

REPLIES OF THE EUROPEAN COMMISSION AND EEAS TO THE EUROPEAN COURT OF AUDITORS SPECIAL REPORT

“EU READMISSION COOPERATION WITH THIRD COUNTRIES: RELEVANT ACTIONS YIELDED LIMITED RESULTS”

EXECUTIVE SUMMARY

Common replies from the Commission for paragraphs I to IX:

The Commission welcomes the ECA Special Report on the EU’s readmission cooperation with third countries. The Commission sees the specific focus of the report as a timely contribution to the EU’s ongoing efforts in this field, as part of the Commission’s New Pact on Migration and Asylum of 23 September 2020.

The new Pact on Migration and Asylum provides a reinforced basis to provide a sustainable and long-term response to manage migration and asylum from both the internal and external dimensions. The Pact foresees fostering strengthened tailor-made, comprehensive and mutually beneficial partnerships with countries of origin and transit. Return and readmission are an integral part of these partnerships. Constructive engagement with third countries, listening to their concerns and needs and providing support where needed are essential elements of such a partnership approach and contribute to achieving sustainable results.

Building on progress made since 2016, the New Pact sets out a fairer, more European approach to managing migration and asylum, by putting forward new initiatives and tools. These provide the basis for addressing several of the recommendations made by the ECA, as implementation and discussions with the co-legislators on specific proposals are ongoing.

The Commission considers that despite improved efforts to tackle irregular migration and ensure the effective return of those who do not have the right to stay in the EU, results are mixed and uneven, including among the 10 countries covered by the ECA report.

As stressed in its Communication of 10 February 2021 –(COM(2021) 56 final) it is important to address internal and external challenges linked to return and readmission in an integrated, structured and effective manner.

To ensure progress towards a more predictable and reliable readmission cooperation, the EU should remain flexible regarding the form and content of the instrument pursued to structure its cooperation with partner countries and use a wide range of tools and relevant policies.

Experience over the last years shows that continuous monitoring and communication and targeted support is necessary for readmission instruments to deliver actual results, but that relevant incentives remain key.

Article 25a of the Visa Code already links the level of readmission cooperation of third countries with visa issuance policy and the first assessment report has been adopted on 10 February 2021. It is an important step adding to the range of EU tools, projects and networks in place to support readmission (e.g. operational support by Frontex, electronic case-management platforms, exchange of liaison

officers, technical workshops to train and mobilise staff operationally involved in readmission process, etc.). Bringing together quantitative and qualitative information, this factual assessment provides a clear picture, with valuable details on practices at all stages of the process that can then be tackled in a targeted manner.

Article 7 of the proposed Asylum and Migration Management Regulation is a coordination mechanism allowing the Commission to identify and mobilise additional measures, including in policy areas other than visa-related or funding instruments, aligned with the partner countries' needs, interests and priorities.

Drawing together the appropriate mix of policy tools and taking account of the respective competences of the different actors requires that EU and its Member States act in unity and in a coordinated and continuous dialogue with partner countries.

Voluntary returns remain the most sustainable option and the EU will continue to support the reintegration of returnees, as set out in the Voluntary Return and Reintegration Strategy of 27 April 2021, which also aims to build partner countries' capacity and ensure their active involvement in the process.

There have been improvements in the accuracy of the return data and the data collection will further improve with the amended Regulation on Migration Statistics, thereby filling past data gaps, notably on voluntary return and reintegration. The entry into force of the EU Entry-Exit System and the operationalisation of the Schengen Information System for return, as well as the amended Eurodac proposal will also complement the picture. With the Migration Situational Awareness and Analysis (MISAA) reports, these developments will provide a more reliable and complete overview of the availability, use and effectiveness of voluntary return and reintegration assistance in the EU.

X. The Commission accepted all recommendations.

INTRODUCTION

05. The obligation for a State to readmit its own nationals is a customary principle of international law. It exists whether specific instruments structuring readmission cooperation are in place or not, as well as in the absence of provisions featuring in larger EU agreements with certain third countries or regions. This principle has already been codified by work of the UN International Law Commission, is backed by opinion juris and consistent State practice and confirmed in other multilateral instruments structuring readmission cooperation. In particular, the obligation to readmit its own nationals is, among others, articulated in the Chicago Convention on International Civil Aviation.

OBSERVATIONS

25. A number of quantitative and qualitative elements and criteria need to be factored into the considerations if, when and how to engage on readmission, including the political opportunity for engagement in the context of the EU's overall relations with the third country, EU foreign policy interests and objectives, as well as political developments in the third country and corresponding domestic political considerations.

27. The Commission and EEAS stress that political will is indeed a crucial element and may be affected by several issues. Domestic political, economic or security developments can affect the political will and a third country's priorities. In many third countries, similarly to in Member States of

the European Union return and readmission are sensitive and politically charged issues. Consequently, third countries' governments frequently seek to avoid publicity around readmission.

28. Engagement at the highest political level has proven useful to facilitate cooperation on migration and in particular readmission and help moving negotiations forward. Accordingly, the Commission and the EEAS have consistently put migration on the agenda of high-level political meetings and events as an integral part of external relations, including discussions on readmission as an important element of a comprehensive approach to migration. Working in a coordinated approach with EU Member States (to ensure coherent messaging and where feasible joint actions and initiatives) delivers the best results.

To enhance coordination on the implementation of external EU migration policy, the HR/VP and the Portuguese Presidency co-chaired a joint informal meeting of Ministers of Foreign Affairs and Minister of Home Affairs on 15 March 2021.

30. A reflection on the opportunity to include or exclude the Third Country National - clause in the negotiating directives, is always ongoing, considerations however go beyond the added value/use in practice for that particular agreement – some of which are explained in Box 3.

33. The EU-Nigeria Ministerial Meeting in November 2020 committed to reinvigorate the bilateral partnership on a wide range of areas, including comprehensive engagement on migration and mobility. This helped to reach an agreement to resume negotiations of a readmission agreement. Since January 2021, five negotiation rounds have taken place.

38. The European Parliament is regularly informed by the Commission on the state of play on implementing EU readmission agreements and arrangements.

39. Readmission agreements are concluded in order to facilitate and help countries to implement their obligation to readmit their own nationals under international law. The main benefit that the readmitting country can receive from the signature of the readmission agreement is to increase control on the return procedure and protect its citizens' rights while they are returned.

42. The Commission and the EEAS stress the importance of effective readmission negotiations to ensure political mobilisation by the third countries concerned, in accordance with the principle of sincere cooperation ensuring, coherent messaging and being able to draw on the privileged relations some Member States enjoy with specific third countries. As in many other policy areas, cooperation between the EU and its Member States in accordance with the principle of sincere cooperation promises to yield the best results in advancing cooperation with third countries on migration and mobility.

43. While no tailor-made packages were agreed at that stage, country-specific discussions on migration cooperation, including readmission, continued and led to the establishment of the Partnership Framework approach. One example for Nigeria: In 2017, the EU mobilised an 'incentive package', in the form of an Action Plan on Migration and Mobility, Investment and Jobs, pending the successful conclusion of negotiations on returns and readmission.

Discussions on comprehensive partnerships with key countries of origin and transit are regularly taking place in the relevant Council Working Groups. On a strategic level, the Commission and EEAS have consulted Member States at key stages of EURA and arrangements negotiations in the relevant Council working groups. This has been reinforced with the New Pact.

44. While not systematic, EU Member States were associated in facilitating negotiations with third countries through Sherpa approach and several joint visits. Moreover, on a strategic level, the

Commission and EEAS have consulted at key stages of EURA and arrangements negotiations (in particular before launching and concluding the negotiations) the MSs in the relevant Council working groups.

45. The Commission underlines the added value of Member States political mobilisation, speaking with one voice and counting on national incentives.

47. Incentives are indeed important elements to support negotiations. However, it is crucial to embed incentives in comprehensive and constructive partnerships as outlined in the New Pact on Migration and Asylum. Incentives can help underpin such partnerships but they can only be effective and sustainable when they can build on mutual understanding of the interests, sensitives and concerns of both sides. Accordingly, the New Pact stresses the need to deploy a wide range of policy tools to underpin the partnership approach.

49. Legal migration and visa policy are important elements of the comprehensive approach to migration as set out in the New Pact.

50. Visa facilitation can also be considered as a relevant element in advancing overall bilateral relations (including trade) or migrant partnerships.

51. With the New Pact, the Commission proposed to go one step further. Article 7 of the proposed Asylum and Migration Management Regulation will allow the Commission to draw further on the readmission assessment conducted under the Visa Code in order to identify and propose any measures that could foster readmission cooperation of third countries. In light of the EU's overall relations, these measures will need to take account of the third country's interests and needs and of what can be mobilised at EU and Member States level.

52. The overarching objective of EU migration policy is to ensure that migration takes place in a safe and regular manner. Financial assistance follows a comprehensive approach, which includes all aspects of migration such as addressing root causes of irregular migration and forced displacement, the fight against migrant smuggling, border management, protection of persons in need of international protection, support to host communities, legal migration and legal pathways, and return, readmission and reintegration.

53. The Valletta Action Plan features five pillars, including return and readmission alongside addressing root causes, migration management and governance, legal migration, and combatting irregular migration.

The EU Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa provided additional funding to support the implementation of the Joint Valletta Action Plan, by addressing the five pillars.

57. The NDICI – Global Europe foresees that a more coordinated, holistic and structured approach to migration will be pursued with partners, through a flexible incentivising approach. This approach is part of a much broader toolbox, as developed in the New Pact on Migration and Asylum. Balanced incentives related to migration can only bring result and maximise the impact of our international partnerships if they are part of a balanced and comprehensive EU approach.

58. Partnership and Cooperation Agreements (PCA) are political agreements, often complemented by separate and self-standing trade agreements. Association Agreements contain most of the times a dedicated trade pillar on top of the broader political and economic cooperation parts.

62. The European Commission services are in the process of finalising the Commission's legislative proposal on the EU Generalised Scheme of Preferences, to be adopted by the College in the second half of 2021.

An external study is being carried out in support of an impact assessment to prepare the review of Regulation No 978/2012¹.

63. Legal migration is an integral part of balanced, comprehensive and mutually beneficial migration partnerships. It can offer benefits for countries of origin, transit and destination alike, as well as for migrants themselves. It can remove the incentive to embark on dangerous journeys to reach Europe. Moreover, it is a key issue for many partners, who frequently ask for more legal migration opportunities.

While indeed the determination of volumes of admission of labour migrants is a competence of the Member States, the EU can support the third countries in fostering legal migration and mobility. For example, as set out in the New Pact on Migration and Asylum the Commission will launch Talent Partnerships with selected third countries to promote legal migration and mobility. The concept will be launched through a high-level conference bringing together the Member States, the business sector, education and other actors.

67. The use of negative incentives has to be seen and weighed against broader EU interests and objectives in a given country and region and the potential impact and effectiveness need to be carefully assessed. A constructive approach to building a comprehensive partnership with shared positive agenda with third countries promises the best sustainable results.

69. The Commission Task Force created in 2016 to support implementation of the Partnership Framework has served as a forum for coordination and discussion between Commission departments and the EEAS. Coordination takes place at several levels: among the EU services (Commission departments and EEAS), between the EU services and Member States, and among Member States themselves.

The Partnership Framework Task Force is still active, through regular, weekly exchanges.

Apart from Coreper, High-Level Working Group on Asylum and Migration (HLWG) and Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) are the main fora for coordination on migration between the Member States, the Commission and EEAS.

78. It is important to underline that in some cases the sustained engagement through the JRC/JWG has contributed to achieving sustainable improvements in cooperation.

79. Dialogues on migration and mobility can nevertheless be efficient by placing return and readmission within the broader context of cooperation on migration and can help address specific issues.

¹ The Pre-final Report of the Study is publicly available: <https://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/impact-assessments/>

95. Indeed, the success and effectiveness of the Readmission Case Management System (RCMS) also depends on a number of other factors such as capacity, financial resources, involvement of other partners and technical support. That is why EU projects normally foresee that operational and financial support continues after the deployment of RCMS in all third countries concerned, including to train the staff using it and to address further technical developments.

98. The Commission has recently adopted its first EU strategy on voluntary return and reintegration, which aims at increasing the share of voluntary returns from the EU and improving the quality of the voluntary return systems. It puts forward a more uniform and coordinated approach among Member States to unlock the full potential of voluntary return and reintegration.

Regarding the evaluation of projects in Annex IV, the Commission underlines that some of the projects in Afghanistan and Bangladesh have been extended to deliver expected outputs. As acknowledged in paragraph 101, the Commission took mitigation measures to respond to the difficulties the projects have encountered related to challenging country contexts and in the case of Bangladesh also to lower numbers of returnees than foreseen, in order to deliver expected results. Therefore, the Commission expects that the results in terms of outputs delivered and sustainability will be at least “partially satisfactory” by the end of the project activities

99. (b) The figure of 820 000 returns from Iran and Pakistan to Afghanistan refers to numbers of returns (not individuals) and includes circular and seasonal migration, particularly high between Iran and Afghanistan.

105. The sustainability of the reintegration assistance in Afghanistan has been negatively impacted also by job market saturation and the overall economic contraction in the country. Where relevant, the Commission and its implementing partners took mitigation measures to promote better access of TVET graduates to market opportunities. The programmes’ mid-term evaluation found the on-the-job training and job promotion adopted in one programme to be a good approach for jobs development through direct private sector engagement.

110. Official statistics from Eurostat and operational data from Frontex are collected for different purposes and should not be directly compared due to their different timeliness, frequency and compilation frameworks.

The Commission stresses the existing collaboration between Eurostat and Frontex regarding data on returns that aims for synergies while keeping distinct the more timely operational data flow of Frontex from official statistics provided by Member States to Eurostat.

111. The Commission notes that Member States do not systematically contribute, with the same level of details, in particular in the context of the Readmission Expert Group (REG) meetings.

116. The average duration from the time of a request to the issuance of documents, has been added in 2021, as an additional information to be provided by Member States if available.

CONCLUSIONS AND RECOMMENDATIONS

122. The Commission and the EEAS have consistently put migration on the agenda of high-level political meetings in order to facilitate cooperation on migration, including readmission. As outlined in the New Pact, this approach will be further pursued and intensified

Recommendation 1 – Pursue a flexible approach in EURA negotiations

The Commission accepts the recommendation.

125. The Commission and the EEAS stress the importance of effective readmission negotiations to ensure political mobilisation by the third countries concerned in accordance with the principle of sincere cooperation ensuring, coherent messaging and being able to draw on the privileged relations some Member States enjoy with specific third countries. As in many other policy areas, speaking with one voice, a Treaty requirement, and joining efforts promises to yield the best results in advancing cooperation with third countries on migration and mobility. This has been reinforced with the New Pact.

Recommendation 2 – Create synergies with Member States

The Commission accepts the recommendation.

1st indent. Indeed, return policy needs to be addressed as a part of a comprehensive migration policy as reflected in the new Pact.

126. The EU pursues a constructive approach to building comprehensive and mutually beneficial migration partnerships to achieve long-term and sustainable results and meet the EU's objectives. Return and readmission are one element in these partnerships. Positive incentives can help underpin cooperation but are most efficient if they are integrated into the partnership with a third country and respond to the partner's interests and needs.

Trade policy in general, and trade agreements in particular, have the main purpose of improving economic ties and creating jobs and growth in both partners. It therefore has a positive impact in Third Countries and contribute to resolving problems at the root.

127. Progress has been achieved in increasing coordination at several levels: among the EU services (Commission departments and EEAS), between the EU services and Member States, and among Member States themselves (see para 69).

The use of negative incentives has to be carefully considered taking broader EU interests and objectives into account. A constructive approach to building a comprehensive partnership with shared positive agenda with third countries promises the best, sustainable results.

Recommendation 3 – Strengthen incentives for third-country cooperation on readmission

The Commission accepts the recommendation.

The New Pact on Asylum and Migration sets out an approach whereby a full range of the EU's and Member States' policies, tools and instruments are pooled together and mobilised in a strategic way in order to achieve the desired objectives under the Pact. This is part of a tailor-made approach to achieve mutually beneficial partnerships. Close coordination between the EU services and with the Member States is of key importance and some of the tools are described in paragraph 127. In addition, the Commission via inter-service consultations, the work of the interinstitutional relations group (GRI), and the external coordination group (EXCO) ensures that the potential impact of different policies and instruments on migration is thoroughly considered. Return and readmissions are one of the elements of a comprehensive migration policy embedded in a broader policy framework.

134. The recent improvements in collecting more frequent and detailed official statistics on returns by Eurostat will fill in past data gaps and allow further improvements in data quality.

Data on swiftness of readmission are operational data.

The main return/readmission-relevant datasets are collected from Member States by Eurostat and by Frontex (on irregular border crossings, irregularly staying migrants, return decisions issued, returns to a third country).

Depending on the needs, these datasets are used together with a comprehensive set of indicators under the Visa Code and information from Member States.. This combination of thorough quantitative and qualitative input leads to a much more accurate picture of the level of cooperation on readmission and provides valuable details on the practices at all stages of the process.

135. See Commission reply under paragraph 111.

Recommendation 4 – Improve data collection

The Commission accepts the recommendation.

1st indent. Regarding the swiftness of the readmission process (i.e. in relation to the timely assistance by third countries to Member States' requests for identification of nationals or travel document issuance), the question of the actual (average) length of the process has been addressed in the context of the 2021 data collection under Article 25a of the Visa Code. The results will be presented to the Council by the end of 2021.

2nd indent. The Commission will aim to reinforce standards and processes in the field of monitoring and evaluation based notably on harmonized tools developed by the EU-IOM Knowledge Management Hub and strengthened data analysis and research. These efforts would allow for cross-regional comparative analyses, particularly in the field of reintegration sustainability.