base of HR standards in the EU, as well as discussing the migrants' rights most important for the paper and the ways in which the usage of informal migration deals can breach them, the first sub-question *"What is the legal framework for the rights of migrants?"* can be answered as follows.

The legal framework for migrants in the EU is mainly based on the CFR, which includes major references to the rights established in the UDHR and the ECHR. Since the Treaty of Lisbon came into force, it has the same legal value as the treaties in is thus binding for all the MS and the EU institutions when they are implementing EU law. Almost all of the rights established in these instruments are applicable to migrants. Most of the rights of migrants are rooted in the CFR, however, some of them are also based on the treaties.

The main rights that can be endangered by the use of informal migration deals are the right to life, the prohibition of torture, the principle of non-refoulment, the right of access to documents, the right to transparency, the right to an effective remedy and trial, the rule of law, and the principle of legal certainty.

3 EU instruments for cooperation on migration matters with third countries

As the last chapter showed, there are multiple rights of migrants that can be hurt by using informal migration deals. This chapter will analyse the instruments that the EU can use to cooperate with third countries and how they can lead to breaching the above-stated rights. The focus will lay on EURAs and MPs as they are most relevant to this paper. At the end of this chapter, the second sub-question: "What instruments are available to the EU when cooperating with third countries in the field of migration?" will be answered.

The strong focus on cooperation with third countries stems from the New Pact on Migration. This pact set out to create a new European framework that allows the EU to respond to migration challenges in a more sufficient way by still providing safe, humane and clear conditions for the migrants (European Commission, 2020). One of the main strategies to achieve those goals is a deepened cooperation with third countries. Following the EU's narrative, the EU hopes that by doing this, it will be able to achieve a more functional migration system that can ensure the protection of migrants. These cooperations are meant to benefit not only the EU but also the transit countries and the countries of origin. However, if these cooperations actually always benefit the migrants and ensure that their rights are respected is contested.

3.1 Legal instruments

The following two sections will discuss the two main legally binding instruments that stand at the EU's disposal when cooperating with third countries in the field of migration.

3.1.1 Readmission agreements and Visa Facilitation Agreements

EU readmission agreements (EURA) are one of the most important tools for external EU action on migration matters (Andare & Martin, 2015; Carrera, 2016). These agreements are concluded by the EU or a single MS and a non-EU country. They are supposed to regulate the return to the third country "of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence in the territories" (European Commission, n.d.b) of the EU. These returns must be executed following the rules and formalities established by Directive 2008/155. By obligating the third country to carry out certain administrative and operational procedures, the EU can ensure that the return decisions of its MSs can be carried out (Andare & Martin, 2015). As a trade-off for their cooperation, the third countries are offered Visa

Facilitation Agreements (Andare & Martin, 2015). These agreements are meant to allow the country's citizens to obtain a visa for the EU more easily. Recently there has been a development within the instrument of EURAs. Many authors have detected an informalization of the EURAs (Cassarino, 2007; Kassoti & Idriz, 2022; Vara & Matellan, 2022).

Multiple authors have criticised EURAs because of their non-compliance with HR.

The first problem stems from the definition of persons to be readmitted used in the EURAs. It has already been stated above. This definition is very broad and does not "distinguish between aliens who are in an unlawful situation whose legal position should be protected, and those who are not" (Rais, 2016, p. 45).

Following Balzacq (2008), EURAs create HR issues because they are often established with countries where the HR record is very bad. Additionally, some of the states that have EURAs with the EU also have readmission agreements with other states, which do not offer the same safeguards for migrant rights and could have a negative HR record. This situation makes it almost impossible for the EU to grant the protection of the migrant's rights, for example, the "prohibition of torture and inhuman or degrading treatment or punishment" (Art.4 CFR).

Connected to this is also another concern called the domino effect. It describes a scenario in which the "failing to review the situation of individual asylum seekers on a case-by-case basis opens the way to serial onwards return to another country […] where human rights are not guaranteed" (Rais, 2016, p. 45) where HR

Charles (2007) states that the compliance of the EURAs with the principle of non-refoulment is also not given. According to him, the EURAs do not include any explicit clauses on the prohibition of expulsion, and some of them are concluded with third countries that do not fulfil HR standards like Pakistan. Additionally, it cannot be guaranteed that the migrant's life and dignity will not be endangered in the returning process.

3.1.2 Migration clauses in international agreements

One of the options available to the EU is the negotiation and insertion of migration clauses into international agreements, like cooperation agreements or association agreements (Andare & Martin, 2015). These international agreements get concluded between non-EU countries and the EU as well as the MSs and are legally binding for all parties (Art. 216 TFEU). The negotiating procedures can be found in Articles 207 and 218 TFEU. The migration clauses

can serve different purposes and entail different elements. They can focus on readmission, the treatment of third-country workers residing legally in EU countries, the joint effort to fight illegal immigration or the promise to support counties of origin economically and socially (Andare & Martin, 2015).

3.2 Political instruments

The following three sections will discuss the most important political instruments available to the EU when cooperating with third countries on migration matters. These instruments all have in common that they are soft law instruments that do not establish any legally binding commitments.

3.2.1 Regional and Bilateral dialogues

Regional dialogues are launched by the EU and the region of transit or origin of the migrants through a political declaration (Andare & Martin, 2015, p. 24). The level of involvement of each MSs differs due to interest and availability of funds. The main goals of these dialogues are to identify common problems and interests on migration matters, work together on strategies and data collection, and actively cooperate to reach the goals decided on (Andare & Martin, 2015). Bilateral dialogues are very similar to regional dialogues, yet their approach is much more technical (Andare & Martin, 2015). "These bilateral dialogues complement the regional processes and, where possible, should be connected to agreements that cover the entire spectrum of cooperation between the EU and the country concerned" (European Commission, 2011, p. 9). They are conducted and entertained by joint association or cooperation councils explicitly created for that purpose. Bilateral dialogues are also often a first step in the direction of the conclusion of a MP.

3.2.2 Mobility Partnerships

One of the EU's most important political instrument in the field of bilateral cooperation on migration matters are MPs (Vara & Matellan, 2022). The Stockholm Programme stated that they are "the main strategic, comprehensive and long-term cooperation framework for migration management with third countries" (Council of the European Union, 2009, p. 61). MPs are seen as long-term cooperations that allow, through their flexibility, to evolve and adapt to new challenges. MPs can be described as multidimensional concepts because they

affect multiple policy fields like labour market policy, development policy, migration policy and external security (Brocza & Paulhart, 2015).

The idea was first introduced by the Commission in 2007 and is based on a Franco-German initiative. The underlying idea was that migration could be used to strengthen the EU‘s economy as “High-skilled labour and cheap and flexible labour liberalisation are intended to foster the international competitiveness of the EU single market project” (Maisenbacher, 2015, p. 887). Due to that, the MPs are designed to promote circular migration. The Commission defines circular migration “as a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries” (Commission of the European Communities, 2007, p. 8). Aside from strengthening the MSs economy, the goals of MPs are “to introduce legal migration into EU cooperation with partner countries, offering them mobility and legal migration opportunities, including circular migration projects, in return for their cooperation on preventing irregular immigration, increasing border management and accepting readmission commitments” (Andare & Martin, 2015, p. 31). These goals are based on the four pillars of the GAMM.

MPs are offered to countries that have already reached a certain level of cooperation on migration with the EU (European Commission, 2011). The exact contents of a MP are not set but rather depend on country-specific factors, the distinct goals of the cooperation, the level of cooperation already reached as well as the willingness of the third country to commit even further. A list of possible contents of such a partnership can be found in the Commission’s communication on MPs (Commission of the European Communities, 2007). MPs “are negotiated, under political guidelines of the Council similar to mandates of international agreements, mainly by the Commission, together with the Presidency of the Council, representatives of Member States and the third country, with the participation of EU agencies” (Andare & Martin, 2015, p. 32). They are established by the EU, the third country, and willing MSs through the signing of a joint declaration between all parties. Even after their conclusion, they stay open for interested MSs to join at a later point (Tittel-Mosser, 2020). Attached to the joint declaration, a list of projects can be found. The MP gets implemented through these projects and can even be “understood as an “umbrella”, bringing together the various individual projects” (Reslow, 2015, p. 118). The projects can be proposed by all the participating partners, however, most of them are bilateral ones between one MS and the third county (Tittel-Mosser, 2020).

In its communication on mobility partnerships from 2007, the Commission stated that: "Mobility partnerships will necessarily have a complex legal nature, as they will involve a series of components, some of which will fall in the Community's remit and others in the Member States'" (Commission of the European Communities, p. 3). Many authors have labelled the MP as a soft law instrument that deviates from the ones specified in the treaties (Carrera & Sagrera, 2012). Due to that, the MPs are not legally binding, which also gets reinforced by a clause that all MPs include, which states that their political nature makes it impossible for them to also create a legally binding international commitment (Andare & Martin, 2015). Owing to this, they neither create direct rights for individuals nor are they subject to the jurisdiction of the CJEU (Andare & Martin, 2015). While agreeing with the legal non-bindingness, Tittle-Mosser sees that by the confirmation of all parties to cooperate on an operational level, a moral obligation gets created (2020).

MPs are meant to benefit not only the EU, the MSs, and the third country but also the migrants. However, if they actually achieve that goal is contested.

One of the main points of critique is that due to them being soft law, MPs are not subject to judicial oversight and control by the CJEU (Carrera & Sagrera, 2009; Moreno-Lax, 2020). The principles of the rule of law and legal certainty are thus also endangered. However, Molinari (2019) comes to the conclusion that even though the MPs do not produce legal effects, "more detailed measures eventually taken by EU authorities to better define or implement the vague content of these deals, transforming them in real commitments, should be directly reviewable" (p.14).

The CJEU is not the only institution left out when MPs are chosen. The EP also gets side-lined in these cases, which in turn marginalizes the democratic accountability of MPs.

Another factor is that compliance with human rights is not guaranteed. Moreno-Lax (2020) stated in her study that the MPs are missing mechanisms that ensure the control of the compliance with migrant rights.

The concept of circular migration that is part of the MPs also leads to endangering of HR. Following Carrera and Sagrera (2009), migrant workers in this scenario "are not treated as workers and human rights holders, but as economic units at the service of the demand and supply of participating states" (p.2). This assumption is based on the fact that circular migration schemes only allow migrants to reside in the MS for a limited period, which in turn does not allow the migrants to socially integrate and settle down. During their time in the host

country, the migrants "are generally denied access to political and sometimes even socio-economic rights" (Wiesbrock & Schneider, 2009). The migrants are only welcome in the EU for the period they are seen as valuable and needed workforce. Furthermore, the selection of the migrants is based on the demand of the labour markets of the MSs. This leads to a situation in which "the skills and usefulness of the worker for the receiving state will also apply in determining his or her access to certain working conditions, protection and assistance, as well as other related fundamental human rights" (Carrera & Sagrera, 2012, p. 110).

The focus set in the MPs is also subject to criticism. Various authors have found that there can be found a strong tendency toward projects tackling illegal migration. Clauses on readmission, irregular migration and border management are not just numerous but also very elaborate (Reslow, 2012). In comparison, it can be observed that projects that focus on asylum and international protection are on the shorthand (Tittel-Mosser, 2020), and the clauses concerning legal migration that do exist are not very precise (Moreno-Lax, 2020).

3.2.3 Common Agendas for Migration and Mobility

Another political soft law instrument are Common Agendas for Migration and Mobility. They serve as alternatives to MPs and are used when the general will to cooperate is there, but the depth of cooperation is not supposed to be as deep as in the partnerships. However, they can still evolve into a MP over time. Common Agendas for Migration and Mobility focus on support measures and recommendations for cooperation and dialogue (Andare & Martin, 2015).

3.3 Conclusion

Based on the findings of this chapter, the second sub-question, *"What instruments are available to the EU when cooperating with third countries in the field of migration?"* can be answered as follows.

The EU has two categories of instruments at its display when cooperating with third countries. On the one hand, there are the legally binding instruments, with the most important ones being EURAs and migration clauses in international agreements. On the other hand, are the political, legally non-binding instruments. The most important there are regional and bilateral dialogues, MPs and Common Agendas for Migration and Mobility. Between these four, the

MPs give the MS the greatest freedom and control and thus a way to protect their sovereignty. This also explains their regular usage as this is what the MSs are longing for (1.3). However, it should be noted that thanks to the detailed framework of the MP, they are the informal migration deal that still offers the most certainty.

For this paper, the EURAs and the MPs are especially important, as they can be related to the following case study. Based on the information collected, it can be concluded that both the EURAs and the MPs bear risks for compliance with migrants' rights. While the concerns arising when using EURAs are mainly bound to the HR situation in the third country, most of the challenges that MPs bring with them can be ascribed to their informal soft law nature.

4 The existing migration deals

Chapter two has shown that the rights of migrants can be hurt in multiple ways by informal migration deals. The third chapter established that there are different ways for the EU to cooperate with third countries and that those different instruments can endanger the rights of migrants in different ways. Based on these findings, the fourth chapter will follow the case studies identified in the introductory chapter by first summarising their content and then doing an in-depth study of the ways in which they could hurt the rights of migrants. At the end of this chapter, the answer to the third sub-question, *"What do the chosen informal migration deals entail and in how far are they compatible with the rights of migrants?"* will be given.

4.1 Mobility Partnership with Morocco

The MP with Morocco got signed on 3 June 2013. The joint declaration is between Morocco, the EU and the participating MSs, namely the Kingdom of Belgium, the French Republic, the Federal Republic of Germany, the Italian Republic, the Kingdom of the Netherlands, the Portuguese Republic, the Kingdom of Spain, the Kingdom of Sweden, and the United Kingdom.

4.1.1 Content

The existing preconditions, the structure, goals, and promises are very similar to the general ones of MPs, already described in section 3.2.2. Even before the establishment of the MP, the EU and Morocco had a close relationship and cooperated on migration matters, as the existing bilateral agreements and international Dialogues and Partnerships show. A list of them can be found on page 2 of the MP. The main goals of this MP are to improve the regulation of the movements of individuals for short time frames as well as legal and labour migration, to work together more closely on migration and development issues, to fight illegal migration, and to develop functional return and readmission policies. The EU offers to start a process towards the facilitation of attaining a visa as a Moroccan citizen. It also promises to work towards an easier process of mutual recognition of vocational and academic qualifications. The MP also talks about promoting the integration of Moroccan citizens residing legally in the territory of the EU and trying to ensure their social security rights. Morocco's main part of the MP consists of intensifying its fight against illegal migration by weakening the underlying structures, enhancing its border control, and informing its citizens about the dangers it brings with it. Morocco is also supposed to create structures that make refugees' voluntary returns

more likely and simplify their reintegration. Additionally, it is planned to negotiate an EURA. However, to this day, Morocco has not agreed to a final version of it (Kaiser, 2019).

4.1.2 Compatibility with Migrant Rights

At the end of the joint declaration, there is a clause stating, "The provisions of this joint declaration and its Annex are not designed to create legal rights or obligations under international law" (Council of the European Union, 2013, p. 12). Because of the non-bindingness of the MP, multiple problems concerning the respect for the rights of migrants arise that have partly been laid out in sections 2.3 and 3.2.2. The main concerns will be discussed in the paragraphs that follow.

The first concern that the MP with Morocco raises is connected to the right to transparency (2.3.5) and the right of access to documents (2.3.4). They are not disregarded totally, as the text of this MP is available. However, it is not guaranteed that migrants will be able to access preparatory documents.

The right to an effective remedy and a fair trial (2.3.6) as well as the principle of the rule of law (2.3.7) are also endangered by the MP.

Throughout the whole declaration, there are six references in the text and five in the annex to fundamental HR, the protection of refugees, the 1989 United Nations Convention on the Rights of the Child, and the 1951 Geneva Convention. The necessity of respecting the rights established in these instruments is mentioned repeatedly. However, none of the 37 proposed projects revolves around the protection of the rights of migrants as its primary goal. Additionally, in none of the proposed projects that entail references to migrant rights, distinct and clear formulated measures are discussed that would serve to protect them. The approaches that get mentioned are the prevention of the migration of children and illegal migrants, information campaigns, the voluntary return projects, and the reintegration of people into the Moroccan society. These measures are not sufficient to grant the protection of migrants' rights. These findings are also in line with the findings of Moreno-Lax (2020).

It is worth mentioning that some of the rights sources mentioned are not including all migrants but are only meant to protect the rights of refugees or children. Also, one of the four objectives is "to comply with duly ratified international instruments concerning the protection of refugees" (Council of the European Union, 2013, p. 4), which would also mean an exclusion of many types of migrants. However, throughout the text, the terms migrant and

fundamental rights of migrants are used primarily. As the EU's definition of a migrant (4.1) is very open and includes a wide variety of individuals, this works against their exclusion.

When comparing the number of times the security and rights of migrants get mentioned and compares that to the number of references to fighting illegal migration, managing migration, and border protection, the clear focus on the latter stands out. A similar picture arises when comparing the plans to help migrants to get legally to the EU, to attain Visas or social security rights in the EU and the plans on readmission, border control, and migration management. When looking at the annex this trend gets even more obvious. Even though the section on mobility, immigration and integration and the one on preventing and combating illegal immigration, people smuggling, border management are equal in length, it is striking that most of the projects from the first category are already existing ones while the ones in the latter on are mainly new projects launched in the context of the MP. The section on new projects in the area of mobility, immigration and integration comprises ten projects. However, most of them lack a comprehensive description of the proposed initiatives and the measures taken to reach them, so the whole section just covers four pages. Especially the measures that would allow more Moroccans to obtain a visa contain very little information. New projects that cater to migrant workers are more elaborate. The eight projects in this category are spread over eight and a half pages and are very well described and detailed. This comparison clearly shows that the focus of this MP lies on the securitization of the EU’s borders and readmission and not on the opening of more legal ways to migrate to the EU or the protection of migrants’ rights. The research of various other authors already discussed above comes to similar results (Chou & Gibert, 2012; Moreno-Lax, 2020; Reslow, 2012; Tittel-Mosser, 2020).

The fact that many of the projects included in the MP have already existed before and that there are multiple hard law agreements linking Morocco and the EU makes it questionable that the things reached with this MP could not have been achieved with hard law measures. The arguments speaking for this MP are the same ones speaking for the general use of soft law instruments (1.3.3), like their flexibility or that there might otherwise have not been any deal at all. The latter reason is especially important when looking at MPs because it not only allows the MSs to choose if they want to be part of it at all but also which of the individual projects they want to support.

4.2 Joint Declaration on Migration between Afghanistan and the EU

The JDCM got concluded on 13 January 2021 by the EU and Afghanistan. It is the renewed version of the Joint Way Forward on migration issues with Afghanistan (JWF), which got concluded on 2 October 2016. The two just differ slightly from each other. However, the changes made do not affect parts that are connected to the rights of migrants.

For this analysis, the text of the JDMC will be used as it is the most recent version of the cooperation. Most authors of the scientific references that will be used in the analysis have written their articles on the JWF. However, as there are no big differences between the two, the results will also be applied to the JDMC.

4.2.1 Content

The cooperation is meant to showcase the "shared commitment of the EU and the Government of Afghanistan to step up their cooperation to manage migration from and to Afghanistan, including the prevention of irregular migration and the return of irregular migrants" (Council of the European Union, 2021, p. 1). The clear focus of the document lays on the return of Afghans to Afghanistan "who do not fulfil the conditions in force for entry to, presence in, or residence on the territory of the EU" (Council of the European Union, 2021, p. 2). Additionally, measures for a better reintegration process of the readmitted Afghans, the fight against human trafficking and smuggling, and information campaigns working against irregular migrations are discussed.

4.2.2 Compatibility with Migrant Rights

The JDMC states that it is committed to "the 1951 Convention relating to the Status of Refugees and its 1967 New York Protocol", "the rights and freedoms guaranteed in the International Covenant on Civil and Political rights and the EU Charter on Fundamental Rights and the Universal Declaration on Human Rights" and "the safety, dignity and human rights of irregular migrants subject to a return and readmission procedure" (Council of the European Union, 2021, pp. 2–3). However, its actual compliance with these instruments is contentious.

Several authors have classified the JWF as an informal EURA because of its structure and content (Kassoti & Idriz, 2022; Slominski & Trauner, 2018; Vara & Matellan, 2022), and also the EU has listed it as one (European Commission, n.d.c). Therefore, are the concerns

regarding migrants' rights that the usage of EURAs entails (3.1.1) also relevant for the JDMC. Additionally, the problems that come with using informal soft law instruments need to be considered.

Afghanistan has been publicly criticised for not meeting HR standards. Following the Human Rights Watch Report from 2016, the armed conflict against the Taliban has cost numerous civilian lives, the rights of women are limited, there are documented cases of torture, and the freedom of expression is restricted (Human Rights Watch, 2016). The UN (2016) stated, "The total civilian casualty figure recorded by the UN between 1 January 2009 and 30 June 2016 has risen to 63,934, including 22,941 deaths and 40,993 injured". Also, in 2021 the situation in Afghanistan was dominated by civilian deaths, torture, "Attacks on Media and Human Rights Defenders", and " Violence and Sexual Harassment Against Women" (Human Rights Watch, 2020). As shown by these studies, the HR violations were known in the years when the EU concluded the JFW and the JDMC. By readmitting Afghans to Afghanistan, the EU cannot grant their right to life (2.3.1) and their right not to get tortured (2.3.2).

The HR situation in Afghanistan also endangers the principle of non-refoulment (2.3.3). The text of the JDMC states that "the principle of non-refoulement will be respected" (Council of the European Union, 2021, p. 4). However, as shown above, it is impossible to ensure that the migrants sent back to Afghanistan will not be subjected to torture or inhuman and degrading treatment. Besides that, there are no additional remarks on measures taken to grant the non-refoulment principle, which showcases that the safety of the migrants is not at the centre of the JDMC.

This pattern can not only be detected in the case of non-refoulment but throughout the whole JDMC. The focus on readmission gets clear when looking at the text. Phrases like return and prevention of illegal migration are used repeatedly, and most of the text revolves around the details of the return process. The rights of migrants are only mentioned rarely, and no measures are foreseen to ensure them. Furthermore, there are no projects planned that will go beyond the cooperation on readmission (Vara & Matellan, 2022).

Some problems that occur are similar to the ones of the MPs (3.2.2). The JWF and the JDMC do not fall into the categories of documents that need to be published. Because of that, it can come to problems regarding the right to transparency (2.3.5) and the right of access to documents (2.3.4). For one, the public could not access the JDMC before its application because the document was marked as a protected document at first and was not published until a few months after its resolution (Gatti, 2022). Additionally, both the Commission's and

the Council's decisions have not been made public (Gatti, 2022). It is also not ensured that migrants are able to access other preparatory documents.

The right to an effective remedy and trial (2.3.6) is also endangered due to the soft law nature of the JDMC.

The principle of the rule of law (2.3.7) is also endangered due to the soft law nature of the JDMC. Its non-legal binding nature gets supported by the incorporation of the statement into the JDMC that it "is not intended to create legal rights or obligations under international or domestic law" (Council of the European Union, 2021, p. 2). However, following Molinari (2019), it actually is reviewable. This is due to its detailed nature, its ability to produce legal effects for individuals and can that it can be ascribed to the EU. The reviewability of the JDMC by the CJEU is thus given but very difficult to achieve.

Molinari (2022) argues that "soft deals do not enable outcomes that could not be negotiated in the context of binding readmission agreements or reach areas that are unreachable for 'hard' regulation" (p.24) and that the JWF does not differ from a legally binding readmission agreement. Based on these observations in connection with the HR concerns that the use of soft law entails, their usage is more than questionable.

4.3 Admission procedures for the return of Ethiopians from EU MSs

The Admission Procedures for the return of Ethiopians from EU MSs got concluded on 18 December 2017 between the EU and Ethiopia.

4.3.1 Content

Following the text of this agreement, its main goal is "to develop cooperation in the area of return and readmission, by jointly defining admission procedures" (Council of the European Union, 2017, p. 1) both for voluntary and non-voluntary returns. The subjects of the return procedures are "Ethiopians nationals illegally present in the territory of the EU Member States" (Council of the European Union, 2017, p. 1). The documents' main part evolves around the readmission procedures' details. The only other topic mentioned is the EU's commitment to help with the reintegration of the returned Ethiopians.

4.3.2 Compatibility with Migrant Rights

The agreement states that the return procedures should be conducted "in full compliance with the human rights of Ethiopian nationals provided under relevant international instruments" (Council of the European Union, 2017, p. 2). However, not only is this the only reference to migrants' rights in the whole text but also its informal nature and the readmission procedures it entails raise the question of whether it is compatible with the rights of migrants.

The Admission Procedure is categorized by the EU (European Commission, n.d.c) as well as various authors (Molinari, 2022; Roman, 2022) as an informal EURA. Because of that, not only the concerns, informal soft-law deals bring with them but also the problems that arise when using EURAs (3.1.1) need to be considered.

The HR situation in 2017, the year that the Admission Procedures got concluded, was very precarious. Human Right Watch (2018) stated in their report that Ethiopia "used a prolonged state of emergency, security force abuses, and repressive laws to continue suppressing basic rights and freedoms". Following the report, especially the right of Freedom, expression and association as well as the right to not get tortured are violated. When examining the EU's external actions website for Ethiopia, multiple articles can be found on the HR and refugee law violations in Ethiopia. (European Union External Action, 2021a; European Union External Action, 2021b). Based on the HR situation in Ethiopia and the EUs undisputable knowledge of the situation, the conclusion of the Admission Procedures and with that, the decision to send people back to Ethiopia is more than questionable.

Due to the HR situation in Ethiopia, compliance with the principle of non-refoulment (2.3.3) is endangered. Additionally, there is not one reference to the principle, which shows again that the focus lies on returning the migrants and not on ensuring that their rights are respected.

The Admission Procedure also brings problems regarding the right to transparency (2.3.5) and the right of access to documents (2.3.4) as it does not fall into the categories of documents that need to be published. The EU has used that to avoid its publication. The EP (2018b) states that the official version never got published, and only a leaked version of the document exists. It is also not ensured that migrants will have access to preparatory documents.

The rights to an effective remedy and trial (2.3.6) and the principle of the rule of law (2.3.7) are also affected due to the soft-law nature of the Admission Procedure.

4.4 Conclusion

After conducting the three case studies, the third sub-question, *"What do the chosen informal migration deals entail and in how far are they compatible with the rights of migrants?"* can be answered as follows.

The MP with Morocco revolves around closer cooperation on migration management and the fight against illegal migration, as well as the creation of functional return and readmission policies. The main demurs concerning migrants' rights are its focus on the return of migrants instead of the protection of their rights and compliance with the right to an effective remedy and a fair trial.

The JDMCs main content is the cooperation on returning Afghans who do not qualify to stay in the EU to Afghanistan. The HR situation in Afghanistan endangers the right to life, the right to not get tortured as well as the principle of non-refoulment. The soft law nature of the deal imperils the compliance with the right of access to documents, the right to transparency and the principle of the rule of law.

The Admission Procedures with Ethiopia also focus on returning Ethiopians illegally staying in the EU. Similar to the JDMC, the HR situation restricts the right to life, the right to not get tortured, and the principle of non-refoulment. The other big concern regarding migrants' rights affects the right of access to documents and the right to transparency.

To conclude, it can be said that these deals were conducted in different contexts and have different names and formats. However, content-wise, they all show that the EU does not set the focus on the rights of migrants but on the fight against illegal migration, more sufficient border control and the return of illegally staying migrants.

5 Conclusion

This paper looked at the compliance of the EU's informal migration deals with the rights of migrants. In a first step, the theoretical base was laid by stating the EU's competencies in migration law and a brief overview of the informalization theory. This was followed by a discussion of the rights of migrants and how informal migration deals can hurt them. Thirdly, the instruments available to the EU when cooperating with third countries on migration matters were presented. The focus laid on EURAs and MPs. A detailed analysis of their relationship with HR and the challenges related to compliance with migrants' rights was conducted for both of them. In a fourth step, a case study of three existing informal partnerships was carried out. The three cases chosen were the MP with Morocco, the JDMC, and the Admission Procedures with Ethiopia. For all of them, a short description of their content was erected, followed by a detailed study of their compliance with the rights of migrants. Based on this, the paper aimed to answer the research question: "*To what extent does the EU's practice to conclude informal migration deals and partnerships with third countries respect the rights of migrants as codified in EU and international instruments?"*

It can be concluded that the informal deals do not respect the rights of migrants. Some of the rights are violated directly by the EU, while others are not sufficiently protected. The most important violations will be presented in the following.

The compliance with the right to transparency is often not given because the EU can use the informal migration deals to circumvent the duty to publish the documents. By doing this, the EU breaches the principle of conducting its work as openly as possible. This also leads to the violation of the right of access to documents. Individuals are often unable to access these deals before their publication, and some of them get never published at all. The principle of the rule of law is also damaged when using informal migration deals as the possible ways to challenge the migration deals are hardly working and are also not accessible to most migrants. Another right that suffers when using informal migration deals is the right to an effective remedy and a fair trial. All of these breaches together also endanger the principle of legal certainty.

There are some migrant rights that are especially important when the deals in question are informal EURAs. The compliance with the right to life and the right to not get tortured can often not be granted due to the low HR standards in the third countries. This also endangers the principle of non-refoulment. When using MPs, their connection with the concept of circular migration is often criticised. This is due to their focus on the migrant workers as

economic entities and not individuals who should be granted their HR. Additionally, a clear focus on the securitization of the EU's borders and readmission and not on the opening of more legal ways to migrate to the EU or the protection of migrants' rights can be observed.

The three cases that have been analysed confirm these findings. They also gave an insight into the focus set in the agreements. In the MP, the m ain concerns are increasing Morocco's border protection, fighting illegal migration and managing migration. The two informal EURAs put their emphasis on the return process. All three of them do not go into detail on the rights of migrants, and especially strategies to help meet them are missing.

This study has several limitations that need to be considered. Due to the frame of this paper, the number of cases studied is very limited, and an in-depth study of the implementation of the migration deals is also missing. Therefore, future research may look at more informal migration deals and investigate their implementation. This would help make the findings more general and give them more reasoning. Especially in the case of Afghanistan, it would be interesting to do further research on how the coming into power of the Thaliban in 2021 has influenced the situation. Moreover, there is a lack of data proving that certain rights are not only violated in theory but also in reality. Case studies looking into that would be beneficial.

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