

Chapter 2



# The Co-operation on Readmission and Enforced Return in the African-European Context

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Despite the reluctance of most African countries to enter into standard readmission agreements, alternative methods of bilateral co-operation with European countries on enforced return have gained momentum over the last decade. These alternative methods of co-operation include memoranda of understanding, exchanges of letters, pacts, and police co-operation agreements, which include a readmission clause. They do not constitute standard readmission agreements. However, they are agreements with serious implications on state-to-state co-operation. The first part of this paper addresses the reasons and factors that have contributed to this new compromise on the complex issue of readmission or enforced return. The second part examines the implications of such alternative readmission co-operation methods on policy-making and shows that their geographical scope is strategically embedded in a broader interaction framework.

A new wave of agreements related to the readmission of illegal migrants is gradually weaving its way into the bilateral and multilateral talks on migration management between the European Union (EU) and Africa. These agreements are the result of the dramatic changes in power relations over the last decade.

Today, various EU Member States, particularly France, Italy and Spain, are currently aware that they can no longer indiscriminately apply pressure on African countries in order to encourage them to co-operate effectively on the readmission of their nationals as well as nationals of third-party countries. A new compromise is now emerging at bilateral and multilateral levels.

At the bilateral level, France, Italy and Spain are readapting with great flexibility their bilateral methods of co-operation on readmission with a view to securing a modicum of operability with their African counterparts. Given the empowered position the latter have acquired as a result of their involvement in the reinforced surveillance of the EU's external borders, the softening of the methods used by these three EU Member States is now more of a necessity than an option.

Bilateral co-operation on enforced return have gained momentum over the last decade.



At the multilateral level, the EU is now leaning towards a different approach to readmission through the recent introduction of mobility partnerships. Mobility partnerships constitute an integral part of the Global Approach to Migration which was first introduced in late 2005 during the Brussels European Council (Council of the European Union, 2006). They are tailor-made and encompass a broad range of issues: development aid, simplification of the delivery procedures for temporary entry visas, circular migration schemes and the combating of illegal migration including readmission.

Before explaining the emergence and gradual consolidation of this new compromise, it is necessary to understand the reaction of some African countries to the call for enhanced co-operation on migration management, including the issue of readmission.

The first part of the paper explains the reasons and factors at the root of the characteristics of the aforementioned compromise. Despite the overt reluctance of African countries to enter into standard readmission agreements and to effectively implement them, alternative methods of bilateral co-operation on enforced return have gained momentum over the last decade. These alternative methods of co-operation have increased considerably in today's Euro-African relations. They include memoranda of understanding, pacts, exchange of letters, and police co-operation agreements, which include a readmission clause. They do not constitute standard readmission agreements. However, they are agreements with serious implications on state-to-state co-operation.

Having explained the recent trends and characteristics of such alternative co-operation methods on readmission in the Euro-African context, the second part examines the implications of such alternative readmission co-operation methods on policy-making and shows that their geographical scope is strategically embedded in a broader interaction framework.

### **Background: Co-operation on readmission between African and European countries**

Intensifying co-operation with migrants' countries of origin, especially with those located within the EU, is a prerequisite to strengthening the EU's comprehensive approach to international migration. This prerequisite was mentioned in the Hague Programme, adopted at the Brussels Council of the European Union in November 2004, which stressed the need to assist third-party countries in their efforts to improve their capacity to manage migration including readmission (Council of the European Union, 2004). The concrete implementation of the EU's comprehensive approach to international migration, as mentioned in the Hague Programme, is not only contingent on the definition of entry and integration policies, but also on the adoption of measures aimed at supporting the effective readmission of illegal migrants and those overstaying their visa.

Recently, this co-operation was reasserted in the November 2006 follow-up document to the EU Global Approach to Migration (GAM) in Africa and the Mediterranean. This document clearly expressed the desire of the EU and its Member States to put migration management at the centre of their relations with African countries from which migrants originate while stressing that “return and readmission will remain a fundamental part of managing migration.” (Commission of the EC, 2006).

However, even though substantial progress has been accomplished in opening up dialogue with African third-party countries regarding migration management, they have been reluctant to fully respond to EU Member States’ call for enhanced co-operation on readmission. This situation stems from the resilience of various obstacles that have acquired increasing importance in multilateral and bilateral migration talks.

### **Resilient obstacles**

Over the last decade, African countries have been increasingly involved in migration talks, within the framework of numerous regional consultative processes (RCPs) related to migration management issues, including the issue of the readmission of third-country nationals.

These RCPs have been critical in raising awareness for the need to adopt provisions aimed at fostering the participation of migrants in the development of their countries of destination and origin. On one hand, the Cotonou Agreement signed in June 2000 and ratified in April 2003 between the EU and its Member States, and on the other hand, the African Caribbean and Pacific (ACP) group of states, have in this respect marked a watershed in the need to consider “strategies aiming at reducing poverty, improving living and working conditions, creating employment and developing training to contribute in the long term to normalizing migratory flows”.<sup>1</sup> Furthermore, with specific reference to readmission, the signatory parties also agreed to facilitate the return of illegal migrants in accordance with Article 13 of the Agreement.

The October 2000 Dakar Declaration<sup>2</sup>, adopted during the West Africa Regional Ministerial Conference on migrants’ participation in the development of their country of origin also contributed to launching a dialogue among African governments on the links between migration and development including the adoption of measures aimed at maintaining the reintegration of migrants. However, in contrast with the abovementioned Cotonou Agreement, the Dakar Declaration emphasised that economic development, as well as social and political stability constitute a prerequisite to facilitating the return of migrants, as well as their reintegration. Moreover, the signatory parties resolved to facilitate the reintegration of migrants wishing to return to their country of origin without making any reference to enforced return or readmission.

This contrast shows that despite the growing consensus on the need to jointly regulate migratory flows, different perceptions remain as to how return should be handled.

These substantial differences became explicit during the Euro-African Ministerial Conferences on migration and development, held in Rabat in July 2006 and in Tripoli in November 2006.<sup>3</sup> African leaders voiced their opinion stating that co-operation on return and repatriation with the EU and its Member States should not be limited to combating illegal migration through the conclusion of readmission agreements, arguing that further development aid should be granted to African source countries with a view to reducing poverty and addressing underdevelopment, i.e., the actual root causes of unwanted migratory flows.

This argument had already been expressed at the April 2006 African Union's Experts Meeting on Migration and Development which took place in Algiers. In their common position, the African Union's experts denounced "the recent measures adopted in Europe which encourage selective migration and target African expertise. [These measures] constitute an additional threat to African economies and show, needless to say, the lack of political will on the part of European countries to commit themselves with Africa to a genuine partnership based on respect for mutual interests".<sup>4</sup>



Economic development, as well as social and political stability constitute a prerequisite to the return and reintegration of migrants.

Undoubtedly, the participation of African countries in these talks and regional consultative processes is indicative of their willingness to have talks on such issues as the management of migratory flows (whether legal or illegal), reinforced border controls and police co-operation.

However, as stated above, their openness does not conceal the resilience of various obstacles to co-operate on readmission:

- Firstly, the capacity of African countries to deal effectively with the readmission of their nationals remains extremely limited, from an institutional, legal, structural, financial and economic standpoint. Co-operating on readmission might be too costly when considering that their economies remain dependent on the revenues of their (legal and illegal) expatriates living abroad, or when migration continues to be viewed as a safety valve to relieve pressure on domestic unemployment and food insecurity.
- Secondly, co-operation on readmission has been predominantly viewed by most African governments as responding solely to the interests of the EU and its Member States and to combating illegal migration;
- Thirdly, African countries' governments argue that the management of readmission has been predominantly shaped by the EU and its Member States' security concerns more than by their developmental

concerns. They believe that illegal migration should be better tackled by targeted long-term development and poverty-reduction programmes with a view to lowering the discrepancies between the European and African continents and to fostering reintegration over the long term.

These obstacles are indicative of resilient contrasting views pertaining to the management and impact of readmission. Above all, they are indicative of an unequal relationship between EU Member States and African countries when it comes to dealing with readmission or enforced return.

### **Unbalanced reciprocity**

The vast majority of readmission agreements are concluded at the bilateral level. Readmission agreements are concluded to facilitate the removal or expulsion of “persons who do not, or no longer fulfil the conditions of entry to, presence in or residence in the requesting state” (Commission of the EC, 2002). “Persons to be readmitted [or removed] under such agreements are a country’s own nationals and, under certain conditions, third-country nationals or stateless persons who have passed [or transited] through the territory of the requested country or otherwise been granted permission to stay there”<sup>5</sup>.

These agreements set out the administrative and operational procedures, which are jointly defined by the contracting parties, regarding the means of identification of undocumented migrants and the ensuing delivery of travel documents (or *laissez-passers*). National authorities responsible for co-operating with the deportation of aliens are clearly stated in the agreement, as well as the border control points which may be used for readmission purposes.

Both contracting parties are committed to respecting reciprocal obligations that are formally mentioned in the standard agreement. These obligations pertain to the fact that each contracting party agrees to readmit, at the request of the other contracting party, foreign nationals (i.e. nationals of the contracting parties and, if need be, nationals of third-party countries) who do not or no longer fulfil the conditions of entry or residence on State territory of the requesting party. But above all, parties agree to carry out deportation procedures without unnecessary formalities and within reasonable time limits, while respecting their national legislation and the international agreements on human rights and the protection of the status of refugees, in accordance with the 1951 Geneva Convention relating to the status of refugees and its 1967 Protocol.

This reciprocity of obligations does not mean that the contracting parties benefit equally from the conclusion and the implementation of the readmission agreement. To use Robert Keohane’s phrase, readmission agreements characterise “relations among unequals” (Keohane, 1986),

above all when these involve two signatory countries having a significant level of developmental asymmetry, which is more often than not the case. It could even be argued that the obligations contained in the readmission agreement are typically unequal, although they are framed in a reciprocal context.

## **Unequal costs and benefits**

Bilateral agreements with unequal benefits abound in international relations. The inequality lies in the repercussions of the effective implementation of the readmission agreement, but also in the structural, institutional and legal capacity of both contracting parties to deal with the deportation of aliens, whether they are citizens of the contracting parties or of a third-party country. Furthermore, perceived costs and benefits attached to the conclusion and to the implementation of a readmission agreement differ substantially between both contracting parties. This assumption is far from being trite when it comes to accounting for the vested interests that each party has in entering into this type of bilateral agreement. Whilst the interest of a destination country sounds obvious (“unwanted migrants have to be effectively deported”), the interest of a country of origin may be less evident, above all when considering that its economy remains dependent on the revenues of its (legal and illegal) expatriates living abroad, or when migration continues to be viewed as a safety valve to relieve pressure on domestic unemployment.

These preliminary remarks are important because they, on the one hand, show that the conclusion of a readmission agreement is motivated by expected benefits which are unequally perceived by the contracting parties, and on the other hand, they show that its concrete implementation is based on a delicate balance between the concrete costs and benefits attached to it.

### *The unstable balance of costs and benefits*

From a contractual point of view, readmission agreements involve two sovereign states, i.e., a state soliciting from another (the solicited state) the co-operation on readmission. Recurrent exchanges precede bilateral negotiations during which the expected costs and benefits of co-operation are evaluated by both parties. These informal exchanges resemble a learning process in which the costs and benefits of co-operation are evaluated.

The benefits for solicited states may include various compensatory measures. The most common incentives used by EU Member States to conclude readmission agreements have been: special trade concessions, accession to a regional trading bloc, preferential entry quotas for economic migrants, technical co-operation, increased development aid, and entry visa facilitation. Furthermore, other intangible benefits may arise from the co-operation on readmission. Solicited states may also be motivated

to co-operate because of their need to act as credible players in the international arena and reinforce their international legitimacy.

The benefits for soliciting states may also be tangible and intangible, as co-operation is expected to speed up the identification process of aliens subject to a removal order and to lower the average costs of their detention which are reportedly high in EU Member States' detention centres.<sup>6</sup> Moreover, the conclusion of readmission agreements may be submitted by the government of the soliciting state to the public and the media as an additional instrument for managing migratory flows and reinforcing its centrality in security matters.

The costs of a readmission agreement predominantly affect the solicited state. These may arise from the moment a readmission agreement is concluded, especially when the agreement requires substantial structural,

institutional and legal reforms that might have a disruptive impact on the State's relationship with civil society as well as on the domestic economy.

The costs of a readmission agreement predominantly affect the solicited state.



Moreover, other social costs may arise when the effects of the agreement are negatively perceived by the population of the solicited state (usually a migration country) and by its expatriates abroad.

The readmission agreement is negotiated on the basis of the perceived value of the exchanged items, however, the balance between costs and benefits can change over time, as a result of unforeseen circumstances. In the long run, the concrete benefits may turn out to be too weak compared with the unintended costs of bilateral co-operation on readmission. This change of value can have a negative impact on the effective implementation of a readmission agreement which can lead to one of the two countries defecting.

For example, Morocco and Spain concluded a readmission agreement in February 1992 which covers the readmission of nationals of the contracting parties as well as the removal of third-party nationals and stateless persons. To date, this bilateral readmission agreement has never been fully implemented, due to the reluctance of Moroccan authorities to accept the readmission of third-party nationals originating mainly from Sub-Saharan Africa who purportedly transited through Morocco before being apprehended on Spanish territory. Moreover, Morocco has often questioned the fact that migrants transited through its territory before arriving in Spain, arguing that they had transited first through Algeria en route to Spain.

When the bilateral readmission agreement was concluded in 1992, this migration phenomenon was not viewed as being sufficiently significant to hinder the negotiations of this type of agreement. Moreover, Morocco accepted to sign the readmission agreement in the wake of a reconciliation process with its Spanish neighbour which came about following the



signing of a Treaty of friendship, good-neighbourliness and co-operation on July 4, 1991. Also, Morocco's acceptance to conclude this agreement was motivated by its desire to acquire special status in its political and economic relationships with the European Union (Mrabet, 2003).

However, the Moroccan defection did not only result from the emergence of unexpected costs attached to the concrete implementation of the readmission agreement. Also, diplomatic tensions with Spain, particularly under the Aznar government (Gillespie, 2006), culminated in the early 2000s, hampering the effective implementation of the obligations and terms contained in the 1992 readmission agreement soon after its conclusion. Changing circumstances may upset the balance of costs and benefits and can be conducive to defection.

Defection has a cost for both contracting parties. The defecting party may be viewed as being unreliable, while the ability of the other party to exert leverage in order to secure co-operation may be questioned.

However, not all defections discredit (Lipson, 1991). Actually, some may be justified due to significantly changing circumstances, or when the concrete implementation of the agreement turns out to be unexpectedly disruptive. A new round of consultations usually takes place in order to circumvent the impediments to the implementation of the readmission agreement.

This learning process helps State actors discover the respective costs and benefits of the agreement. It also helps them tweak their demands according to their counterparts' capacity. In other words, the (re)negotiation process, viewed as a learning process, may bring about other methods of co-operation on readmission, which don't necessarily correspond to the standard readmission agreement, and which are adaptively shaped by the responsiveness of the state actors involved. New consultations fraught with additional compensatory measures may unveil the broader framework of strategic co-operation of which readmission constitutes only one part.

### *Strategic issues*

As the abovementioned Spanish-Moroccan case study indicates, the conclusion of a readmission agreement is never isolated from a broader interaction and co-operation framework. Often, its conclusion results from a *rapprochement* which in turn stems from the gradual strengthening of diplomatic relations. In this sense, the conclusion of a readmission agreement is never an end in itself but just a means, among many others, to consolidate an entire bilateral co-operative framework including other strategic (and perhaps more crucial) policy areas.

The recent bilateral readmission agreement signed in July 2006, but still not enforced, between the United Kingdom and Algeria is no exception to the rule. This agreement – limited to the removal of nationals of the contracting parties – took place in the context of an entire round of

negotiations including such strategic issues as energy, security, combating terrorism and police co-operation. These strategic issues have become top priorities in the bilateral relations between the UK and Algeria, particularly following the July 2005 G8 meeting in Gleneagles which was also attended by Algeria.

Stressing that co-operation on readmission is included in a broader strategic framework is crucial to demonstrating that the issue of readmission may permeate various bilateral co-operation methods. The more two

It is a fact that negotiations leading to standard readmission agreements have been difficult.



state actors interact (whether successfully or unsuccessfully), the more they learn about each other, the more they reciprocally understand the costs and benefits attached to co-operation on

readmission, the more they will be inclined to adaptively and jointly determine their co-operative framework, in response to the unstable balance of costs and benefits.

It is a well-known fact that negotiations leading to the conclusion of standard readmission agreements with Mediterranean third-party countries have been difficult, given the potentially disruptive consequences that their obligations may have on their domestic economic and social stability, and on their external relations with their African neighbours (Cassarino, 2005).

This does not mean that bilateral co-operation on readmission has been suspended. On the contrary, various rounds of negotiations, at bilateral and multilateral levels, are taking place. These have allowed certain EU Member States (particularly Italy, France, and Spain) to adaptively develop alternative co-operation methods on readmission. These alternative co-operation methods on readmission do not constitute standard readmission agreements. Yet they are agreements related to readmission that have been negotiated and transformed according to various concerns.

### **The compromise on bilateral co-operation on readmission**

An inventory of all the bilateral readmission agreements concluded between each of the EU-27 Member State and African countries still wouldn't paint an accurate picture of all the various mechanisms and co-operative instruments that have emerged, over the last decade, to sustain the deportation of illegally residing third-party nationals.

These mechanisms may be formalised, as is often the case, through the conclusion of a standard readmission agreement. Formalisation of the agreement can be perceived as beneficial to both parties involved or because the solicited State must act as a credible player in exchange of expected concrete benefits.

Under certain circumstances, however, both parties may agree to co-operate on readmission issues without necessarily formalising their co-operation on the basis of a standard readmission agreement. They may opt for alternative ways of addressing readmission by placing it in a broader co-operation framework including additional forms of mutual assistance (e.g., police co-operation agreements, arrangements, pacts) or by choosing to formulate their co-operation in other types of deals, including exchanges of letters and memoranda of understanding.

These alternative co-operation methods related to readmission but not formalised as readmission agreements are harder to detect. Therefore, by being informal they are not necessarily published in official bulletins and are not always recorded in official documents or correspondence.<sup>7</sup> However, they remain traceable if we bear in mind the fact that these informal arrangements are, just like the formal readmission agreements, intrinsic in a strategic bilateral co-operation framework. There are perceptible signs which indicate or foretell that two countries may or may not accept to negotiate or conclude an accord on readmission, depending on circumstances in their broadest sense, i.e., the ways in which they interact, the size and nature of the migratory flows affecting both countries, and (to a lesser extent) their geographical proximity.



The sharp increase in bilateral readmission agreements is reflective of its growing importance EU and third-party countries relations.

### **Trends in bilateral co-operation on readmission between Europe and Africa**

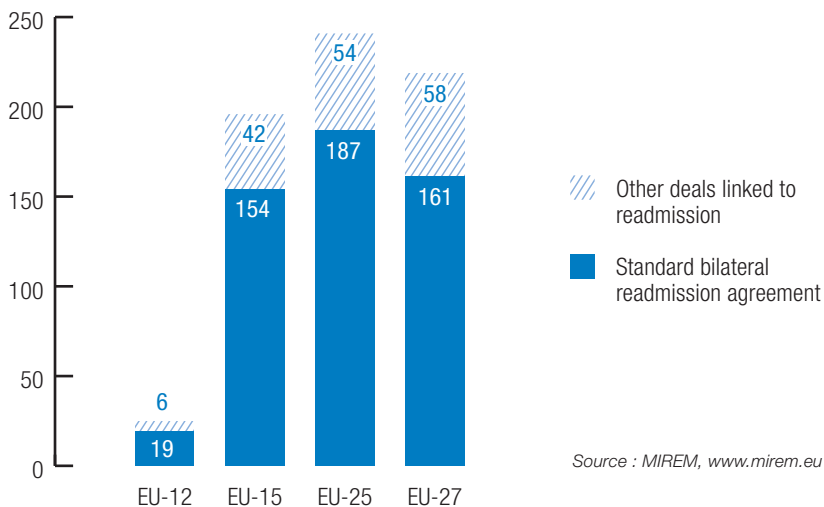
The sharp increase in the number of bilateral readmission agreements is of course reflective of the growing importance attached to readmission issues between EU Member States and third-party countries in recent decades. Conversely, it is also illustrative of these third-party countries' responsiveness to the call for concluding such agreements.

→[Figure 2.1](#) plots data related to the number of bilateral agreements related to readmission and concluded between EU Member States and third-party countries, from the time in which the EU comprised 12 Member States to date. Readmission is now part and parcel of the international relations of the EU member states. →[Figure 2.1](#) distinguishes between standard and non-standard readmission agreements. In June 2008, 219 agreements related to readmission were concluded at a bilateral level between each of the EU-27 Member State and third-party (non-EU) countries.

Clearly, not all EU Member States are equally affected by the readmission issue in their interaction with African countries. Within the EU-27, France, Italy and Spain are the most prominently involved in readmission co-operation and in on-going negotiations with African countries.

Figure 2.1

Agreements related to readmission concluded by the EU Member States with third-party (or non-EU) countries, from the EU-12 to the EU-27 (June 2008)



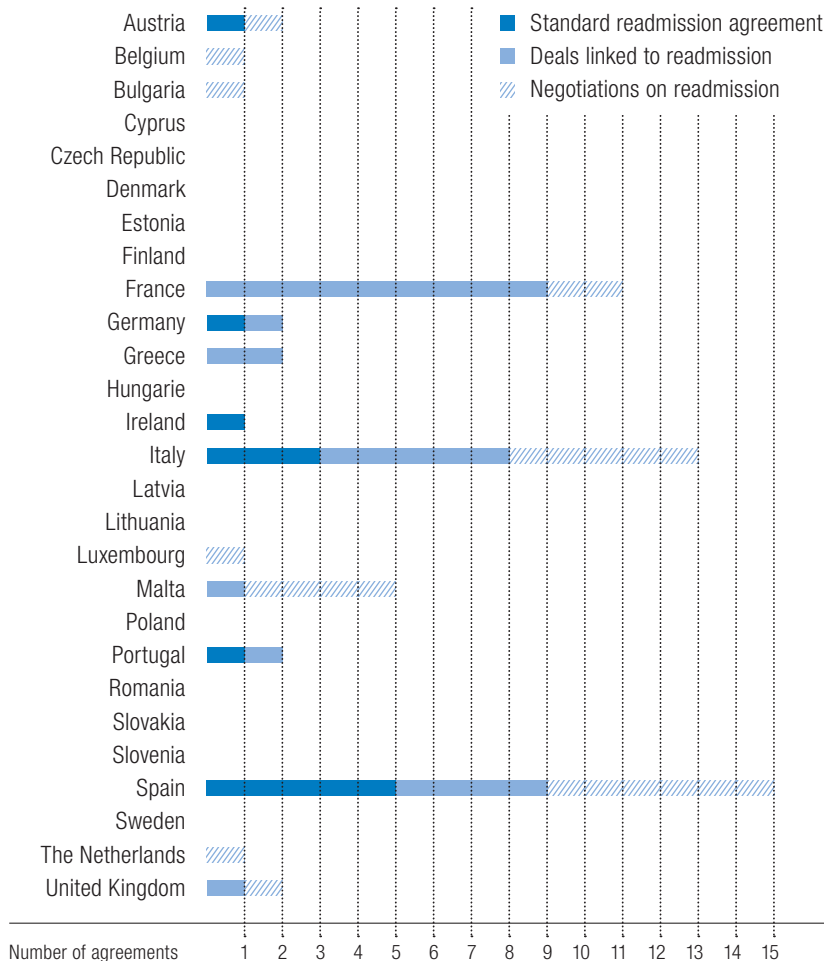
Indeed, as of June 2008, regardless of the number of agreements that are currently negotiated, more than 65 per cent of the total number of agreements related to readmission remained focused on France, Italy and Spain. This clearly reflects that these countries have been the most proactive over the last few years in considering ways of inducing African countries to become more co-operative on readmission or enforced return.

More interestingly, more than half of the concluded agreements are based on alternative co-operation methods on readmission including exchanges of letters, memoranda of understanding, administrative accords and police co-operation agreements with a clause concerning readmission.

These preliminary observations highlight the fact that these co-operative methods on readmission between the EU Member States and African countries are extremely heterogeneous. That is why limiting the scope of the approach to the conclusion of standard readmission agreements would not properly reflect the actual context in which (re) negotiations and co-operation on readmission are taking place. Just like for standard readmission agreements, alternative accords have a *raison-d'être* that needs to be further considered.

Figure 2.2

Bilateral agreements related to readmission, concluded between each EU-27 Member State and African countries, June 2008



Source: MIREM, [www.mirem.eu](http://www.mirem.eu)

### Securing the operability of the co-operation on readmission

The main rationale for the adoption of non-standard agreements is to secure bilateral co-operation on readmission and to avoid defection as much as possible and to respond in a flexible manner to new situations. Various EU Member States have flexibly readjusted their co-operative methods with some Mediterranean third-party countries in order to address the urgent problem of re-documentation, i.e. the delivery of travel documents or laissez-passers by the consular authorities of the third-party

country needed to expel undocumented migrants. Such flexible arrangements result from repeated consultations allowing co-operative methods to be readjusted with a view to complying with the terms of bilateral arrangements.

Undoubtedly, the incentives offered to African countries have certainly played a crucial role in inducing the latter to enter into such informal readmission accords. However, these incentives would not sufficiently explain the reason for which these arrangements have been increasingly important over the last few years, nor would it fully account for African countries' responsiveness. Actually, it is important to highlight the inherent characteristics of such accords.

- The first characteristic lies in their low level of public visibility. It is important to recall that these arrangements involve actors having different costs and benefits attached to co-operation on readmission. In Africa, the readmission issue is rather unpopular, and governments in these countries do not like to publicise their co-operation in this field, because it would jeopardise their relationships with their expatriates and population. It would also convey the negative image of a subordinate state to the European dominant power.
- The second characteristic pertains to the adaptability and flexibility of these accords to changing circumstances and to the consequential need to renegotiate the terms of the accord. In contrast, with a formal readmission agreement, requiring a lengthy ratification process, renegotiation can easily be performed with a view to responding to new situations and claims. The "asymmetry in benefits" that typically qualify readmission co-operation between some Mediterranean third-party countries and some EU Member States is too resilient to be ignored. Circumstances change over time and these are sufficient to create other types of arrangements which could adaptively and swiftly be renegotiated. These arrangements may take the form of exchanges of letters or memoranda of understanding. They may also be crafted through the conclusion of police co-operation agreements including a clause concerning readmission or through other types of development deals.
- The third characteristic lies in the limited cost of defection. As defection applies equally to any kind of international accord, defection arguably implies a lower cost when it applies to an informal arrangement. Actually, instead of being viewed as a fundamental rupture by the parties involved, it may rather be viewed as a disagreement stemming from the unstable balance of costs and benefits.
- The fourth characteristic of these accords relates to their compatibility with domestic and regional security concerns. Actually, bilateral readmission co-operation has been shaped by these security concerns. That is why numerous police co-operation agreements include a

readmission clause. At the same time, the externalisation process of migration and asylum policies of the EU and its Member States, plus the proactive involvement of some African countries in the enhanced control of the EU's external borders (Lutterbeck, 2006), has contributed to gradually placing the readmission issue in an entire set of strategic initiatives in the field of Justice and Home Affairs. Various police co-operation arrangements which foresee the delivery of sophisticated technical equipment aimed at combating illegal migration and at controlling borders have been concluded with a number of African countries. These bilateral co-operative methods regarding security matters are actually indicative of the growing convergence of security concerns of Maghreb countries with those of their European neighbours. These countries have been jointly involved in various bilateral and multilateral police operations such as the Seahorse project led by the Spanish Guardia Civil, whose main objective lies in co-operating with the Mauritanian law-enforcement agencies to reinforce maritime border controls. These bilateral police co-operation initiatives have led to the emergence of unprecedented forms of interconnectedness (Cassarino) between the North and the South of the Mediterranean, because they promote exchanges between national law-enforcement agencies, but also because they allow various Mediterranean and African third-party countries to play the efficiency card and to enhance their international credibility and regime legitimacy in the management of migration and borders.

« Bilateral readmission co-operation has been shaped “by security concerns.”

These four characteristics (invisibility, flexibility, cost-effectiveness, adaptability to security concerns) can sufficiently explain the gradual importance of the informal readmission co-operation methods. They are also key to understanding that African countries have been responsive to the call for enhanced co-operation on readmission with some EU Member States despite their vocal reluctance to formalise their co-operation or to fully implement their formal agreements.

### *A gradual expansion towards Africa*

It is also important to stress that co-operation on security and border control issues in the Euro-Mediterranean area has led to the expansion towards other African countries.

There are two interrelated reasons explaining this geographical expansion towards the south. The first one is that the EU and its Member States are intent on co-operating directly with the source countries of migrants in Sub-Saharan Africa, in order to mobilise them in the joint management of international migration, particularly in the fight against illegal migration.

The second reason is that various EU Member States, particularly France, Italy and Spain, are becoming aware of the need for an agreement with

To link readmission to debt relief, development aid, poverty-reduction projects, police co-operation agreements.



Sub-Saharan source countries for two reasons: firstly, to alleviate the burden of strategic North African countries regarding the readmission of third-country nationals. Secondly, to secure

the co-operation of these strategic North African countries with regard to the reinforced surveillance of the EU's external borders.

France, Italy, and Spain have recently initiated a new wave of co-operation agreements with African countries which cover, among other things, the readmission issue and substantially replicate those that have already been concluded with North African countries. More precisely, these agreements are based on a three-pronged approach covering:

- police co-operation (including readmission) to combating illegal migration;
- strengthening border controls; and
- jointly managing economic migration with migrants' countries of origin and increased development aid with a view to addressing the root causes of migration.

This approach significantly draws on a project that Italy had already presented when it took over the presidency of the Council of the European Union in 2003 (Council of the European Union, 2003). This three-pronged approach has come a long way over the last five years. Today, it is an integral part of Spain's *Plan Àfrica*<sup>8</sup> and of France's pacts on concerted migration management and co-development ("*accords de gestion concertée des flux migratoires et de codéveloppement*") (National Assembly, 2005). Its main characteristic is to link readmission to an array of measures ranging from debt relief, development aid, poverty-reduction projects, police co-operation agreements aimed at combating organised crime and human-trafficking, and co-operation between law-enforcement agencies.

There is no question that France, Italy and Spain have been able to negotiate ad hoc accords on readmission with a growing number of African countries. As mentioned before, the conclusion of these accords, which differ from standard readmission agreements, has contributed to the geographical extension and density of the Euro-African web of agreements related to readmission, whether these are standard or not.

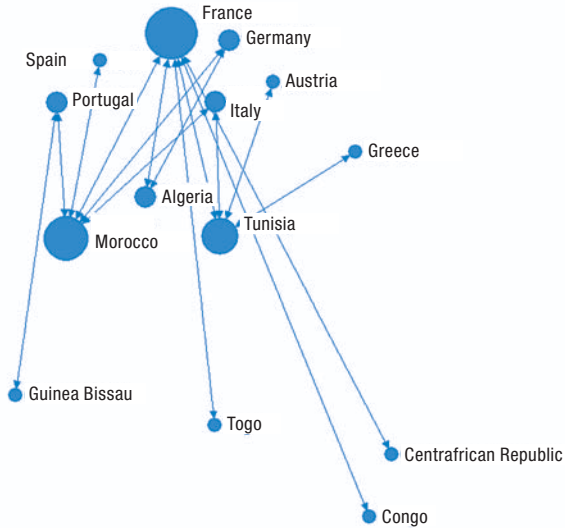
The figures below reflect the growing importance that bilateral co-operation concerning readmission or enforced return has gained in the Euro-African relations since the 1990s (→ [Figure 2.3](#)) to mid-2008 (→ [Figure 2.4](#)).

For each time period, the size of the circles (or nodes) has been weighted with regard to the total number of bilateral agreements related



to readmission (whether standard or not). In other words, the bigger the circle the denser the Euro-African web of agreements related to readmission in which each country depicted is involved.

**Figure 2.3**  
The web of bilateral agreements related to readmission between the EU Member States and African countries (during the 1990s)



**Figure 2.4**  
The web of bilateral agreements related to readmission between the EU Member States and African countries (June 2008)



Source: MIREM, [www.mirem.eu/datasets/agreements](http://www.mirem.eu/datasets/agreements)

It is interesting to note that, during the 1990s (→Figure 2.3), France, Morocco and Tunisia were the most involved in the Euro-African web of agreements related to readmission. The web involved 14 countries equally distributed between the EU and Africa. At that time, the main concern shared by most EU Member States was to extend their networks of co-operation on readmission towards third-party countries East of the EU and the Western Balkans. Additionally, the planned enlargement of the EU and the obligation for the ten new acceding countries to align themselves with the “Schengen acquis” also increased the number of bilateral agreements on readmission with third-party countries in the East.

In mid 2008 (→Figure 2.4), the situation changed drastically. The Euro-African web of bilateral agreements related to readmission increased extensively involving 26 countries in both areas.<sup>9</sup> It is striking to note that in →Figure 2.4, numerous countries located on the Western coast of Africa, from Gabon to Morocco (including Benin, The Gambia, Guinea Bissau, Guinea Conakry, Mauritania, Nigeria, Senegal, and Togo) are now involved in the array of agreements related to readmission. This geographical expansion has not been random. Rather, it stems from the combination of various specific factors.

First, as mentioned above, within Europe there has been growing awareness that methods of co-operation with African countries regarding readmission need to be adapted. Given their reluctance to conclude standard readmission agreements, the idea was to devise flexible arrangements which could serve the interests of all the contracting parties.

Incidentally, the May 28, 2006, interview with Mr Miguel Angel Moratinos, the current Spanish Minister of Foreign Affairs, is emblematic of the growing awareness shared by most officials and policy-makers in the EU Member States that a new compromise must be considered in their interaction with third-party

These agreements have also allowed countries to acquire a strategic position in migration talks.



countries in the Mediterranean and the African continent regarding the delicate issue of readmission: *“The old approach to readmission agreements has to be complete with other approaches. This is not to say that we should renounce the need for readmission. However, to put this into practise, sending countries need an array of incentives to accept the removal of their citizens”*<sup>10</sup>.

This shift does not so much lie in the incentives offered to third-party countries’ governments as in the creation of alternative mechanisms allowing quick and discreet solutions – linked to other strategic issues – to be found.

The second reason explaining the gradual expansion of agreements related to readmission in Africa is that such bilateral initiatives have allowed some African countries to play the efficiency card in the field of

migration and border management, while gaining further international credibility and regime legitimacy. They have also allowed these countries to acquire a strategic position in migration talks on which they intend to capitalise.

This perceptible process of empowerment is also important to understand in the geographical expansion of readmission accords towards Sub-Saharan African countries. Some African leaders have realised that their involvement in such readmission talks would reinforce their bargaining power and strategic position with regard to their European counterparts.

A third element which contributed to the enlarged geographical scope set out in →[Figure 2.4](#) is the attempt of the European Commission to devise new forms of partnerships with African third-party countries in the field of migration management.

Since the introduction of the EU Global Approach to Migration, a variety of actions have been prioritized and implemented through the launching of mobility partnerships in co-operation with third-party countries. Just like France's pacts on concerted migration management or Spain's *África Plan*, the EU's mobility partnerships are tailor-made. They encompass a broad range of issues ranging from development aid to the simplification of the delivery procedures for temporary entry visas, circular migration schemes and combating illegal migration including readmission.

In late 2007, the Commission was invited by the Council to launch pilot mobility partnerships with Cape Verde leading to the conclusion of a mobility partnership joint declaration in June 2008. Similarly, a mobility partnership has been in negotiation with Senegal since June 2008.

Although mobility partnerships do not constitute readmission agreements, they are presented as "a novel approach capable of bringing added value in implementing different aspects of the Global Approach to Migration" (Council of the European Union, 2007), including co-operation on an effective readmission policy". Most importantly, their recent introduction is viewed as giving more impetus to co-operation on migration management and also allows the credibility of the EU and its institutions to be consolidated after years of lengthy and intricate negotiations on EC readmission agreements with African third-party countries (Algeria and Morocco).

Behind the introduction of mobility partnerships is the need to make African countries' governments and authorities more co-operative with regard to migration management, particularly in combating illegal migration and the difficult issue pertaining to readmission. In other words, mobility packages are conditionally offered in that they are addressed to those third-party countries "once certain conditions are met, such as co-operation on illegal migration and effective mechanism for readmission" (Commission of the EC, 2006).

The EU's attempt to link mobility partnerships with effective co-operation on readmission is reflective of how this issue has become a central component of its external relations with African countries. This conditionality may be motivated by the need to secure the temporariness of circular migratory movements and to avoid the permanent stay of migrants.

There are, however, other factors explaining this conditionality. First, readmission is all the more central for the EU and its Member States as the control of its external borders have been reinforced. In other words, border restrictions impact on the fluid and repeated back and forth movements inherent in circularity. The EU and its Member States are aware of the fact that, due to border restrictions and difficult access to the labour market in the destination country, circular migrants may be tempted to extend the duration of their stay abroad<sup>12</sup> or to overstay and become irregular. In the same vein, the resilient differentials in terms of standards of living, economic development, welfare and political governance between origin and destination countries constitute additional push factors that cannot be overlooked. Given the resilience of the aforementioned differentials existing between the EU and its surroundings, particularly with regard to African countries, readmission is presented as the necessary instrument to deal with the unintended consequences of circular migration schemes, i.e. overstay.

### **Conclusion: Implications on policy-making**

A whole spectrum of agreements related to readmission has emerged over the last decade in existing bilateral co-operation methods between African and European countries. Standard readmission agreements constitute just one method of co-operation. Furthermore, incentives play a crucial role in encouraging third-party countries to co-operate on readmission. However, they do not adequately account for the sustainability of bilateral co-operation over the long term. Actually, the perceived costs and benefits facing each country also shape the durability as well as the co-operation method.

The issue of readmission permeates an array of policy areas in Euro-African relations. It is strategically embedded in a whole range of co-operative methods which shape the terms of co-operation sometimes favouring and sometimes hampering the formalisation of a readmission agreement.

African and European migration players know that the conclusion of agreements related to readmission (whether standard or not) is no guarantee for their effective implementation, owing to the strong asymmetry in costs and benefits that characterises their bilateral co-operation.

The gradual proliferation of accords (e.g., memoranda of understanding, pacts, administrative arrangements and police co-operation agreements including a clause concerning readmission) shows that the issue at stake

lies in finding flexible solutions aimed at co-operating on readmission more than in the mere conclusion of bilateral readmission agreements *per se*. The agenda remains unchanged, but there has been a shift in priority actions with regard to African countries. Actually, the operability of co-operation on readmission has been prioritised over its formalisation. This shift in priority has various implications in terms of policy-making.

Co-operation methods have been primarily conducive to judicial and police reforms in African countries as well as to enhanced technical assistance to police forces and law-enforcement agencies aimed at strengthening their border management capabilities.

One is entitled to question the extent to which the prioritisation of such security concerns might not jeopardise the principle of the free circulation of



The proliferation of accords shows that the issue at stake lies in finding flexible solutions.

persons which constitutes an essential component of the regional integration initiatives in Africa, including the Economic Community of West African States (ECOWAS). It is likely that African countries involved in such co-operation methods on migratory flow management, including the readmission issue, will have to perform a balancing act between their commitments or obligations with regard to their European counterparts and those resulting from their regional involvement in African trading blocks.

Moreover, as stressed in a recent study produced by the Assembly of Western European Union, it raises the question of whether the technical assistance provided to law-enforcement agencies and border police authorities may be compatible with the promotion of good governance, democracy and public accountability<sup>73</sup> in some African countries, as well as developing a genuine legal system respecting migrants' rights and protecting asylum-seekers.

Another entanglement stemming from prioritising security concerns regarding co-operation related to readmission in Euro-African relations is that bilateral co-operation is aimed at securing the effective expulsion of unwanted migrants but does not foresee any mechanisms aimed at supporting the social and professional reintegration of persons subject to a removal order. Such reintegration mechanisms will have to be considered, as they will determine the effectiveness of bilateral co-operation on readmission and its sustainability.

A new compromise is emerging regarding readmission in Euro-African relations, resulting predominantly from the convergence of short-term security concerns. This compromise reflects the emergence of power relations, which substantially differ from those that prevailed a few years ago leading to flexible co-operation methods on readmission.



- 10 "El viejo enfoque de los acuerdos de readmisión debe ser completado con otros enfoques. No hay que renunciar a la exigencia de readmisión, pero para que se aplique, los países emisores necesitan una serie de incentivos para aceptar la devolución de sus ciudadanos." See the full text of Moratinos' interview, in *Ministerios de Asuntos Exteriores*, "La crisis de Canarias es fruto del éxito de la nueva relación con Marruecos", 28 May 2006 [www.mae.es](http://www.mae.es).
- 11 See Paragraph 10 of Council of the European Union, "Council Conclusions on extending and enhancing the Global Approach to Migration", 2808<sup>th</sup> General Affairs Council meeting, Luxembourg, 17–18 June 2007
- 12 This point draws on Heaven Crawley's viewpoint reported in House of Commons International Development Committee, *Migration and Development: How to make migration work for poverty reduction*, Sixth report of Session 2003–2004, Vol. 1, 8 July 2004. "When people come to a country [...] through a managed migration programme often they have had quite a difficult time getting onto that programme in the first place, and when they get to the [destination country] their first thought is not to think about how to return, because they found it difficult trying to get here in the first place, it is more about how to stay" (see §71, p. 40–41).
- 13 Assembly of Western European Union, *Security and Stability in the Mediterranean Region*, Document A/1939, 52<sup>nd</sup> session, 20 June 2006, Paris, WEU, 2006. [www.assembly-weu.org/en/documents/sessions\\_ordinaires/rpt/2006/1939.php?PHPSESSID=f3137d60](http://www.assembly-weu.org/en/documents/sessions_ordinaires/rpt/2006/1939.php?PHPSESSID=f3137d60).

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## Glossary<sup>1</sup>

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**Alien:** A person who is not a citizen of the country in which he/she lives. A “legal alien” is someone who lives in a foreign country with the legal approval of that country. An “illegal alien” (or undocumented alien) is someone who lives in a foreign country without having legal status in that country. A distinction is made between illegal immigrants and illegal aliens; the former being someone who wishes to settle permanently in the new country. A distinction is made between illegal immigrants and illegal aliens – the former being someone who wishes to settle permanently in the new country.

**Arrest Warrant:** An order give by the examining judge to the police to seek and arrest someone for indictment then take them to a correction centre.

**Circular migrant:** One who moves regularly between his/her home country and a foreign country for employment-related reasons. Typically, though not exclusively, circular migrants do agricultural or construction work, returning home when employment opportunities wane, or when they have saved a bit of money. The term “circular migrant” is not entirely synonymous with guest worker, because the latter term implies that the individual fits into a specific employment-visa category of the host country; a circular migrant can be in a host country illegally or legally. Further, a guest worker may come to a host country for a set period of time and only return home when the visa expires – in other words, there is no back-and-forth and hence no circularity

**Economic migrant:** *Sometimes used as an equivalent to the term labour migrant or migrant worker. However, the two concepts may cover different categories. The term “labour migrant” can be used restrictively to only cover movement for the purpose of employment while “economic migrant” can be used either in a narrow sense, which includes only movement for the purpose of employment, or in a broader sense that includes persons entering a State to perform other types of economic activities such as investors or business travellers.*

**Expulsion:** A measure undertaken by the police by which an alien is ordered to leave the country. There is a tendency to systematically use the word “expulsion” every time an alien is forced to leave a country. There are several expulsion measures:

- Arrested and sent to the border: on the basis that the alien is in an irregular situation.
- Deportation order: ordered if the alien constitutes a threat to public order (sentenced to a long prison term, for example).
- Legal exclusion from the country: often goes along with a prison term whereas at the end of the term, the alien is deported from the country as a result of a judge-ruled exclusion. It can be used in cases of irregular situations, for certain offences or crimes.
- Surrendered to another country: can only take place in application of an agreement between two countries to which the alien is surrendered.

There are cases of protection from expulsion measures following the individual situation and the alien’s country of origin: protection from being led to the border, protection from expulsion, protection and guarantee from judicial banning from the country

**Flagrante delicto:** Delicto or offence in process of being committed or which was just committed and registered by the police. When the crime is punishable by a prison term, the Prosecution can quickly present the suspect before the judge for a hearing called an immediate appearance for a decision to be made.

**Flow:** The term used for the unstable and changing portion of an overall population figure

**Forced departure:** So as to avoid using the word “expulsion” (a legal-technical term in State immigration law), we speak of “forced departure” of an alien in cases in which authorities enforcing the decision of expulsion have used physical or other pressure to force an alien to leave his former country of residence.

**Illegal migrant:** A person who comes to settle in a country without the correct legal documentation, or who lives there using false identification or no documentation at all (“sans papiers” – without papers), or who otherwise resides in a country without formal permission. E.g., a person who enters a country on a tourist or student visa and then overstays his or her visa becomes an illegal immigrant.

**Intergovernmental method:** Negotiation sessions between representatives of national governments

**Irregular migration:** As defined by the Global Commission on International Migration, it is a complex and diverse phenomenon in which the main focus is irregular flows and entries, rather, for example, than the various challenges posed by stocks or irregular migrants such as undocumented work.

**Immediate appearance<sup>2</sup>:** A procedure which makes it possible to make judge quickly somebody following the police custody.

**Labour migration:** Movement of persons from their home State to another State for the purpose of employment.

**Migrant smuggling; smuggling of migrants:** Defined in the relevant Protocol as follows: “Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. Trafficking victims can be, at least in the beginning, consenting and candidates for emigration, unlike those described by the expression “human trade.”

**Naturalization:** In law, refers to an act whereby a person acquires a citizenship different from that person’s citizenship at birth. Naturalization is most commonly associated with economic migrants or refugees who have immigrated to a country and resided there as aliens, and who have voluntarily and actively chosen to become citizens of that country after meeting specific requirements. However, naturalization that is at least passive and often not voluntary, can take place upon annexation or border adjustments between countries. Unless resolved by denaturalization or renunciation of citizenship, naturalization can lead to multiple citizenship.

**Non-refoulement:** *A core principle of refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. This principle is usually considered a part of customary international law and is therefore binding on all States, whether or not they are parties to the 1951 Convention relating to the Status of Refugees.*

**Refugee:** Defined under Article 1 of the Geneva Convention (28 July 1951) relating to the Status of Refugees as “any person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the

country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country”.

**Return migration:** I.e., migrants returning to their country of origin – going home.

**Statutory Refugee:** In France, refugee status is a legal status recognised by the Office français de protection des réfugiés et apatrides (OFPRA), in accordance with the Geneva Convention of 28 July 1951 as well as the law of 25 July 1952 (in its draft of the law of 11 May 1998) referring to two categories of persons: - anyone meeting the definitions set out in Article 1 of the Geneva Convention of 28 July 1951 related to the status of refugees; – “any person persecuted due to his/ her actions on behalf of freedom” (L. 11.5.1998, Article 29).

**Stock:** In migration statistics, used to describe the stable portion of an overall population figure.

**Total population** (Contribution by J.-M. Cour): as set out in the WALTPS women, the aged and children, “inactive” and “unemployed” included is comprised of three strata:

- The primary strata corresponds to the total population of urban and rural households who depend on most of their total revenue (including non-monetary) from a primary activity;
- The formal non primary strata corresponds to households having a formal private or public salaried employment and households involved in formal (officially registered businesses) non agricultural businesses (non primary); and
- The informal non primary strata corresponds to the total population of households not classified in the two other strata. The non-primary population is that of two non-primary strata, formal and informal.

This breakdown of the total population into three strata, which abolishes in fact the household entity and ignores the notions of activity and unemployment, can evidently be disputed, but it enables the aggregates and ratios to be calculated taking into account the totality of the population which is often the only known data and prevents disputes over the definition of active (over 7 or 15 years of age? Less than 60 or 90 years of age?) and the unemployed (concept which has no sense except in the formal and modern sector).

**Primary value added** (Contribution by J.-M. Cour): is that of the primary sector of the economy, agriculture, livestock rearing, fisheries and forestry.

**Warrant of Committal:** An order given by a magistrate or judge to enforce a judgment or order to receive and maintain an indicted person in detention pending trial.

NOTE //

- 1 *The text in italics has been translated based on the official source text. www.iom.int and United Nations Multilingual Terminology Database <http://157.150.197.21/dgaacs/unterm.nsf>*
- 2 *[www.speedylook.com/Immediate\\_appearance.html](http://www.speedylook.com/Immediate_appearance.html)*

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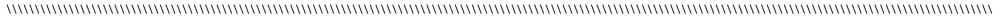
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