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EU Migrant return policy – cooperation with third countries on readmission

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An effective and well-managed return policy is an essential part of a comprehensive migration policy. In the EU, less than 40 % of the irregular migrants ordered to leave the EU actually return to their country of origin or a third country. In our Special Report 24/2019 on Asylum, relocation and return of migrants, we identified several reasons for low returns from Greece and Italy, and the EU in general. One of those reasons is difficulty in cooperating with migrants' countries of origin.

In 2015, the European Commission published an EU Action Plan on Return, in which it recognised that an effective system of return requires the readmission of irregular migrants to be prioritised in relations with third countries. Readmission of own nationals is an obligation under customary international law.

In June 2016, the Commission introduced the Migration Partnership Framework, which embeds migration in the EU's foreign policy. In March 2017, the Commission launched a Renewed Action Plan on Returns where it presented recommendations on how to make returns and readmission more effective.

This audit will focus on the measures to improve readmission cooperation with third countries, as introduced in the Commission's action plans, and assess if the EU has succeeded in enhancing cooperation with priority third countries on the readmission of migrants.

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Return and readmission

Return of irregular migrants

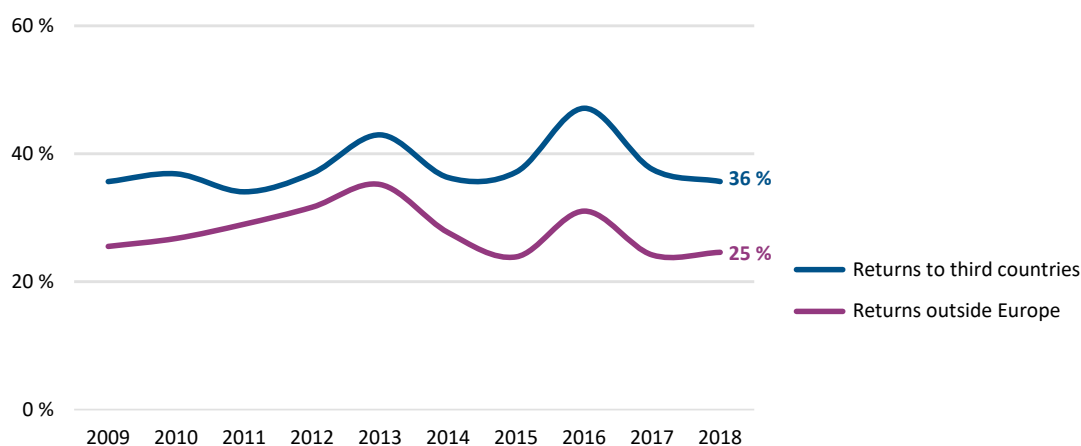
According to Directive 2008/115/EC, “return” means the process of a non-EU national going back – whether in voluntary compliance with an obligation to return, or enforced to:

- his or her country of origin,
- a country of transit in accordance with EU or bilateral readmission agreements or other arrangements,
- another non-EU country, to which the non-EU national concerned voluntarily decides to return and in which he or she will be accepted¹.

Since 2008, around 500 000 foreign nationals on average per year have been ordered to leave the EU because they had entered it, or were staying, irregularly.

However, on average only 38 % of them have actually returned to a third country (36 % in 2018). This average return rate drops below 30 % for returns to countries outside the European continent (*Figure 1*).

Figure 1 – Rate of actual returns from the EU, 2009 to 2018



Source: ECA, based on Eurostat data.

The actual returns are split more or less equally between voluntary and enforced returns².

Readmission obligations

Readmission of own nationals is an obligation under customary international law. The legal basis for readmission of a State's own nationals is the fundamental right to leave and return to one's country stated in documents such as the Universal Declaration of Human Rights of 1948, Article 13(2) of which states that everyone has the right to leave any country, including their own, and to return to their own country.

Article 13 of the Cotonou Agreement³ with African, Caribbean and Pacific (ACP) countries, signed in 2000, states that "each of the ACP States shall accept the return of and readmission of any of its nationals who are illegally present on the territory of a Member State of the European Union, at that Member State's request and without further formalities". Other EU agreements with third countries also include similar provisions⁴.

Improving readmission cooperation

The policy framework

In 2015, the Commission published an EU Action Plan on Return. In the plan⁵, it recognised that an effective system of return requires the readmission of irregular migrants to be prioritised in relations with third countries.

In June 2016, the Commission introduced the Migration Partnership Framework⁶, which embeds migration in the EU's foreign policy. Under the framework, the EU has envisaged using various policies and tools (i.e. visa and trade concessions, development aid and investment support, diplomatic engagement), to foster better cooperation on migration management (including readmission) with targeted priority countries of origin and transit.

In March 2017, the Commission launched a Renewed Action Plan on Returns⁷. In the plan, the Commission presented recommendations on how to make returns more effective by improving national administrative systems and return procedures and working with third countries to overcome the challenges of readmission.

In its resolution of 12 April 2016, the European Parliament considered that "in order to increase the efficiency of readmissions, and in order to ensure the coherence of returns at a European level, it will be necessary to adopt new EU readmission agreements which should take preference over bilateral agreements between Member States and third countries"⁸.

In its June 2018 conclusions, the European Council underlined the need to “significantly step up the effective return of irregular migrants”⁹.

EU readmission agreements and arrangements

To make it easier to implement readmission obligations, the EU has concluded 18 legally binding EU readmission agreements with third countries¹⁰. Third countries may, however, be reluctant to engage in negotiations on readmission agreements, mainly due to internal political considerations, since these types of agreements can be a source of public hostility. Since 2016, the Commission has therefore focused on developing practical cooperation arrangements with third countries and several legally non-binding arrangements for return and readmission have been put in place¹¹. This has drawn criticism that informal readmission agreements inherently challenge the principles of democratic and judicial accountability¹².

In addition to the 18 legally binding EU readmission agreements already concluded¹³, negotiations on readmission agreements were launched in 2016 with Nigeria, Tunisia and Jordan¹⁴, but have not progressed as needed¹⁵. Negotiations with Morocco (launched in 2000) have been stalled since 2015, but are being progressively resumed since June 2019¹⁶.

Table 1 lists the top 11 countries of origin in terms of non-returned irregular migrants in the EU. The EU has already signed or is currently negotiating readmission agreements or arrangements with most of these countries. In May 2011, the EU suspended all bilateral cooperation with the Syrian authorities¹⁷.

Table 1 – Average number of non-returned irregular migrants 2014-2018

Country of origin	Type of cooperation on readmission	Third country nationals ordered to leave 2014-2018 yearly average	Third country nationals returned to a third country following an order to leave 2014-2018 yearly average	Unreturned irregular migrants 2014-2018 yearly average	Effective return rate 2014-2018 average
Afghanistan	Arrangement (2016)	29 544	3 924	25 620	13 %
Syria	No mandate	26 992	1 793	25 199	7 %
Morocco	Negotiations ongoing (2000)	33 097	9 810	23 287	30 %
Pakistan	Agreement (2010)	24 237	7 294	16 943	30 %
Iraq	No mandate	24 683	7 924	16 759	32 %
Algeria	Mandate to negotiate (2002)	20 711	4 245	16 466	20 %
Nigeria	Negotiations ongoing (2016)	12 849	3 216	9 633	25 %
Tunisia	Negotiations ongoing (2014)	11 908	2 814	9 094	24 %
India	No mandate	15 283	7 480	7 803	49 %
Bangladesh	Arrangement (2017)	10 197	2 426	7 771	24 %
Guinea	Arrangement (2017)	7 511	291	7 220	4 %
Total excluding Syria		190 020	49 424	140 596	26 %
Total all countries of origin		493 666	191 122	302 544	39 %

Source: ECA, based on Eurostat data.

Improving practical cooperation – the “Integrated Return Management System”

In 2015, the Commission launched the “Integrated Return Management System” (IRMS) to improve practical cooperation among the Member States and with third countries. In particular, this initiative aimed initially to create better connections between the EU-funded networks focusing on return and readmission and, at a later stage, to pass over the networks’ responsibilities to Frontex – the European Border and Coast Guard Agency.

Table 2 provides more information on the Member State networks, their activities, sources of funding and the timing of the handover to Frontex.

Table 2 – Integrated Return Management System

Network	Asylum, Migration and Integration Fund (AMIF) funding	Main activity related to readmission	Source of financing	Handover to Frontex
<i>European Integrated Return Management Initiative network (Eurint)</i>	6.3 M EUR	14 working groups on priority countries	AMIF, Specific actions, (led by the Netherlands)	Finalised December 2019
<i>European Return Liaison Officers Network (EURLO)</i>	7.8 M EUR	10 liaison officers posted in third countries by EU MS	AMIF, Specific actions, (led by Belgium)	Started December 2019
<i>European Return and Reintegration Network (ERRIN)</i>	24.4 M EUR	Reintegration assistance (projects) in 17 countries	AMIF, Specific actions, (led by the Netherlands)	2022 (indicative)

Source: ECA.

Roles and responsibilities

Governance arrangements

Cooperation on readmission obligations is an integral part of the European Union’s political dialogue with third countries. The Commission, the European External Action Service (EEAS) and the Member States tackle the external aspects of EU return policy through specific cooperation frameworks with third countries. The Commission negotiates the legally binding readmission agreements between the EU and third

countries, with a mandate from the Council and final consent from the European Parliament. Once these are in force, a Joint Readmission Committee (JRC) monitors their application. Legally non-binding arrangements do not require European Parliament consent, and are monitored similarly by Joint Working Groups (JWG).

At the operational level, the Commission organises “readmission expert meetings” (REM) on a monthly basis to receive feedback from practitioners in the Member States.

With the extensions of its mandate, Frontex – the European Border and Coast Guard Agency – has been progressively taking over activities from the existing Member State networks: Eurint, EURLO and ERRIN.

Funding

There is no dedicated budget line for EU cooperation on readmission with third countries and a clear overview of EU funding is not available.

Following our request, the Commission services have identified 59 EU-funded projects linked to the readmission and reintegration of irregular migrants. The projects were funded under various instruments and, taken together, have a total value of €641 million.

Focus of the audit

This audit aims to assess the progress made by the EU since 2015 in developing the framework for readmission of irregular migrants to third countries and the effective implementation of this framework for priority third countries. In particular, we will examine:

- how the priority countries for negotiations were identified;
- how the negotiating process was carried out;
- the Commission’s tools to create incentives for implementing the readmission obligations;
- the support provided to the third countries to facilitate returns, to ensure that the readmission obligations are met and to improve practical cooperation;

- how implementation of the third countries' readmission obligations was monitored; and
- the sharing of best practices among all actors.

In our assessment, we will gather knowledge from various European Commission directorates, primarily DG HOME, but also DG DEVCO and DG NEAR. We will consult the EEAS for the overall political dimension, the Commission's Secretariat General concerning the mobilisation of various EU policies, Frontex regarding improving practical cooperation, and a number of other stakeholders such as Member States and their networks funded under AMIF (Eurint, EURLO, ERRIN).

Finally, we will assess 20 projects in the ten countries, excluding Syria, with the highest numbers of non-returned irregular migrants in order to check whether the projects were relevant, the planned outputs were delivered and they led to the desired outcome as set out in the contractual documents.

In the course of our audit, we will analyse key issues identified during the preparatory phase. Since these issues have been identified before the audit work commenced, they should not be regarded at this stage of the Audit preview as audit observations, conclusions or recommendations.

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Audit previews provide information in relation to an ongoing audit task. They are based on preparatory work undertaken before the start of the audit and are intended as a source of information for those interested in the policy and/or programme being audited.

If you wish to contact the team in charge of this audit, please do so through the following e-mail address:

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- ¹ https://ec.europa.eu/home-affairs/e-library/glossary/return_en
 - ² Enforcement of immigration legislation statistics, Eurostat, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Enforcement_of_immigration_legislation_statistics#Types_of_returns_and_assistance_received
 - ³ Article 13.5(c)i) of the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (the “Cotonou agreement”).
 - ⁴ See for example Article 84 of the Algeria Association Agreement (2005) and Article 105 of the Iraq Partnership and Cooperation Agreement (2018).
 - ⁵ EU Action Plan on return of 9 September 2015, COM(2015) 453, page 15.
 - ⁶ Partnership Framework with third countries under the European Agenda on Migration, COM(2016) 385.
 - ⁷ Renewed Action Plan on Returns of 2 March 2017, COM(2017) 200.
 - ⁸ European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI)), point 59.
 - ⁹ European Council conclusions of 28 June 2018 (EUCO 9/18), point 10.
 - ¹⁰ With Hong Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, the Republic of North Macedonia, Bosnia and Herzegovina, Montenegro, Serbia, Moldova, Pakistan, Georgia, Armenia, Azerbaijan, Turkey, Cape Verde and Belarus.
 - ¹¹ The Commission’s 2018 proposal for a new EU Return Directive, COM(2018) 634.
 - ¹² See <https://www.migrationpolicy.org/article/eu-migrant-returns-policy-towards-sub-saharan-africa> and page 11 of the European Parliamentary Research Service Study “European Implementation Assessment on the Return Directive 2008/115/EC” stating “Informal agreements lack accountability, both to the European Parliament and Court of Justice of the EU”; EPRS June 2020, see . [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642840/EPRS_STU\(2020\)642840_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642840/EPRS_STU(2020)642840_EN.pdf)
 - ¹³ With Hong Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, the Republic of North Macedonia, Bosnia and Herzegovina, Montenegro, Serbia, Moldova, Pakistan, Georgia, Armenia, Azerbaijan, Turkey, Cape Verde and Belarus.
 - ¹⁴ A renewed Action Plan on Returns of 2 March 2017, COM(2017) 200, page 12.
 - ¹⁵ Progress report on the implementation of the European Agenda on Migration of 6 March 2019, COM(2019) 126, page 11.

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- ¹⁶ Progress report on the Implementation of the European Agenda on Migration of 16 October 2019, COM(2019) 481, page 12.
- ¹⁷ Council conclusions on Syria, 3091st Foreign Affairs Council meeting, Brussels, 23 May 2011.

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