

# The implications of the United Kingdom's withdrawal from the European Union on readmission cooperation

## KEY FINDINGS

- EU readmission agreements, and mixed agreements containing readmission clauses will no longer apply to the UK following its withdrawal from the EU.
- Geographical proximity and migration patterns necessitate continuing cooperation between the EU and UK on readmission.
- A readmission clause pertaining to the readmission of own nationals should be included in the future EU-UK relationship agreement alongside an EU-UK readmission agreement covering third country nationals and stateless persons.
- Further cooperation beyond such a readmission clause and agreement will be dependent on the structure and closeness of the future relationship.

## INTRODUCTION

This briefing examines the implications of the UK's decision to withdraw from the European Union (EU) on the EU's readmission policy, as well as the framework for relevant future cooperation between the UK and the EU. In this area, the UK's withdrawal will have a limited effect on the EU, in part due to readmission being an area of shared competence, as well as the UK's general relationship with the EU on matters pertaining to the Area of Freedom, Security and Justice (AFSJ). The implications for the UK of its withdrawal from the EU are far greater, as EU readmission agreements will presumably cease to apply to the UK following its withdrawal. Due to the current migration flows between the EU and UK, as well as their geographical proximity, it would be beneficial for the EU to include a readmission clause in the future relationship agreement alongside the negotiation of an EU-UK readmission agreement. Such an agreement would include own nationals, third country nationals and stateless persons.

## 1. HOW READMISSION OPERATES

Readmission is legally defined as *'the transfer by the Requesting State and admission by the Requested State of persons (nationals of the Requested State, third country nationals or stateless persons) who have been found illegally entering, being present in or residing in the Requesting State'*.<sup>1</sup> This means the act of returning such persons to their state of origin, or in limited circumstances, to another state. The category of persons to which this procedure is applicable is limited to those who are resident, present or entered the territory of a state other than their state of origin in an irregular manner and covers a wide category of potential scenarios. Therefore, a person with a regular status in a country such as humanitarian protection or refugee status does not fall within the scope of readmission. In order to return a person to a state other than that of his/her origin there must be a form of legal agreement between the two states concerned, and it is often a measure of last resort when return to the country of origin is not possible.

## Purpose of Readmission Agreements

Readmission agreements are concluded where there are disagreements between states on whether an individual should be returned and the method through which this would be achieved. The agreements detail the applicable legal obligations and procedures through which to readmit an individual. These procedures range from how nationality can be confirmed, to what travel documents may be used for the transfer and who is responsible for the associated costs.

Agreements concluded at the EU level contain two types of legal obligations. The first is the **obligation on a third country to accept the return of their own nationals** when it has been confirmed that they had entered, been present or been living irregularly in the territory of an EU Member State. The second type of obligation is for the third country **to accept the return of any other nationals or stateless persons** who entered the territory of a Member State irregularly via that particular third country.

The readmission process may only commence once a determination on return has been made under the Return Directive.<sup>2</sup> This applies to third country nationals both between EU Member States, and between a Member State and a third country. The first consideration for a Member State wishing to return an individual is whether it is possible to return him/her directly to the country of origin. However, this may not be possible due to the situation in the country of origin. The returning state is bound by all its international human rights obligations as well as the principle of non-refoulement and customary international law. For EU Member States these include the European Convention on Human Rights (ECHR)<sup>3</sup> and the Charter of Fundamental Rights of the European Union (CFR).<sup>4</sup>

Formulating these obligations into a legal text has a number of advantages for the EU. First and foremost is that they are more readily enforceable against the third country concerned than customary international law or a comparable political arrangement. Second, they allow for a dialogue between the parties on readmission and third, they prescribe a jointly agreed procedure, thereby lowering the probability of future disputes over proof of nationality or the issuance of travel documents among other areas.

## Readmission between EU Member States

The process of readmission between EU Member States is dependent on the status of the individual being readmitted. If they are or have been in the process of applying, or have received international protection, their movement between Member States is governed under the so-called Dublin system, currently the Dublin III Regulation.<sup>5</sup> The Dublin system functions in tandem with the Eurodac<sup>6</sup> fingerprint database to allow for the identification of such individuals. Where a third country national has legal status in one Member State but moves to, resides in or enters another Member State irregularly, they are required to return to the Member State which originally granted them status under Article 6 (2) of the Return Directive. This also applies to third country nationals who present a threat to national security or public policy.

The expulsion of individuals possessing EU citizenship is governed by the Citizenship Directive,<sup>7</sup> which only allows this on the grounds of public policy, health or security under Articles 27-29. The responsible Member State is that which issued the passport or identity card, even if they are no longer valid documents.

## 2. THE EU'S READMISSION POLICY

Under Article 79 (3) Treaty on the Functioning of the European Union (TFEU),<sup>8</sup> the EU has the competence to negotiate readmission agreements with third countries. The conclusion of such an agreement is subject to the international agreement procedure under Article 218 TFEU.

Readmission forms part of the EU's AFSJ, and is an area of shared competence under Article 4 (2) (j) TFEU. Therefore, Member States may only exercise their competence on readmission where the EU has not exercised its own.<sup>9</sup> Where a Member State and an EU readmission agreement coexist with the same

third country, the EU agreement takes precedence and the Member State one ceases to apply, to the extent that it is incompatible with the EU's.<sup>10</sup> Within an EU readmission agreement there is a delay in application between the obligation to readmit own nationals and third country nationals. In this respect, each readmission agreement is bespoke. For example, the EU-Ukraine agreement contains a delay in application of two years,<sup>11</sup> whereas the EU-Turkey one includes a three-year delay.<sup>12</sup> During this delay period, only nationals of states with which the third country has concluded its own readmission agreements can be readmitted. If a Member State agreement with the same third country also contains third country national obligations, then it may continue to apply during the delay period. This was the case with the EU-Turkey Readmission Agreement and the Greece-Turkey Readmission Protocol. Member States are indeed encouraged by the EU to conclude bilateral readmission agreements when it has not been possible to negotiate an agreement at the EU level.

The EU's readmission policy is embedded within its wider external relations with third countries, constituting but one element of its wider cooperation on issues of migration, both regular and irregular. Furthermore, it is closely linked to policy areas such as development aid. The policy operates on the legal and political planes, with political arrangements often sought in the absence of a legal agreement. The intertwined nature of this policy space means that it is difficult to extract the precise effects of the UK's withdrawal on the EU's readmission policy.

## Types of Legal Obligations

Excluding Member State bilateral readmission agreements, the EU's policy is reliant upon three different types of legal obligation. At the first level, the EU is able to rely upon the **recognised customary international law** principle that a state accepts the return of its own nationals from another state.<sup>13</sup> As defined under Article 38 (1) (b) of the 1946 Statute of the International Court of Justice, customary international law is evidenced as general state practice which is accepted as law. As Hailbronner argues, such an obligation cannot be limited by undue administrative processes,<sup>14</sup> such as burdensome proof of nationality requirements. For many states, customary international law is sufficient to allow for the return of own nationals. However, this is not sufficient when the third country is uncooperative in allowing the return of its own nationals, particularly in the provision of travel documents or where states distinguish in acceptance between forced and voluntary returns from another state. Pertinent for the EU is that customary international law in any case does not allow for the return of other nationals or stateless persons to a third country other than that of their nationality.

In order to resolve these issues, at the second level the EU negotiates **formal readmission agreements with third countries**, which allow for the return of own nationals, third country nationals and stateless persons between the Contracting Parties. The obligation to accept the return of a third country national or stateless person is only valid when the individual has entered irregularly from the territory of one Party to the other, the individual held a valid residence permit in the Requested State, or a valid visa for entry into the Requested State. This obligation does not include those individuals who were in airside transit or where the Requesting State had issued its own residence permit or visa to the individual. When returning an individual to the EU, responsibility is assigned to the Member State which issued the visa or residence permit. Returning a third country national or stateless person to a state which is not their nationality is, however, a procedure of last resort where return to the state of nationality is not possible.

In order to return an individual under a readmission agreement, the Requesting State must submit a readmission application. Such an application includes evidence of nationality, personal information and any other information considered relevant, for example, any assistance the individual may require. If an own national is holding a valid travel or identity document, the Requesting State does not need to make a readmission application to the Requested State. When returning a third country national or stateless person, the Requesting State must also demonstrate that the entry into the state from the Requested State was irregular. The accepted forms of evidence of nationality are included in the annexes of each agreement. The precise time requirements for each party to submit and respond to a readmission application differ between each agreement. An EU Member State and the contracting third country may negotiate further implementing protocols to a readmission agreement, which add further depth to the level of cooperation and include precise definitions and procedures, for example, defining appropriate border-crossing points for the return of individuals.

The third level of readmission obligations are those included in **mixed agreements**. These include Association Agreements, Partnership and Cooperation Agreements and Framework Cooperation Agreements. The inclusion of these types of clauses stem from those agreed in the Council's '*conclusions on clauses to be inserted in future mixed agreements*' of 1996, with three types of references to readmission: recital in the preamble, a clause on own nationals and a clause facilitating the negotiation of Member State-third country readmission agreements.<sup>15</sup> Reflecting the EU's current competence in readmission matters, obligations now vary in type and scope from an obligation to readmit own nationals, to negotiate a future readmission agreement, or to fully implement an existing readmission agreement. The most significant mixed agreement for readmission is the Cotonou Agreement,<sup>16</sup> concluded with 79 African, Caribbean and Pacific (ACP) states. Under Article 13 (5) (c), the EU and ACP states agree to readmit their own nationals alongside the ability to negotiate future bilateral Member State and EU readmission agreements including third country nationals. The cooperation facilitated by the Cotonou Agreement is essential in the absence of formal readmission agreements as Contracting Parties such as Nigeria, Guinea, the Ivory Coast and The Gambia are significant countries of origin for irregular migrants to the EU.<sup>17</sup>

## Identifying Third Countries for Negotiations

The selection process for appropriate third countries for EU readmission agreements is clearly defined. There are currently six different criteria which may be applied, the most significant of which is (1) the **geographical location** of the third country in relation to the EU. Of the 17 agreements currently in force, 12 are with third countries in the EU's near neighbourhood. As the agreements include third country nationals and stateless persons, they may act as a buffer against irregular migration into the EU. Following this, (2) is the **migratory pressure** which a particular third country is placing on the EU. For example, the migratory flows from the Middle East through Turkey, as well as Turkish nationals themselves, meant that it was more practical to conclude an EU-Turkey Readmission Agreement than pursue bilateral Member State agreements.

The next two criteria are dependent on the third country's relationship with the EU, whether it is (3) a **candidate accession country** or, (4) **party to an existing agreement with the EU** which contains a form of readmission clause. An example of this is the EU-Cape Verde Readmission Agreement signed in 2013, which relied on the obligation under Article 13 (5) Cotonou Agreement to negotiate such an agreement at the EU's request. The EU must also take into account (5) **geographical balance** or **regional coherence** of the third country and, finally, (6) the **added value** of an EU readmission agreement over Member State bilateral ones.<sup>18</sup> The substantive difference between an EU readmission agreement and those of Member States is that EU agreements allow for the return of persons other than the nationals of the particular third country, whereas this is not always the case in Member State ones. However, Member States may be able to negotiate shorter time limits and enhanced procedures in comparison to when the EU acts as a whole.

Based on these criteria, a third country may be proposed by the Commission, Council, Parliament or by Member States as being suitable for negotiations. This allows the process to reflect the interests of the EU as a whole, as well as the interests of particular Member States who may be facing difficulties with specific third countries.<sup>19</sup> In the event that it is not possible to conclude a formal readmission agreement, the EU or Member States prefer to create political arrangements that do not constitute international agreements or contain legal obligations. Despite this, many of these agreements replicate certain aspects of the formal readmission agreements.

## Negotiation Process

Once a suitable state has been identified, the Commission, following the procedure under Article 218 TFEU, submits a recommendation to the Council to begin negotiations, subject to receiving a negotiating mandate. The conclusion of the agreement is subject to the consent of the Parliament as readmission is an area to which the Ordinary Legislative Procedure applies, as well as a decision of the Council authorising its signature.

In a number of instances, the negotiating process has not been straightforward, in part due to readmission agreements being almost entirely for the benefit of the EU, rather than the third country. Readmission agreements may entail a number of costs for third countries, ranging from potentially

damaging relations with neighbours, the economic costs of integration or those associated with wider migration and border management. Furthermore, they may also affect existing regional migration dynamics.<sup>20</sup>

As a result of these potential barriers to negotiation, the EU must employ a number of incentives or coercive measures with third countries. Incentives, primarily offered under the 'More for More' principle, may include the negotiation of visa facilitation agreements alongside a readmission agreement, or other agreements that are to the clear benefit of the third country. Clauses on the temporary movement of people for the provision of services in EU trade agreements may be offered, or the provision of development aid targeted at the root causes of migration or migration capacity and enhanced cooperation in other policy areas have also been effective. Coercive measures, particularly when a third country is not fully implementing its readmission obligations, may include the targeting of high-level officials for visa bans. The point of maximum leverage for the EU is when it is already in the process of negotiating a cooperation agreement with the respective third country as it is able to leverage cooperation on readmission against cooperation in other areas.

## Governance of Readmission Agreements

A dedicated Joint Readmission Committee, composed of officials from the parties, oversees each EU readmission agreement. Within these committees, Commission officials, supported by Member State and Frontex experts, represent the interests of the Union. The committees fulfil three primary functions: first, ensuring the effective implementation of the agreements, second, proposing changes to the text of the agreements and third, negotiating any practical arrangements considered necessary to aid the functioning of the agreement. Before the Commission can take a particular position on these areas before the committee, it must receive authorisation via a decision of the Council.

## Territorial Application

As with other EU international agreements, readmission agreements are subject to a territorial limitation of its application. Only a state in which the Treaty on European Union (TEU)<sup>21</sup> (or its predecessors) is applied may be a party to the agreement. Therefore, a Member State is not able to rely on the EU's readmission agreements or any negotiated implementing protocols following its withdrawal.

## Status of EU Readmission Agreements<sup>22</sup>

State	Negotiation Mandate	Signed	Entry into force
Albania	November 2002	14 April 2005	1 May 2006
Algeria	November 2002	Negotiation Ongoing	
Armenia	December 2011	19 April 2013	1 January 2014
Azerbaijan	December 2011	28 February 2014	1 September 2014
Belarus	January 2014	Negotiation Ongoing	
Bosnia and Herzegovina	November 2006	18 September 2007	1 January 2008
Cape Verde	June 2009	18 April 2013	1 December 2014
China	November 2002	Negotiation Ongoing	
FYROM	November 2006	18 September 2007	1 January 2008
Georgia	November 2008	22 November 2010	1 March 2011
Hong Kong	May 2001	27 November 2002	1 March 2004
Jordan	April 2016	Negotiation Ongoing	
Macao	May 2001	13 October 2003	1 June 2004
Moldova	December 2006	10 October 2007	1 January 2008
Montenegro	November 2006	18 September 2007	1 January 2008

Morocco	September 2000	Negotiation Ongoing	
Nigeria	June 2016	Negotiation Ongoing	
Pakistan	September 2000	26 October 2009	1 December 2010
Russia	September 2000	25 May 2006	1 June 2007
Serbia	November 2006	18 September 2007	1 January 2008
Sri Lanka	September 2000	4 June 2004	1 May 2005
Tunisia	October 2016	Negotiation Ongoing	
Turkey	November 2002	16 December 2013	1 October 2014
Ukraine	June 2002	18 June 2007	1 January 2008

#### 4. IMPLICATIONS OF THE UK'S WITHDRAWAL

There are implications for both parties due to the UK's withdrawal in the area of readmission. However, its effects are asymmetric, and will affect the UK to a greater extent than the EU in a number of different ways.

##### Implications for the EU

The primary effect of the UK's withdrawal on the EU in this area is on the future ability of Member States to return third country nationals and stateless persons irregularly present in their territory to the UK after the transition period. In the absence of a readmission agreement, whether at EU or bilateral level, it would not be possible to return third country nationals or stateless persons to the UK.

We do not yet know the potential provisions of a future EU-UK relationship agreement as to the free movement of persons; however, in the absence of any future agreement and the ability to identify and confirm the nationality of such persons, returning UK nationals irregularly present in the territory of a Member State would be reliant on customary international law. Other implications may well include the loss of UK diplomatic assistance when the EU initially approaches a third country to negotiate an agreement, although it is unclear to what extent the UK contributes in any way to this. There may also be a loss of associated expertise in this area.

##### Implications for the UK

The implications for the UK can be distinguished between UK-EU and UK-third country readmission. For UK-EU removals, both parties face the same issue in respect of returning irregular third country nationals who had been granted a residence permit or visa. However, where the UK faces a further disadvantage is in its access to the Dublin system and the Eurodac database (depending on the future relationship) for third country nationals, as well as the expulsion orders under the Citizenship Directive for EU nationals. The UK has previously negotiated readmission agreements with Romania and Bulgaria (2004) as well as Switzerland (2006) but these did not enter into force. As the Dublin system and Eurodac govern the identification and responsibility for third country nationals who applied for international protection, it may no longer be possible for the UK to identify whether such an individual travelled through an EU Member State on their journey to the UK, which Member State is responsible for them and the ability to then return to that Member State.

As for the UK's readmission cooperation with third countries, as the UK would no longer be a territory in which the TEU applies after March 2019, territorial limitations would exclude the UK from the EU readmission agreements in which it currently participates, namely: Albania, Bosnia-Herzegovina, FYROM, Georgie, Hong Kong, Macao, Moldova, Montenegro, Pakistan, Russia, Serbia, Sri Lanka, Turkey and Ukraine. It is legally unclear as to the current status of bilateral readmission agreements concluded by the UK prior to its participation in EU agreements, for example the UK-Albania Readmission Agreement which existed prior to the EU-Albania one.

In addition to the EU's formal readmission agreements, there is also the issue of readmission obligations contained in mixed agreements, some of which are more significant than others. The obligations under EU Association Agreements, whether they are related to own nationals or the obligation to negotiate a future readmission agreement at the request of a Member State or the EU will cease to apply to the UK. This is also the situation in regards to the readmission obligations under the Cotonou Agreement. Although the UK may seek to rely on customary international law in the absence of these agreements, this presumes cooperation from the third countries concerned in implementation. Equally as significant is the loss of the facilitative effect of these clauses to negotiate bilateral readmission agreements in the future.

There are a number of areas in which the effect of the UK's withdrawal on its own readmission policy is unclear. The first is the effect on the UK's involvement in EU political arrangements which assist in readmission cooperation. These include agreed EU Standard Operating Procedures with third countries and political processes such as the Khartoum Process.<sup>23</sup> Second, the UK's future ability to leverage readmission agreements with third countries. This latter point refers back to the factors behind the creation of an EU readmission policy, that Member States were individually facing shared problems returning certain nationals back to their countries of origin and decided that they could exercise more influence over those third countries as a bloc, rather than at the bilateral level.

## Transition Period

Upon its withdrawal from the EU in March 2019, the UK will cease to be a party to the TEU or TFEU. However, it is likely that there will be a transition period of up to two years in which the full EU acquis will continue to apply to the UK.<sup>24</sup> This raises the question as to the UK's continued status as a contracting party to EU readmission agreements. The continuing application of these agreements may not be automatic, and may require the consent of the particular third country. The resolution of this issue is ultimately bound with the agreed solution for the UK's status in all the international agreements which the EU has concluded.

Readmission agreements allow for the movement of personal data where necessary, subject to the provisions of EU data protection legislation. Therefore, in any transition period, the EU's data protection provisions must still be enforced for the readmission agreements to function effectively. There is the further issue of the EU-Turkey Association Agreement, the judgments of the CJEU and Association Council decisions, all of which have granted rights to Turkish nationals residing in EU Member States. Any agreed transition period must ensure that such rights continue to be respected.

## 5. THE FUTURE EU-UK RELATIONSHIP

As it will constitute but one element of the future EU-UK relationship on measures pertaining to the EU's AFSJ, the depth of readmission cooperation will ultimately depend on the depth of the overall relationship. However, any future readmission relationship should start from two forms of legal obligation: first, the inclusion of a **readmission clause** in the text of the future relationship agreement and second, the conclusion of an **EU-UK Readmission Agreement** including third country nationals and stateless persons.

### Readmission in the Future Relationship Agreement

It is longstanding practice for the EU to include varying types of readmission clause in its mixed agreements with third countries. These typically refer to the obligation to accept the return of their own nationals without further formalities, alongside cooperation in other areas of migration. For example, Article 23 of EU-Canada Strategic Partnership Agreement contains the commitment to cooperate on migration, asylum and visa-free travel. On irregular migration it provides that:

*'Canada shall readmit any of its citizens illegally present on the territory of a Member State, on request by the latter and, unless otherwise provided by a specific agreement, without further formalities'.*

There is also a provision for the future negotiation of a readmission agreement:

*'The Parties shall endeavour to engage in negotiations of a specific agreement to set out obligations on readmission, including the readmission of nationals of third countries and stateless persons'.*

The Canadian example is relevant as an example of how the EU has engaged with a geographically distant state, with significantly lower migration than that between the UK and EU and furthermore, the depth of the overall relationship between Canada and the EU is shallower than in other EU international agreements.

If the future EU-UK relationship is approximate to an Association Agreement, then we may expect a greater level of cooperation on readmission. Readmission clauses in EU Association Agreements may contain two types of obligation, dependent on when the agreement itself was concluded and whether negotiations for a readmission agreement were ongoing, had not yet commenced or that a readmission agreement was already in force.

The EU-Chile Association Agreement is an example of when there were no parallel negotiations for a readmission agreement and indeed, there is currently no mandate for the Commission to negotiate an EU-Chile Readmission Agreement. As with Canada, Chile is a geographically distant state but with a deeper relationship with the EU under the association agreement. In summary, the EU-Chile agreement contains two types of facilitative provisions, one for an EU-Chile Readmission Agreement and another for Member State bilateral agreements. While the provisions are similar to those contained in the EU-Canada Strategic Partnership Agreement, under Article 46 (4) of the EU-Chile agreement Member States may negotiate bilateral readmission agreements with Chile in the absence of an EU-Chile one. A bilateral agreement would include provisions on third country nationals and stateless persons.

Ukraine and Moldova have association agreements negotiated following readmission agreements. Therefore, both association agreements contain the obligation to fully implement the existing readmission agreement. As the EU had already exercised its competence to conclude a readmission agreement, there was no need for a provision to facilitate a Member State agreement. States with which the EU has concluded Stabilisation and Association Agreements, such as Albania, have a further obligation to conclude readmission agreements with other stabilisation and accession process states. Although such states are in a unique position due to the accession process, these demonstrate how readmission clauses in mixed agreements can go further in prescribing the conclusion of readmission agreements with other third countries.

The EEA states of Norway, Liechtenstein and Iceland, as well as the EFTA state of Switzerland, have a unique relationship with the EU's readmission policy. Due to the degree of integration with the EU, including the free movement of people and membership of the Schengen Area, these states are encouraged to conclude readmission agreements with the same third countries as the EU and under the same terms. References to this are located in the Joint Declarations to EU readmission agreements. For instance, the Joint Declaration to the EU-Turkey Readmission Agreement states that:

*'The Contracting Parties take note of the close relationship between the Union and Iceland and Norway, particularly by virtue of the Agreement of 18 May 1999 concerning the association of these countries with the implementation, application and development of the Schengen acquis. In such circumstances it is appropriate that Turkey concludes a readmission agreement with Iceland and Norway in the same terms as this Agreement'.*

Separate joint declarations are made in respect of Switzerland and Liechtenstein. The decisive question in respect of these four states is at which point their relationship becomes close enough for the need to replicate in exact terms, but not necessarily the same timescale, the EU agreements at the bilateral level. Although evidently Schengen states are under particular obligations due to their membership, there could be an argument that if the future EU-UK relationship takes the form of an EEA or EFTA relationship, including free movement of people, for the UK to mirror EU readmission agreements at least in outcome, if not substance. None of these models allow for a form of EU+UK-third country readmission agreement, which would be substantially more complex than current EU ones, with issues over governance, third country relations and the level of convergence of EU and UK migration policies and priorities.



Despite the variations between these agreements, it is clear that the future EU-UK relationship agreement should include, **at the minimum, a provision on the readmission of own nationals.** The form of the second provision is then dependent on timing. If a formal readmission agreement (including third country nationals and stateless persons) is negotiated in parallel to the future relationship agreement then it should include an obligation to ensure its full implementation. If a readmission agreement is not negotiated in parallel, the future relationship should include a facilitating provision allowing for the negotiation of a readmission agreement.

## 6. AN EU-UK READMISSION AGREEMENT

Based on the EU's criteria for the identification of appropriate third countries for a readmission agreement, the EU should seek to conclude a **formal readmission agreement with the UK.** Following the UK's withdrawal, the border between Ireland and Northern Ireland will be an external EU border (satisfying the geographical proximity criteria), yet it is also a border that both parties have committed to ensuring remains as open as possible to the extent to which it is required to maintain current links. As of this time, it is unclear precisely how this will be accomplished. The movement of people across this border arguably poses a problem for both parties as readmission pertains to not only irregularly resident individuals but also those irregularly present or who entered irregularly.

There is also the matter of migration between the UK and the EU, both in terms of own and third country nationals. For example, in 2016 Schengen state embassies in the UK issued 245,026 Schengen visas to third country nationals, making the UK the 11th highest in the world and first among EU Member States.<sup>25</sup> This represents a substantial movement of third country nationals to Schengen states, not including visas issued for entry by non-Schengen EU states to third country nationals with status in the UK. In the absence of a readmission agreement, there would be no 'fall back' option of returning third country nationals to the UK if return to their country of origin proves not to be possible. Furthermore, any future migration regime employed by the EU and the UK to each other's nationals may further increase the need for a readmission agreement which sets out the precise procedures for return.

The third criterion (accession state) is not applicable to the UK; furthermore, the criterion of whether a readmission provision is present in an agreement with the third country would be dependent on how the negotiations proceed. The added value of an EU agreement over bilateral agreements would be maintaining coherence between the Member States in these unique circumstances, where the EU and the UK are constructing a new relationship from what existed before in almost every policy area, and readmission is one element of this, rather than an add-on to an existing relationship. Negotiating an agreement at the EU level will also increase the potential leverage available to the Member States in the negotiations.

As with all EU readmission agreements, the procedures for the returns themselves will be subject to negotiation, yet due to the functioning of the UK's immigration system there is no reason why areas such as response times to readmission applications cannot be shorter than in other EU agreements.

Including the EU-UK readmission agreement as an annex or protocol to the future relationship agreement could prove problematic to the ratification process due to the likelihood that it will be a mixed agreement. If a formal readmission agreement were included, account would then have to be taken of Ireland and Denmark's opt-outs from AFSJ measures under Protocols 21 and 22 of the Treaties. Further to these considerations, including the agreement as an annex or protocol may also affect the legal basis of the future relationship agreement.

## **CONCLUSION**

A readmission clause as part of a wider future relationship agreement alone will not be sufficient for the EU's purposes, particularly in relation to third country nationals who currently, and may in future, move between the EU and the UK. It would also not be sufficient for the EU to rely on customary international law as it does not allow for the return of third country nationals to a state other than that of their nationality. Therefore, the EU should seek to negotiate a formal readmission agreement with the UK which will allow it to return third country nationals and stateless persons who move from the UK to the EU and vice versa. Although the timing of the negotiation for a readmission agreement may depend on negotiating priorities, it would be to the greater benefit of the EU to conduct the negotiations in parallel to those on the future relationship agreement. Beyond the conclusion of these two elements, further cooperation between the EU and UK is very much dependent on the closeness of their overall future relationship.

- <sup>1</sup> Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation [2014], OJ L 134/3, Art.1 (n) (EU-Turkey Readmission Agreement).
- <sup>2</sup> Council Directive (EC) 2008/115 of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals [2008], OJ L 348/98 (Return Directive).
- <sup>3</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (1950).
- <sup>4</sup> Charter of Fundamental Rights of the European Union [2012], OJ C 326/391.
- <sup>5</sup> Council Regulation (EU) 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or stateless person [2013], OJ L 180/31 (Dublin Regulation).
- <sup>6</sup> Council Regulation (EU) 603/2013 of 26 June 2013 on the establishment of -Eurodac- for the comparison of fingerprints for the effective implementation of Regulation (EU) 604/2013 [...] on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013], OJ L 180/1 .
- <sup>7</sup> Council Directive (EC) 2004/58 of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Council Regulation (EEC) 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004], OJ L 229/35 (Citizenship Directive).
- <sup>8</sup> Consolidated version of the Treaty on the Functioning of the European Union [2012], OJ C 326/47 (TFEU).
- <sup>9</sup> Ibid, art.2 (2).
- <sup>10</sup> Agreement between the European Community and Ukraine on the readmission of persons [2007], OJ L 332/48, Art.17 (EU-Ukraine Readmission Agreement).
- <sup>11</sup> Ibid, Art. 20 (3).
- <sup>12</sup> EU-Turkey Readmission Agreement, footnote 1, Art. 24 (3).
- <sup>13</sup> Hailbronner, K. (1997), Readmission agreements and the obligation on states under public international law to readmit their own and foreign nationals, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, pp. 11-ff .
- <sup>14</sup> Ibid, p. 14.
- <sup>15</sup> Council of the European Union (1996), 'Council conclusions on clauses to be inserted in future mixed agreements', 4272/96, Brussels, 22 January, pp. 2-3.
- <sup>16</sup> Agreement amending for the second time the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, as first amended in Luxembourg on 25 June 2005 [2010], OJ L 287/1
- <sup>17</sup> Sabbati, G. and Apap, J. (2017), 'Recent migration flows to the EU', European Parliamentary Research Service, European Parliament, PE 614.604, December, p. 3.
- <sup>18</sup> European Commission (2004), 'Communication from the Commission to the Council and the European Parliament report on the priorities for the successful development of a common readmission policy', SEC (2004) 946 final, Brussels, 19 July, p. 4-ff.
- <sup>19</sup> Council of the European Union (1999), 'Summary Report of Member States' contributions on readmission questions', 7609/1/99, Brussels, 3 May.
- <sup>20</sup> Wolff, S. (2014), 'The politics of negotiating EU readmission agreements: insights from Morocco and Turkey', 16(1), European Journal of Migration and Law 69, pp.69-ff.
- <sup>21</sup> Consolidated version of the Treaty on European Union [2012], OJ C 326/13 (TEU).
- <sup>22</sup> For an up-to-date list of readmission agreements see [https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en)
- <sup>23</sup> European Commission (2015), 'The European Union's cooperation with Africa on migration', MEMO 15/4832, 22 April, [http://europa.eu/rapid/press-release\\_MEMO-15-4832\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-4832_en.htm)
- <sup>24</sup> <http://www.consilium.europa.eu/media/32504/xt21004-ad01re02en18.pdf>
- <sup>25</sup> European Commission, 'Visa statistics for consulates, 2016', [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/borders-and-visas/visa-policy/docs/2016\\_consulates\\_schengen visa\\_stats\\_en.xlsx](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/borders-and-visas/visa-policy/docs/2016_consulates_schengen visa_stats_en.xlsx)

## DISCLAIMER

The content of this document is the sole responsibility of the author and any opinions expressed therein do not necessarily represent the official position of the European Parliament. It is addressed to Members and staff of the EP for their parliamentary work. Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

This document is available at: [www.europarl.europa.eu/studies](http://www.europarl.europa.eu/studies)

Contact: [poldep-citizens@ep.europa.eu](mailto:poldep-citizens@ep.europa.eu)

Manuscript completed in February 2018

© European Union 2018

PE 596.843



ISBN: 978-92-846-2605-2 (pdf)  
ISBN: 978-92-846-2607-6 (paper)  
CATALOGUE: QA-02-18-112-EN-N (C+N)  
doi: 10.2861/789339 (pdf)  
doi: 10.2861/203902 (paper)