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*Readmission, Visa Policy and the “Return Sponsorship” Puzzle
in the New Pact on Migration and Asylum*

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Abstract

Something anchored in the past may account for the recent proposal of the European Commission to link the EU’s visa policy with third countries’ degree of cooperation on readmission. What do we know about this linkage? And what lies behind the unprecedented introduction of “return sponsorships”? The latter may raise a host of concerns in terms of competence and relevance which are analysed in this study.

Linking readmission with visa policy?

Chapter 6 of the New Pact on Migration and Asylum proposes, among other things, to create a conditionality between cooperation on readmission with third countries and the issuance of visas to their nationals. This conditionality was legally established in the 2019 revision of the Visa Code Regulation together with a series of provisions. The text of the 2019 revision of the Visa Code states that, given their “politically sensitive nature and their horizontal implications for the Member States and the Union”, such provisions will be triggered once implementing powers are conferred to the Council (following a proposal from the Commission).

What do these measures entail? We know that they can be applied in bulk or separately. Firstly, EU consulates in third countries will not have the usual leeway to waive some documents required to apply for visas (Art. 14(6) [Regulation \(EC\) No 810/2009](#)). Secondly, visa applicants from uncooperative third countries will pay higher visa fees (Art. 16(1) [Regulation \(EC\) No 810/2009](#)). Thirdly, visa fees to diplomatic and service passports will not be waived (Art. 16(5)^b [Regulation \(EC\) No 810/2009](#)). Fourthly, time to take a decision on the visa application will be longer than 15 days (Art. 23(1) [Regulation \(EC\) No 810/2009](#)). Fifthly, the issuance of multi-entry visas (MEVs) from 6 months to 5 years is temporarily suspended (Art. 24(2) [Regulation \(EC\) No 810/2009](#) and Art. 24(2)c [Regulation EU 2019/1155](#)). In other words, these coercive measures are not aimed at suspending visas. They are designed to make the procedure for obtaining a visa more lengthy, more costly, and limited in terms of access to MEVs.

Moreover, it is important to stress that the revision of the Visa Code Regulation mentions that the Union will strike a balance between “migration and security concerns, economic considerations and general external relations”. Consequently, measures (be they restrictive or not) will result from an assessment that goes well beyond migration management issues. The assessment will not be based exclusively on the so-called “return rate” that has been presented as a compass to reward or blame third countries’ cooperation on readmission. Other indicators or criteria, based on data provided by the Member States, will be equally examined by the Commission (OJEU 2019). These other indicators pertain to “the overall relations” between the Union and its Member States, on the one hand, and a given third country, on the other. This broad category is not defined in the 2019 revision of the Visa Code, nor do we know what it precisely refers to.

Lessons learned

What do we know about this linkage? The idea of linking cooperation on readmission with visa policy is not new. It was first introduced at a bilateral level by some Member States. For

example, fifteen years ago, cooperation on redocumentation, including the swift delivery of laissez-passers by the consular authorities of countries of origin, was at the centre of bilateral talks between France and North African countries. In September 2005, the French Ministry of the Interior proposed to “sanction uncooperative countries [especially Morocco, Tunisia and Algeria] by limiting the number of short-term visas that France delivers to their nationals.”¹ Sanctions turned out to be unsuccessful not only because of the diplomatic tensions they generated – they were met with strong criticisms and reaction on the part of North African countries – but also because the ratio between the number of laissez-passers requested by the French authorities and the number of laissez-passers delivered by North African countries’ authorities remained unchanged.

At the EU level, the idea of linking readmission with visa policy has been in the pipeline for many years. Let’s remember that, in October 2002, in its Community Return Policy, the European Commission reflected on the positive incentives that could be used in order to ensure third countries’ constant cooperation on readmission. The Commission observed in its communication that, actually, “there is little that can be offered in return. In particular visa concessions or the lifting of visa requirements can be a realistic option in exceptional cases only; in most cases it is not” (2002: 24). Therefore, the Commission set out to propose additional incentives (e.g. trade expansion, technical/financial assistance, additional development aid).

In a similar vein, in September 2015, after years of negotiations and failed attempt to cooperate on readmission with Southern countries, the Commission remarked that the possibility to use Visa Facilitation Agreements as an incentive to cooperate on readmission is limited in the South “as the EU is unlikely to offer visa facilitation to certain third countries which generate many irregular migrants and thus pose a migratory risk. And even when the EU does offer the parallel negotiation of a visa facilitation agreement, this may not be sufficient if the facilitations offered are not sufficiently attractive” (2015: 14).

More recently, in March 2018, in its Impact Assessment accompanying the proposal for an amendment of the Common Visa Code, the Commission itself recognised that “better cooperation on readmission with reluctant third countries cannot be obtained through visa policy measures alone.” (2018: 26). It also added that “there is no hard evidence on how visa leverage can translate into better cooperation of third countries on readmission” (2018: 31).

The “peripheral centrality” of readmission

Against this backdrop, why has so much emphasis been put on the link between cooperation on readmission and visa policy in the revised Visa Code Regulation and later in the New

¹ Excerpt from the discourse of former Minister of the Interior, Nicolas Sarkozy, addressed to French regional governors, dated Friday 9th September 2005.

Pact? The Commission itself recognised that this conditionality might not constitute a sufficient incentive to ensure the cooperation on readmission.

To reply to this question, we need first to question the oft-cited reference to third countries' "reluctance"² in order to understand that cooperation on readmission is inextricably based on unbalanced reciprocities. Moreover, migration, be it regular or irregular, continues to be viewed as a safety valve to relieve pressure on unemployment and poverty in countries of origin. Readmission has asymmetric costs and benefits having economic social and political implications for countries of origin. Apart from being unpopular in Southern countries, readmission is humiliating, stigmatizing, violent and traumatic for a human being (Von Lersner et al 2008; Schuster and Majidi 2015; Alpes et al 2017), making readmitted migrants' process of reintegration extremely difficult, if not impossible, especially when countries of origin have often no interest in promoting reintegration programmes addressed to their nationals expelled from Europe.

Importantly, the conclusion of a bilateral agreement does not automatically lead to its full implementation in the field of readmission, for the latter is contingent on an array of factors that codify the bilateral interactions between two contracting parties. Today, more than 320 [bilateral agreements linked to readmission](#) have been concluded between the 27 EU Member States and third countries, at a global level. Using an oxymoron, it is possible to argue that, over the past decades, various EU member states have learned that, if bilateral cooperation on readmission constitutes a central priority in their external relations (this is the official rhetoric), readmission remains peripheral to other strategic issue-areas which are detailed below. Finally, unlike some third countries in the Balkans or Eastern Europe, Southern third countries have no prospect of acceding to the EU bloc, let alone having a visa-free regime, at least in the foreseeable future. This basic difference makes any attempt to compare the responsiveness of the Balkan countries to cooperation on readmission with Southern non-EU countries' impossible, if not spurious.

Today, patterns of interdependence between the North and the South of the Mediterranean are very much consolidated. Over the last decades, Member States, especially Spain, France, Italy and Greece, have learned that bringing pressure to bear on uncooperative third countries needs to be evaluated cautiously lest other issues of high politics be jeopardized. Readmission cannot be isolated from a broader framework of interactions including other strategic, if not more crucial, issue-areas, such as police cooperation on the fight against international terrorism, border control, energy security and other diplomatic and geopolitical concerns. Nor can bilateral cooperation on readmission be viewed as an end in itself, for it has often been grafted onto a broader framework of interactions.

² For a critical approach to the use and abuse of the notion of "reluctance" in the West, see Acharya (2004), Cassarino (2018), Cebeci (2019).

The “return sponsorship” puzzle

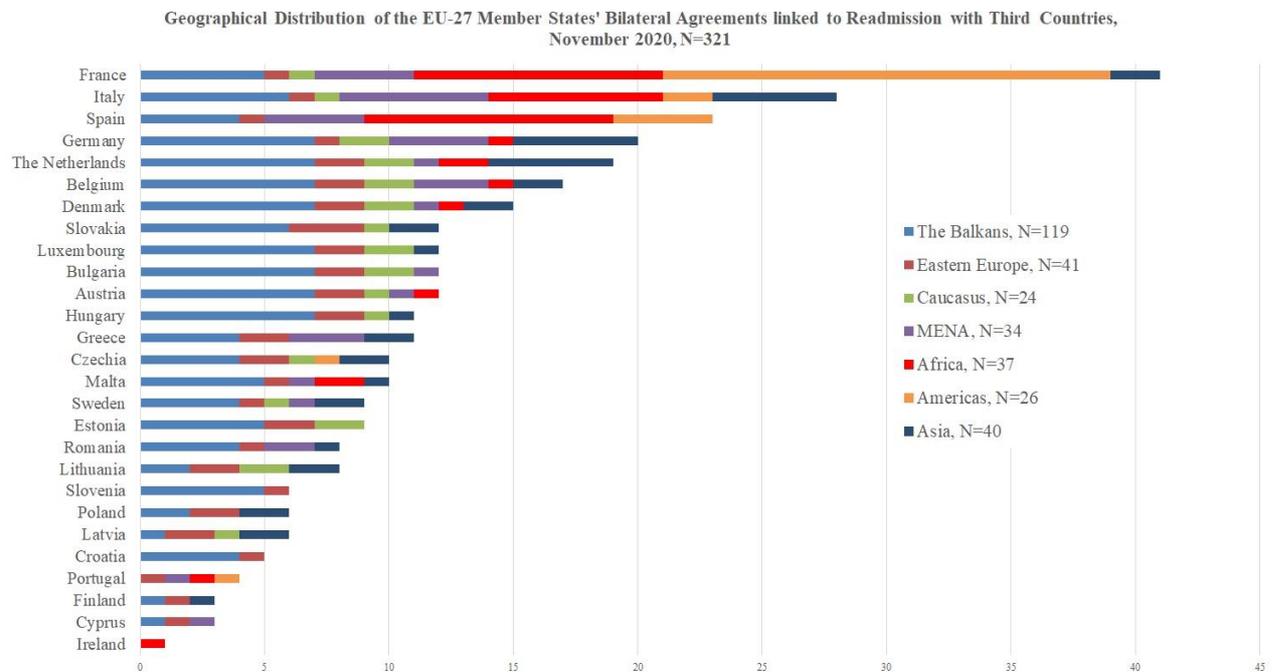
This point leads to a final remark regarding “return sponsorship” which is detailed in Art. 55 of the [proposal for a regulation on asylum and migration management](#). In a nutshell, the idea of the European Commission consists in a commitment from a “sponsoring Member State” to assist another Member State (the benefitting Member State) in the readmission of a third-country national. This mechanism foresees that each Member State is expected to indicate the nationalities for which they are willing to provide support in the field of readmission. The sponsoring Member State offers an assistance by mobilizing its network of bilateral cooperation on readmission, or by opening a dialogue with the authorities of a given third country where the third-country national will be deported. If, after eight months, attempts are unsuccessful, the third-country national is transferred to the sponsoring Member State. Note that, in application of [Council Directive 2001/40 on mutual recognition of expulsion decisions](#), the sponsoring Member State may or may not recognize the expulsion decision of the benefitting Member State (Council Directive 2001)³ just because Member States continue to interpret the Geneva Convention in different ways and also because they have different grounds for subsidiary protection.

Viewed from a non-EU perspective, namely from the point of view of third countries, this mechanism might raise some questions of competence and relevance. Which consular authorities will undertake the identification process of the third-country national with a view to eventually delivering a travel document? Are we talking about the third country’s consular authorities located in the territory of the benefitting Member State or in the sponsoring Member State’s? In a similar vein, why would a bilateral agreement linked to readmission – concluded with a given ‘sponsoring’ Member State – be applicable to a ‘benefitting’ Member State (with which no bilateral agreement or arrangement has been signed)? Such territorially bounded contingencies will invariably be problematic, at a certain stage, from the viewpoint of third countries. Additionally, in acting as a sponsoring Member State, one is entitled to wonder why an EU Member State might decide to expose itself to increased tensions with a given third country while putting at risk a broader framework of interactions.

As the graph shows, not all the EU Member States are equally engaged in bilateral cooperation on readmission with third countries. Moreover, a geographical distribution of available data demonstrates that more than 70 per cent of the total number of bilateral

³ The Directive enables but does not require Member States to enforce each other’s expulsion decisions. It is, however, very much unlikely that a Member State will not recognise the expulsion decision of another Member State. See also the [comments from Statewatch](#).

agreements linked to readmission (be they formal or informal⁴) concluded with African countries are covered by France, Italy and Spain. Over the last decades, these three Member States have developed their respective networks of cooperation on readmission with a number of countries in Africa and in the Middle East and North Africa (MENA) region.



Given the existence of these consolidated networks, the extent to which the “return sponsorship” proposed in the Pact will add value to their current undertakings is objectively questionable. Rather, if the “return sponsorship” mechanism is adopted, these three Member States might be deemed to act as sponsoring Member States when it comes to the expulsion of irregular migrants (located in other EU Member States) to Africa and the MENA region. More concretely, the propensity of, for example, Austria to sponsor Italy in expelling from Italy a foreign national coming from the MENA region or from Africa is predictably low. Austria’s current networks of cooperation on readmission with MENA and African countries would never add value to Italy’s consolidated networks of cooperation on readmission with these third countries. Moreover, it is unlikely that Italy will be proactively “sponsoring” other Member States’ expulsion decisions, without jeopardising its bilateral relations with other strategic third countries located in the MENA region or in Africa, to use the same example. These considerations concretely demonstrate that the European Commission’s call for “solidarity and fair sharing of responsibility”, on which its “return sponsorship”

⁴ On the informalization of the agreements linked to readmission and its implications for the protection of human rights, see Cassarino (2007), Carrera (2016), Giuffré (2020: 160-170), Moreno-Lax (2020: 25-28).

mechanism is premised, is contingent on the existence of a *federative* Union able to act as a unitary supranational body in domestic and foreign affairs. This federation does not exist in political terms.

Beyond these practical aspects, it is important to realise that the cobweb of bilateral agreements linked to readmission has expanded as a result of tremendously complex bilateral dynamics that go well beyond the mere management of international migration. These remarks are crucial to understanding that we need to reflect properly on the conditionality pattern that has driven the external action of the EU, especially in a regional context where patterns of interdependence among state actors have gained so much relevance over the last two decades. Moreover, given the clear consensus on the weak correlation between cooperation on readmission and visa policy (the European Commission being no exception to this consensus), linking the two might not be the adequate response to ensure third countries' cooperation on readmission, especially when the latter are in position to capitalize on their strategic position with regard to some EU Member States.

To conclude, the puzzle of the "return sponsorship" mechanism shows that readmission agreements or arrangements are no panacea, for the vested interests of third countries must also be taken into consideration when it comes to cooperation on readmission. In this respect, it is telling that the Commission never consulted third countries on the new return sponsorship mechanism, as if their territories were not concerned by this mechanism, which is far from being the case. Consequently, it is legitimate to imagine that the main rationale for the return sponsorship mechanism may be shaped by domestic concerns. In other words, the return sponsorship – which transforms itself into a form of relocation after eight months if the third-country national is not expelled from the EU territory – subtly takes non-frontline European states out of their comfort-zone and engage them in cooperating on expulsions. If they fail to do so, namely if the third-country national is not expelled after eight months, non-frontline European states are as it were 'forcibly' engaged in a 'solidarity practice' that is conducive to relocation. Given the disappointing past experience of the 2015 relocations (Savino 2020), the extent to which this mechanism will ever be adopted is quite uncertain.

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