

Migration Control Conditionality: a flawed model

ECRE's assessment of the flaws in attaching migration conditionality to EU development funding

I. INTRODUCTION

The new leadership of the European Commission (EC) and the Council of the EU are currently discussing how to increase the number of people returned to third countries. The fact that return and readmission is a priority for the new EC could hardly have been missed- it featured strongly in the mission letters sent to Commissioners and its importance was stressed throughout the hearings of the Commissioners designate, by candidates and some Members of the European Parliament alike. A continued disproportionate focus on deportations is likely, with an increased number of people returned from Europe seen as one – if not the – most important indicator of a successful migration policy.

ECRE accepts that returns can be a legitimate part of migration policy and that cooperation on readmission with third countries of their own nationals can be a valid action of the EU. However, this is only so long as there are fair asylum and return procedures and fair and transparent relations with third countries, which is currently not the case. ECRE has serious concerns, in addition, about the lack of evidence for many of the assumptions behind recent policy decisions regarding return and the purely numerical measure of effectiveness, as argued elsewhere.

In this Policy Note, ECRE will focus on the proposal to make EU external funding, including development assistance, conditional on third country governments' willingness to increase cooperation on readmission. It points out the various flaws in this approach, many of which also apply to using other external policies, such as trade or security policy, to further the EU's return objectives. It ends with recommendations regarding future cooperation on return and readmission, as well as for the negotiations on EU development funding after 2021.

II. ANALYSIS

PLANS TO INCREASE LEVERAGE FOR COOPERATION ON RETURN AND READMISSION

The EU is assessing policy options for increasing cooperation by third countries on return and readmission. Early discussions have centred on how to use visa restrictions or facilitation for nationals of a third country to increase cooperation. This approach has already been used in the Western Balkan countries where, as part of the stabilisation and association process, a visa suspension mechanism triggers suspension of visa-free travel. The recently adopted changes to the Visa Code provide for a mechanism to use visa processing as a form of leverage on third countries generally. It includes the obligation for the EC to assess annually a country's cooperation on readmission and enables it to propose specific measures to restrict issuance of visas to be adopted by the Council as a way to pressure countries to cooperate.

In addition, the Council of the EU and the new European Commission are assessing what other leverage is available to make third country governments more compliant and to influence them in line with the EU's interests. The use of EU external funding, including development assistance, is being considered and the negotiations on the Neighbourhood, Development and International Cooperation Instrument (NDICI) in the next Multi-annual Financial Framework (MFF) is viewed by EU Member States as an opportunity to anchor this approach in the legislation that will underpin spending from 2021 onwards.

The gist of what is being proposed - vigorously by some Member States - is that EU development assistance should be subject to annual assessments which would review, inter alia, the third country's performance in relation to the EU's migration control objectives, which include cooperation on readmission. Depending on the outcome of the assessment, funding allocation would be increased or decreased. This is being pursued in the negotiations of the NDICI in parallel to proposals that a) would dedicate a specific amount of external funding to migration and forced displacement and b) would increase Member States' ability to influence funding decisions and make allocation more flexible. The latter proposals have already been discussed by ECRE so the following analysis will focus on the issue of conditionality and the flaws in current proposals.

FLAW NO 1: IT IS AGAINST THE EU'S OWN PRINCIPLES

The proposal to link funding to the implementation of readmission agreements is contrary to the EU's commitments made in the Global Partnership for Effective Development Cooperation (GPEDC) during the Busan High Level Forum on Aid Effectiveness in 2011 and renewed during the High-Level Meeting in Nairobi in 2016. Those commitments emphasise local ownership of priorities by developing countries; a focus on results; inclusive development partnerships; and transparency and mutual accountability. They were reiterated in the EU's own Consensus on Development which provides the framework for EU implementation of the Sustainable Development Goals and the 2030 Agenda to which it is also committed. Conditionality related to readmission cooperation would mean backtracking on the principles and commitments made by the EU.

FLAW NO 2: IT WILL MAKE EU DEVELOPMENT ASSISTANCE LESS EFFECTIVE

Putting migration cooperation at the centre of the EU's decision-making on funding allocation will lead to ineffective development assistance because EU funding will not go where it could have the most impact. Instead, it goes where it seems opportune for the EU to reward a government for supposed progress in a policy area that should not be the main focus of development assistance. In fact, the approaches on migration control pursued by the EU have in the past had negative consequences on development indicators, such as in the case of the Sahel where it has hampered cross border cooperation and trade. It also risks providing legitimacy to actors who generate the situations from which people are either forced to flee or do not see a future for themselves due to poor governance or lack of opportunities. Cooperation with the previous regime in Sudan on migration is a case in point.

FLAW NO 3: IT IGNORES THE RELATIONSHIP BETWEEN MIGRATION AND DEVELOPMENT

Development funding can be used for purposes related to migration and mobility but the overall framework in which the EU committed to engage is the 2030 Agenda which recognises the positive contribution of migration and mobility to growth and sustainable development. Human mobility is a driver and consequence of development and contributions by migrants to their home countries' economies can be significant. The World Bank estimates

that in 2019, remittance flows to low- and middle-income countries will reach \$550 billion, which would constitute their largest source of external financing. Remittances from France, Germany and Italy to Morocco in 2018 constituted €1,2 billion. In comparison, in the same year Morocco received €148 million from the EU Trust Fund for Emergency Assistance to Africa, in addition to €182 million support to overall development from the EC.

In many contexts, EU development assistance is not enough to offer sufficient incentive for the third country government to change its approach to readmission – it does not make economic sense for them. The contribution of remittances to a country's GDP for the third countries with the highest number of nationals who were issued a return decision in 2018 shows its importance: Morocco 5,8%; Ukraine 11,8%; Albania 9,3%; Afghanistan 4,4% ; Algeria 1%; Iraq 0,3%; Pakistan 7,9%; Guinea 0,3%; Mali 5,4%; Tunisia 5,3%; India 2,8%; Nigeria 5,7%.

FLAW NO 4: IT DECREASES THE TRANSPARENCY AND ACCOUNTABILITY OF DEVELOPMENT ASSISTANCE

The contribution that migrants make to their home communities also explains why repatriation agreements are so unpopular. This unpopularity outside Europe and criticism of the EU's coercive approach means that the preparation and negotiation of return and readmission agreements is usually conducted in secret. This, in connection with the increasing use of informal agreements, means that there is very limited democratic and judicial oversight of return agreements, which in turn impedes the protection of rights of people who are being returned and undermines parliamentary oversight. Linking development assistance to return and readmission agreements will also likely lead to a reduction in the transparency and accountability of development assistance itself. For instance, the implementation of the 2016 Joint Way Forward on Afghanistan which de facto tied cooperation to increasing cooperation on return is overseen by a series of monitoring meetings for which neither agenda nor conclusions are publicly available. Another example is a recent report on Nigeria which finds that it is impossible to track billions of Euro of migration-related spending in the country. Without transparency, results cannot be assessed. Hard won victories on oversight of aid are being undermined.

FLAW NO 5: IT DESTROYS TRUST WITH THIRD COUNTRY GOVERNMENTS

Migration control conditionality is perceived as the EU's domestic agenda and often directly contradicts a third country government's interests for the reasons described above. It thus risks causing lasting damage to the EU's cooperation with third countries and the EU's reputation as a diplomatic actor. The fact that senior EU officials and Member State ministers invoke the spirit of partnership with African countries stands in stark contrast to the attempt to force cooperation on the EU's areas of interest. This is further exacerbated by the limited progress Member States have made on the expansion of regular migration channels which is often a priority for third countries. As an illustration, research soon to be published by Oxfam on the EU Trust Fund for Emergency Assistance to Africa found that of a total €3.9 billion allocated between November 2015 and May 2019, only €56 million was spent on projects which included legal migration as one of the strategic objectives, representing less than 1,5% of total Trust Fund allocation.

Instead of creating a trusting relationship between the EU and third countries, conditionality makes development assistance a bargaining tool subject to potential manipulation by donor and recipient. Increasingly governments outside the EU use migration as a political lever in their relations with Europe. Introducing conditionality for readmission in development assistance is detrimental to the EU's overall standing as development actor and reduces its ability to enforce international standards on human rights, gender equality and its climate targets. The approach also undermines the EU's own diplomatic and security interests by damaging trust and reputation.

HOW CAN COOPERATION WITH THIRD COUNTRIES ON RETURN AND READMISSION BE ADVANCED?

ECRE argues that all policy initiatives in the area of return would greatly benefit from an investment in analysis and an evidence base that acknowledges the complexity of return at the individual level as well as the dynamics within the countries from which and to which a person may be returned. For instance, at the individual level there is no clear evidence that detention increases returns or that a hostile environment makes individuals who have been issued a return decision more likely to leave the EU. Instead, recent research concludes that it is precisely the fact that people have been able to establish themselves, earn money and support their families back home that makes them more willing to return. This suggests regularisation and access to rights and services, including access to the labour market, need to be part of a comprehensive approach to return.

When it comes to cooperation with third countries certain ideas should be off the table, starting with the suggestion that third countries should admit people who are not their nationals. As well as being a known stumbling block in the negotiation of formal readmission agreements, it creates the risk of indirect refoulement for the individual concerned for which the respective Member State can be held responsible. Third countries legitimately raise questions as to why they should be responsible for other third country nationals when the EU is refusing to be. It would also help to place any negotiations of readmission agreements much more firmly in the context of overall migration governance and avoid the limitations of a negative approach as outlined above. For this, the EU and, first and foremost, EU Member States, should be ready to provide incentives to third countries in the form of increased opportunities for legal and circular migration. As discussed earlier these are often priorities for third countries. This makes sense not only because these are two sides of the same coin, or different means to achieve the same outcomes, but also because it will help the governments of third countries to generate support for any agreements on readmission concluded with the EU.

III. RECOMMENDATIONS

Cooperation with third country governments on return and readmission should:

- Not be a condition for more support under other EU external policy areas, including foreign, development or trade policy.
- Be conducted in a transparent way, with plans for cooperation and updates on negotiations publicly available and oversight by the European Parliament and parliaments in the countries of return.
- Guarantee the protection of fundamental rights of the individuals that are being returned.
- Exclude forcing third country government to accept non-nationals.
- Be centred within the framework of the SDGs and the objective of developing a mutual beneficial cooperation on migration which includes progress on the expansion of regular migration channels.

In the negotiations for the NDICI, Member States and Members of the European Parliament should:

- Focus on developing a funding instrument that enables the EU to remain relevant as a development actor and live up to its own principles and commitments.
- Resist the push for migration control conditionality or for other approaches with narrow and limited targets on the use of migration-related funding.
- Guarantee that allocation of funding to third countries is governed by a set of agreed criteria to avoid that increased flexibility leads to ineffective and potentially harmful use development assistance.
- Ensure human rights due diligence is put in place before, during, and after migration-related programmes are implemented to ensure that the EU is not complicit in human rights abuses and that it ceases funding partnerships on migration management with countries which have a proven track record of gross human rights violations.