Briefing

European Parliament

EU Readmission Agreements
Facilitating the return of irregular migrants

SUMMARY

EU Readmission Agreements (EURAs) are based on reciprocal obligations and are concluded between the European Union and non-EU countries to facilitate the return of people residing irregularly in a country to their country of origin or to a country of transit. They operate alongside but take precedence over bilateral readmission agreements between individual EU Member States and non-EU countries.

They are negotiated in a broader context where partner countries are usually granted visa facilitation and other incentives such as financial support for implementing the agreement or special trade conditions in exchange for readmitting people residing without authorisation in the EU. As such, they are crucial to the EU's return policy, as defined in the Return Directive (Directive 2008/115/EC).

The legal basis for concluding EURAs is Article 79(3) of the Treaty on the Functioning of the European Union (TFEU). They are negotiated with the partner country on the basis of a negotiating mandate granted by the Council to the Commission. They are then concluded after the European Parliament has given its consent. Once they come into force, their effectiveness can vary significantly from country to country.

In the past, the European Parliament (EP) has raised concerns that EURAs do not provide sufficient human-rights safeguards to ensure the protection of returnees at all times. The EURA with Albania (signed in 2005) was the first to reflect the EP's concerns about this insufficient reference to human rights.

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Context

The EU has long been an attractive destination for people seeking better living conditions, security or protection. EU countries have therefore come under considerable migratory pressure and are faced with a steady influx of non-EU nationals belonging to different categories (economic migrants, refugees, asylum-seekers, irregular migrants etc.).

According to Frontex, although some data are still missing for December 2014, the number of detections of illegal border crossings in 2014 as a whole totalled about 278 000. This is two and a half times larger than the year before (107 000), and twice as much as in 2011 (141 000) during the initial stages of the Arab Spring. This increase is mostly connected to the increasing number of refugees and displaced people worldwide, related to the ongoing conflict in Syria and its spread to Iraq, which have created the worst refugee crisis since the Second World War.

According to Eurostat figures, the number of valid residence permits for the EU28 rose from around 15.7 million at the end of 2008 to around 18.4 million at the end of 2013. In addition, the number of asylum applicants almost tripled between 2008 and 2014, from 226 330 to 626 710. Most claims were submitted in Germany, where applications leapt from 26 945 to 202 815. The growing number of asylum-seekers reflects the deteriorating security situation in countries such as Syria, Libya, Iraq and Eritrea. In January 2015 alone, according to available data, at least 66 025 asylum applications were submitted in the EU28.

In contrast, Eurostat figures show that during the six years up to 2014, the overall number of non-EU nationals found to be illegally present in the EU28 fell steadily, from approximately 608 865 to 428 840, although it increased in specific countries such as Germany (53 695 to 86 305), Belgium (13 800 to 15 075), Bulgaria (1 415 to 5 260), and Austria (14 500 to 25 960). Also between 2008 and 2013, the number of people returned each year under EU Readmission Agreements (EURAs) or other arrangements fluctuated between 241 965 and 215 885.

Legal and policy framework

The key challenge for an effective EU return policy is to strike a balance between the legitimate security and social cohesion interests of EU and non-EU countries, and respect for human rights and humanitarian obligations. The EU has various legal instruments at its disposal to meet this challenge, which are set out in the overarching framework of its Global Approach to Migration and Mobility (GAMM).

Within this global approach, the 2008 Return Directive is the lynchpin of the EU's return policy, and readmission agreements are crucial to its practical implementation. The Directive establishes fair, transparent and common EU standards for the return or removal of illegal stayers in a humane manner, and with full respect for their fundamental rights and dignity and the principle of *non-refoulement*. It explicitly refers to the use of readmission agreements to facilitate this process in recital 7 and Article 3(3). Further information on the Directive is set out in a parallel briefing.

The Directive requires Member States to take into consideration the best interests of children, family life and the health of the person concerned. In other words, return decisions must comply with EU and other international human-rights guarantees, in

accordance with the Return Directive's procedural guarantees and the relevant EU asylum *acquis*.

EURAs can only come into play once a return decision has been issued on this basis. They are technical instruments that set out clear obligations and procedures for the authorities of non-EU and EU countries as to when and how people residing irregularly in a country should be taken back.[1]

Negotiating and concluding EURAs

The Council authorises the Commission to open negotiations on these agreements with partner countries. Once negotiations are completed, the EURA must receive the European Parliament's consent before it can be concluded. Once in force, the EURA is monitored by a Joint Readmission Committee (JRC) comprising experts and representatives from the EU Member States and the partner country, and co-chaired by the Commission and the partner country.

It can be difficult to bring partner countries to the negotiating table and it can take several years to reach an agreement. A case in point is Morocco, where the negotiating directives were agreed in 2000, but the negotiations are still ongoing, with little prospect of a swift conclusion. As regards China and Algeria, the EU has not even managed to formally open negotiations.

EURAs are meant to create a 'give and take' and 'win-win' situation. The Commission explains[2] that non-EU partner countries want something in exchange for concluding readmission agreements with the EU. These incentives range from visa-facilitation agreements to financial assistance for implementing the agreement (which negotiating partners often consider inadequate), or broader and more substantive incentives in other areas of cooperation.

Another difficulty involved in concluding EURAs concerns the requirement for non-EU countries to readmit not only their own nationals, but also people who have transited through their territory. Non-EU countries argue that they cannot be held responsible for the citizens of other countries and are therefore not obliged to readmit them. Morocco and Turkey in particular have mentioned this as their main reason for not having concluded readmission agreements with the EU so far.

The European Parliament has a clear say in EU readmission agreements. The 2009 Lisbon Treaty provides an explicit legal basis for EURAs (Article 79(3) TFEU) and specifically states that the EP must give its consent prior to the conclusion of association and similar agreements (Article 218(6)(v) TFEU). Moreover, the EP 'shall be immediately and fully informed at all stages of the procedure (Article 218(10) TFEU).

Example of the EP's role in the negotiation process: the EURA with Pakistan[3]

As the main safeguard for the respect of human rights, standard EURAs contain a non-affection clause, which provides that the underlying agreement will not prejudice rights, obligations and responsibilities arising from international law. In the past, the EP had criticised this clause because the reference to human rights was insufficient. Before voting on the EURA with Pakistan, MEPs questioned the then EU Commissioner for Home Affairs very closely because the text did not include a clear reference to the protection of human rights.

The EURA with Albania (mandated in 2002 and signed in 2005) was the first to reflect the EP's concerns about the need for greater emphasis on human rights.

EU readmission agreements: state of play

The Council has adopted 21 negotiating directives on the conclusion of readmission agreements between the EU and partner countries and 17 EU readmission agreements have already entered into force.

Evaluation of EU readmission agreements

According to a synthesis report published in 2014 by the European Migration Network (EMN), there has been only very limited evaluation of the effectiveness of EURAs at national level. Only Greece had carried out a study to assess the effectiveness of EURAs at that stage. The results showed that the extent to which they could be judged effective depended on the agreement and cooperation with a given non-EU country. For example, the EURA with Georgia was assessed as particularly effective since the readmission rate went up from 36% before the implementation of the agreement to almost 94% after its implementation. In contrast, the EURA with Pakistan is judged problematic due to delays in response and various other practical obstacles, such as the loss of documents. The average response time also reflects the disparity in the effectiveness between EURAs concluded with different non-EU countries. For example, while the average response time for Georgia is six to seven days, in the exceptional case of the EURA with Pakistan, it can take over a year to obtain a response from the authorities.[4]

The situation is further complicated since some Member States continue to use bilateral readmission agreements. They claim that they do not apply EURAs because there are no corresponding bilateral implementing protocols and/or that they only use EURAs if they facilitate returns.[5] In fact, the absence of a bilateral protocol for implementing a EURA can be explained by the existence of a bilateral agreement that had already been signed with the third country in question before the EURA entered into force.[6] However, the Commission argues that EURAs are self-standing, directly operational instruments which do not necessarily require the conclusion of bilateral implementing protocols with the third country.[7]

The EMN report cited above points out that Member States claimed that the practical problems they experienced when trying to implement EURAs and bilateral agreements were the same, namely that specific countries did not cooperate sufficiently or respect the set deadlines.

Strengthening human-rights safeguards

All persons subject to readmission procedures benefit from the rights and procedural guarantees (legal representation, judicial review, respect of *non-refoulement* etc.) enshrined in EU legislation (mainly the Return Directive) and legally binding applicable international instruments (1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); 1984 Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment; and 1951 Geneva Convention related to the Status of Refugees as amended by the 1967 New York Protocol). Furthermore, EU countries must respect the EU Charter of Fundamental Rights when implementing EU readmission agreements. Consequently, returns can only be carried out on the basis of a return decision issued in accordance with these guarantees.

However, practice shows that there are no clear mechanisms to ensure that the human rights of returnees are fully respected at all times.

As recently as December 2014, a study published by the Swiss Federal Commission on Migration raised concerns that even with partnership support, the protection capacity of countries of origin and their respect for human rights might not be sufficiently well grounded to safeguard the rights of returning migrants.[8]

In its 2010 resolution, the Parliamentary Assembly of the Council of Europe (PACE) mentioned a risk that readmission agreements could pose a threat, directly or indirectly, to the human rights of irregular migrants or asylum-seekers. It therefore invited the EU 'to properly consider the human rights situation and the availability of a well-functioning asylum system in a country prior to entering into negotiations on readmission agreements with that country.

In 2005, the European Council on Refugees and Exiles (ECRE) had also warned against premature returns, i.e. it urged Member States not to assume that a declared end to hostilities in a non-EU country was sufficient reason to repatriate its nationals.[9]

In its 2011 evaluation, the Commission pointed out that the EU's readmission policy should be much more firmly embedded in the overall external-relations policies of the EU, seeking possible synergies with association and commercial agreements with non-EU countries.

It advocated that the JRCs, which are responsible for monitoring the implementation of the agreements, should play a more important role in monitoring respect for the human rights of returnees. In this sense, JRCs should provide for the systematic participation of the relevant national experts, as well as NGOs and international organisations in appropriate cases.

It also suggested that EURAs should include a clause providing for the temporary suspension of an agreement in the event of a persistent and serious risk that the human rights of readmitted persons might be violated. The EU could in this case unilaterally stop the application of the agreement by notification to the other contracting party.

Main references

Cassarino, Jean Pierre: Readmission Policy in the European Union, Study of the Directorate for Internal Policies - Policy Department C: Citizens' Rights and Constitutional Affairs, 2010.

Coelho Patricia: The Way Forward: The return of asylum seekers whose applications have been rejected in Europe / European Council on Refugees and Exiles (ECRE), June 2005

Synthesis Report – Good practices in the return and reintegration of irregular migrants: Member States' entry bans policy and use of readmission / European Migration Network, 2014.

Communication from the Commission to the European Parliament and the Council: Evaluation of EU Readmission Agreements / European Commission, 23 February 2011.

Gillade, Kim: Readmission Agreements Concluded by the EU, Masterproef van de opleiding 'Master in de rechten', University of Ghent, 2010/2011.

Kohls, Martin: Effectiveness of Re-Entry Bans and Readmission Agreements, Study by the German National Contact Point for the European Migration Network (EMN) / Federal Office for Migration and Refugees, 2014.

Poptcheva, Eva-Maria: Irregular immigration in the EU – Some national perspectives on arrival of immigrants, EPRS, 13 December 2013.

Zetter, Roger, Protecting Forced Migrants: A State of the Art Report of Concepts, Challenges and Ways Forward', study commissioned by the Swiss Federal Commission on Migration / Refugee Studies Centre, University of Oxford, December 2014.

Endnotes

[1] Return & Readmission / European Commission website.

[2] Communication from the Commission – Evaluation of EU Readmission Agreements, COM(2011) 76 final.

[3] KIm Gillade, Readmission Agreements Concluded by the EU, 2011, pp.67 ff.

[4] Synthesis Report – Good practices in the return and reintegration of irregular migrants, p. 22 / European Migration Network.

[5] COM(2011) 76 final p. 4.

[6] Jean-Pierre Cassarino,Readmission Policy in the European Union, 2010,. p. 19

[7] COM(2011) 76 final p. 4

[8] Roger Zetter, Protecting Forced Migrants: A State of the Art Report of Concepts, Challenges and Ways Forward, 2014, p. 65.

[9] Patricia Coelho, The Way Forward: The return of asylum seekers whose applications have been rejected in Europe, 2005, p. 6.

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