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NOTE

From: Commission services
To: Delegations

Subject: Non-Paper on a Strategic Approach on Readmission Agreements and Arrangements

Delegations will find attached a non-paper on a Strategic Approach on the Readmission Agreements and Arrangements, issued by the Commission Services.

NON-PAPER ON A STRATEGIC APPROACH ON READMISSION AGREEMENTS AND ARRANGEMENTS

The New Pact on Migration and Asylum set out a comprehensive approach to migration to build an effective, long-term and sustainable migration and asylum system in the EU. A common EU system for return, combining stronger structures inside the EU with more effective cooperation with third countries on return and readmission, is an essential component of a comprehensive and integrated migration management system. In the framework of the gradual approach on the New Pact, the Presidency has invited the Commission to present a **strategic approach on readmission**, with a view to:

- Assess the efficiency of existing EU agreements/arrangements;
- Unblock stalled negotiations, possibly by coming back to the negotiating mandates;
- Identify possible new third countries to open formal readmission negotiations.

This non-paper is proposed as a basis for a technical discussion in the IMEX working party on the main elements of such an approach.

Overall, and depending on the context, the EU readmission agreements and arrangements can be **effective tools for the implementation of the EU return and readmission policy**, as part of a **comprehensive approach to migration**. However, cooperation on readmission depends on a broad range of factors, agreements / arrangements being one of them. The **context** in which they are negotiated and implemented has evolved: a fresh look is needed to address new challenges, fulfil the outstanding mandates and better support the common EU system for return¹.

1. EFFECTIVENESS OF READMISSION AGREEMENTS AND ARRANGEMENTS

EU readmission agreements and arrangements are tools to operationalise the international obligation of readmission, providing for clear and predictable procedures, timeframes and communication channels with partner countries. They ensure that the same conditions apply to all Member States, and establish a regular and structured dialogue on readmission cooperation with partner countries.

It is challenging to **measure the efficiency of readmission agreements and arrangements through quantitative indicators only** (return rate and issuance rate), as they aim to reflect at the same time the quality of cooperation of the third countries and the efficiency of the internal return system. As a way of illustrating this complexity, we can take the example of Bangladesh – with a return rate of 9% in 2019 and 5% in 2020, and an issuance rate of 49% and 31% respectively. In 2020 9 370 persons were ordered to leave, and only 691 readmission requests were submitted by Member States. This indicates that, even with a 100% issuance rate indicating perfect cooperation, the return rate would still be relatively low.

¹ This non paper addresses specifically the issues linked to negotiations of EU readmission agreements and arrangements. For a more comprehensive analysis of the internal and external challenges to return, see COM (2021) 56 final, *Enhancing cooperation on return and readmission as part of a fair, effective and comprehensive EU migration policy*.

Despite these challenges, we can nonetheless observe an overall positive effect for countries with EU readmission agreements higher than the average EU return rate of 32%, for instance 94% for North Macedonia, 85% for Montenegro, 82% Albania, 79% for Serbia, 60% for Azerbaijan, 59% for Bosnia and Herzegovina 55% for Georgia (though, as set out below, this may also be influenced by other factors). Partner countries with readmission *arrangements* had much lower average rates of effective return during the same period. However, the issuance rate (i.e. the proportion of readmission requests for which travel documents were issued) was generally much higher.

To increase the effectiveness of returns, both the return rate and the issuance rate should overall increase. EU engagement with partner countries, supported by measures to improve the level of cooperation on readmission (including the mechanism of Article 25a of the Visa Code and other policies and instruments), contributes to improved quality of cooperation on readmission, and hence can result in an increase of the issuance rate. In parallel, additional efforts on the internal side are needed. Member States should work on improved and faster procedures throughout the asylum and migration system, enhanced digitalisation of the return and readmission processes, improved availability and implementation of voluntary return and reintegration support and systematic follow up of return decisions with readmission requests². This would support an increase of the return rate, contributing to more effective readmission.

The existence of a readmission agreement/arrangement **does not guarantee in itself cooperation on readmission. The context has a strong influence in the implementation of the agreements/arrangements.** The overall relationship and engagement with the EU and its Member States, the presence of (enduring) incentives and leverages, the internal political environment and relations between stakeholders, the capacity to identify, readmit and reintegrate the returnees, the perception of returns and returnees in the public opinion and society, can all have an influence on the quality of cooperation. It is therefore essential that cooperation on return and readmission and reintegration is systematically pursued as part of comprehensive, balanced and tailor-made partnerships with countries of origin and transit, as outlined in the New Pact on Migration and Asylum.

To ensure an effective implementation of EU readmission instruments in place, it is of **utmost importance that Member States use them consistently and systematically to their full potential.**

The effectiveness of the implementation of readmission agreements and arrangements is **continuously assessed** in regular meetings with the third countries (Joint Readmission Committees/Joint Working Groups) and in the annual assessment of readmission cooperation under Article 25a of the Visa Code, on the basis of qualitative information provided by the Member States and quantitative indicators.

² As mentioned in COM/2021/56 final, the Commission will systematically monitor the implementation of return rules, including through the Schengen evaluations mechanism and, where appropriate, infringement procedures, during all steps of the return process.

Based on an assessment of past negotiations as well as the level of implementation of existing readmission agreements, a preliminary conclusion would indicate that the higher the level of incentives of the EU vis-à-vis partner countries, the more effective the level of cooperation, both in terms of swift conclusion of agreements/arrangements, and in terms of effective implementation of the agreement. By way of example, agreement with certain partners with highly valued incentives (i.e. visa facilitation/liberalisation)³ like in the case of the Western Balkans were negotiated swiftly and implemented successfully. On the other side, agreements with other partners with a lower level of cooperation required lengthier negotiations. Despite these shortcomings, **without these agreements, several Member States would have no framework for cooperation on readmission** with many partner countries.

There are several third countries with which the EU has no readmission agreement or arrangement and with which cooperation on readmission needs to be improved as assessed by the Readmission report under the Article 25a Visa Code mechanism.

The choice for arrangements rather than agreements was made considered an alternative conducive to swift results for **third countries with which there was an urgent need to improve cooperation**. Negotiations of arrangements are more straightforward than those of readmission agreements, due to their non-binding nature, greater flexibility to incorporate political commitments (e.g. on reintegration), absence of the provisions on the obligation to readmit third country nationals, the acceptance of the EU travel document, tailor made approach, less cumbersome approval procedures in the third country, possibility to keep the arrangement confidential. In this context, other possible complementary non-binding political tools to foster effective readmission and reintegration cooperation should also be explored. More specifically and as an element of these possible tools, the EU could support third countries in dealing with the return and readmission of third country nationals and support the return from transit countries to countries of origin. Cooperation with the Western Balkan partners in the return of third country nationals or the support provided to countries of North Africa could be explored further.

Generally, although not in all cases, **the arrangements have led to improvements in cooperation**, as they have helped establish a useful reference framework (e.g. Joint Working Groups) and good practices. For certain EU Member States the improvement has been substantial.

³ These maintain their relevance also during the implementation of the agreement and can be suspended or withdrawn if the requirements are no longer fulfilled.

2. OPTIONS TO UNBLOCK STALLED NEGOTIATIONS

A new context for readmission

Since 2001, **the readmission context has evolved, with new opportunities and challenges.** Return and readmission are clear political priorities, which should be supported by all available tools and policies as recalled several times by the European Council, taking into account the specificity of each partner country. The mechanism under the Visa Code now links visa policy and cooperation on readmission. Indicatively 10% of the financial envelope of the Neighbourhood, Development and International Cooperation Instrument – Global Europe for 2021/2027 will be dedicated particularly to actions supporting management and governance of migration and forced displacement, as well as to actions addressing root causes⁴. [Part of this funding envelope is foreseen to contribute to a flexible incitative approach, increasing opportunities to fund projects in countries that cooperate well on all elements of migration, including return and readmission.] Furthermore, a common EU system for return is being set up based on a reformed solid legal framework (recast Return Directive, amended proposal for an Asylum Procedure Regulation) and an EU strategy on voluntary return and reintegration, strong governance and internal coordination, with the appointment of a Return Coordinator supported by the High Level Network for Return, and expanded operational and technical support provided by Frontex for the identification of returnees and acquisition of travel documents, the organisation of return operations and support to voluntary return and reintegration.

At the same time, more than 90% of irregular migrants who reach the EU make use of smugglers during their journey. Two thirds of irregular migrants in the EU do not meet the criteria for being granted international protection (following a first instance decision) and will eventually need to be returned. Moreover, the EU has faced the significant challenge of political instrumentalisation of irregular migration.

In this context, where the key tools for an effective EU common return system are expected to be put in place as rapidly as possible within the Union (notably with the completion of ongoing legislative negotiations and in parallel the thorough implementation of the current EU acquis), **the format, content and negotiation process of the readmission agreements has not changed, and the mandates have not evolved.**

⁴ Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, recital 51: “indicatively 10 % of the financial envelope for the Instrument should be dedicated particularly to actions supporting management and governance of migration and forced displacement within the objectives of the Instrument. In addition, that target should also include actions to address the root causes of irregular migration and forced displacement when they directly target specific challenges related to migration and forced displacement”.

EU readmission negotiations are complicated by the lack of attractive, pertinent and tailor made incentives. A **different approach could help** to engage productively on readmission with a wider set of countries. The European Court of Auditors⁵ has recommended **pursuing a more flexible approach to negotiations and strengthening incentives**.

In view of unblocking the ongoing negotiations and engaging successfully with new countries, the EU and Member States could consider new approaches, including on some elements that have slowed down past negotiations and represent a challenge in the ongoing ones: (1) **insufficient or not appropriately chosen or targeted incentives and leverages**, (2) **need for a more coherent and coordinated EU position**, (3) **rigidity of the mandates**, (4) **complex format of the agreement**.

1. **Leverages and incentives**, both at the EU and Member States' level, should ideally be identified and outlined in parallel with the negotiating directives. The level of ambition of the mandate for an agreement/arrangement should be matched by adequate policies and instruments that can be pulled together in a strategic way, taking into account the interest of the EU and the specificities of the partner country in terms of risk of irregular migration, implementation capacity and overall relationship with the EU. Negotiations backed by adequate tailor-made incentives will significantly increase the chances of success on negotiations on readmission facilitating the internal process and negotiations in the partners concerned.

Further policy measures or instruments to improve readmission cooperation, should be developed and mobilised, both at the EU and Member States' level as part of the EU's comprehensive engagement on migration. **Opportunities for legal migration** are particularly pertinent in this context and should be fully exploited including the development of Talent Partnerships which as one of the key aspects of the external dimension in the New Pact, will underpin a comprehensive policy framework and financial support to engage key partner countries strategically in all areas of migration management, including effective return and readmission, as well as the prevention of irregular migration. The linkage between readmission cooperation and the (coordinated) incentives and leverages should be **clearly communicated** at political level to partner countries, to maximise political gains for return and readmission. The proposal for an Asylum and Migration Management Regulation (Article 7) foresees the possibility for the Commission to identify and propose **further policy measures or instruments beyond visa** to improve readmission cooperation.

⁵ [Special Report No 17/2021: EU readmission cooperation with third countries \(europa.eu\)](#).

2. **A united front, transparency and coordination and close cooperation between Member States and the Commission are key to successful negotiations.** When defining the negotiating directives and the EU position in ongoing and future negotiations, it would be important for Member States to provide the necessary elements **to identify the best practices already in use and establish a baseline on which to build a solid, realistic negotiation strategy.** Those Member States that have higher stakes in the negotiations or privileged relationships with a partner country, should continue to be particularly **closely engaged and have the opportunity to provide feedback and input during the process.** Finally, when a readmission agreement or arrangement is concluded, it is crucial that Member States ensure from the start that a **sufficient** caseload is available to kick off and sustain the cooperation and build the awareness and capacity of the third country's administration.

3. Following a careful individual assessment, **additional flexibility** could be considered on **certain elements of the mandates.** One option concerns **readmission of third country nationals** (under the so-called third country national clause) is not an international obligation, is opposed by most third countries and has been an obstacle in negotiations, but the EU has been able to include it in the agreements in force. In practice its use is limited, it is considered a deterrent against transit and the opening of new routes. However, it displaces the problem down the route, when direct readmission to the country of origin would be preferable. The **EU travel document** can streamline and accelerate returns, and adds predictability to the procedure. However, many countries oppose it because they consider it an attempt to challenge their sovereignty, and are afraid of losing control of the readmission process.
In future negotiations, **provisions relating to these elements could be considered necessary only insofar as they have a high added value for the EU.** To facilitate their acceptance, **their scope can be limited to what is strictly necessary,** restricted in terms of timing or geographical applicability, or linked to a review clause. The existing mandates should also be interpreted in light of this need for flexibility.

4. To facilitate negotiations, the **structure of new readmission agreements could be streamlined. Provisions on the identification procedure could be updated,** introducing elements such as biometric identification and the use of readmission case management systems (RCMS). The systematic inclusion of more specific **recitals on respect of fundamental rights, due process, rights of the child** could reassure third countries and facilitate the acceptance of the agreement in Parliaments and with public opinion.
The **compatibility** of future EU readmission agreements with more favourable provisions in Member States' existing bilateral agreements will need to be clarified to avoid weakening already established effective bilateral cooperation. Finally, it could be beneficial to include in the mandate a **review clause** to assess, after a certain number of years, the opportunity to continue the negotiations or review elements of the mandate.

3. WAY FORWARD

For ongoing negotiations on readmission agreements

In light of the approach outlined above, negotiations with key countries of origin and transit including Algeria, Morocco, Nigeria and Tunisia should advance, taking into account each individual context and the mandates should be considered for discussion, including the possibility of some **flexibility** in implementing the mandates. While the more favourable conditions of certain bilateral arrangements need to be preserved, the EU and Member States need to show a united front and support the negotiations at political level, in high level bilateral contacts and through diplomatic representations. Coordinated political messages should be agreed and delivered, including on the wider comprehensive engagement on migration with such partner countries. Appropriate leverage and incentives, and their timing and strategic use need to be identified at EU and Member States' levels. In relation to other existing mandates, a reflection on the approach could also be useful in relation to China⁶ and Jordan, at a moment when it is considered opportune.

For existing agreements and arrangements

Constant engagement is needed to maintain and nourish cooperation under existing agreements and arrangements. Appropriate incentives and leverages should continue being mobilised, according to the quality of implementation, foster improvements and keep the level of cooperation of the third country. A **pragmatic approach is necessary**, including through frequent informal contacts with each of the partner countries concerned, based on co-ordinated messaging so that partners hear the same emphasis from EU and all MS, to address specific irritants and implementation issues of operational nature, e.g. through targeted EU support for organising return flights and supporting reintegration.

For new engagements

Starting from the outcome of the exercise under Article 25a of the Visa Code as providing the assessment of the needs for enhanced cooperation on readmission, the decision to engage with a new country on structured cooperation on readmission, must take into account broader geopolitical considerations, the EU interest and depending on the scale of the irregular migration problem faced with the third country, any political opportunities, if present, the leverages and incentives available, the willingness of the third country to engage on readmission, and its capacity to do so.

The **choice of instrument** (structured cooperation with strengthened monitoring, for example through regular meetings several times a year at technical level) readmission arrangement, readmission agreement) should be appropriate and realistic. Where the context is not favourable for swift negotiations of an instrument, a gradual approach should be considered: structured cooperation, supported by trust and capacity building measures, with the proposal of a readmission arrangement or a readmission agreement at a later stage. This approach is particularly appropriate for countries with low implementation capacity and for countries having been newly approached on readmission.

⁶ This is without the inclusion of Hong-Kong, where an EU Readmission agreement is in place since 2004.

The opportunity of opening new negotiations both on EU readmission agreements and arrangements will need to be assessed taking into account i.e. the progress made of the implementation of the proposed strategic approach and the work on outstanding mandates.

For new structured engagements, a first reflection could start where recent high-level contacts on migration including readmission have prepared the ground to upgrade the cooperation towards a more structured framework.
