MEDAM

Mercator Dialogue on
Asylum and Migration

European and African perspectives on asylum and migration policy: Seeking common ground

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Preface

In 2016, the Mercator Dialogue on Asylum and Migration (MEDAM) was established to improve our understanding of the interrelated challenges facing the EU and its member states in the areas of asylum and migration. It seeks to stimulate a broad and open conversation about implementable solutions to these dilemmas. Through our publications and outreach, we are engaging policy makers, academia and civil society across the EU, culminating in practical recommendations.

Over the last three years, we have analyzed important elements of the asylum and migration system in the EU and highlighting their global interdependencies. These include the driving forces of migration in countries of origin, migrants' decision making, public attitudes toward immigration policy, and the interaction of EU rule-making and member state practices in asylum policies.

With this 2020 MEDAM Assessment Report, the project enters its second phase (2020–22). We welcome the European Policy Centre as our new partner, with whom we will strengthen our monitoring and analysis of EU policies, along with our outreach to policy makers and other stakeholders in Brussels.

Our strengthened focus on EU policy making is also reflected by the new structure of the annual MEDAM Assessment Report. It includes a substantive chapter assessing the state of play in EU asylum and migration policy and analyze important developments over the previous year.

Asylum and migration issues have recently taken on a new urgency as conditions on the EU's external border have deteriorated in several member states. When Turkey opened certain border crossings toward Greece to irregular migrants in March 2020, the fragility of the existing understanding between the EU and Turkey on containing irregular migration to the EU came to the fore. More recently, several EU member states have effectively eliminated access to asylum at their external borders, justifying their actions by the COVID-19 pandemic.

In this report, the authors argue that the EU cannot sustainably handle these predicaments on its own, but needs to cooperate with migrants' countries of origin and transit as equal partners. As part of its planned new strategy (the forthcoming New Pact on Migration and Asylum), the EU should provide more support to low- and middle-income countries hosting refugees—especially to Turkey, which now hosts the world's largest refugee population. To contain irregular migration to Europe along the Central Mediterranean route to Italy, the EU needs to work closely with countries of origin and transit in Africa.

It is thanks to the continued generous support by Stiftung Mercator that we can present this 2020 MEDAM Assessment Report, whose objective is to help shape policies for refugee protection and migration in Europe that respond effectively to the imminent global challenges.

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About the authors

Matthias Lücke is a senior researcher at the Kiel Institute for the World Economy, an adjunct professor at Kiel University, and a former senior economist at the International Monetary Fund. In his research and teaching, he focuses on migration, development, international trade policy, and European integration. Matthias coordinates the MEDAM project, guiding the development of MEDAM's research agenda and leading the project's outreach to stakeholders. He has consulted widely for national governments and international organizations.

Olivia Sundberg Diez is a policy analyst for the European Migration and Diversity Programme at the European Policy Centre (EPC). In her work, she primarily focuses on the human rights implications of EU policies concerning irregular migration. Her latest work has concentrated on return and readmission practices. She has worked for multiple UK think tanks and has been a consultant for the European Council on Foreign Relations. In the MEDAM project, Olivia co-authors policy-oriented publications and provides analysis of EU developments, policy processes, and political preferences.

Leonie Jegen has researched the impacts of migration policy in Niger and Senegal as part of the MEDAM project on "The Political Economy of West African Migration Governance" (WAMiG), undertaken by the Arnold Bergstraesser Institute (ABI). Previously, Leonie was a researcher for the project "African Migration: Root Causes and Regulatory Dynamics" (AMIREG) at the United Nations University Institute on Comparative Regional Integration Studies (UNU-Cris) and the Institute for European Studies (IES). She has conducted extensive field research in Ghana, Niger, and Senegal.

Franzisca Zanker is a senior researcher and head of the research cluster "Patterns of (Forced) Migration" at the Arnold Bergstraesser Institute (ABI). Her research interests include refugee and migration governance, peace processes, and civil society. She has conducted fieldwork in Liberia, Kenya, South Africa, and the Gambia. In addition, she is the co-founder of the research network "African Migration, Mobility, and Displacement." Within the framework of MEDAM, Franzisca leads the WAMiG project ("The Political Economy of West African Migration Governance"), which is conducted by the ABI.

While MEDAM team members share the whole systems approach to analyzing migration, not every author agrees with all policy conclusions in all sections of the report.

Main messages

The European Commission is currently finalizing its proposed New Pact on Migration and Asylum to re-start the debate on how to reform the common European asylum system and manage immigration from non-EU countries. One prominent concern is the 'external dimension': jointly managing migration to Europe with countries of origin and transit. By cooperating with countries of origin and transit across a wide range of policy areas, the EU and its member states may reduce irregular migration to Europe without undermining their humanitarian principles and impairing bilateral relations, which the present emphasis on securitizing the external EU border risks doing.

In this 2020 MEDAM Assessment Report, we explore how European and African governments can reach common ground on jointly managing migration from Africa to Europe. On the one hand, the EU and its member states are keen to limit irregular immigration along the Central and Western Mediterranean routes, where in the recent past 'mixed' and labor migrants predominated while few asylum seekers were recognized as refugees in Europe. This situation differs from the Eastern Mediterranean region, where the focus is on how states in the region and the international community, including the EU and its member states, can fairly share responsibility for hosting several million war refugees.

On the other hand, many African citizens and governments view migration and mobility as an important element in their economic and social development. Financial remittances from migrants, whatever their legal status, sustain the livelihoods of many households and are an important source of external finance for many African economies. Cooperation on migration management with the EU has therefore been patchy, especially in sensitive areas such as the return and readmission of non-EU citizens who have no permission to remain in the EU.

Below, we derive six main messages from our analysis to provide guidance on how the EU and its member states can move ahead with the reform of the European asylum system and cooperate successfully with countries of origin and transit. The key task is to negotiate 'self-enforcing' agreements on joint migration management—i.e., agreements that all parties have strong incentives to abide by because, at any time, the benefits from the agreement for each party are larger than the cost of implementing any unpopular provisions. A chief ingredient should be more legal opportunities for labor migration to Europe to complement measures to restrict irregular migration.

Message #1: The EU and its member states should negotiate on an equal footing with countries of origin and transit, particularly in Africa, for comprehensive agreements on mobility that reflect both sides' interests, concerns, and political limitations (chapter 5).

– In recent years, the EU has increasingly imposed conditionality related to migration management on low- and middle-income countries by attaching it to agreements in various policy areas. Yet, there has been little improvement in measurable outcomes like the effective return rate for non-EU citizens who have no permission to stay in the EU (section 2.2).

– Recently, the EU has shown a tendency to apply conditionality 'punitively'—for example, by making existing positive elements in visa practices conditional on the partner country promising to tighten controls on irregular migrant flows. This amounts to introducing new demands in an already settled context and may encourage evasive behavior rather than constructive engagement by partner governments.

– By imposing conditionality on governments that were poorly placed to refuse it, the EU sometimes managed to obtain commitments on paper. Later, however, partner governments often had little incentive to implement those provisions and, in fact, did not do so. To address this time-inconsistency issue, the EU needs to acknowledge that it is in many ways the more powerful party in these agreements. Thus, it is in the EU's own interest to use its power wisely and to ensure that agreements adequately reflect the policy space as well as the constraints of both sides. The EU should aim to create an appropriate incentive structure for both sides to adhere to their commitments.

Message #2: The EU and its member states are interested in reducing irregular immigration and facilitating the return and readmission of non-EU citizens who have no permission to stay in the EU. Nevertheless, many obstacles to smooth return and readmission arise from logistic and administrative failures in the EU and its member states, rather than from a lack of cooperation by countries of origin. Given the importance that the EU and its member states attach to return and readmission, they should begin by streamlining their own administrative and legal processes for return and readmission. It would be unhelpful to let return and readmission dominate bilateral relations with countries of origin to the point where other important objectives—such

as development cooperation or international mobility for education, research, tourism, or business—are put at risk (chapter 3).

— Data on voluntary and mandatory returns from EU member states to non-EU countries are subject to many methodological uncertainties and return rates vary widely across member states and countries of origin (section 2.2). Despite the lack of reliable information, it is clear that a lack of cooperation by country of origin authorities, for instance with travel documents, is only one among many reasons why the effective return rate is low for many member states and countries of origin.

— Initially, EU member states applied conditionality mainly to visa facilitation, for which there is a logical connection with return and readmission (visas can be granted more liberally if visa overstayers can be returned quickly). Subsequently, visa issuance by EU member states has become so restrictive as to impede legitimate travel between the EU and many low- and middle-income countries.

— Some member states are now pushing for conditionality to be tightened, notably in the area of development cooperation. This is especially problematic if development cooperation is targeted at disadvantaged groups within the partner country.

Message #3: When would-be migrants in low- and middle-income countries must choose between migrating irregularly to a high-income country or not at all, irregular migration is often their preferred outcome. The EU and its member states should accept that citizens and governments in countries of origin are concerned about repercussions from losing financial remittances in the case of any push to reduce irregular migration (chapter 4). Partner countries will only have an incentive to work with the EU to reduce irregular migration if the EU offers compensation that addresses the potential losses at both the macroeconomic and the household level.

— In many African economies, migrant remittances are a more important source of external finance than development assistance and sustain the livelihoods of hundreds of thousands of households.

— We find in our research in West Africa that citizens and stakeholders consider migration and mobility an important element in promoting development and securing livelihoods. This view reflects a long

history of both regional and international migration, which makes the governance of irregular migration highly sensitive.

Message #4: The EU and its member states should offer substantially expanded opportunities for legal labor migration to Europe to complement any efforts to reduce irregular migration through joint migration management. Legal migration opportunities would benefit African workers and their families, sustain financial remittances to African economies, and render restrictions on irregular migration politically feasible (chapter 5).

— More legal migration will not in and of itself reduce irregular migration. Some of those who will take advantage of future legal opportunities might never migrate irregularly; at the same time, those who now migrate irregularly may still do so in the future if legal opportunities are beyond their reach. Even so, those who benefit from legal opportunities will have a strong incentive to support curbs on irregular migration by their governments because legal opportunities will depend on the country of origin's authorities helping to reduce irregular migration.

— Migrants would need certain educational, language, and vocational skills to be able to integrate into the EU labor markets and to earn enough to support themselves and their families. In order to be accessible to a meaningfully large number of African workers, EU member states should set those requirements as low as possible without putting labor market integration at risk.

— One example of a similarly motivated initiative is the German Western Balkans program: about 20,000 work visas are available annually for workers from Western Balkan states who are offered a job in Germany at standard conditions. There are no other income, skill, or language requirements, making the German labor market far more accessible for citizens of these countries than for other non-EU citizens. The program started after the number of (mostly unsuccessful) asylum applications by Western Balkan citizens in Germany surged in late 2015. It is credited with helping to reverse that surge, combined with accelerated asylum procedures (Germany now classifies all Western Balkan states as safe countries of origin) and the fact that all stakeholders are keen to maintain EU visa liberalization for the Western Balkans (MEDAM 2018, box 1.2).

— At the same time, there is a risk that even with moderate skill requirements compared with European labor market needs, migration to Europe could lead to a brain drain in Africa, given the relatively low average performance of African secondary school students in internationally comparable skills tests (Backhaus 2020). The EU should therefore combine more labor market access in Europe with support for skill partnerships in Africa—vocational and language training programs that teach critical skills for both local and European labor markets.

Message #5: The EU and its member states should assume more responsibility for protecting refugees who are using the irregular migration routes to Europe to seek safety.

— Although 'mixed' and labor migrants have made up the majority of migrants along the Central and Western Mediterranean migrant routes in recent years, there are also a significant number of refugees who require protection. If migration to Europe is interrupted and refugees get stuck, the EU and its member states should help to protect these refugees.

— In particular, the UNHCR's Emergency Transit Mechanism is meant to evacuate vulnerable individuals from Libya to Niger or Rwanda and then provide options for resettlement in non-EU countries, voluntary return to countries of previous asylum, voluntary return to countries of origin (where safe), or local integration in Rwanda. This emergency transit mechanism will be effective and sustainable only if there are enough places for resettlement in the EU or elsewhere; otherwise, migrants will get stuck in transit centers and evacuations from Libya will cease, although the human rights of migrants continue to be violated there.

Message #6: In addition to the external dimension of EU migration and asylum policy, the European Commission's proposed new pact will address the internal dimension, particularly the way EU member states share responsibility among themselves for refugee protection. Discussions among stakeholders will revolve around, first, whether (and how) refugees should be relocated from EU member states at the external border to other member states for more equitable burden sharing; and second, how much logistic and financial support will come from the Union for asylum systems in member states,

especially for possible 'border measures' like reception centers near the external border (section 2.1). At this stage, it is impossible to predict what direction discussions and negotiations will take over the coming months. In the meantime, the EU and its member states should pursue progress along both the external and internal dimensions of migration and asylum policy because the two complement each other: resilient arrangements for cooperation with countries of origin and transit to manage immigration to Europe will help to stabilize the number of asylum applications; in turn, with a more predictable external environment, it will be easier for the Commission and member states to agree on strategies for centralizing certain functions at the EU level and sharing responsibility among member states.

— The new pact will likely propose a combination of mandatory flexible solidarity and accelerated border procedures. If the Commission chooses this way forward, the degree of division among EU member states should not be underestimated; member states would have to cross many red lines to reach agreement. There would also be difficult implementation issues, such as how to avoid unsustainable large-scale detention at the external border and how to secure sufficient, reliable, long-term solidarity (be it by relocating asylum seekers, financial contributions, or the provision of staff and material resources).

— However, the EU and its member states may consider picking low-hanging fruit by implementing a limited voluntary scheme for relocating asylum seekers from the most affected member states on the external border. Importantly, migrants who enter EU territory irregularly across the external border today account for no more than a third of asylum seekers in the EU. The shares of most EU member states in all first-time asylum applications are currently close to their 'fair' shares based on population and GDP; the major exceptions are Greece, Malta, and Cyprus with far higher numbers. Hence, a small, voluntary relocation scheme, possibly with EU financial support, would go a long way toward addressing this impasse (MEDAM 2019, section 4.1). If such a scheme works well, it may later be scaled up to make the EU asylum system more resilient to possible future surges in refugee numbers.

1 Introduction

Lead Author: Matthias Lücke

With its New Pact on Migration and Asylum, the European Commission will propose a reform of the European asylum system to achieve two overarching objectives: to ensure that the same adequate standard of refugee protection applies throughout the EU; and to distribute responsibility for refugee protection and border management equitably among EU member states. In the coming months, the Commission proposal will be scrutinized and debated intensely by member states, the European Parliament, civil society, and the European public.

One area of particular concern is the 'external dimension' of migration and asylum policies—particularly the joint management of migration together with migrants' countries of origin and transit. This is important because the external dimension is key to the success of asylum reform: any system for distributing responsibility for asylum applicants 'internally' among EU member states will come under severe stress if the total number of applicants rises too high. Hence, to maintain a functioning asylum system, it is essential to manage the number of applications such that member states are not overwhelmed by their allocated responsibilities.

Doing so effectively and humanely requires agreement and close cooperation with neighboring countries and countries of origin and transit in several policy areas. First, refugees who have obtained international protected status in low- to middle-income, non-EU countries need to be supported so they can lead dignified lives and have few incentives for secondary migration to the EU. In addition to financial support as under the 2016 EU-Turkey Statement, this calls for the resettlement of some especially vulnerable refugees to EU member states.

Second, irregular migration leads to many deaths among migrants as well as their exploitation by people smugglers.[1] Most activity by people smugglers takes place outside the EU where it is also most effectively combatted. Therefore, cooperation with countries of origin and transit is essential.

Third, although several EU member states on the external border have erected fences to discourage irregular entry, these are costly to build, maintain, and police; furthermore, it is difficult to secure sea borders in this way. Fences may also prevent non-EU citizens from applying for asylum, jeopardizing human rights commitments and the Geneva Convention. At the same time, EU visa policy and member state policies for labor migration limit entry to the EU to individuals who meet certain requirements. If member states could smoothly return those foreign citizens to their countries of origin who have no permission to remain in the EU, this would discourage irregular immigration without the need for physical barriers at the border. Again, return and readmission requires cooperation between countries of destination, transit, and origin.

While the EU and its member states are keenly interested in reducing irregular immigration (and this position is also in line with the Global Compact for Safe, Orderly, and Regular Migration),[2] countries of origin often find it difficult to implement policies that restrict the international movement of their citizens or to cooperate with their mandatory return. This is not only because will they lose external financing in the form of migrant remittances, but governments may also lose political support from citizens who have invested heavily in their own irregular migration or that of their relatives and friends.

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[1] Technically speaking, people smugglers are usually understood to be illegal service providers who act in agreement with the wishes of migrants, whereas traffickers use force to exploit migrants. In many environments (such as Libya), this distinction has become blurred and migrants are subject to abuse and exploitation from the same people through whose services they hope to travel to Europe.
[2] United Nations, Resolution adopted by the General Assembly on 19 December 2018, Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195, January 11 (2019), https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195.

Thus, when it comes to responding to irregular immigration, the EU and its member states need to choose between three approaches, which they can combine to some degree: (i) effectively leave their external border open for anyone to cross irregularly, possibly apply for asylum, and live in the EU indefinitely; or (ii) set up a new iron curtain, trying to prevent irregular entry through physical barriers and policing at the external border; or (iii) negotiate agreements and work with countries of origin and transit to reduce irregular migration, including through mandatary return and readmission, while rewarding partner countries for their support through economically and politically meaningful measures including enhanced legal migration opportunities (MEDAM 2019).

This report explores how the third approach may be adopted consistently. We start by summarizing key developments in EU asylum policy over the last year and identify important challenges (chapter 2). Debates and negotiations among EU member states on how responsibility can be shared more equitably (the 'internal dimension' of asylum policy) have become bogged down (section 2.1). Meanwhile, many EU agreements with low- and middle-income countries now include provisions on migration management, especially on the readmission by their countries of origin of non-EU citizens who have no permission to remain in the EU (section 2.2).

Such agreements often make EU actions that are favorable to the partner country, especially in the area of visa issuance or visa facilitation, conditional on the partner country's cooperation with the readmission of its citizens (and sometimes non-EU citizens who have passed through the partner country's territory). In chapter 3, we discuss the possible benefits as well as risks inherent in such conditionality from the viewpoint of the EU. Concerns relate particularly to poor

targeting (when mandatory return does not work well, this is often not due to the country of origin) and collateral damage to other EU objectives (such as to mobility for education, development cooperation, or tourism).

In chapter 4, we report on field research on how migration and migration policy are viewed by the public, civil society, and policy makers in West Africa. Above all, mobility within countries, within West Africa, and between continents is viewed as a way of life and an opportunity for individuals and their families to improve their lives. As such, attempts to restrict migration or to make emigrants return home if they have no permission to remain in the destination country are challenging for citizens and their governments.

These diverging positions render it challenging for EU member states and African countries of origin and transit to jointly manage migrant flows and to combat people smuggling and irregular migration (chapter 5). Any agreement that provides for the kinds of restrictions on irregular migration that the EU and its member states want to see, will also need to acknowledge the desire of African populations and their governments for (legal) migration opportunities and travel to Europe. Enabling measures, such as vocational training for prospective labor migrants, are required to ensure that any new legal pathways come within the reach of an economically and politically significant number of African workers, which is not the case for existing migration channels.

Although new legal opportunities may not directly benefit the same people who now migrate irregularly, such opportunities may still help to reduce irregular migration because they would strengthen political support for country-of-origin governments that cooperate with the EU and its member states in migration management.

2 Discussions on EU migration and asylum policy ahead of the new pact

Lead Author: Olivia Sundberg Diez

2019 was a year of institutional transitions within the EU, as the European Parliament held elections in May and a new European Commission took office in December. On the internal dimension of EU asylum and migration policies, namely the way asylum and mobility are managed within the Union, there was little legislative progress at the EU level. Instead, there was a distinct proliferation of national and bilateral modes of policy making by member states. At the same time, efforts on the external dimension of migration, including cooperation on migration management with non-EU countries, were notably strengthened. This chapter provides an analytical overview of developments in both areas.

The first part of this chapter discusses the growing tendency toward national and bilateral initiatives. It focuses on attempts to reach an agreement on dis-embarkation and relocation for people rescued in the Mediterranean (the discussions around the Malta Declaration), and on a series of national position papers issued in the final months of 2019. These initiatives reveal a growing fragmentation among member states that will be challenging to address. Doing so, however, should be a priority for the new European Commission.

The second part of this chapter outlines the latest developments in the EU's cooperation with non-EU countries on migration, particularly on arrivals and returns. The EU's approach to return and readmission has shifted to place an increasing emphasis on the use of conditionality to secure other countries' cooperation in readmitting non-EU nationals. This chapter provides an overview of these trends.

2.1 An uncertain future for European asylum policy

Stalled progress on the internal dimension

When the new European Commission took office on December 1, 2019, it inherited a gridlocked discussion about the future of the Common European Asylum System (CEAS) and the internal dimension of migration more broadly. The package of seven legislative proposals that together form the CEAS reforms, as first proposed by the Commission in 2016, has still not been adopted.[3] The proposals sought, among others, to increase harmonization by reducing states' discretion regarding asylum standards and procedures, to target the secondary movements of asylum seekers, and to revise the contentious mechanism for attributing responsibility for asylum seekers within the Union.

The package remains deadlocked despite there being agreement on most of these files. Five made it to trilogue negotiations and secured provisional compromises between the European Parliament and the Council. However, since all the proposals were legislatively and politically interlinked (the 'package approach'), a deadlock over two files has blocked the adoption of any of them. The two on which contention has centered, and which have never made it to trilogue negotiations, are the recast of the Dublin III Regulation (Dublin IV) and the proposed asylum procedures regulation (currently a directive).

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[3] The proposals introduced by the European Commission as part of the reform of the CEAS are a recast of the Dublin III Regulation, a recast of the Eurodac Regulation, a regulation establishing a European agency on asylum, an asylum procedures regulation, a qualification regulation, a recast of the Reception Conditions Directive, and the establishment of an EU Framework on Resettlement. See General Secretariat of the Council, "Reform of EU asylum rules," https://www.consilium.europa.eu/en/policies/migratory-pressures/ceas-reform/.

First, the entrenched disagreement over the Dublin IV regulation, and the notion of responsibility sharing for asylum seekers in particular, has been at the core of the deadlock over the package. In essence, the Commission proposal advanced in May 2016 retained the current system for allocating responsibility (namely, the first country of entry), but introduced a 'corrective allocation mechanism' to alleviate the pressure on member states receiving asylum seekers at over 150 percent of their capacity.[4] The European Parliament issued its report in November 2017 calling for far greater responsibility-sharing measures. The Council never issued a position on the regulation, given the significant disagreements between member states.

Several states, primarily those on the southern border, supported a revision of the regulation that entails greater responsibility sharing for asylum seekers within the Union. Meanwhile, the 'Visegrad Four' states (Hungary, the Czech Republic, Poland, and Slovakia) remain irreconcilably opposed to any manda-

border, the potential for using it at locations other than the external border or transit zones, and most importantly whether the procedure should be optional or mandatory. States at the EU external border, whose asylum systems are already under pressure, forcefully reject making border procedures mandatory, claiming that it would be too inflexible and impractical, especially at sea borders. This would require considerable staff and resources for procedures to be completed in time and to cover the entire external border (such as the shores of southern states), create multiple new responsibilities, and entail the potential of large-scale detention. Despite this opposition, discussions in the Council have made modest advancements. A possible compromise would involve making border procedures mandatory only after a transition period and on certain grounds.[5]

In addition, the decision to uphold the package approach even as the difficulty of resolving these deadlocks became apparent has itself been subject to criti-

Table 1 Indications of member states' positions on the future of EU-wide responsibility sharing

Support mandatory relocations	Hold flexible or varying positions on the form of solidarity	Support voluntary relocations
Belgium, the Netherlands, Sweden, Bulgaria, Cyprus, Greece, Italy, Malta	Germany, France, Spain, Portugal, Slovenia, Lithuania, Poland, Finland, Croatia, Latvia	Denmark, Austria, Romania, the Czech Republic, Hungary, Slovakia, Ireland, Estonia, Latvia

Source: Own compilation, based on EU and national documents, as well as media comments, as of early 2020.

tory relocation. The positions of other countries that receive large numbers of asylum applications, such as France and Germany, have changed over time, becoming relatively open to incorporating a degree of flexibility in solidarity models (Maushagen 2018; see also table 1). Other disagreements in the context of the Dublin IV regulation concern the duration of responsibility, the scope of pre-Dublin checks, and the inclusion of beneficiaries of international protection in the Dublin rules.

Second, the proposal for an asylum procedures regulation was also stuck in the Council. Member states have been especially divided on the Commission's proposed inclusion of accelerated procedures at border posts, which involve faster processing with reduced safeguards for asylum seekers. Sticking points have included the deadline for keeping people at the

cism (MEDAM 2019). The Parliament and the Council insisted on treating the reform proposals as a package, rather than moving forward on at least those proposals on which there was agreement: nothing is agreed until everything is agreed. Both sides feared that 'unpacking' them would entail losing leverage with respect to the more sensitive Dublin discussions. The Parliament sought to press for a more systematic and equitable system of responsibility sharing, whereas within the Council, several states were insistent on opposing any system based on mandatory relocations. The European Council Conclusions of June 2018, for example, stressed states' insistence on "a speedy solution to the whole package."[6] Under President Jean-Claude Juncker, the Commission made efforts to separate the proposals: in December 2018, Home Affairs Commissioner Dimitris Avramopoulos called on the Council

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[4] Capacity would be based on a reference key, calculated through a member state's total population size and GDP in equal weighting.
[5] Council of the European Union, "Note from the Presidency to the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA): Border Procedures," Brussels (2018), https://www.statewatch.org/news/2018/oct/eu-council-ceas-asylum-border-procedure-13376-18.pdf.

and the Parliament to be "realistic and pragmatic" and adopt five of the seven proposals.[7] Still, this turned out to be too little too late to influence the discussions.

Because of these entrenched divisions between member states, and the lack of procedural decisions to proceed despite them, no significant progress was made on the seven CEAS proposals prior to the European Parliament elections in May 2019 or the change of the European Commission in late 2019. The new Commission announced in February 2020 that it planned to drop its proposals on both Dublin and asylum procedures. By contrast, the proposals that had made the most progress dealt with the external dimension (such as the revised European Border and Coast Guard Regulation, the revised Visa Code, and the recast Return Directive), as discussed in a later section.

Proliferation of national and bilateral policy making

In the absence of progress at the EU level, policy making has shifted decisively to national and bilateral modes. Throughout 2018 and 2019, ad hoc initiatives addressing the internal dimension of asylum policy multiplied, led by either individual member states or 'coalitions of the willing.'

At the June 2018 European Council summit, expectations were high for breaking the deadlock on several proposals, but no agreements or serious commitments were reached. On the sidelines of the summit, however, Germany began negotiating bilateral agreements with several member states to address secondary movements by securing quick transfers of asylum seekers who had been registered elsewhere. Administrative arrangements with Spain, Greece, and Portugal entered into force later that year.[8]

These arrangements were presented as an interim solution in the context of stalled negotiations, but faced substantial criticism for attempting to bypass the existing legal framework (ECRE 2018, 7). First, while replicating commitments that already existed under the Dublin III Regulation, the agreements provided fewer procedural safeguards and fundamental rights protections for asylum seekers before and after the transfer than those afforded by the regulation. In doing so, the agreements violated the applicable EU law, and should not have been applied (Hruschka 2019), as was later confirmed by a German administrative court.[9] Second, experts stressed that they undermined the credibility of the current and any prospective asylum package, as they opened up the possibility of member states openly violating the asylum standards therein (ECRE 2018, 7). Third, concerns were raised about negotiations that would have an impact on EU policies being conducted without the parliamentary and public scrutiny that EU-level procedures normally receive (Refugee Support Aegean 2018).

Two proposals advanced by the Austrian Council Presidency in the second half of 2018 also reflect the tendency toward national action. In September 2018, Austria and Italy issued a proposal to process asylum seekers on ships (*Deutsche Welle* 2018). The following month, Austria and Denmark released a joint vision paper.[10] In it, they called for providing protection only to those individuals who cannot find asylum closer to their home country. All others would be denied asylum and would, instead, get European economic assistance in their region. Both ideas were quickly dismissed as incompatible with international law (Dastyari and Ghezelbash 2018; Ruhs and Barslund 2018).

In 2019, unilateral or coalition-of-the-willing approaches gained further prominence, with two particularly relevant initiatives. One is a temporary disembarkation and relocation mechanism established for individuals rescued in the Mediterranean (the 'Malta Declaration'). Another is a series of non-papers by member states in late 2019 in the context of the upcoming New Pact on Migration and Asylum. Both initiatives reveal the growing polarization of member states, and the urgency of addressing it.

The Malta Declaration

A long series of high-profile cases of search and rescue operations in the Mediterranean took place in the summer of 2019. In several of the cases, Italy and

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[6] European Council, European Council Conclusions of 28 June, Brussels (2018), https://www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/.

[7] European Commission, "Remarks by Commissioner Avramopoulos on Progress Made under the European Agenda on Migration," Brussels (2018), https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_18_6660.

[8] Hellenic Republic and Federal Republic of Germany, "Administrative Arrangement on Cooperation when Refusing Entry to Persons Seeking Protection in the Context of Temporary Checks at the Internal German-Austrian Border," Federal Ministry of the Interior, Building and Community, Berlin (2018); Kingdom of Spain and Federal Republic of Germany, "Administrative Arrangement on Cooperation between Germany and Spain when Refusing Entry to Persons Seeking Protection in the Context of Temporary Checks at the Internal German-Austrian Border," Federal Ministry of the Interior, Building and Community, Berlin (2018); and Federal Ministry of the Interior, Building and Community, "Federal Minister of the Interior Seehofer Welcomes his Portuguese Counterpart," Berlin (2018), https://www.bmi.bund.de/SharedDocs/pressemitteilungen/EN/2018/portugiuese-counterpart.html.

[9] Administrative Court of Munich, Case M 18 E 19.32238, Amygdaleza Detention Center v. Bundesrepublik Deutschland, August 9, 2019, https://www.proasyl.de/wp-content/uploads/Eilbeschluss-VG-M%C3%BCnchen_8.8.2019-2.pdf.

[10] Federal Ministry of the Interior, Republic of Austria and Ministry of Immigration and Integration, Denmark, "Vision for a Better Protection System in a Globalized World" (2018), https://uim.dk/filer/nyheder-2018/vision-for-a-better-protection-system-in-a-globalized-world.pdf.

Malta did not allow the people rescued at sea to disembark in their ports for up to 19 days, until other member states had agreed to relocate them. In this context, and under Franco-German impetus, several informal discussions were held on a predictable mechanism to manage future cases. A meeting in Malta on September 23, 2019 sought to formalize the agreement (the Malta Declaration), which was signed by France, Germany, Italy, and Malta.

According to the leaked Joint Declaration of Intent, the participating states would allow people rescued by private vessels to have access to a safe port, which could be rotated on a voluntary basis.[11] Following disembarkation, participating states would relocate the individuals rescued based on predeclared pledges and within a period of four weeks. Rescued migrants would be subject to fast-tracked asylum and return procedures (if applicable). The mechanism would act as a pilot for six months, yet could be suspended in the event of disproportionate migratory pressure. The agreement therefore envisions solidarity with a very limited scope, namely when it is least urgent and for a small percentage of arrivals. Only 9 percent of the migrants who entered Italy irregularly in the 14 months before the Malta Declaration had been rescued by nongovernmental organizations (NGOs); all the others had arrived autonomously and were excluded from relocations (Villa and Corradi 2019).

Similar to other ad hoc initiatives, the informal, opaque, and extra-Treaty nature of the agreement also raises some legitimate concerns. These include questions over whether the streamlined asylum and return procedures would comply with the minimum safeguards expected in the EU asylum acquis. Notably, there is a lack of transparency or systematic oversight of the relocation process, including whether existing family ties would be considered (Neidhardt et al. 2019, 4). Leaked guidelines on the disembarkation and relocation process reference the possibility for states to indicate migrant "profiles" that they are willing to accept, which could give way to discriminatory practices.[12] Relevant questions about the agreement's exact terms remain unanswered, limiting judicial and democratic scrutiny.

The Malta Declaration has likewise received a cold reception from other member states. It was presented at the Justice and Home Affairs Council meeting on October 8, 2019 with a view to securing relocation commitments from additional member states. As was made clear from the outset by the original signatory states, success would depend on widespread endorsement. However, only three more countries confirmed their support—Ireland, Luxembourg, and Portugal—with at best a lukewarm response from some others. States that have traditionally rejected responsibility-sharing mechanisms, including the Visegrad group, Austria, and Denmark, remained opposed (Bault 2019). At the same time, the discussions revealed the growing divisions between member states on the external border: all other states of first arrival also rejected the Malta Declaration. Cyprus, Greece, and Bulgaria submitted a paper on the Eastern Mediterranean Migration Route Initiative, calling for greater focus on and resources for the region (Barigazzi 2019). Spain refused to participate in relocations, and reiterated that solutions must apply to the entire Mediterranean, and not only to Italy and Malta (Abellán 2019).

The Malta agreement has remained instrumental in coordinating disembarkations and relocations since then. The Commission stated that in 2019, it had coordinated the relocation of 1,000 people rescued at sea from Italy and Malta in the context of the Malta Declaration and earlier ad hoc arrangements (Schieffer 2020). Although as many as 10 member states have participated at one point, most of the relocations appear to have been to France and Germany. Many had hoped that the Malta Declaration would be a gesture of solidarity that could serve as a litmus test for states' willingness to redistribute asylum seekers on a limited scale, perhaps gradually unlocking compromise on Dublin. Instead, it has confirmed the difficulty of reaching an agreement even on responsibility-sharing schemes that are ad hoc, temporary, and voluntary.

Member states' policy positions

As a second development, the autumn of 2019 was marked by a series of position papers on European

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[11] See the "Joint Declaration of Intent on a Controlled Emergency Procedure—Voluntary Commitments by Member States for a Predictable Temporary Solidarity Mechanism," Valletta, September 23, 2019 (published by Statewatch), http://www.statewatch.org/news/2019/sep/eu-temporary-voluntary-relocation-mechanism-declaration.pdf.

[12] Council of the European Union, General Secretariat, "Guidelines on Temporary Arrangements for Disembarkation," Brussels (2019), http://statewatch.org/news/2019/jun/eu-council-wk-guidelines-on-temporary-arrangement-disembarkation.pdf.

migration policies released by several member states. These sought to inform the Commission's New Pact on Migration and Asylum—a new proposal for reforming the European asylum system expected to be published in the late spring of 2020.

One of the most impactful proposals came from Germany in November 2019 and advocated a "reorientation" of the CEAS.[13] It proposed, to begin with, screening asylum applications at the EU's external border in a quick "initial assessment." The EU asylum agency (EUAA, currently the European Asylum Support Office, EASO) would play a strong role in these assessments. Asylum seekers with manifestly unfounded or inadmissible applications—potentially including individuals traveling from a safe non-EU country—would be denied entry into the EU and swiftly returned with the support of Frontex.

For applicants who were allowed to enter the EU, the EUAA would determine which member state should be responsible for examining their asylum applications and making final decisions. Each state's predefined responsibilities, or 'fair share,' would be calculated based on population size and GDP. Individuals would be transferred to the responsible state, which would be permanently responsible for that person's asylum application and, if applicable, return procedures. Applicants would only receive accommodation and social assistance in the member state responsible.

France's non-paper addressed similar issues.[14] It called, first, for mandatory accelerated asylum procedures in 'controlled' centers at the external border, followed by swift returns by Frontex of those rejected, which echoed the German proposal. Second, it called for a mandatory solidarity mechanism among EU member states for those in need of protection in 'crisis periods.' There would be additional, systematic solidarity measures for individuals rescued at sea, not just in crisis periods, so as to secure southern states' cooperation on disembarkation. Solidarity would primarily involve relocations, but states that refused to accommodate asylum seekers could also make substantial financial, material, or personnel contributions to relevant EU agencies. A suspension of EU funds could apply for states that contributed in neither way.

Greece issued two statements. A non-paper in December focused on returns (ANA-MPA 2019). It argued for, among others, a new framework on the mutual recognition of return decisions within the EU—so that return decisions issued by the responsible state take precedence over Dublin transfers—and on a greater use of leverage to secure readmission cooperation with non-EU countries. Greece issued a further position paper in January 2020 (*Ekathimerini* 2020). It stressed the need for a mandatory responsibility-sharing mechanism, not only in terms of financial and humanitarian assistance, but also the hosting of asylum seekers.

A leaked document from the Finnish Presidency of the Council emphasized the need to accelerate readmission cooperation on returns, including through broad use of leverage.[15] Denmark, in turn, issued a non-paper calling for the external processing of asylum seekers in reception centers in North Africa, while withdrawing the possibility to spontaneously apply for asylum in Europe (Thobo-Carlsen 2019). Finally, Italy issued a non-paper, which was not circulated, but which reportedly also focused on returns and on restoring a fully functioning Schengen area (Eder 2019).

A couple of observations can be made about this series of proposals. First, many of these ideas are not new. Rather, they are often proposals that have been previously rejected due to the considerable practical or legal obstacles to their implementation, due to the considerable weakening of safeguards for migrants they entail compared with the existing EU framework, or due to the inability to secure EU-wide commitments on them. Typically, they disproportionately reflect the interests of the member state drafting the proposal, and thus will not necessarily be compatible with others. As such, these modes of policy making are more likely to further polarize and impede discussions on a common asylum system than they are to produce a new way forward.

External processing, which is advocated by Denmark, was discussed extensively in EU-wide debates in 2018, and subsequently in the Austrian-Danish proposal of that same year. Although the European Commission was tasked with examining the feasibility of this approach, it was later abandoned.[16] This was, in part, due to the legal and practical hurdles to its implementation, including non-EU countries' unwillingness to host processing centers (McNamara 2018; Carrera and Guild 2017). The screenings at the border proposed by Germany incorporate accelerated border procedures, which have already proven contentious in both the Council and the European Parliament to the point of blocking any progress on the proposed asylum procedures regulation. If they are to be carried

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[13] See "Food for Thought: Outline for Reorienting the Common European Asylum System", Berlin, November 13, 2019 (published by Statewatch), http://www.statewatch.org/news/2019/dec/eu-asylum-FoodForThought-GermanNoPaper.pdf.

[14] Derived from the document "Refondation de l'espace Schengen," to which the author had access through electronic correspondence on a confidential basis at the time of writing, in January 2020. For further details, contact the author at o.sundberg@epc.eu.

[15] Council of the European Union, "Policies and Tools to Enhance Readmission Cooperation—Presidency Discussion Paper," Brussels (2019), http://www.statewatch.org/news/2019/nov/eu-council-readmission-cooperation-13190-19.pdf.

[16] European Commission, "Managing Migration: Commission Expands on Disembarkation and Controlled Centre Concepts," Brussels (2018), https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4629.

forward, they will need to incorporate an innovative way of addressing earlier concerns. Certain significant obstacles, such as the compatibility of accelerated procedures with minimum safeguards for people seeking asylum, how large-scale detention can be avoided, and whether they are feasible in practice, have not yet been overcome.

Second, the proposals reflect growing differences among member states' positions, even though there are some areas of agreement. For example, states share an interest in the external aspects of migration management, most notably return and the use of leverage to increase readmission cooperation. Several proposals also emphasize the need for an emergency mechanism to respond to future surges in arrivals (*Ekathimerini* 2020), and reflect a consensus that "Dublin has failed" and will need substantial reform.[17] Crucially, however, they continue to disagree on what should replace Dublin and on the principles that should guide the allocation of responsibility in the future, whether during a 'crisis' or not.

Germany advocates a mandatory relocation system, to which the Visegrad states immediately expressed their opposition (*Hungary Journal* 2019). As noted above, long-standing divisions over responsibility sharing remain entrenched, even when it concerns only temporary, limited, and voluntary commitments, such as under the Malta Declaration. At the same time, Greece has stressed that any system without compulsory relocations, even if it entails financial or other forms of solidarity as in the French proposal, would be "unfair," "inadequate," and "against our fundamental values" (*Ekathimerini* 2020). Moreover, Greece has asserted that responsibility should not be permanently allocated to one state; yet this is a core tenet of the German proposal, so as to avoid secondary movements and duplicating assessments of an asylum application.

These divisions risk continuing to block progress on the future of European asylum policy. The Commission's New Pact on Migration and Asylum is premised on the goal of building consensus among member states; this will be no easy task.

As leaked details of discussions on the new pact suggest, the most likely path forward looks set to involve a combination of mandatory flexible solidarity and border procedures. As in the German proposal, this combination would seem to be more palatable and to give all states something to support: stronger border controls would most probably be made a pre-condition for any form of responsibility sharing and vice versa. On solidarity, member states' positions are bound to lead to a balance between some form of substantial solidarity being guaranteed to southern member states, and some form of flexibility being granted to Central European states that refuse relocations. This will involve either mandatory contributions or strong financial incentives to contribute. It would also likely be combined with efforts to establish a border procedure, which is either partly or fully mandatory. To ensure its feasibility, and to avoid placing too much pressure on states of first arrival, other states will need to contribute substantial resources to Frontex and EASO to facilitate asylum assessments, the allocation of responsibility, and return procedures if appropriate.

If this is the way forward, the degree of existing fragmentation within the EU should not be underestimated. The proposals will still require difficult negotiations before getting the support of member states, as several red lines will necessarily be crossed. Furthermore, important implementation issues will remain, such as how to avoid unacceptably weakening safeguards on asylum procedures or giving rise to unsustainable large-scale detention, as well as how to secure sufficient, reliable, long-term solidarity, whether through relocations, financial contributions, or otherwise.

Winding back states' divisions will be critical under this Commission. As noted throughout this section, the increasingly unilateral and bilateral modes of policy making they have fostered are unlikely to be constructive to long-term reform. For a start, they tend to limit public scrutiny and bypass the procedural expectations of policies that have an EU-wide impact. Furthermore, they tend not to be workable proposals that can translate effectively to the EU level. Finally, they undermine confidence in the future CEAS. By creating 'interim' alternatives to the existing legal framework, states complicate efforts to develop binding legislation and secure buy-in for harmonization efforts. Member states will not be more inclined to comply with the future package, or accept compromises reached at the EU level, if earlier compromises have been ignored by certain countries. This is particularly problematic when overt attempts to evade CEAS safeguards or replace its processes unilaterally go unchallenged by the Commission. In other words, treating the CEAS as a 'lame duck' is likely to be self-fulfilling.

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[17] "Food for Thought: Outline for Reorienting the Common European Asylum System," Berlin, November 13, 2019 (published by Statewatch).

2.2 Developments in EU external migration policy

Whereas the internal dimension of EU migration policy has been marked by stalling progress and increasing divisions in member states' positions, the external dimension has taken center stage as a policy area where progress appears easier to achieve. Efforts have concentrated, in particular, on strengthening cooperation with non-EU countries to manage irregular arrivals and on efforts to increase the rate of return and readmission of migrants without permission to remain in the EU. Other aspects of the external dimension, such as resettlement or developing labor migration channels, have received less attention.

Partnerships with non-EU countries to limit arrivals through irregular channels have intensified. Much of this has taken place under the EU Emergency Trust Fund for Africa (EUTF), which targets countries of origin and transit and has improved migration management as a primary objective. As of January 2020, €4.4 billion had been approved (see table 2).

Cooperation with Libya and Turkey received specific attention in 2019. Despite facing questions from the European Parliament among others, the European Commission has continued the EU's partnership with the Libyan coastguard, which includes training, information sharing, and considerable financial support.[18] Meanwhile, cooperation under the EU-Turkey Statement of 2016 has come under increasing strain. Turkish President Recep Tayyip Erdoğan has made recurring threats to cease patrolling the border in the absence of more financial support. These escalated in early March 2020 following his announcement that Turkey had 'opened the doors' to asylum seekers hoping to enter Europe. Although the Commission has so far stood by the agreement and discussions are ongoing on a further allocation of funds to Turkey, the form of future cooperation under the Statement remains unclear at the time of writing.[19]

Table 2 Allocations under the EUTF, January 2020

Region	North of Africa	Sahel/Lake Chad	Horn of Africa
Countries	Morocco, Algeria, Tunisia, Libya, Egypt	Burkina Faso, Cameroon, Chad, Cote d'Ivoire, the Gambia, Ghana, Guinea, Mali, Mauritania, Niger, Nigeria, Senegal	Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Tanzania, Uganda
Total funds to region	€ 807 million	€ 2,023 million	€ 1,611 million

Source: European Commission, "Factsheet—EUTF for Africa: The EU Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa," Brussels, 2020.

Table 3 Returns of migrants following return decisions by EU countries, 2014—18

Year	2014	2015	2016	2017	2018
Issued return decisions	470,080	528,645	486,150	505,300	478,155
Returns conducted	170,415	196,190	228,905	189,740	170,360
Rate of effective returns (%)	36.3	37.1	47.1	37.6	35.6

Source: Eurostat, own compilation.
Note: Figures are for the EU28 and only include returns to non-EU countries, not within the EU.

[18] European Commission, "EU Support on Migration in Libya: EU Emergency Trust Fund for Africa—North of Africa Window," Brussels (2019), https://ec.europa.eu/trustfundforafrica/sites/euetfa/files/eutf-factsheet_libya_dec_2019_1.pdf.
[19] The situation on the Greece-Turkey border was continuing to unfold.

EU return and readmission policy

At the same time, increasing returns of migrants without a legal right to remain has grown as a political priority. The rate of effective return to non-EU countries, or the percentage of return decisions that are actually enforced, has mostly remained under 40 percent.[20] These include voluntary returns following an order to leave, which are approximately half of all returns (see table 3).

These results vary significantly from one member state to another. Between 2016 and 2018, Portugal, Hungary, Slovenia, the Czech Republic, and France had the lowest rates of return (all under 15 percent), whereas Malta, Latvia, Poland, Romania, and Lithuania were all above 85 percent (see figure 1).

The figures also varied by the returnees' country of nationality. Of the countries for which the largest number of return decisions were issued across 2016-18 (over 20,000 decisions), Albania, Serbia, Kosovo and Ukraine had the highest rates of return. Mali, Guinea and Syria had the lowest rates, all below 7 percent. Rates for a selection of countries with a high number of return decisions are shown in figure 2.

The EU has long reiterated that effective expulsion is a prerequisite for the integrity of its asylum and mi-

Figure 1 Breakdown of return rates by EU countries, 2016−18
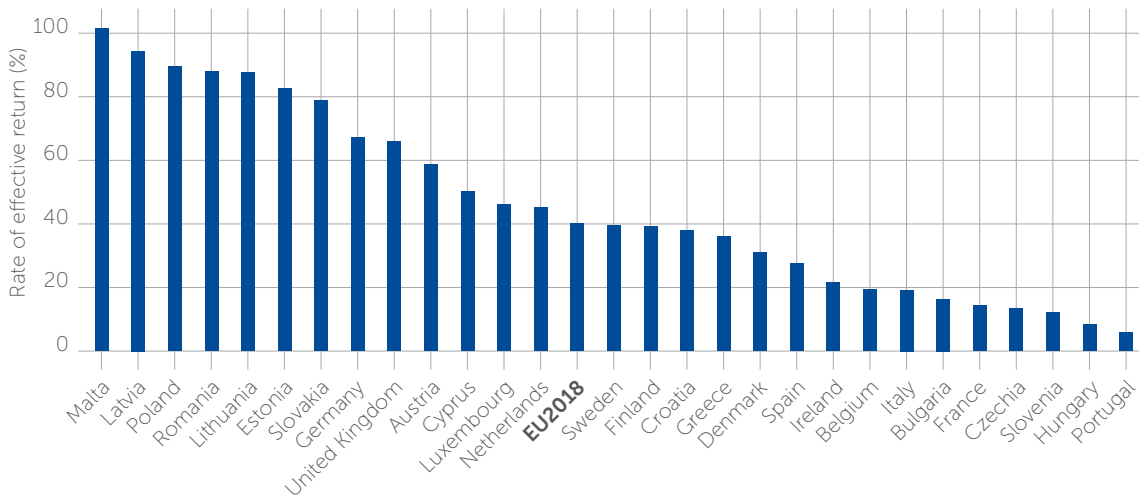
Source: Eurostat and own compilation.
Note: The figures only include returns to non-EU countries, not within the EU. The absolute number of return decisions issued by member states from 2016-18 vary widely, from 1,400 in the case of Malta, to 271,235 in the case of France.

Figure 2 Breakdown of return rates by nationality of selected non-EU countries, 2016-18
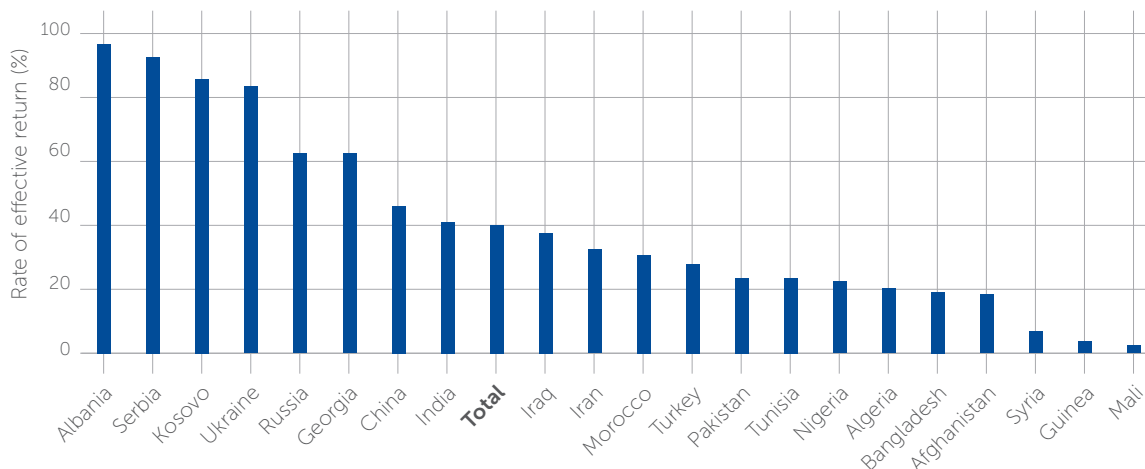
Source: Eurostat and own compilation.
Note: The figures relate to the nationality of individuals issued return decisions and returned. However, not all people were returned to their country of nationality. Only nationalities for which at least 20,000 return decisions were issued from 2016-18 are included. The absolute number of return decisions issued for the countries included from 2016-18 vary widely, from 22,400 in the case of Mali to 101,015 in the case of Morocco.

[20] European Commission, "2018 Annual Activity Report—DG Migration and Home Affairs," Brussels (2019, 10), https://ec.europa.eu/info/sites/info/files/home_aar_2018_final.pdf.

gration system. As such, both the Jean-Claude Juncker (2014–19) and Ursula von der Leyen (2019–24) European Commissions have sought to increase the low rate of returns. In 2018, the Commission advanced the goal of achieving a "return rate of at least 70% by 2020."[21] While the new Commission has dropped that unrealistic figure, it has retained the emphasis on developing a "more robust system of readmission and return."[22] It is already clear from the hearings, mission letters, and recent statements of the two commissioners with a migration portfolio, Ylva Johansson and Margaritis Schinas, that this will remain a priority in the New Pact on Migration and Asylum.

The Commission has identified several factors influencing the low rate of returns. These include the lack of cooperation by non-EU countries (such as in issuing travel documents), practical problems in the returning member state (such as in determining the identity of a returnee), and migrants' unwillingness to cooperate with return decisions for various reasons. Yet, there are other limitations to a high rate of return that will be much harder to address. For instance, many people subject to return decisions cannot be returned without violating international law, and in particular the principle of non-refoulement. Some of the countries with the largest number of pending returns in 2019 are refugee-producing or conflict-ridden, such as Afghanistan, Mali, and Iraq.[23] Returns to these countries, or to others like Turkey that pose risks of indirect (or secondary) refoulement, have faced repeated legal challenges across the EU (Sundberg Diez 2019). This can occur, for example, because EU asylum procedures under the Qualification Directive do not consider all grounds that could amount to refoulement, and because individuals who would face persecution if returned may be refused international protection on procedural or technical grounds. This is the case for a non-trivial proportion of rejected applications. At the same time, scholars have continually highlighted concerns about how data on returns are collected, including the likely double-counting of return decisions and undercounting of unmonitored voluntary returns (ibid., 12).

Determining the scale of these limitations (the number of 'unreturnable' people, or the number of unrecorded returns) is a difficult feat. Whereas returning individuals without a legal right to remain continues to be a legitimate EU policy objective, increasing the rate of returns much beyond the current rate may be both a more nuanced and a more complex policy issue than present policies suggest.

Recent policy developments

Several initiatives aimed at accelerating returns have been launched in the recent past, spanning a wide range of policy areas. These include revisions of the Visa Code, the European Border and Coast Guard Regulation, and the Return Directive, as well as intensified negotiations on readmission agreements with non-EU countries.

The amendment of the Visa Code was proposed in March 2018 and entered into force in February 2020. It expands the role of visa policy in readmission cooperation with non-EU countries. It establishes annual assessments by the Commission of the level of non-EU countries' cooperation on readmission. Based on these assessments, the Commission will propose either visa restrictions or visa facilitation measures regarding specific non-EU countries to the Council. In this way, the EU hopes to incentivize further cooperation.

The revised European Border and Coast Guard (Frontex) Regulation was proposed in September 2018. It was formally adopted in November 2019 and entered into force that December. It incorporates a significantly expanded mandate for the agency to assist member states in conducting returns, including in the preparation of return decisions and acquisition of travel documents. The number of return operations coordinated by Frontex had already risen dramatically, from approximately 3,500 in 2015 to 14,000 in 2017.[24] This remained only 9 percent of all effective returns, however, and the agency's role is projected to increase further.

In September 2018, the Commission also proposed the first recast of the Return Directive since its entry into force in 2010. The Directive sets out common standards and procedures for member states to apply when returning non-EU nationals. The recast proposal seeks to expedite returns by, among others, expanding the grounds for detention, broadening the use of entry bans, extending returnees' obligations to cooperate, and introducing accelerated return procedures at border posts. The European Parliament issued a first draft report in response in January 2019, although the

[21] European Commission, "Managing Migration: Possible Areas for Advancement at the June European Council," Brussels (2018, 3), https://ec.europa.eu/commission/sites/beta-political/files/euco-migration-advancement-june-2018_en.pdf.

[22] European Commission, "Mission Letter to Ylva Johansson, Commissioner-designate for Home Affairs," Brussels (2019, 5), https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-ylva-johansson_en.pdf.

[23] Frontex, "Risk Analysis for 2019," Warsaw (2019, 25), https://frontex.europa.eu/assets/Publications/Risk_Analysis/Risk_Analysis/Risk_Analysis_for_2018.pdf.

[24] Frontex, "Risk Analysis for 2018," Warsaw (2018, 29), https://frontex.europa.eu/assets/Publications/Risk_Analysis/Risk_Analysis/Risk_Analysis_for_2018.pdf.

rapporteur changed following the European Parliament elections the following May (issuing an updated draft report in February 2020). The Council agreed on a partial position in June 2019—an agreement could not be reached on contentious provisions related to accelerated border procedures. Negotiations have not yet begun at the time of writing.

Meanwhile, negotiations with non-EU countries on readmission cooperation have continued, and have taken an increasingly informal form. While the EU has reached only one formal readmission agreement since 2016 (with Belarus), it has, over the same time span, reached at least 10 informal arrangements. These are listed in table 4. Such informal arrangements tend to be easier to negotiate, but they are not legally binding international agreements and, as such, there is a lack of democratic and judicial scrutiny over their contents (Sundberg Diez 2019). The Commission continues to pursue additional partnerships: negotiations are underway or have recently stalled with Morocco, Tunisia, Algeria, Nigeria, Jordan, and China.

One common thread in these initiatives on return is the resort to conditionality to increase cooperation from non-EU countries on readmission. New policy tools, such as the Visa Code, increasingly allow member states to make cooperation in other policy areas conditional on a non-EU country's support for the EU's migration-management objectives. Discussions on extending this approach to other policy areas—such as development funding under the new EU budget, trade, or the creation of legal pathways—have recently gained traction. These developments suggest that the EU's approach to readmission cooperation will rely heavily on conditionality, and on employing 'all possible leverage' over non-EU countries. However, the effectiveness of this strategy is uncertain, and its implications for broader EU policy objectives need to be investigated. These points are discussed in the following chapter.

Table 4 Informal EU-wide readmission agreements with non-EU countries since 2016

Country	Format of informal cooperation	Date
Cote d'Ivoire	Joint document	July 2, 2018
The Gambia	Good Practices	May 8, 2018
Ethiopia	Admission Procedures	February 5, 2018
Bangladesh	Standard Operating Procedures	September 25, 2017
Guinea	Good Practices	July 24, 2017
Mali (subsequently withdrew)	*Joint Migration Declaration*	*December 11, 2016*
Belarus	Mobility Partnership	October 13, 2016
Afghanistan	Joint Way Forward	October 2, 2016
Ghana	Joint Migration Declaration	April 16, 2016
India	Common Agenda on Migration and Mobility	March 29, 2016
Turkey	Joint Statement	March 18, 2016

Source: Own compilation based on official EU documents.

3 Conditionality for readmission cooperation

Lead Author: Olivia Sundberg Diez

Increasing the returns of migrants without a legal right to remain is gaining prominence as an EU political priority. In particular, there is a growing emphasis on the use of conditionality to secure other countries' cooperation in readmitting migrants. In the first section, this chapter provides an overview of this trend and the factors explaining non-EU countries' hesitation to cooperate with the EU on readmission absent sufficient incentives. The next section discusses the effectiveness of conditionality and obstacles that need to be navigated in its implementation. Finally, the third section highlights the shift within the EU toward a more restrictive use of conditionality for readmission cooperation, also referred to as 'less for less' rather than 'more for more,' which risks multiplying the complications of an already sensitive policy area.

3.1 Increasing calls for conditionality

As outlined in the previous chapter, a growing number of EU initiatives aimed at increasing returns emphasize the use of conditionality. Accordingly, cooperation in areas of common interest to the EU and non-EU countries—such as capacity building, legal migration pathways, visas, development assistance, refugee resettlement, and trade—is increasingly viewed as leverage to secure readmission cooperation.

The EU has repeatedly called for using "all leverage and incentives at its disposal" to secure migration partnerships with non-EU countries.[25] This approach also became a core tenet of the EUTF established in 2015 and the 2016 Partnership Framework (Cortinovis and Conte 2018). Under these frameworks, funds and projects were allocated to states as a function of their cooperation with the EU on migration-management objectives, including readmission, and their success was often measured based on their impact on migration flows. At the same time, the Commission has made repeated calls to identify incentives to enhance readmission cooperation by non-EU countries.[26] It often negotiates readmission agreements and visa facilitation agreements simultaneously to make partnerships on the former more attractive.

Calls to expand the conditionality approach have continued to grow in prevalence recently. The mission letter sent to Jutta Urpilainen, Commissioner for International Partnerships, for example, reflects the precedence that migration will enjoy over other policy areas in her portfolio:[27] "You should support efforts to reach comprehensive partnerships with countries of migration origin and transit, bringing together all instruments, tools and leverage. You should therefore be ready to adapt bilateral funding to achieve our objectives on migration management."

This trend is also clear in legislative developments. Most significantly, the revised Visa Code, which entered into force in February 2020, will enable the introduction of visa restrictions or facilitation as a func-

25 European Commission, "A European Agenda on Migration," Brussels (2015, 10), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf.

26 European Commission, "Fifth Progress Report on the Partnership Framework with Third Countries under the European Agenda on Migration," Brussels (2017, 2), https://eeas.europa.eu/sites/eeas/files/20170906_fifth_progress_report_on_the_partnership_framework_with_third_countries_under_the_eam_en_0.pdf.

27 European Commission, "Mission Letter to Jutta Urpilainen, Commissioner-designate for International Partnerships," Brussels (2019, 5), https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-jutta-urpilainen_en.pdf.

tion of a country's readmission cooperation, affecting factors like visa processing times and fees. This new legislation followed and formalized the legal basis for the "informal visa leverage mechanism," which had been established by Coreper[28] in 2017 but never used in practice.[29] The assessments of a country's cooperation will consider such factors as the number of return decisions and actual returns to that country, assistance in identification of nationals, member state reports of cooperation, or the signing of a readmission agreement. The precise benchmarks for what will be considered "sufficient" cooperation, and how this will be reliably quantified, remain unclear.

Member states have signaled their intention to broaden this approach to other policy areas. For example, conditionality has featured significantly in negotiations over the future of EU external funding in the next Multiannual Financial Framework (MFF) for 2021–27. Several member states have called for development assistance under the Neighbourhood, Development and International Cooperation Instrument to be subject to annual reviews of non-EU countries' performance on migration management, including readmission, as is the case for visas (ECRE 2020, 2). In addition, in late 2019 a non-paper submitted by Greece and a leaked discussion paper by the Finnish Presidency of the Council both proposed a robust use of leverage beyond the Visa Code, for instance by linking trade, development aid, and the creation of legal pathways to readmission cooperation (*ANA-MPA* 2019).[30] These positions appear to have the support of a majority of member states. Conditionality will therefore likely play a significant role in this legislative cycle.

The high costs of readmission

The EU's resort to creating incentives for readmission is based on the recognition that readmission is a fundamentally asymmetrical policy objective, with non-EU countries bearing the brunt of the reciprocal obligation to take individuals back. Cooperating on readmission is often not in non-EU countries' interests for multiple reasons, as discussed further in chapter 4. It can be costly due to the structural and institutional reforms needed to implement the agreement or

the socioeconomic reintegration of returnees. It also undermines migration's function as a safety valve to relieve pressure on local economies and, crucially, as an important long-term source of income through remittances (Cassarino 2010, 33; Carrera et al. 2016, 6).

Furthermore, readmitting one's own nationals can have high political costs and damage the state's relations with its citizens. In some cases, large-scale returns can pose risks for a country's political stability. A public backlash led Mali, for example, to withdraw from an agreement with the EU in 2016 (*AFP* 2016). Other countries, such as Bangladesh and Afghanistan, have repeatedly refused to sign formal readmission agreements with the EU yet agreed to informal arrangements, which reduce the publicity around the cooperation.

Despite this, states vary in their willingness to cooperate in different cases. In particular, countries have been reluctant to cooperate on readmitting nationals of other states. As a rule, EU agreements expect non-EU countries to accept non-nationals, such as citizens of neighboring states that are unsafe or unwilling to readmit them, as well as their own nationals. This is unpopular in non-EU countries since it may compromise their relations with those returnees' countries of origin, and since there is no guarantee that the latter would eventually take them back. For transit countries, which may receive arrivals from multiple directions at once, this can generate fears of considerable economic burdens. EU member states' insistence on this clause blocked progress on readmission agreements with Tunisia and Morocco, among others (Carrera et al. 2016, 6; Abderrahim 2019, 17-19).

In addition, non-EU countries are more resistant to cooperation on forced returns of their own nationals. Voluntary returns do not carry the same negative public perception domestically, and so are rarely problematic. Iraq, the African Union, and several West African states have stressed the difficulty of cooperation on forced returns and called for voluntary returns to be given more attention in negotiations (Bowcott 2012; Barbière 2017; Zanker et al. 2019). Voluntary departures are around 50 percent of all returns from the EU currently; despite this, they are increasingly deprioritized in EU policy compared with forced returns (Sundberg Diez 2019, 15).

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[28] The Committee of the Permanent Representatives of the Governments of the Member States to the EU.

[29] European Commission, "Impact Assessment Accompanying the Document, Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EC) No. 810/2009 Establishing a Community Code on Visas (Visa Code)," Brussels (2018, 23), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_7173_2018_ADD_2&from=DE.

[30] See also Council of the European Union, "Policies and Tools to Enhance Readmission Cooperation," (2019).

3.2 Is conditionality an effective response?

The effectiveness of conditionality in securing readmission cooperation in the past is unclear. The Commission's impact assessment of the revised Visa Code itself states that "there is no hard evidence on how visa leverage can translate into better cooperation of third countries on readmission" besides limited "anecdotal experience."[31] The case studies are Bangladesh and Cote d'Ivoire: visa restrictions were reportedly instrumental in reaching readmission arrangements in September 2017 and July 2018 respectively.[32] However, the return rate has not increased in either case since then; in fact, it has fallen. While this could be due to a wide range of factors, it does not facilitate extrapolation about the success of conditionality elsewhere.

A mechanism similar to the one contemplated in the Visa Code reform has been employed in the Western Balkans since 2016, enabling visa-free travel to be suspended if countries do not cooperate on returns, among other benchmarks. The Western Balkans have had return rates from the EU of over 100 percent in recent years, although these have fallen recently.[33] That being stated, the Western Balkans are unique in their geographical proximity to the EU, the intensity of cooperation in other areas, and the prospects of significant positive rewards in the long term, namely EU accession. Scholars have persistently pointed out that such factors make countries more likely to cooperate on readmission (Cassarino 2010, 32). Close relations and incentives of this magnitude cannot easily be made available elsewhere. In negotiations with Morocco and Tunisia, for example, the visa liberalization incentives on offer were not considered significant enough. As such, negotiations remain stalled.

Considerations on implementing conditionality

In practice, the implementation of conditionality is not straightforward, and several factors will need to be taken into account as this Commission develops its approach to readmission cooperation.

First, the incentives on offer must be significant in order to have a real impact on non-EU countries' willingness to cooperate. They must also be visible, so as to allow them to claim some political wins from negotiations with the EU. As noted above, readmission cooperation can be very difficult for non-EU countries to justify domestically and is rarely economically advantageous to them. The hostile reception in Mali of a readmission agreement with the EU in 2016, for example, was enough to lead to its withdrawal, despite it being linked to €145 million in project support (Collett and Ahad 2017, 17). If the EU is serious about readmission, it will have to scale up its offers.

Second, the incentives will need to be credible. To begin with, the EU has repeatedly been guilty of promising more than it can deliver. Member states may be unwilling to commit resettlement spots or labor migration opportunities, which fall within their powers, or to subsidize visa fees. Despite this, the EU has repeatedly overstated these possibilities to non-EU countries in an attempt to offer incentives for cooperation on migration management. For example, references to promoting legal migration and mobility have regularly featured in EU statements and meetings with partner countries. Legal migration was one of the five pillars of the European Agenda on Migration and the Valletta Action Plan in 2015, and was emphasized in the context of the 2017 EU-Africa summit (Reuters 2017). This rhetoric has not translated into practice: no serious or concrete opportunities for labor mobility have been offered by member states, and less than 1.5 percent of the EUTF budget has been directed toward regular migration channels. African actors have repeatedly voiced their dissatisfaction with the number, duration, and accessibility of legal migration pathways available as a result (Ndiaye 2020).

The same can be said for the EU's threats. Although member states generally agree on the need to increase the return rate, they have proven hesitant in the past to compromise their bilateral relationships with non-EU countries by applying conditionality (Collett and Ahad 2017, 28). Securing agreement in the Council on

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[31] European Commission, "Impact Assessment, Establishing a Community Code on Visas (Visa Code)," (2018, 31).

[32] Council of the European Union, "Policies and Tools to Enhance Readmission Cooperation," (2019, 6).

[33] European Commission, "Second Report under the Visa Suspension Mechanism," Brussels (2018), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20181219_com-2018-856-report_en.pdf.

the response to a specific country may be difficult, not least when negative conditionality is concerned. The failure to deliver on its rhetoric, in either direction, can impact the EU's credibility and countries' responses to conditionality.

Third, the EU's prospective use of conditionality may be complicated by the fact that it is generally losing leverage with key countries of origin and transit, especially in Africa. Conditionality is only likely to be effective as long as Europe is the only or the most important player in the region (ibid., 28). With rapidly increasing Chinese, Russian, and Middle Eastern investment and influence in Africa, such as the first Russia-Africa summit held last year, this is no longer the case. In the meantime, regional integration within Africa is playing a larger role. Morocco, for example, has prioritized moving closer to the African Union and the Economic Community of West African States (ECOWAS) over strengthening ties with the EU (Guild 2019, 56).

These shifts in non-EU countries' priorities have several implications for the EU. Policies that negatively affect regional cooperation or integration, such as border controls or the establishment of readmission networks within the region, may encounter more resistance than in the past. Furthermore, positive incentives offered to non-EU countries to cooperate may need to become more substantial going forward, as they compete with other regions' investments that are not tied to similar conditions. Restrictive uses of conditionality, such as the removal of existing aid or visas, may become less effective as the costs for non-EU countries of dropping out of the EU framework decrease. In short, the EU's negotiating position is becoming weaker.

Fourth, developing a coherent approach to the EU's multiple partners also poses challenges. On the one hand, a one-size-fits-all approach is certainly not practical: various forms of leverage will have different impacts on different countries, as a function of their domestic priorities. Visa restrictions are bound to be more effective on Algeria or Morocco (which requested 713,255 and 662,585 Schengen visas, respectively, in 2018) than on Guinea or Afghanistan (13,487 and 1,350, respectively).[34] Correctly identifying each partner's interests will require close and regular dialogue.

On the other hand, creating tailored packages for partner countries can itself pose problems. The discrepancies between what one country and another receives can raise questions about the credibility of partnerships with the EU (ibid.). If two countries with comparable readmission rates receive divergent visa fees or only one has access to legal pathways, if necessary to influence greater readmission efforts, that may complicate relations with non-EU countries or empower them to demand larger concessions. Countries are likely to be hesitant to follow the EU's lead on conditionality if they do not perceive it to be fair or reliable. As such, these complex trade-offs need to be navigated carefully.

Finally, it must be noted that, even at its most effective, conditionality for readmission cooperation will only have a limited impact on the overall rate of effective return. As highlighted in the previous section, the factors limiting returns from the EU are extensive, including migrants' lack of cooperation, member states' practical difficulties, and people who cannot be returned due to international law constraints, besides the widely acknowledged unreliable elements in member states' return figures. If conditionality approaches successfully and considerably increase non-EU countries' willingness to cooperate on readmission, there is still a ceiling on how much this may increase return numbers.

Given this, readmission is best regarded as a long-term policy objective and as part of a broader strategy for cooperation with non-EU countries, rather than a particularly urgent, immediate, or self-standing policy priority. In addition to the factors listed above, therefore, the use of conditionality should take into consideration its impact on broader EU policy goals. Two examples of its potential implications beyond return rates are outlined below.

Impact on broader EU objectives

Employing conditionality for readmission cooperation may also have unintended consequences for other policy areas. Two relevant implications, for relations with non-EU countries and for other related policy fields, merit discussion.

The EU has a stated interest in building sustainable partnerships with non-EU countries. As such, officials have consistently stressed that relations with Africa should be "a true partnership of equals," between "equal partners with mutual interests," and "a partnership that works on the basis of reciprocal commitments."[35] This is a critical juncture for the EU's future

[34] European Commission, "Visa Statistics for Consulates, 2018," Brussels (2019), https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-policy_en#stats.

[35] European External Action Service, "The European Union and African Union—Key Partners," Brussels (2019), https://www.africa-eu-partnership.org/sites/default/files/documents/factsheet_eu_au-21-1-2019.pdf; see also Ursula von der Leyen, "Remarks by President von der Leyen at the Joint Press Statement with Moussa Faki, Chairperson of the African Union Commission," Addis Ababa (2019), https://ec.europa.eu/commission/presscorner/detail/en/speech_19_6697.

relationship with Africa, among others through the new, comprehensive EU-Africa Strategy and the on-going negotiations for the future of the new Cotonou Agreement (or Africa-Caribbean-Pacific/EU Partnership) beyond December 2020.[36] EU officials have reiterated throughout that these strategies must be "not about Africa, but … for Africa together with Africa."[37]

Yet, the use of conditionality for readmission clashes with this rhetoric. Non-EU countries, especially in Africa, have long been frustrated with the EU's approach to cooperation and its imposition of the migration agenda over their own priorities. In 2018 and 2019, European proposals to establish disembarkation platforms for the external processing of asylum claims in North African states were met with firm opposition, as the African Union underscored that they would undermine the fundamental rights of African citizens (Boffey 2019). Several African academics have outlined concerns about the dynamics of partnerships with Europe, and the impact that the prevalence given to migration management has had on other issues of interest, such as legal pathways, remittances, and development projects (Ndiaye 2020; Thiombiano 2020; Songa 2020). African diplomats have reported feeling pressured and undermined by the EU's use of conditionality (Raty and Shilhav 2020, 10). For example, time and again objections have been raised about the lack of African ownership or influence over EUTF objectives, projects, or the implementation thereof.

As outlined in earlier sections, readmission is a controversial policy area within non-EU countries, in part due to the perception that domestic interests are being made subsidiary to the European agenda (Mouthaan 2019). The continued use of conditionality, through which policies that non-EU countries value are contingent on readmission (which is highly contentious domestically), is likely to undermine EU attempts to form sustainable partnerships. The effects go beyond immediate readmission cooperation: conditionality approaches may add unnecessary friction and mistrust to relations with non-EU countries in the long term and across policy objectives.

A further implication of conditionality relates to the efficacy of broader EU policy objectives. In those policy areas that are made subsidiary to migration management, the most effective actions will have to be compromised to incentivize progress on migration management objectives. In certain cases, policies that are made conditional on readmission cooperation may consequently not be implemented at all, despite having been in the EU's interest to begin with. This may impact a wide range of policy areas, such as effective development aid, the economic benefits of trade, tourism and labor migration, or the promotion of human rights and good governance.

In the past, critiques have centered on efforts to make development aid or resettlement conditional on migration management.[38] In the context of the EUTF, funds designated as development aid have repeatedly been allocated and evaluated according to migration-management objectives (Raty and Shilhav 2020, 14, 21). As such, migration management appears to be overtaking poverty reduction as the primary objective of development aid, in contradiction of core principles about the purpose of development assistance under the Treaty on the Functioning of the European Union.[39] Similarly, the Commission's proposal for a Union resettlement framework, which is still pending negotiations, seeks to make resettlement commitments contingent on non-EU countries' cooperation with the EU on migration management, including on readmission. This undermines resettlement's primary purpose as a humanitarian tool to assist particularly vulnerable individuals (Bamberg 2018, 10).

Most importantly, the shift in function of the funds entails that they are diverted away from where they are most effective. For example, there are recurring instances of the EUTF directing development assistance to favor countries of origin or transit, which have greater migration relevance for the EU (Cortinovis and Conte 2018, 8). This has shifted support away from poorer countries or those with the most pressing needs, which often do not produce substantial numbers of migrants. Whether aid is actually effectively employed becomes a secondary consideration. This has reverberations at the local level. NGOs and agencies operating in non-EU countries have reported being required to adjust their focus, for example, by relocating their headquarters to areas that are less in need, or by concentrating on young men, who are deemed more likely to migrate, rather than on women or other highly vulnerable demographics (CONCORD 2018, 27). These concerns have been echoed for resettlement. If resettlement places are primarily offered to countries that cooperate closely with the EU and have the most developed migration-management systems, they will leave regional resettlement blind spots. The countries with the least ability to support refugees will receive less assistance through offers to host those refugees (Bamberg 2018, 11).

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[36] European Commission, "New Africa-Caribbean-Pacific/EU Partnership: Moving Forward towards a New Partnership Fit for the Future," Brussels (2020), https://ec.europa.eu/commission/presscorner/detail/en/IP_20_248.

[37] Josep Borrell, "Foreign Affairs Council: Remarks by High Representative/Vice-President Josep Borrell at the Press Conference," Brussels (2020), https://eeas.europa.eu/headquarters/headquarters-homepage/74772/foreign-affairs-council-remarks-high-representativevice-president-borrell-press_en. [38] European Parliament, "Revision of the European Consensus on Development" (2017).

[39] See Article 208, Treaty on the Functioning of the European Union, OJ C 115/47 (9.5.2008), https://www.refworld.org/docid/4b17a07e2.html.

Finally, the policy choice of using migration-related conditionality entails a corresponding loss of EU influence in other areas. Employing two forms of conditionality simultaneously would render them ineffective: one of the two objectives must take priority over the other for the use of leverage to be credible and impactful. As such, the EU cannot effectively pursue both migration-related conditionality and human rights conditionality. The EU has faced justified criticism for financially supporting regimes that commit systematic human rights abuses, due to their relevance for migration-management objectives, such as

Libya, Sudan, and Eritrea. If migration conditionality continues to gain prominence in EU relations with non-EU countries, its credibility and financial leverage when demanding states' respect for human rights, good governance, or international law will continue to suffer (Strik 2017). This is not only important in isolation but can, in the long term, also have implications for migration flows into Europe. Addressing human rights and governance conditions in non-EU countries are key to improving migrants' vulnerabilities and tackling the causes of displacement in the long term (Chetail 2019, 46).

3.3 Current and future EU policy: A shift toward 'less for less'?

As the previous section shows, employing conditionality for readmission cooperation is, in general, a difficult policy area, and one that can have wide implications beyond the number of returns from Europe. Nevertheless, recent EU policy initiatives risk adding a further layer of complexity, by increasingly resorting to negative (less for less) conditionality.

A distinction should be drawn here between 'positive' (more for more) and 'negative' (less for less) conditionality. Whereas positive conditionality involves rewarding states for cooperative behavior, negative conditionality implies the use of sanctions or reduced benefits compared with the status quo before conditionality was applied. Both modes of conditionality are interlinked, in that positive rewards may later be withdrawn if conditions are not met so as to become negative. There is a distinction, however, regarding whether non-EU countries are presented with benefits or restrictions compared with the reference point before conditionality was implemented. The way conditionality is framed and perceived is important.

Recent initiatives on readmission cooperation at the EU level seem to pave the way for an increasingly punitive use of conditionality, focused on less for less. In

the past, positive incentives have been favored in readmission negotiations with non-EU countries, such as by negotiating visa liberalization, capacity building, or new development projects concurrently. By contrast, policy tools like the revised Visa Code emphasize the threat of withdrawing current benefits or weakening the EU's existing relationships with partner countries unless they increase their cooperation.

This punitive shift is clear from EU documents describing its new policy tools. For example, the Commission underscored and praised the fact that the Visa Code will allow the introduction of a new "possibility to adopt restrictive visa measures."[40] More generally, the Finnish Council Presidency has highlighted the need for procedures to address "situations in which a third country systematically refuses to cooperate" on readmission.[41]

The tendency toward less-for-less conditionality is due, in part, to member states' frustration about persistently low return numbers. At the same time, it reflects a general unwillingness to offer significant enough benefits so as to sway non-EU countries' positions. Negative conditionality typically involves asking less from member states, whether it be further development aid, legal pathways, resettlement com-

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[40] European Commission, "Progress Report on the Implementation of the European Agenda on Migration," Brussels (2019, 16), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20191016_com-2019-481-report_en.pdf.
[41] Council of the European Union, "Policies and Tools to Enhance Readmission Cooperation," (2019, 3).

mitments, or reduced visa fees. While it may ease political consensus building at the EU level, this shift poses additional complications.

Complications of negative conditionality

Negative conditionality is likely to have an especially adverse impact on relations with non-EU countries. When readmission negotiations are framed around the EU's withdrawal of existing cooperation or benefits, or the threat to do so, they are bound to be interpreted as a unilateral threat or ultimatum in non-EU countries. These negotiations cannot be presented domestically as an agreement reached by both countries in a spirit of partnership.

Under negative conditionality, governments that choose to increase their efforts on returns may receive no additional support in exchange. As such, they will be unable to claim wins and present the benefits of cooperation domestically, such as new legal pathways or visa facilitation regimes (Collett and Ahad 2017, 26). This may unnecessarily limit non-EU countries' room for maneuver domestically to cooperate on readmission and inadvertently bolster a public backlash against it. More broadly, it may compromise ongoing efforts to establish comprehensive partnerships with countries of origin and transit. Given the increasing presence and leverage of non-EU actors in the region, the risk that countries opt out of EU frameworks entirely should not be dismissed either.

Moreover, this approach risks leading to a vicious cycle of less for less. Removing development resources or resettlement places—for example, from countries that cooperate less on readmission—is likely to contribute to the pressure on their asylum systems. It can have the pernicious effect of limiting non-EU countries' capacity to improve their asylum and reception systems, and the resources they can direct toward reintegrating returnees. This in turn renders them less able to increase their cooperation on readmission, which may force the EU to reduce support further, while public perceptions of readmission in non-EU countries continue to worsen.

Conditionality approaches to readmission should be sensitive to how dynamics in non-EU countries can make EU pressure counterproductive. Given the multiple reasons for states' hesitation to readmit their own or other nationals, and the EU's decreasing leverage over key countries of origin and transit in Africa, the incentives offered would have to be significant.

Whereas the current EU approach relies increasingly on punitive measures and negative conditionality, offering non-EU countries benefits they would not have received in the status quo is less likely to cause tension and will allow them to claim successes domestically. As such, if the EU is to employ conditionality, more-for-more conditionality should be favored. These positive incentives should be determined in close conversation with non-EU countries, and would likely include visa facilitation and legal pathways to the EU. The potential negative implications of conditionality on the effectiveness of other policy areas also merits consideration, and should be weighed against the likely realistic impact on return rates. Making development aid or resettlement conditional on readmission cooperation, for example, may have an excessive negative effect on those policy objectives without having a logical link to readmission. Conditionality on these terms is therefore likely to be highly problematic.

The incentives on offer should also be credible, visible, and fully implemented. Partner countries have often perceived the EU as making commitments that it could not keep. False expectations and the promise of incentives that never materialize also compromise bilateral relationships. Commitments must be realistic and backed up. For example, legal pathways, if used as leverage, must be more realistic and visible than they have been in the past. Member states have different labor market needs and have opposed initiatives to harmonize labor migration, as was made clear from the negotiations on the Blue Card Directive (Groenendijk 2019, 69). That notwithstanding, creating visible and viable alternatives to irregular migration is still in EU member states' interests. In the absence of harmonization, EU institutions should encourage and secure commitments from member states as to what concessions they are prepared to make, before offering such incentives to non-EU countries.

Other aspects of readmission cooperation face substantially less resistance from non-EU countries, and prioritizing these could contribute to increasing the rate of return without compromising partnerships or broader objectives. For example, clauses that expect non-EU countries to readmit other countries' nationals have limited value and cause disproportionate friction in negotiations. These could be revised. Similarly, member states could continue efforts to increase the number of voluntary rather than forced returns, on which non-EU countries are least reluctant to cooperate. In that regard, the recast Return Directive should protect non-EU nationals' opportunities to return voluntarily and increase the reintegration support they receive when they do so (Sundberg Diez 2019, 15).

Key to these steps will be developing a better understanding of the impact of EU policies on non-EU countries and their respective domestic priorities, as discussed in the following chapter.

4 The political economy of migration governance in West Africa

Lead authors: Leonie Jegen and Franzisca Zanker

Despite the increasing attention on West African countries as a major region of origin for refugees and other migrants coming to Europe, there is little research that specifically considers the position, stakes, or interests of West African states. However, in order to understand the stakes of migration cooperation, the EU and its member states need to better understand how and in what ways African governments *prioritize* migration. This means considering migration policy interests in a more holistic way rather than reducing them to migration toward Europe, as that would render analysis of an African view incomplete. Because different migration interests can be played off against each other, it is vital to look at where irregular migration to Europe stands in relation to other issues like diaspora remittances and displacement in the country.

For research on the "Political Economy of West African Migration Governance" (WAMiG)[42] project, we employ such a holistic understanding, expanding on a point that has repeatedly arisen in previous studies for MEDAM (see box 1).

Box 1 A holistic understanding of the politics of migration

The WAMiG project assesses the *political relevance* of different types of migration journeys. In doing so, it acknowledges the overlapping nature of, for example, refugees and other migrants, as well as the agency, choice, and flexibility of individual journeys. In all the countries considered, it looks at the political role of the following aspects:

- irregular migration;
- diaspora migration;
- immigration;
- refugees and asylum seekers *from* the country; and
- refugees, asylum seekers, and displaced persons *in* the country.

The WAMiG project aims to analyze the political dimension of migration governance as well as the roles of multiple stakeholders, which reach far beyond government officials to civil society groups, international organizations, and journalists to name just a few. In short, the research examines how migration governance instruments and institutions are established, the interests and stakeholders involved (or excluded), and the societal discourse that influences these interests.

The qualitative research uses four countries as a starting point to better understand migration governance from an African perspective: Niger, Nigeria, Senegal, and the Gambia. All of them are of importance to the EU, the first three being priority countries under the EU Partnership Framework. Moreover, they represent a mix of countries of origin, transit, and destination, both small and large in size, as well as anglo- and francophone.

We conducted fieldwork in all four countries, interviewing a total of 133 policy makers, politicians, civil society activists, and academic experts. The work was mostly undertaken in the countries' capitals. In Nigeria, however, interviews of respondents were also held in Lagos and Benin City; in Senegal, interviews and/or participant observations also took place in Tambacounda and Saly. Noting the importance of discussing our research findings and analysis in the region, the research was participatory by design. The case studies were peer-reviewed, mostly by experts from the countries themselves. We presented our findings at dissemination events in Abuja, Banjul, Niamey, and Dakar between July and November 2019. Lastly, we discussed our findings with academics and civil society activists from all four countries at a stakeholder workshop in Accra. The following sections present the main findings. We conclude with recommendations on how more holistic cooperation on migration between West African countries and European partners can be achieved.

[42] The WAMiG project involves independent research conducted by the Arnold Bergstraesser Institute, within the overall framework of the MEDAM project.

4.1 The politics of migration governance

Migration and mobility are generally not considered a threat or problem in the West African context. While concerns over dangers on the routes to Europe feature in official discourse and are mirrored in political actions, migration and mobility as such are considered a common part of everyday life. The most usual form of migration in West Africa is regional migration (see for instance, Awumbila, Teye, and Yaro 2017).[43] Regional migration is safeguarded through the free movement protocols of ECOWAS and the rules of the West African Economic and Monetary Union (WAEMU).[44] Furthermore, both Senegal and Nigeria safeguard the 'right to migrate' in their constitutions and relevant policy documents (Arhin-Sam 2019; Jegen forthcoming (b)).
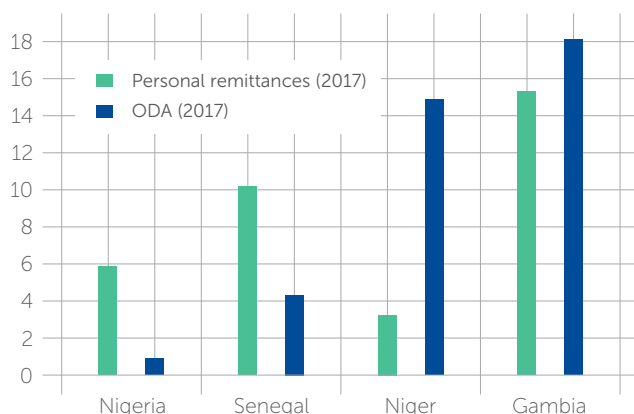
An important interest of West African states in relation to migration is linked to remittances. These come from within the region as well as beyond it. In Niger, regional migration plays a crucial role as a livelihood strategy of rural communities (Mounkaila, Amadou, and Boyer 2009), while the destination countries for migrants from the other three case study countries are more varied. Nigeria is the largest net recipient of remittances in Sub-Saharan Africa. In 2017 for example, the country received US$22 billion in official remittances, representing 5.9 percent of Nigeria's GDP (World Bank 2019). Meanwhile, in the Gambia, remittances amounted to US$228 million in 2017—nearly the same as official development assistance, which stood at US$269 million (World Bank 2019; see also figure 3).

On the whole, migration and mobility in the West African context are widely considered a non-issue. This becomes most evident in the fact that all four case study countries only adopted (or in the Gambia's case, are planning to adopt) a national migration policy following external funding for these schemes. Indeed, mobility in the region is normalized with many borders dividing ethnic groups that maintain close social, economic, and cultural cross-border ties. Two issues do stand out, however, that have raised concerns about migration for some West African governments. First, forced displacement within the region, which is not discussed at length in this report, is a critical issue, especially in both the Nigerien and Nigerian contexts. Second, are the governments' concerns for the safety of their citizens—notably following the release of the *CNN* documentary in late 2017 on the human rights abuses, slavery, and torture of African migrants in Libya.

European and West African interests in juxtaposition

In contrast to the typically low level of political interest in migration by West African states, for the EU and its member states, migration cooperation with West African countries has become increasingly important. Both the EU and its member states have contributed to setting up and strengthening institutions and policies dealing with migration governance in the region. This has also led to an increasing role for European (and European-funded) actors in the formulation of objectives for national migration policy, both directly and indirectly.

Broadly, European interest in migration governance centers on regulating migration flows from the region in general and stopping irregular migration to Europe

Figure 3 Contribution of remittances and official development assistance as a percentage of GDP, 2017

Different income sources as a % of GDP

Source: World Bank (2017).
Note: ODA = official development assistance.

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[43] This includes informal herder movements across country borders that hold important livelihood implications.
[44] Collectively, the 1979 Protocol (A/P.1/5/79) relating to Free Movement of Persons, Residence and Establishment, the 1985 Supplementary Protocol (A/SP.1/7/85), the 1986 Supplementary Protocol (A/SP.1/7/86), the 1989 Supplementary Protocol (A/SP 1/6/89), and the 1990 Supplementary Protocol (A/SP 2/5/90) are known as the ECOWAS free movement protocols. WAEMU (comprising the eight states that share the West African CFA franc currency) has its own rules.

in particular. This interest is pursued through institutional and legal capacity building on issues such as people smuggling, human trafficking, border control, and (forced) return cooperation. To further incentivize cooperation in these areas, projects that target the 'root causes' of migration have been adopted and wide reintegration programs have been set up. Owing to the significant impact on development funding (see also table 5), especially in countries like Niger or the Gambia, European interests have slowly gained in political relevance. This external push to adopt and implement measures targeting irregular migration has resulted in irregular migration becoming a top priority in Niger and the Gambia in comparison with other mobility-related policy issues, and a secondary priority in Nigeria and Senegal (see figure 4). Hence, some of these priorities are donor driven, while others correspond to more intrinsic policies.

The fact that migration cooperation is often realized through capacity-building projects funded by development aid highlights that such aid for migration-related purposes makes it lucrative for governments to cooperate with the EU in this regard (see also Adamson and Tsourapas 2019). Aid includes institution building, training, technical support, and policy development.

Indeed, the Valetta summit in 2015—bringing together European and African heads of state for the first summit solely dedicated to the topic of migration—saw the launch of the EUTF, mostly funded through the EU's development budget. Niger has been the largest benefactor of the four case study countries, with 12 projects to the tune €253 million, making up a high 3 percent of GDP (see table 5). If we account for population size, the EUTF is especially significant in the Gambia, amounting to €16.82 per inhabitant compared with €0.66 per inhabitant in Nigeria.

Another incentive to cooperate on migration-related projects has been security concerns. Especially in Niger and Senegal, which face a volatile, regional security context, border capacity building is often perceived as fostering state capabilities in anti-terror measures. The link between migration and security considerations has not only been forged by external powers, but has also been evoked, for instance, by the Nigerien government to gain much needed military support, in addition to state capacity building and development assistance.

Despite these benefits, migration cooperation bears a number of consequences, of which four are discussed below.

Figure 4 Migration policy priorities in Nigeria, Senegal, Niger, and the Gambia
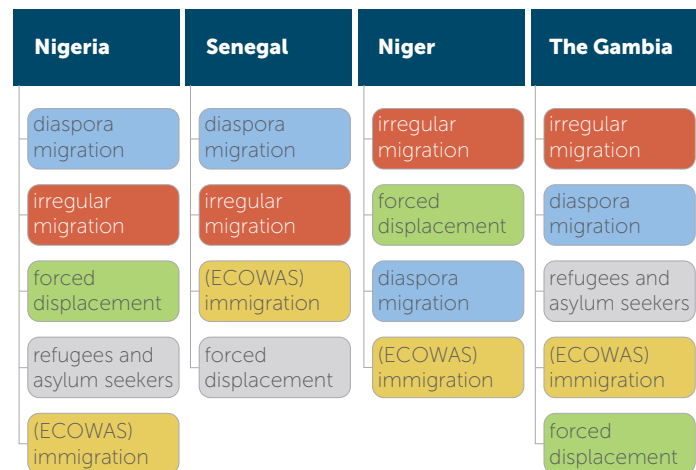
Source: Own research (see also Arhin-Sam 2019; Altrogge and Zanker 2019; and Jegen forthcoming (a, b)).

Table 5 Overview of EUTF projects, September 2019

	Nigeria	Senegal	Niger	The Gambia
Total value of EUTF projects (€)	128,523,633	107,803,200	253,000,000	37,900,000
Number of EUTF projects	8	10	12	3
EUTF as a share of GDP (%)	0.04	0.49	3.00	2.55
Volume of EUTF funding per person (€)	0.66	6.80	11.27	16.82

Source: Figures for the EUTF are from the European Commission and include all EUTF spending up to September 2019 (https://ec.europa.eu/trustfundforafrica/region/sahel-lake-chad); GDP and population size stem from the World Bank (2018).
Note: EUTF = EU Emergency Trust Fund for Africa.

4.2 Obstacles to migration cooperation in West Africa

The challenges that arise from European interests in cooperation can be distinguished into four categories, which affect the case study countries to varying degrees. First are the adverse effects on local ownership; second is increasing conflict over institutional mandates; third are domestic legitimacy problems; and fourth are concerns over a trade-off between migratory rent [45] and reduced remittances. The first two speak of migration governance more broadly, and the latter two are especially tied to the question of migrant returns. Each consequence is discussed using the example of a case study country.

Niger: Adverse effects on local ownership

The European focus on irregular migration governance derives from the 'fight against smuggling' becoming a short- and long-term policy priority in Europe's migration cooperation with non-EU states. It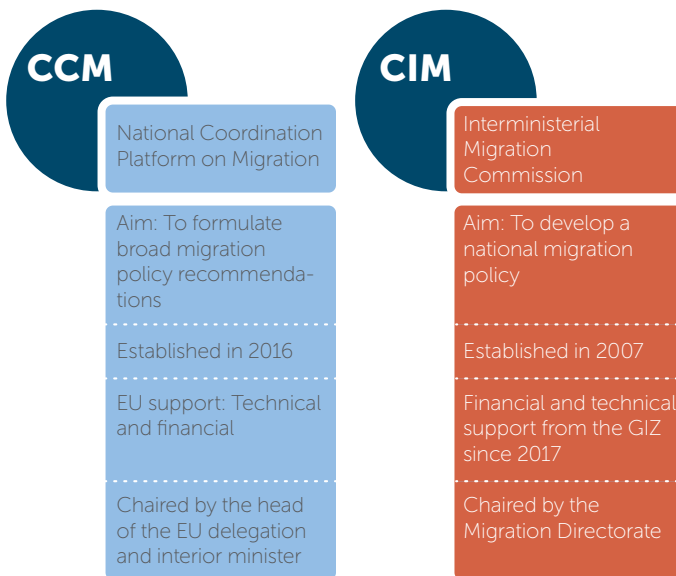 is therefore not surprising that even though emigration from Niger toward Europe is negligible, the country has become a key partner of the EU (member states) due to its role as a 'transit country.'

This situation has resulted in European funding prioritizing the implementation of the 2015 Nigerien anti-smuggling law (no. 2015–36), which was drafted in close cooperation with the UN Office on Drugs and Crime. The law entrenches the criminalization of the transport of travelers without possession of valid identification documents. Support has sought first to strengthen the judicial capacities of the Nigerien state in order to prosecute 'smugglers.' Further projects have worked to build the capabilities of security actors. For example, the Directorate for Border Surveillance has profited from extensive support, which covers the construction of border posts and installation of data management systems as well as training.

An increasing number of 'humanitarian' projects have also been set up to care for and 'voluntarily' return stranded travelers. For instance, since 2016 an EU-funded project implemented by the International Organization for Migration (IOM) provides food, water, shelter, medical and psychological support, alongside assistance with travel documents for migrants in six so-called transit centers. However, assistance at the centers is based on individuals' willingness to voluntarily return to their countries of origin, making the humanitarian assistance conditional (see also Morales 2019). There are also search and rescue operations for migrants stranded in the desert; as of June 2019, nearly 20,000 people had been rescued since April 2016, and taken to the transit centers. Finally, development projects have been launched to offset the negative consequences of the 2015 law on local economies, through initiatives in the transit region Agadez.

Beyond supporting the implementation of laws, European support has had an impact on policy. In 2007, Niger launched its Interministerial Commission on Migration (Commission Interministerielle de Migration, CIM) to develop a national migration policy. For numerous reasons, mainly financial but also due to a lack of strong leadership, this process was put on hold in 2014. In the meantime, the EU funded the development of the National Strategy to Counter Irregular Migration, which spells out how to put the 2015 law into effect. In record time of under a year, the International Centre for Migration Policy Development drafted the

Figure 5 Overview of the main migration frameworks in Niger

CCM
- National Coordination Platform on Migration
- Aim: To formulate broad migration policy recommendations
- Established in 2016
- EU support: Technical and financial
- Chaired by the head of the EU delegation and interior minister

CIM
- Interministerial Migration Commission
- Aim: To develop a national migration policy
- Established in 2007
- Financial and technical support from the GIZ since 2017
- Chaired by the Migration Directorate

Notes: The CIM predates the CCM but was inactive for a number of years, partly due to funding issues. Today, both frameworks receive substantive external funding and technical assistance raising doubts over local ownership.
GIZ = Deutsche Gesellschaft für Internationale Zusammenarbeit.

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[45] Harouna Mounkaila used this term to describe the financial incentives that go in hand with donor-induced national migration projects at the WAMiG dissemination event in Niamey, Niger in October 2019.

strategy. This stands in strong contrast to the national migration policy. A civil society actor commenting on the adoption of the strategy on irregular migration told us: "On a fait les filles avant la mere, ce n'est pas logique."[46]

In fact, the EU has secured a permanent role in the formulation of migration policy recommendations in Niger through financing the setup of the National Coordination Platform on Migration (Cadre Concertation de Migration, CCM). This is a biannual meeting of national and international stakeholders that work to define such recommendations. Formed in 2016, the platform is chaired by the head of the EU delegation along with the Nigerien interior minister (see figure 5).

The national migration policy process was relaunched in 2017 with financial and technical support from the German development agency, GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit; see figure 5). The formulation of the national migration policy bears the potential of being more owned by Nigeriens. Two civil society groups are closely involved in the process as well as the national human rights council.[47] Yet, some interlocutors decried the political nature of inclusion in the consultation framework. Moreover, Nigerien civil society organizations as well as academics stressed that a more locally owned national migration strategy will only be possible if the policy is able to curtail the security-focused approach to migration governance taken in the post-2015 context.

Senegal: Increasing conflicts over institutional mandates

Competition for leadership is a feature of migration governance in Senegal. There was wide agreement among respondents that competition extends to actors at the political level, in government institutions, and in civil society. One civil society activist put it thus: "Mais le problème est que comme vous venez de le souligner, quand les bailleurs arrivent, il y a cette compétition-là qui est créé."[48] The most notable conflicts over mandates have occurred in the formulation of the national migration policy, the modernization of the civil registries, and the setting up of reintegration programs under the EU-IOM initiative.

This competition is at least partially linked to external financial incentives. One individual involved in implementation commented : "Mais ils veulent, cha-

cun veut piloter cette fois. Pourquoi ils veulent piloter ? C'est très simple : c'est les ressources. Ce n'est pas autre chose, la gestion des ressources," noting that the donors had introduced such a system.[49] More generally, there is a fragmented institutional landscape in which actors operate with partially overlapping and unclear mandates. This in itself may make the determination of the best project partner for external donors difficult and has in part contributed to project failure (see also Vives 2017).

Relatedly, decisions are often at a technocratic ministerial level—without explicit consent from politically relevant stakeholders. This is best illustrated when considering the development process of the national migration policy. Its formulation started in 2015 and was concluded with the technical validation of the document in March 2018. Political validation was still outstanding at the time of writing. The drafting of the document took place in the framework of an interministerial committee, which was coordinated by the Ministry of Economy, Planning, and Cooperation and financed by the IOM. According to respondents, the initiative to develop the policy did not come from a high political level but from civil servants. They started the development process without initial permission from a higher ministerial level, which was only granted once the funding had been secured. This raises questions on the exact (political) ownership of the policy elaborated given that the initiative to launch the drafting process may not have derived from a political priority but rather a funding possibility. This may also explain why the policy's political adoption has been slow. Even making EU budgetary support conditional upon adoption has so far proven unsuccessful. Beyond this Senegalese civil society groups have raised concern about the agenda-setting ability of external donors in relation to the policy.

Furthermore, the coordination role has been contested by other ministries—especially the Ministry of Foreign Affairs and its Diaspora Unit (Direction General de l'Appui de Sénégalaise de l'Exterieur), which at the beginning saw its mandate on migration curtailed in the elaboration process. Competition for leadership between the participating actors has also led to delays in the EUTF-funded modernization of civil registries, where both of the government agencies involved claim leadership over the process. Similarly, the delayed launch of the reintegration program as part of the EU-IOM joint initiative funded by the EUTF can

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[46] Translation: "We created the daughters before the mother. This is not logic." Comment by a Nigerien working for an international NGO (Interview, Niamey, March 2019).

[47] The groups are Jeunesse-Enfance-Migration-Développement (JMED) and Groupe de Réflexion et d'Action pour le Soutien au Phénomène de l'Immigration (GRASPI), though there were some complaints that these civil society groups are uncritical of the irregular migration agenda.

[48] "But there is this problem, as you highlighted, when the donors arrive, there is this competition" (Interview of a civil society activist, Dakar, July 2019).

[49] "But they want, everyone wants, to lead this time. Why do they all want to lead? That is very simple: it is resources. There is nothing else, it is the management of resources" (Interview of an individual from an implementing organization, Dakar, July 2019).

be understood as a result of initial competition over funding and ambiguity in the mandates of Senegalese and international actors.

Lastly, the influx of migration-related development aid (or migratory rent) results in sustainability problems. Interlocutors highlighted that the end of project funding often ends the initiative. While this is indicative of the limited financial resources available, it must also be understood in the context of competition for migratory rent—where financial incentives may override political priorities.

The Gambia: Domestic legitimacy problems

In the Gambia, cooperation with European actors became ever more important after the opposition leader Adama Barrow won the presidential election in December 2016, ending the country's long-term authoritarian rule by Yahya Jammeh in January 2017. Development assistance to the country more than doubled in 2017. Merely a year before, development assistance only made up 6 percent of GDP, compared with over 18 percent in 2017 (see figure 3).

With the idea of the Gambia being a good example to showcase successful cooperation on return, the country has been pushed into the limelight of European migration cooperation interests. Much like the other countries (with the exception of Niger, where return does not play a role due to the low emigration rate), the number of forced returns is low, especially as shown in the ratio of those returned to how many received an order to leave (see figure 6). For example, in 2018 only 7.4 percent of all Gambians with an or-

der to leave were returned to their country of origin. Many policy makers attribute the low number of returns primarily to a lack of willingness to cooperate by the country of origin.

The new Gambian government tentatively began to cooperate with the EU on return matters. For example, it sent regular missions to Europe to issue nationals with identification documents to facilitate their return.[50] To enhance cooperation on forced returns, the EU and the Gambia concluded a non-binding 'good practice' agreement on preferable conditions of forced returns from EU member states in May 2018, with implementation starting in November that year. This approach is illustrative of a general turn toward informal readmission politics between the EU and Sub-Saharan African states (see Slagter 2019). In the Gambian context, considering also the increasingly volatile political situation of the country, cooperation on forced returns has gained ever more potential to become an explosive issue for domestic politics.

Tensions regarding implementation of the good practice agreement arose when European governments started increasing returns and, according to Gambian officials, did not sufficiently adapt their operations in line with the standards agreed. This cumulated in a return flight operation in February 2019 from Germany, about which the Gambian authorities were allegedly insufficiently informed and which was therefore initially refused entry. The confusion over this flight purportedly caused violent outbreaks between Gambian security authorities and the returning migrants. Around the same time, in response to numerous such flight-related incidents and a public outcry, the Gambian government declared a temporary moratorium against further forced returns from the EU from March onwards.

Months of tense negotiations followed, with the moratorium lifted in October, though the matter has by no means yet been adequately resolved. The good practice agreement indicates that the Gambia's reception capacities should not be overstretched by the number of returns. For the Gambian government, this means a reduction in chartered operations and lower overall return numbers. Most importantly, it calls for more time to pave the way for a 'return with dignity,' by setting up better reintegration opportunities also for forced returnees.

Although the moratorium has been lifted, the number of returns from Europe has remained very low and limited to individuals on scheduled commercial flights. That is because the transition government needs to collaborate with EU partner countries, but the issue of return also has the potential to weaken its

Figure 6 Returns from the EU to the Gambia, 2016–18

Return ratio: 9.09%
Return ratio: 4.89%
Return ratio: 7.44%

Returns
Ordered to leave
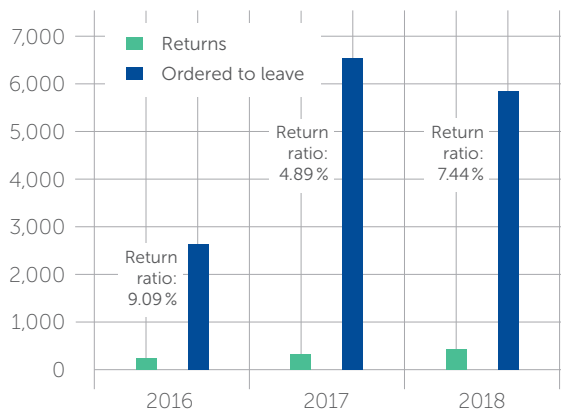
Source: Eurostat.

50 The United States has also been scaling up its cooperation. The new government agreed to accept forced returns from the United States, which in turn revoked a travel ban for Gambian government officials that had been in place since October 2016. The number of forced returns from the United States then slightly increased from 56 in 2017 to 111 in 2018 and to 124 in 2019. See "ICE Details How Border Crisis Impacted Immigration Enforcement in FY 2019", US Department of Homeland Security, February 24, 2020, https://www.ice.gov/features/ERO-2019 and Altrogge and Zanker (2019).

legitimacy at home. The Gambian press, and especially social media, regularly comment on this highly emotional issue. A communication imbalance has emerged in which social media is taking the lead. Activists on social media are protesting against deportations. And they have their particular narrative, as explained by one civil servant.[51] At the same time, the government is frequently suspected of playing an active role in returns and is accused of withholding information about its dealings with the EU and member states like Germany. Allowing more deportations from the EU would be perceived as betrayal by many migrants and their families. The moratorium and continued delay in accepting a higher number of returns therefore fulfills a symbolic function of (seemingly) defending Gambian against foreign national interests.

The Gambian government is currently facing increasing domestic turmoil, with President Barrow extending his three-year transition period to five years, which—while constitutionally legitimate—contradicts what he originally agreed. Opposition to this has been growing, which in turn faced repressive crackdowns in January 2020. That makes potential cooperation on returns even riskier. The domestic environment also includes the diaspora abroad, and return cooperation can undermine political support from diaspora communities and possibly undercut remittances, including from people who have returned (unwillingly). Indeed, remittances not only come from the high-skilled immigrants abroad, but also from irregular migrants. This brings us to a related challenge, namely the role of remittances.

Nigeria: Concerns over a trade-off between migratory rent and potentially reduced remittances

A key stake in European migration cooperation is the prospect of reduced remittances, which make up an important economic contribution in all the selected countries (see figure 3). Remittances to Nigeria currently exceed official development assistance and foreign direct investment. As noted earlier, Nigeria is the largest recipient of remittances in Sub-Saharan Africa. By 2018, the country received more than US$24.3 billion in official remittances (an increase of $2 billion from 2017, see figure 3), representing 6.1 percent of Nigeria's GDP (World Bank 2019).

Considering the huge effect of remittances, it is unsurprising that the Nigerian government's implicit priority clearly lies with diaspora migration policies (see also figure 4). On the whole, Nigeria has been active in migration policy development since 2014, includ-

ing through a national migration policy, strategies on labor migration and diaspora matters, and a coordinating framework to reform migration governance. Nevertheless, many of these initiatives are lacking in implementation.

The most advanced policies concern the diaspora, which are far-reaching and include an office assisting the president on diaspora affairs, a diaspora policy, a diaspora commission, a senate committee on diaspora matters, and strong support for the Nigerians in Diaspora Organization. In collaboration with Nigerian diaspora organizations, the government has been arranging global Nigerian diaspora conferences. Still, for the most part, government activities have focused on economic benefits. In June 2017 the Nigerian government floated its first diaspora bonds. Furthermore, there are ongoing plans to set up a government-owned money transfer system for Nigerians abroad. Government action does not go as far as to address the government's inability to retain highly skilled people, with critics arguing that remittances amount to quick pay-offs rather than dealing with the longer-term problems related to the loss of skilled people (see also Clemens 2016).

This attention on the diaspora stands in sharp contrast to the European interests in migration cooperation with the country. A substantial portion of funding for governing irregular migration in Nigeria comes from development partners and particularly the EU. Though it is not easy to actually obtain an overview of migration projects in the country, investigative reporters recently counted 50 migration projects in Nigeria funded by 11 individual European countries, and 32 migration projects funded through the EU, amounting to more than €770 million (Vermeulen et al. 2019; see also Vermeulen, Amzat, and Zandonini 2019). Migration-related projects funded by the EU and its member states in Nigeria have centered for the most part on irregular migration, trafficking, return, and reintegration. Governance initiatives in this area are dominated by international and nongovernmental actors. The low interest of the Nigerian government to work on this issue is mirrored by the funds provided. For example, the government reduced the annual funding of the primary agency for combating human trafficking and smuggling (NAPTIP) from 2.5 billion naira (€6.2 million) in 2015 to 1.7 billion naira in 2016 (€4.2 million).[52]

These diverging migration priorities have left the Nigerian government in a dilemma. While they are interested in capitalizing on migration-related development aid, it may de facto lead to the curbing of migration from the country (although this is highly

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contested), but more concretely a higher number of returns to Nigeria. Returns have been both implicitly and explicitly tied to migration projects (Zanker et al. 2019; see also chapter 3). Cooperation on returns can be costly and further challenge domestic legitimacy, like in the Gambia. Considering that many Nigerians blame their government for the high level of corruption, lack of good governance, unemployment, inability to retain skilled professionals, and many other

problems, any return agreement threatens to further discredit the government.

For the time being, Nigeria still errs on the side of prioritizing diaspora policy. Notably, EUTF funds make up 0.04 percent of GDP (see table 5) and remittances 5.9 percent (see figure 3). This helps to explain the tendency toward a proactive interest in diaspora migration yet a much more reactive approach toward irregular migration and trafficking.

4.3 Outlook

From a West African perspective, there are, of course, benefits to the rise in European interest in cooperating on migration. The increase of external funding and migration-related development projects has surely been welcomed in many countries and by many vulnerable people in need of protection and support. Nonetheless, the drive to improve migration cooperation is not without effects that complicate the relationship between West African and European nations and the role of migration therein. In terms of designing frameworks for migration governance, our research has found adverse effects on local ownership and increasing conflicts over institutional mandates. The most contentious issue—return and readmission—is entangled in domestic legitimacy problems and concerns related to potentially reduced remittances. Migration cooperation between the EU and many West African countries is tense, with scholars, activists, and others repeatedly criticizing the current approach. So, where does that take us?

A renewed push toward increased and strengthened migration conditionality can be seen at the EU level, as shown in chapter 3. First, the recently adopted Visa Code provides for using the restriction or issuance of visas as a form of leverage toward non-EU countries to cooperate on issues such as forced returns. Second, the ongoing discussions on the adoption of the new Multiannual Financial Framework show a strong move toward further development aid conditionality. Under the proposed MFF, the Neighbourhood, Development and International Cooperation Instrument will provide EU actors increased leverage over non-EU countries in migration matters. The instrument, of which at least 92 percent must be financed by official development assistance, will allow for an annual assessment of the non-EU country's performance in line with the donor's migration control ob-

jectives—including readmission. Depending on the outcome of the assessment, funding allocation will be adaptable.

Our research has highlighted that the continued social and political importance of remittances is unlikely to be balanced by development aid. Current trends indicate that migration cooperation induced by development aid will not lead to a more-for-more but rather a less-for-less principle. This is only likely to worsen the difficulties West African states are facing, as outlined above. Development projects in the field of migration currently run the risk of responding more to European priorities than those of West African stakeholders, as critics have continued to point out. This further raises the possibility of project-related rent-seeking on the side of receiving states, which in the long term can undermine project implementation as well as project sustainability. To counteract these problems, moving away from the renewed and strengthened focus on migration conditionality and bringing local ownership back to the center of development assistance is the way forward.

Moreover, the lack of transparency surrounding increasingly informal migration cooperation (see also chapter 3), has heightened the mistrust of populations and governments, and has negatively impacted democratic accountability. In some countries, such as the Gambia, this runs a high risk of further contributing to growing political instability.

At the moment, the EU, its member states, and their African partners are often talking past each other. Migration is continuously framed as a problem, as something to be curtailed. This stands in strong contrast to different (and multiple) understandings of migration and mobility as something normal and an important livelihood strategy. While the significance of irregular migration can be understood from a European

perspective, putting it at the center of discussions and summits as well as development aid approaches highlights that African interests are not being valued.

That is not to say that a clear and joint definition of migration exists in West Africa, let alone how it should be governed. For example, we find that for the time being the *lack of implementation* of free movement protocols in ECOWAS, due to lax or missing border controls, seems to actually uphold mobility in the region. ECOWAS as an institution as well as its member states need to independently re-establish norms for free movement in the region and develop plans on how to best achieve them. This includes finding a balance between the informality needed in the region to enable cross-border mobility as well as joint interests in strengthening borders for security reasons, for instance. In the meantime, and while allowing room for such a process, summits and meetings like the forthcoming EU-African Union summit in Brussels in 2020 should put free movement on center stage, which is of interest not only to ECOWAS but also to the African continent as a whole.

Finally, and most importantly, an emphasis should be placed on creating more and actually feasible legal pathways to migration. As already iterated in chapter 3, a recent report highlights that less than 1.5 percent of the EUTF goes toward funding regular migration schemes among African countries or between Africa and the EU (Raty and Shilhav 2020).

Migration is a long-standing, important, and legitimate development strategy in the region, and only through offering legal options for it will fewer people feel the need to embark on the dangerous irregular journeys that continue to be used. Such opportunities must be more than mere rhetoric in policy documents, but accessible, visible, and credible:

- Accessible means addressing practical problems, like not being able to apply for a Schengen Visa in all countries, and having to travel at high cost to endure a lengthy process that often stands little chance of success.

- Visible means that people can see positive examples of others actually being able to migrate in safe and orderly manners. It also implies being more transparent in development projects that give advice on the European job market, when knowing full well that in reality it is nearly impossible to access. Otherwise, such initiatives only lead to more frustration and suspicion.

- Credible means that not just a handful benefit from such programs—like the 84 Nigerians who received scholarships from Erasmus+ during 2014–18, a miniscule fraction of a population of over 200 million.

Only when such legal pathways are in place will African governments be in a better position to cooperate on return and readmission. The current trend of moving toward negative conditionalities will do nothing to improve an already tense relationship.

5 Implications for asylum and migration policies in Europe

European and African interests in the area of international migration policy differ considerably, especially with respect to irregular migration. Many European citizens and governments want to manage immigration to ensure that immigrants from outside the EU meet specific conditions: those coming to work in the EU are meant to be highly educated (and earn a correspondingly high salary) or have special vocational skills. Others are admitted because their family members already live in the EU or because they qualify for international protection from persecution or violent conflict. At the same time, many European citizens and governments are opposed to irregular immigration on the grounds that, if individuals do not qualify for legal immigration, their presence may be detrimental to residents.[53]

By contrast, many African citizens and their governments view mobility between places, especially within Africa, as a natural way of life (chapter 4). Such mobility has existed longer than the states whose borders individuals are now obliged to cross, turning long-standing patterns of mobility into international migration. For many individuals, these borders, like the states that they delineate, are of limited relevance and the act of crossing borders is usually not contentious as such. Yet, mobility may well be contentious at the point of destination if it leads to conflicts over resources, as in the case of conflicts between farmers and herders in many parts of Africa or hostility to immigrants from poorer African countries in South Africa.

In addition, many governments in Africa are reluctant to support any restrictions on international migration by countries of destination because migrant remittances sustain the livelihoods of hundreds of thousands of households and represent a large source of international finance. Governments are particularly reluctant to cooperate with the mandatory return and readmission of their migrant citizens, especially at a time of high youth unemployment at home.

Because of the large difference in per-capita incomes between most African countries on the one hand and EU member states on the other hand, many African workers can improve their standard of living significantly if they migrate to the EU, even irregularly. Although travelling to Europe from Africa irregu-larly is dangerous and requires substantial payments to people smugglers, approximately 200,000 individuals reached Europe irregularly via the Western and Central Mediterranean migrant routes in 2016. In the same year, nearly 5,000 individuals died when they attempted to cross the Mediterranean, while even more migrants died attempting to cross the Sahara to reach Libya. Of those who made it to Europe, many applied for asylum, but did not receive international protection.

Since 2016, irregular migration from Africa to Europe along the Western and Central Mediterranean routes has declined sharply, largely as a result of EU support for the Libyan coastguard taking back to Libya migrants rescued at sea. Although the number of migrant deaths in the Western and Central Mediterranean also more than halved from 2016 to 2019, many migrants taken back to Libya have suffered severe human rights abuses from the local authorities. While the IOM and UN High Commissioner for Refugees have repatriated some migrants from Libya to their home countries and resettled others for international protection, abuses in Libya continue.

This situation exemplifies the dilemma that the EU and its member states face in pursuing their goal of controlling immigration to Europe when there is less than full cooperation from countries of origin or transit or when authorities in potential partner countries pursue their own agendas that contradict EU objectives or values. In recent years, the EU and its member states have attempted in multiple ways to limit irregular entry into the EU: disrupting irregular migration routes (including through EU support for the Libyan coastguard); supporting refugees in Turkey in exchange for Turkey restricting irregular movement to the EU (EU-Turkey Statement of March 2016); building fences and policing the external border more tightly; closing borders; and issuing visitor visas only under highly restrictive conditions to ensure that visitors have no incentive to remain in the EU. While these practices have been effective to varying degrees in reducing irregular immigration, they also have important downsides. Notably, the Libyan coast guard has been involved in human rights abuses. Refugees who were prevented from applying for asylum in the

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[53] It is worth noting that the Global Compact for Safe, Orderly, and Regular Migration (emphasis added) takes a similar position—implicitly in its title and explicitly in Objective 9.

EU may not always have been safe in their current host countries. The EU-Turkey Statement was never implemented fully, with dire consequences for migrants on the Greek islands. And restrictive visa practices have hurt bilateral relations by creating barriers for legitimate international travel for education, tourism, and business.

The dilemma for the EU and its member states lies in the fact that, under present conditions, simply abandoning these restrictive practices would be tantamount to opening the EU's external border to all would-be immigrants who manage to physically reach it: any non-EU citizen can apply for asylum at the border and remain in the respective EU member state while the application is processed. However, many of those who do not receive permission to remain in the EU never return to their countries of origin (section 2.2). To a large extent, this low return rate is caused by bureaucratic inefficiency on the part of EU member state authorities, rather than by countries of origin responding slowly to requests by EU member states to readmit their citizens. In any case, restrictive practices at the EU's external border played a key role in reducing the number of irregular immigrants arriving in the EU in 2016 (via the Eastern Mediterranean route, the EU-Turkey Statement) and 2017 (via the Central Mediterranean route, support for the Libyan coastguard) and in keeping the number low since then.

Furthermore, irregular immigration occurs not just when individuals cross the external EU border unauthorized; more often, individuals enter EU territory in a regular manner, but remain there after their visa runs out. In this case, restrictive practices at the border are ineffective. As a result, for many non-EU countries, EU member states will only issue visas to their citizens if applicants demonstrate conclusively that they have no incentive to remain in the EU.

By jointly managing migrant flows with countries of origin and transit based on the principles of the Global Compact for Safe, Orderly, and Regular Migration and the Global Compact on Refugees, the EU and its member states could make substantial progress toward controlling immigration without engaging in problematic restrictive practices at the external border. People smuggling takes place, and needs to be combatted, in transit countries as well as in the EU. The EU-Turkey Statement of March 2016 is an example of how the EU can support refugees in countries of first asylum in the European neighborhood who might otherwise embark upon secondary migration to the EU. In return for EU support, Turkey largely stopped irregular migration to Greece until late February 2020.[54] Thus,

when (potential) irregular migrants are refugees who may embark on secondary migration and stand a good chance of receiving international protection in the EU, the key to successful cooperation with host countries is for the EU to share in the responsibility for ensuring that refugees can live with dignity in their host country. While the primary tool is financial support for refugees and for the host country as it provides public services for refugees and residents, this should be complemented with other instruments like resettlement options for particularly vulnerable refugees.

By contrast, when irregular migrants are mostly mixed or labor migrants as along the Western and Central Mediterranean migration routes or simply visa overstayers, well-functioning procedures for the mandatory return and readmission of non-EU citizens by their countries of origin become crucial. When non-EU citizens who overstay their welcome in the EU can be returned smoothly, the EU and its member states have little reason to engage in problematic restrictive practices at the external border to prevent irregular migrants from entering EU territory in the first place: irregular migration will turn out to be a bad investment, discouraging others from trying. While administrative processes in EU member states for the mandatory return of non-EU citizens to their countries of origin are often ineffective, there are also cases in which the lack of active cooperation from countries of origin is the bottleneck.

So how can the reluctance of many country-of-origin governments, including in West Africa, to cooperate with the EU and its member states in curbing irregular migration be addressed constructively (chapter 4)? So far, EU efforts have focused on making the EU policies in which African and other developing-country governments are especially interested conditional on cooperation with return and readmission. Increasingly, the EU has used conditionality in a 'punitive' manner in the sense that existing benefits would have been withdrawn had the partner countries not signed up formally to certain commitments (chapter 3). In practice, however, cooperation on return and readmission fails mostly not because there is no written agreement, but because the partner-country government faces strong disincentives to implement an existing agreement or principle of internal law and finds ways to drag its feet.

To overcome this impasse and draw together the diverging interests of the EU vs. the countries of origin in the area of migration management, the EU needs to offer measures that are credible and significant enough to change the political calculus of country-of-origin

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[54] During a two-week episode in early March 2020, Turkey attempted to put pressure on the EU for more financial, political, and military support by actively aiding irregular migrants as they sought access to Greece, violently at times, across the border that had been closed from the Greek side. The EU responded by offering to renew the EU-Turkey Statement on refugees, but did not otherwise give in to Turkish demands. In mid-March, Turkey closed its side of the border, assisted would-be irregular migrants in returning to their places of residence in Turkey, and expressed its interest in renewing the agreement with the EU.

governments by creating substantial benefits for their citizens. One prominent concern among developing-country citizens and governments relates to the EU's very cumbersome visa procedures. Remarkably, the EU maintains successful visa-liberalization regimes with several poorer countries in the Western Balkans and Eastern neighborhood that were subject to highly restrictive visa practices not too long ago. In the process of negotiating visa liberalization, these countries undertook far-reaching reforms in the area of human rights so that their citizens could not plausibly claim to be persecuted at home and successfully apply for asylum in the EU after entering visa-free; judicial cooperation and return and readmission procedures were also strengthened (Ademmer 2012). With weaker institutions in many poorer African countries, visa liberalization may be a long-term vision rather than a short-term possibility, although it may be within the reach of a few countries in North Africa. For all others, there are progressive steps in terms of visa facilitation that would provide important benefits to partner-country citizens and a political bonus for the government.

Another policy area that would be of great interest to African citizens and governments is enhanced opportunities for legal labor migration to EU member states. The benefits to African citizens and the political mileage that governments would receive from any step forward are clear. On the EU side, responsibility for labor migration rests with the member states, which would have to issue work visas to non-EU citizens based on their governments' willingness to cooperate in the area of return and admission. This process would require considerable coordination between the European Commission and member states. Member states would want to determine their offers of work visas based on the absorptive capacity of their labor markets, whereas the involvement of the Commission would reflect its growing role in returns policy, including through Frontex. If the Commission can present a unified negotiating position on behalf of member states, this may be more effective than individual member states negotiating separately (Barslund, Di Salvo, and Ludolph 2019).

Going forward, member states' willingness to offer work visas to African citizens will be influenced by the impact of the COVID-19 pandemic on output and labor demand, which is impossible to predict at this stage. Even when labor demand recovers, it will be crucial to set education, skill, and language requirements for visa applicants at a level that puts migration to Europe credibly within the reach of a large enough group of workers in Africa to make a difference to the political calculus of governments. Despite the preference of many European voters for high-skilled immigrants, many non-EU citizens who initially arrived as low-skilled irregular migrants are now gainfully employed and socially well integrated in the EU. Hence, there is likely to be room for more and successful labor migration from Africa to Europe that would be in the interest of many Africans and supported by their governments.

Member states should also use their available policy space for pilot projects that would demonstrate the feasibility of this approach while generating operational experience that will be useful for upscaling the program later. Interestingly, Germany has a work visa program for citizens of Western Balkan countries that may serve as an example. The program has been part of a move to curb irregular immigration from Western Balkan countries to Germany after its surge in late 2015. For several years, a total of approximately 20,000 work visas annually have been issued to citizens of Western Balkan countries, requiring only the offer of an employment contract with standard pay and working conditions from a German employer. In contrast to the more restricted migration opportunities available to other non-EU citizens, there are no requirements regarding education, vocational, or language skills.[55] While it is difficult to formally establish causality between the Western Balkan program and the reduction in irregular immigration since 2015, it is plausible that the program has enabled governments in the Western Balkans to cooperate fully with the swift return of rejected asylum seekers while offering a realistic possibility for legal migration to many Western Balkan citizens with links to employers in Germany.

In sum, our analysis calls for a substantial shift in emphasis in the external dimension of EU asylum policy: rather than attempt to enforce punitive conditionality, the EU should treat joint migration management as an important element in negotiations for a win-win scenario that takes on board the aspirations of African citizens and governments for easier travel and legal labor migration to Europe. Such cooperation offers the best prospect for more humane practices at the EU's external border and for all stakeholders benefitting from safe, orderly, and regular migration to Europe.

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[55] The large share of low-skilled workers in the Western Balkan program suggests that it has not led to a brain drain from the Western Balkans to Germany. A possible brain drain is more of a concern in relation to plausible patterns of labor migration from Africa because the level of education in Africa tends to be lower than in the Western Balkans, while a minimum education level is needed for successful labor market integration in Germany (Backhaus 2020). These observations suggest that vocational training for African workers in preparation for work opportunities either at home or in the EU should be part of the proposed cooperation with African countries of origin.

Abbreviations

CCM	National Coordination Platform on Migration (Cadre Concertation de Migration)
CEAS	Common European Asylum System
CIM	Interministerial Commission on Migration (Commission Interministerielle de Migration)
EASO	European Asylum Support Office
ECOWAS	Economic Community of West African States
EUAA	EU asylum agency
EUTF	EU Emergency Trust Fund for Africa
IOM	International Organization for Migration
MFF	Multiannual Financial Framework
NGO	Nongovernmental organization
UNHCR	UN High Commissioner for Refugees
WAEMU	West African Economic and Monetary Union
WAMiG	The Political Economy of West African Migration Governance

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About MEDAM

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