

Conditionality in Migration Cooperation: Five Ideas for Future Use Beyond Carrots, Sticks, and Delusions

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LIST OF ABBREVIATIONS

AFIC	Africa-Frontex Intelligence Community
AU	African Union
BAMF	Bundesamt für Migration und Flüchtlinge (German Federal Office for Migration and Refugees)
BATNA	Best alternative to negotiated agreement
CAMM	Common Agenda on Migration and Mobility
CJEU	Court of Justice of the European Union
COREPER	Committee of Permanent Representatives
DG	Directorate General (EU Commission equivalent of ministries)
DG HOME	Directorate General for Migration and Home Affairs (EU Commission)
DG INTPA	Directorate General for International Partnerships (formerly DG DEVCO – Directorate General for Development Cooperation)
DG TRADE	Directorate General for Trade
DHS	United States Department of Homeland Security
DOS	United States Department of State
EBCG	European Border and Coast Guard Agency (still referred to as FRONTEX)
ECHR	European Convention on Human Right
ECRE	European Council on Refugees and Exiles
EEAS	European External Action Service
EMN	European Migration Network
EMWP	Working Party on External Aspects of Asylum and Migration
EP	European Parliament
ERF	European Refugee Fund
EU	European Union
EURA	EU Readmission Agreement
EURCAP	EU Readmission Capacity Building Facility
EURODAC	European Asylum Dactyloscopy Database
EUTF	EU Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa
FDI	Foreign Direct Investments
FRA	European Union Agency for Fundamental Rights
FRIT	Facility for Refugees in Turkey
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

GAM	Global Approach to Migration
GAMM	Global Approach to Migration and Mobility
GIZ	Deutsche Gesellschaft für International Zusammenarbeit GmbH (German Agency for International Cooperation)
GP	Good Practices on identification and return procedure
GSP	Generalized Scheme of Preferences
HRVP	High Representative of the Union for Foreign Affairs and Security Policy and Vice President of the European Commission
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMPD	International Centre for Migration Policy Development
IMEX	Working Party on Integration, Migration and Expulsion (Council working group)
IO	International Organisation
IOM	International Organisation for Migration
Interpol	International Criminal Police Organization
JHA	Justice and Home Affairs
JHA Council	Justice and Home Affairs Council in the Council of the EU
JWF	Joint Way Forward (Agreement between the EU and Afghanistan)
LDC	Least Developed Country
Madad	EU Regional Trust Fund in response to the Syrian crisis
MEP	Member of European Parliament
MFF	Multiannual Financial Framework
MOCADDEM	Operational Coordination Mechanism for the External Dimension of Migration (Council working group)
MoU	Memorandum of Understanding
MPI	Migration Policy Institute
MPF	Mobility Partnership Facility
NATO	North Atlantic Treaty Organization
NDICI	Neighbourhood, Development and International Cooperation Instrument
NGO	Non-governmental organisation
OACPS	Organisation of African, Caribbean and Pacific States
PAM	Partnerschaftliche Ansätze für Ausbildungs- und Arbeitsmigration (Partnership Approaches for Development-oriented Vocational Training and Labour Migration)
PCA	Partnership and Cooperation Agreement
RCMS	Readmission Case Management System
RSD	Refugee Status Determination
SCIFA	Strategic Committee on Immigration, Frontiers and Asylum (Council working group)
SOP	Standard Operating Procedures for the Identification and Return of Persons without an Authorization to Stay
SVC	Schengen Visa Code
TEC	Treaty Establishing the European Community
TFEU	Treaty on the Functioning of the European Union
THAMM	Towards a Holistic Approach to Labour Migration Governance and Labour Mobility in North Africa
TLC	Tender Loving Care
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UNHCR	United Nations High Commissioner for Refugees
UN	United Nations
US	United States of America
VP	Vice President (of the European Commission)

Executive Summary

Effective migration partnerships with third countries are a declared goal of the European Union. But views diverge on what good migration cooperation looks like. Using carrots and sticks, also known as conditionality, is a controversial strategy to reach the EU's migration goals. Politicians and experts either frame it as necessary and legitimate, or as post-colonial and counterproductive.

Whether one supports conditionality or not, positive and negative incentives have shaped the different types of migration agreements the EU has struck in the last decade. Some are formal agreements binding under international law, but most are soft law or handshake deals. They may cover just one specific issue within migration policy, or tie migration to other policy areas. Some are public, others confidential. All these agreements reflect the interests and the leverage which the EU, Member States, and partner countries bring to the table.

The three most discussed levers the EU uses to nudge partner countries toward joint migration management are visas, development aid, and trade – the holy trinity of migration conditionality. But the exclusive focus on these three levers is artificial. Europe also uses other levers, such as police or military cooperation and training, diplomatic attention on high levels, legal migration opportunities, and others.

When these levers are used, they generate three kinds of effects: the conclusion of an agreement, common document, or statement (paper), procedural or technical changes (process), and migratory movements (people). But they also bring unintended side effects, such as backlash from the citizens of third countries, or the phenomenon of reverse conditionality, when a third country reacts to threats by reducing border patrols or by supporting irregular onward migration. Lever use of one EU country can also worsen the migration relationship of its EU neighbors with that third country.

Despite these high stakes, Europe uses conditionality remarkably inconsistently. Its strategy to create coordination mechanisms to make Member States' approaches more coherent is hobbled by entrenched realities: The cost of coordination is often disproportionate to its benefits, and turf demarcation hinders cooperation. Thus, the chase for coherent conditionality usage in the EU is at best an uphill battle and at worst a delusion.

This report puts forward five recommendations to improve Europe's migration conditionality use and debate in the future. It draws on case studies that trace the EU's use of incentives and threats toward Bangladesh, The Gambia, Afghanistan, Iraq, and Nigeria, and distills lessons from them.



1. Stop using conditionality as a rhetorical tool and start using it as a practical tool that has legitimate yet limited use.

Politicians and experts alike should work to make the debate on conditionality less ideological and more pragmatic. Concretely, opponents of conditionality should acknowledge that applying carrots and sticks can indeed be effective and legitimate, while proponents of conditionality should acknowledge that it only works in specific cases, and that large-scale replicability of successful cases is unlikely. Rejecting or embracing conditionality categorically, as happens so often, prevents a meaningful and nuanced debate on incentives in migration cooperation.



2. If you use conditionality, use it smartly.

Policymakers should go through a checklist to use conditionality more effectively and credibly in the future. They should avoid path dependency and use of a lever just because it is there or has worked elsewhere, and instead find the levers a country is most receptive to. They should also adapt the timing and sequencing of their demands to the electoral calendar of the country they are engaging: the case studies show that elections and governmental changes are central determinants of countries' behaviors, perhaps more so than the EU's lever use itself. European policy-makers should also be more consistent in their demands. They should use threats more credibly, and negative levers consciously, not accidentally – as has happened in the past.



3. Make the visa lever fairer and more daunting.

The EU should try and make its visa lever fairer by adapting the indicators that measure readmission cooperation, and by monitoring the effects of visa restrictions more systematically. To date, restrictions under Article 25a are not used on the countries that cooperate the least, but on countries that depend most on the EU and do not have a strong veto player friend among Member States. At the same time, the EU should try and make its visa restrictions more daunting. The EU could consider increasing wait times by introducing delays longer than the maximum 45 days, and it could critically review the current visa fee increase structure. Alternatively, Member States should improve the speed and efficiency of their visa delivery to increase the impact of restrictions. The current visa process is so cumbersome that the added hassle brought by visa restrictions has little impact on applicants. A better baseline would make visa restrictions more potent.

visa processing, and decreasing their population of irregular migrants through alternative efforts like regularizations. They can also change their strategies at home to improve EU coordination, for instance when they sidestep the go-to solution of yet another coordination format, and instead bring in third-party moderators to create incentives for positive coordination.

Migration conditionality, like it or not, is here to stay. The EU will keep expanding its conditionality toolbox. But if it wants this toolbox to be more effective, coherent, and credible, it needs to use it more smartly and selectively than in the past. The use of carrots and sticks will continue. But it will hopefully be driven by more facts and fewer delusions.



4. Let realism reign about development, trade, and legal pathways levers.

Policy-makers should come to a more realistic assessment of the potential of the development, trade, and legal pathways levers, as expectations of these levers' powers are overblown. Less for less aid conditionality is hotly debated in theory, but rare and easy to buffer in practice. The trade lever formalization is uncertain, and even if it is formalized, it is unlikely that it will be used. Legal pathways are now in the spotlight, but ways to use them as a positive incentive have either been discarded (resettlement) or are underdeveloped (skill-based schemes).



5. Create alternatives to decrease dependency on conditionality.

Europe should also go beyond conditionality and work to solve migration challenges with other or fewer external partners. European countries could piggyback on other countries' established relations with third countries on readmissions, which would allow them to use a path already carved instead of having to carve new paths from scratch. Also, European countries could decrease the urgency to strike migration agreements through internal improvements, such as fixing dysfunctions in their national systems of migration, return, and

INTRODUCTION

International migration cooperation matters more and more for the EU and its Member States. Politicians and experts alike constantly call for better and deeper partnerships, because they understand that good migration governance needs not just cooperation within Europe, but with key countries of origin and transit along migration routes to Europe.

But this coveted migration cooperation suffers from clashing goals and interests. Acutely aware of their own limited leverage at the negotiation table, the EU and its Member States have been developing a conditionality toolbox consisting of incentives and sanctions to use towards third countries. This trend has been gaining so much momentum in the last decade that, today, most EU Member States support the expansion of migration conditionality. The EU Commission has repeatedly endorsed using visa, development, and trade policies as levers to get closer to the elusive progress on returns and readmissions, first in the 2015 “Action Plan on Return” and again in the “New Pact” of 2020. The European Council also repeatedly confirmed political support for this approach, most recently in communications in 2021 and 2023.¹

The use of carrots and sticks in migration cooperation elicits heated debates. Many experts criticize the EU’s push towards migration conditionality. Opponents regularly argue that migration conditionality undermines diplomatic relations, crowds out more important or acute priorities of other policy fields, and that it undermines the effectiveness of development aid. Also, they find that the resources spent are disproportional to the objective and that, worst of

all, conditionality is ineffective. Many commentators thus argue that the EU should only use the “more for more” approach, i.e. improving access to visas or European markets or increasing development funds. In contrast, the “less for less” approach is perceived as harmful or ineffective, especially sanctions that cut development funding, make it harder to get visas, or reduce trade opportunities.²

Yet this controversy around migration conditionality is often based on hypothetical scenarios and potential risks rather than on real-life experiences or case studies. Evidence on the use of conditionality and on the actual – as opposed to theoretical – effects rarely is publicly available. Systematic research on the formalization of the EU’s conditionality levers and on their use in practice is also scarce to date. This lack of reliable data and research complicates an evidence-based discussion.

This report aims to fill this gap. It is based on 53 confidential interviews, held between July 2022 and May 2023, with practitioners and experts from EU institutions, Member States, and select third countries on the real-life, practical costs and benefits of using migration conditionality. The findings from these interviews, alongside extensive desk research and an in-depth review of existing literature on migration cooperation, the external dimension of EU migration policy, and conditionality, were sharpened through two closed-door expert workshops on conditionality and migration partnerships, organized by DGAP in September 2022 with international participants and in November 2022 with German participants. A draft version of this study received checks and feedback through 13 external expert reviews.

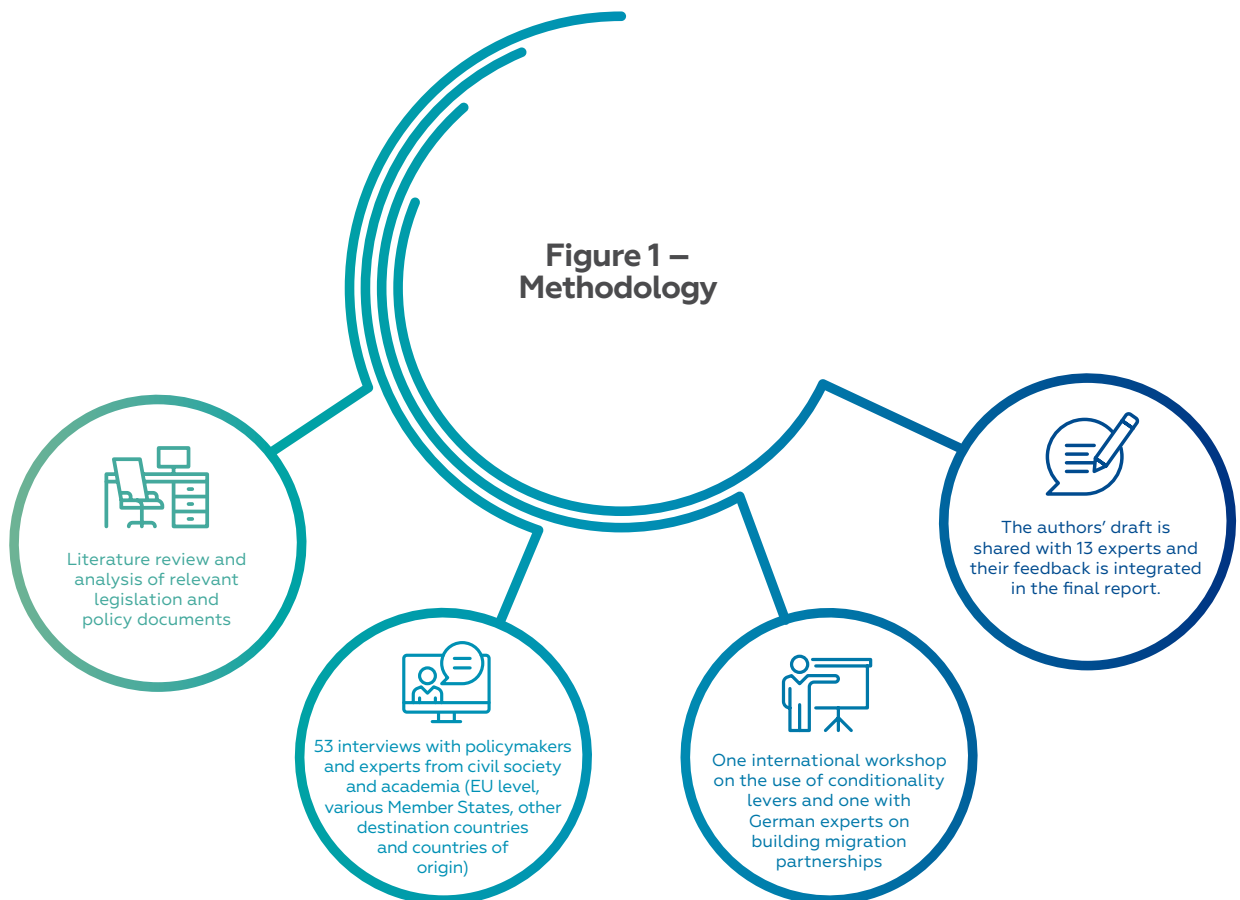
- 1 In 2015, the Commission endorsed readmission conditionality as follows: “Return and readmission should be part of a balanced and consolidated EU package to a third country, drawing on all relevant policies – in particular home affairs, foreign policy, development assistance, trade, security – to achieve EU migration policy goals. Conditionality should be used where appropriate.” European Commission, “EU Action Plan on Return: COM/2015/0453 Final,” September 9, 2015, p. 14, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:453:FIN>. In 2020, the Commission announced that the “full range of the EU’s and Member States’ policies, tools and instruments” should be mobilized to foster cooperation on returns and readmission. European Commission, “Communication on a New Pact on Migration and Asylum” (Brussels, September 23, 2020), https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_1&format=PDF. In 2021, the European Council called on Member States “to ensure effective returns from the EU to countries of origin by using as leverage all relevant EU policies, instruments and tools, including development, trade and visas.” See: European Council, “Conclusions” (Brussels, December 16, 2021), <https://www.consilium.europa.eu/media/53575/20211216-euco-conclusions-en.pdf>. In 2023, the same statement was repeated, adding a reference to “opportunities for legal migration” as a further lever. See: European Council, “Conclusions of the Special Meeting of the European Council (9 February 2023), EUCO 1/23,” February 9, 2023, <https://www.consilium.europa.eu/media/61997/2023-02-09-euco-conclusions-en.pdf>. The position of the European Council has followed this line since 2015. Relevant statements are quoted in European Court of Auditors, “Special Report No 17/2021: EU Readmission Cooperation with Third Countries,” September 19, 2021, p. 64–65, https://www.eca.europa.eu/Lists/ECADocuments/SR21_17/SR_Readmission-cooperation_EN.pdf.
- 2 For a glimpse of the breadth of opinion, see, e.g., Olivia Sundberg Diez, “Conditionality for Readmission Cooperation,” in European and African perspectives on Asylum and Migration Policy: Seeking Common Ground: 2020 MEDAM Assessment Report on Asylum and Migration Policies in Europe, by Mercator Dialogue on Asylum and Migration, ifW ed. (Kiel, 2020), pp. 26–32; Livia Benko, “Development Aid, Migration and Conditionality: The Case of the Marshall Plan with Africa” (Brussels, May 1, 2020), https://www.martenscentre.eu/wp-content/uploads/2020/05/marshall_plan_with_africa_0.pdf; ECRE, “Migration Control Conditionality: A Flawed Model: ECRE’s Assessment of the Flaws in Attaching Migration-Related Conditionality to EU Development Funding,” Policy Note, January 1, 2020, https://www.ecre.org/wp-content/uploads/2020/01/PN_25.pdf; David Kipp et al., “Negative Sanctions and the EU’s External Migration Policy: ‘Less for Less’ Not Fit for Purpose,” SWP Comment (German Institute for International and Security Affairs, June 1, 2020), <https://doi.org/10.18449/2020C34>; Nadine Bieher, Anne Koch, and Amrei Meier, “Risks and Side-Effects of German and European Return Policy” (Stiftung Wissenschaft und Politik (SWP), German Institute for International and Security Affairs, January 1, 2021), <https://doi.org/10.18449/2021RP12>. Victoria Rietig and Mona Lou Günnewig, “Deutsche Rückkehrpolitik Und Abschiebungen: Zehn Wege Aus Der Dauerkrise,” DGAP Analyse (Berlin, May 1, 2020), https://dgap.org/sites/default/files/article_pdfs/dgap-analyse-2020-03-de_0.pdf.

This study answers the following five sets of questions:

- What different types of migration cooperation has the EU pursued in the last decade?
- What role has conditionality played in these migration cooperation efforts so far? Which levers has the EU used and which effects has the EU's conditionality use had to date?
- How united are the EU and its Member States in their conditionality use? How useful are current strategies to reach coherent approaches?
- Which lessons can be drawn from specific cases of conditionality use?
- How can the EU and its Member States use conditionality more responsibly and effectively in the future?

Chapter 1 maps the types of migration cooperation the EU has pursued in the past to explain the context of the conditionality debate and use. Chapter 2 lists and analyzes available evidence on the use of conditionality levers in practice and the ongoing development of further policy tools; Chapter 3 highlights the EU's incoherent conditionality use, and Chapter 4 draws practical lessons from five country cases. Chapter 5 provides recommendations to European policymakers on how different conditionality levers can and should be used in migration cooperation in the future – and when to steer clear of them.

The findings of this study come with a few limitations: Few practitioners the researchers interviewed and engaged with were willing to go on the record with their statements, either because they were not formally authorized to share certain information, or because they had concerns about backlash. This fact allowed for frank conversations, but also makes the



interviewee list of this study untransparent (see annex). Also, the researchers could not always verify interviewees' statements and assessments regarding the impacts of conditionality use through alternative sources since the information interviewees cited was often confidential and not public. In the same vein, the authors had to exclude some relevant information they had at hand to honor their interviewees' confidentiality. Further, since most interviews were held between August 2022 and October 2022, interviewees could not take into account some developments regarding the visa lever that have happened since (such as the finalization of the Commission's third assessment report of third countries' readmission cooperation, the new proposal for visa restrictions in December 2022, and the engagement with partner countries that followed). It is possible that these changes might have changed some judgments of interviewees and that interviews at a later stage might have yielded slightly different results. Another limitation are the effects of the Covid-19 pandemic on migration patterns and cooperation, which complicates assessments of people's movements and effects of conditionality use, as upward trends can be a sign of long-term change or just a return to pre-Covid levels of migration and a restoration of previously interrupted migration cooperation. Lastly, the fact that this study is a German effort, funded by the research center of Germany's Federal Agency for Migration and Refugees, may have influenced the statements of some interviewees, especially those from third countries.

Aware of these limitations, this study is an attempt to provide information that is as balanced as possible, to make the heated debate about migration conditionality more fact-based, and to improve the use of conditionality in the future.

1. MIGRATION COOPERATION: SETTING THE SCENE

Migration cooperation is often discussed, but its details are not always understood. The goal of this first chapter is to explain the context in which conditionality is discussed and used, to set the scene for the research results in the rest of the report.

Put simply, migration cooperation is an umbrella term that includes any transnational engagement on migration. For years, the EU's declared goal has been to create more and better migration cooperation. This goal was reflected in the 2005 Global Approach on Migration (GAM), the 2011 Global Approach on Migration and Mobility (GAMM), and the 2016 Migration Partnership Framework. Today, it is an integral part of the New Pact on Migration and Asylum. Commission officials call migration cooperation the ground floor of the three-story house of EU migration policy.³

Understanding these successive EU strategies on the external dimension of migration policies is difficult, though. As often in the EU, a jargon jungle has sprouted that is close to impenetrable for an uninitiated layperson who wonders what is hiding behind these buzzwords. Box 1 explains the main terms and concepts of EU migration cooperation.

This chapter provides a concise analysis of the types of migration cooperation that European countries and the European Union have pursued in the last ten years. Migration cooperation can vary in four ways. The dividing lines are 1. the goals countries pursue; 2. the actors and levels of governance that cooperate; 3. the scope of their cooperation; and 4. the degree of formality of their agreements. The table at the end of this chapter provides a simple typology and analysis of the types of migration cooperation the European Union has pursued in the last decade and gives examples for each type.

³ European Commission, "Speech by Vice-President Schinas on the New Pact on Migration and Asylum," September 23, 2020, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1736.

BOX 1 – WHAT IS BRUSSELS TALKING ABOUT? A SHORT GUIDE TO THE EU'S MIGRATION COOPERATION JARGON

Brussels is full of migration buzzwords and concepts, such as mobility partnerships, talent partnerships, and skills partnerships, which are hard to understand for laypeople who try to get a grip on the details and differences between these terms. This box explains the main terms and concepts of EU migration cooperation in the last two decades. These concepts sound similar, but are different, and exist in parallel.

Mobility Partnerships (since 2006)

The EU first introduced “mobility partnerships” in 2006 as core concept of the EU’s strategy at that time (the 2005 Global Approach to Migration or GAM). They are flexible but institutionalized frameworks for cooperation with partner countries covering a wide range of migration, mobility, and asylum policies (making them medium formats, see Table 1). Since 2008, the EU has signed such agreements with Cape Verde, Moldova, Georgia, Armenia, Morocco, Azerbaijan, Tunisia, Jordan, and Belarus. By signing these mobility partnerships, the EU and its partners committed to negotiate visa facilitation and readmission agreements (formal) or arrangements (informal), and to cooperate on border and migration management.

Common Agendas on Migration and Mobility (since 2011)

New strategy, new concept: After GAM came the 2011 Global Approach to Migration and Mobility (GAMM). This approach brought a new cooperation concept: the Common Agendas on Migration and Mobility (CAMM). To date, the EU has signed such Common Agendas with Ethiopia, Nigeria, and India. These are also medium agreements for dialogue on all areas of migration, but, unlike Mobility Partnerships, they do not have to include the negotiation of visa facilitation nor readmission agreements.

Migration Partnerships (since 2016)

Following the crisis-driven 2015 strategy called the European Agenda on Migration, the EU adopted another concept, the “New Partnership Framework”, which aimed at “a coherent and tailored engagement where the Union and its Member States act in a coordinated manner putting together instruments, tools and leverage to reach comprehensive partnerships (compacts) with third countries to better manage migration in full respect of our humanitarian and human rights obligations.”⁴ The difference to previous concepts was more flexibility: A Migration Partnership could be filed relatively freely by the parties. This remains the EU’s approach to date. The flexibility of the partnership approach means that the EU can easily include conditionality in its partnerships.

EU Migration Compacts (2016)

Under the New Partnership Framework, the EU negotiated migration compacts, which were bilateral and concrete commitments on migration management and economic development, with the goal to prevent onward migration from countries of first refuge in the Eastern Mediterranean, and the Sahel and Maghreb regions. To reach this goal and implement the compacts, the EU set up specialized funds – notably the EU Regional Trust Fund – in response to the Syrian crisis (more well-known by the Arabic term Madad, meaning sustaining or reinforcing), and the EU Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa (known as EUTF for Africa). The only two compacts concluded to date have been with Jordan and Lebanon.⁵ Importantly, these migration compacts should not be confused with the UN’s migration and refugee compacts, which are non-binding declarations of intent agreed upon by the international community in 2018.



4 European Commission, “Migration Partnership Framework. A New Approach to Better Manage Migration,” 2016, https://www.eeas.europa.eu/sites/default/files/factsheet_ec_format_migration_partnership_framework_update_2.pdf.

5 European Commission and Hashemite Kingdom of Jordan, “Joint Proposal for a Council Decision on the Union Position within the Association Council Set up by the Euro-Mediterranean Agreement Establishing an Association between the European Communities and Their Member States, of the One Part, and the Hashemite Kingdom of Jordan, of the Other Part, with Regard to the Adoption of EU-Jordan Partnership Priorities and Annexed Compact JOIN/2016/041 Final - 2016/0289 (NLE),” 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=JOIN:2016:41:FIN>; European Commission and Lebanon, “Decision No 1 / 2016 OF The EU-Lebanon Association Council of 11 November 2016 Agreeing on EU-Lebanon Partnership Priorities [2016/2368],” 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22016D2368>.

Mobility Partnership Facility (since 2016)

Launched in 2016, the Mobility Partnership Facility (MPF) is an initiative funded by the EU Commission's DG Home and implemented by ICMPD to "strengthen dialogue and cooperation on migration and mobility with third countries." Projects must involve both EU and third countries and target either "support to EU migration priorities with partner countries" or "labour mobility schemes and projects" to address labor shortages in both countries of origin and destination. So far, the MPF has funded 40 pilot projects.⁶

Talent Partnerships (since 2020)

The 2020 New Pact on Migration and Asylum brought the concept of Talent Partnerships, which aim to scale up the pilot labor migration schemes funded under the MPF. These, like most skills-based schemes, are challenging to implement, because they bring brain-drain concerns, require in-depth and long-term buy-in from private sector partners, and are (due to their tailored nature) hard to scale up. Therefore, the momentum on Talent Partnerships has been limited to date. The term Talent Partnership, which encompasses a broad range of skill-based migration cooperation options, should not be confused with Global Skills Partnerships, which are a specific type of skill-based migration cooperation that was coined and promoted by the Center for Global Development, a Washington-based think tank.

seeks to avert irregular arrivals by working with countries of transit, especially Türkiye, the Western Balkans, and North African countries, but also countries like Niger or Mali further down migration routes. European countries support transit countries' reception and integration capacities, the development of their migration and asylum systems, and border enforcement capabilities. The EU and its Member States also seek to prevent informal emigration and forced migration by addressing the root causes in countries of origin, such as war, violence, poverty, and lack of perspectives at home.⁸ Essential actions here include improving good governance and services such as the justice, healthcare, or education systems, but also investing in security and economic development and addressing the effects of climate change.

Next to prevention, another central priority for destination countries is the return of persons without legal residence status, including rejected asylum-seekers, to their countries of origin (also see Box 3 on the duty to readmit). This requires building good working relationships with third countries' administrative bodies and consular authorities and can be supported by investing into reintegration structures and capacities in societies of origin. A fourth classic goal of destination countries is to attract workers to decrease labor shortages. The urgency of this goal fluctuates with economic needs. It is currently experiencing a large revival in Germany, just as it did during other periods of high economic activity that required foreign labor, especially from the 1950s through 1970s. Similar developments are ongoing in France, the Netherlands, and Italy, among others, although these countries' governments do not emphasize this goal as much in their rhetoric as Germany currently does.⁹

1.1. Goals: Clashes and Overlaps Between Destination, Transit, and Origin Countries

Migration cooperation differs, first, by the goals countries pursue. Destination countries often aim to prevent irregular migration.⁷ Europe, for instance,

A combination of these four goals – preventing irregular migration, fighting root causes, returning migrants in irregular status, and attracting labor mi-

6 Migration Partnership Facility (MPF), "About the MPF," Website of the Migration Partnership Facility (MPF), n.d., <https://www.migrationpartnershipfacility.eu/about> (accessed April 28, 2023). Diana Stefanescu, "Partnerships for Mobility at the Crossroads. Lessons Learnt From 18 Months of Implementation," Migration Partnerships Facility, International Centre for Migration Policy Development (ICMPD), 2020, <https://www.migrationpartnershipfacility.eu/storage/files/mpf-policy-brief-pilot-projects-1020.pdf>.

7 This report uses the term "destination countries" as a catchall term for countries that host a substantial number of migrants but acknowledges, as the Global Compact on Migration does, that all countries are countries of destination, transit, and origin for voluntary and involuntary migration.

8 This report uses the term "root causes" to describe direct and indirect factors that contribute to people fleeing their homes. It is a contested concept, since critics claim that it suggests a simple causal effect between one or several phenomena – such as high unemployment, conflict, climate events, or corruption – and outward migration. They are concerned that policy responses to address root causes as push factors (another contested term) risk being blind to the complex patterns influencing migration decisions. The authors of this report are mindful of the shortcomings of the term but chose to use it because it is established and understood by the general population.

9 From the Second World War to the oil crisis and the recession that followed, most European countries had policies encouraging immigration into their labor markets, including a patchwork of measures such as liberal visa arrangements, eased mobility from (former) colonized countries, guest worker programs, and refugee reception programs. In the 1970s, labor migration became more tightly restricted in most EU countries. Since the early 2000s, as intra-EU migration began to no longer suffice to fill labor shortages, many EU countries have been introducing policies to attract foreign workers in certain economic sectors, especially in healthcare, IT, and agriculture.

grants – have driven the bulk of European countries' migration cooperation attempts in the last decades. The first two goals of prevention and returns tend to dominate public debate and are also primary driving forces of the EU's conditionality use (see Chapter 2). But the Commission regularly emphasizes that irregular migration and returns are only a small part of migration to the EU. Frontex recorded around 200,000 irregular crossings in 2021 and 330,000 in 2022, a small fraction of the circa 2.5 million persons who entered the EU legally, mostly to work, study, or reunite with their family in 2021.¹⁰

In contrast, countries of origin tend to pursue different goals in migration cooperation. For many origin countries, a central goal is to maintain or raise remittances from their citizens abroad, since they constitute an important source of income and investments, far outshining development aid and foreign direct investments. Therefore, a further goal of countries of origin is to increase their nationals' ability to be mobile, be it through more liberal tourist and temporary visa arrangements that benefit international business and the leisure mobility of their nationals, or through work and student visas for their nationals keen on migration opportunities. Unsurprisingly, they often have little interest in readmitting their nationals, which is why returns, especially deportations, tend to be vastly unpopular. Further goals of both countries of origin and transit, especially in recent years, are to pursue support to accommodate refugees and displaced persons, most of whom reside in the Global South, to manage migration and to increase social cohesion or integrate migrants into their societies and economies.¹¹

This list of goals illustrates that some goals of origin and transit countries may overlap with those of destination countries, but some clash fundamentally.

1.2. Actors: Multi-level Games and Interests

Second, migration cooperation differs by the actors that try and work together. The primary actors are states, represented by their governments, ministry officials, and diplomats. Experts and bureaucrats from international organizations, representatives of civil society, the private sector, and other economic players are also involved directly or indirectly, as well as officials from regional and local levels of government.

Migration cooperation takes place at all levels of diplomacy. Globally, it happens in the organs of the United Nations, in multilateral and regional forums like the Rabat and Khartoum process or EU-AU summits, and in bilateral negotiations, be it between countries (for instance, Spain and Morocco) or on a subregional level (for instance, between the German state of North-Rhine Westphalia and Ghana). Success or failure at any level influences the others.¹²

The EU's migration cooperation is thus a multi-level game between actors whose interests vary substantially.¹³ Generally, actors will try to get to outcomes that are ideal from their point of view, which is often based on structural factors, such as countries' geographical proximity and economic dependence, but also political or cultural closeness. For instance, geographic proximity to the EU and the prospect of joining the Union (as in the case of the Western Balkans) means that the economies and societies of partners are deeply interconnected, and the readiness to co-

10 Frontex's irregular crossings statistics are imperfect indicators: these figures do not reflect the number of persons entering the EU irregularly, since some crossings are not detected and since multiple attempts to enter the EU by the same persons are included in the count. Concerning regular migration to the EU, the figure of 3 million first residence permits issued by Member States per year is often put forward, but this figure includes permits issued to refugees or on compassionate grounds, so it does not indicate whether the person arrived regularly to the EU. See: European Commission, "Statistics on Migration to Europe," May 2023, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-life/statistics-migration-europe_en; Frontex, "January: Number of Irregular Border Crossings down Slightly from a Year Ago," February 13, 2023, <https://frontex.europa.eu/media-centre/news/news-release/january-number-of-irregular-border-crossings-down-slightly-from-a-year-ago-pAOBvq>; Eurostat, "First Residence Permits Reached Pre-Pandemic Levels," August 9, 2022, <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20220809-2>.

11 Victoria Rietig and Alia Fakhry, "How to Talk About Migration in Africa: Classic Hurdles and Six Recommendations for European Policymakers," DGAP Report (DGAP, January 1, 2022), <https://dgap.org/sites/default/files/articthttps://dgap.org/en/research/publications/how-talk-about-migration-africa> (accessed May 11, 2023). Franzisca Zanker, "A Typology of Resistance: The 'Hot Potato' of European Return in West Africa," Territory, Politics, Governance 0, no. 0 (April 27, 2023): pp. 1–20, <https://doi.org/10.1080/21622671.2023.2198579>.

12 The "Rabat Process" is a dialogue on migration and development between Europe and Africa including 28 countries in Central, Western and Northern Africa and 29 European countries. ICMPD Brussels Mission, "Rabat Process - Partners," n.d., <https://www.rabat-process.org/en/about/partners> (accessed April 28, 2023). The "Khartoum Process" or EU-Horn of Africa migration route initiative, is a dialogue between countries of Europe and Eastern and Northern Africa (from Somalia to Uganda and Tunisia to Egypt) established in 2014 by the Rome Declaration. Its focus is on human smuggling and trafficking. See: ICMPD, "The Khartoum Process - Actors and Governance," <https://www.khartoumprocess.net/> (accessed April 28, 2023). Both frameworks include ministerial and technical meetings, as well as high-level summits; Also see Council of the European Union, "EU-Africa Relations," April 11, 2023, <https://www.consilium.europa.eu/en/policies/eu-africa/> (accessed April 28, 2023); Mosa'ab Elshamy and Joseph Wilson, "Spain and Morocco Renew Ties with Migration, Business Deals," ABC News, February 2, 2023, <https://abcnews.go.com/Business/wireStory/spanish-moroccan-prime-ministers-meet-improve-ties-96843585>; dpa, "NRW Und Ghana Wollen Ghanaer Für Arbeitsmarkt Qualifizieren," Zeitonline, February 23, 2022, https://www.zeit.de/news/2022-02/23/nrw-und-ghana-wollen-ghanaer-fuer-arbeitsmarkt-qualifizieren?wt_zmc=sm.ext.zonaadev.twitter.ref.zeitde.share.link.x (accessed April 28, 2023).

13 Natasja Reslow and Maarten Vink, "Three-Level Games in EU External Migration Policy: Negotiating Mobility Partnerships in West Africa," JCMS: Journal of Common Market Studies 53, no. 4 (January 1, 2015), pp. 857–74, <https://doi.org/10.1111/jcms.12233>; Özgehan Şenyuva, "Turkey's Two-Level Game in the Refugee Dispute with the EU" (Washington, March 1, 2020), <https://www.gmfus.org/news/turkeys-two-level-game-refugee-dispute-eu>.

operate on migration is higher among the actors involved. Actors that are highly dependent on trade with or support from the EU and its Member States – be it for development, investments, military, or security cooperation – are also more vulnerable to pressures in the migration field.

1.3. Scope: From Within to Beyond Migration

Third, the scope of migration cooperation differs fundamentally. It comes in all sizes. Migration cooperation can either be issue-specific (small), cover different elements within the migration field (medium), or be part of a broader cooperation including other policy areas beyond migration (large). Conditionality can be used in agreements of all scope, but quid pro quo deals are especially common in medium and large formats.

Small migration cooperation establishes agreements on one specific policy area within migration. A prominent example is agreements about labor migration. Programs to attract workers are an evergreen staple of migration cooperation. Some EU countries have arrangements in place to recruit seasonal agricultural workers that tend to be low-skilled.¹⁴ Other agreements aim at skilled workers, for instance, to fill structural labor shortages in IT, manufacturing, and the care sector. Historically, Germany struck guest worker agreements with Türkiye and different countries in Southern Europe to fill its labor needs, and today, yet again, it is particularly active in this field. For example, it is currently investing in programs that aim to attract workers while simultaneously building skills in countries of origin. For instance, Germany works with countries in Africa, the Western Balkans, and Eastern Partnership countries under the INSPIRE Project, an umbrella which includes programs such as Triple-Win, THAMM (Towards a Holistic Approach to Labour Migration Governance and Labour Mobility in North Africa), PAM (Partnerschaftliche Ansätze für Ausbildungs- und Arbeitsmigration), and others.¹⁵ Through its devel-

opment agency GIZ, Germany is also investing in a large range of skills partnerships, targeting different countries and sectors and working with different actors to increase skills and mobility.¹⁶ The European Union also has been funding skill-based partnerships via the Mobility Partnership Facility (see Box 1).

Another well-known area of migration cooperation is return and readmission agreements. European countries have struck dozens of readmission agreements with third countries, next to (and overlapping with) the readmission agreements between the EU and third countries.¹⁷ To nudge the implementation of such agreements, European actors sometimes fund projects to provide technical support, for instance, a project to help digitize readmission processing (Readmission Case Management System, RCMS) in Bangladesh and Pakistan.¹⁸

Also common is issue-specific cooperation on border enforcement, smuggling, or human trafficking, which often translates into police cooperation and an exchange of knowledge, intelligence, or equipment.

Medium migration cooperation connects different policy areas within migration. The current trend moves away from small cooperation toward cooperation with a larger scope, to introduce a quid pro quo across different areas of migration – for example, linking labor migration and returns. Many actors (among them the EU and some Member States like Germany, France, and Spain, as well as other countries like Switzerland) emphasize the need for migration cooperation to be tailor-made, meaning they should fit the priorities and needs of the parties involved.¹⁹ It should also cover different forms of migration, including both forced and voluntary, irregular and regular, desired and unwanted. India and Germany finalized such a broad agreement in 2022, and India, in fact, struck similar agreements with France, Finland, and the UK the same year, and with Austria in 2023.²⁰

14 Marie-Laure Augère-Granier, "Migrant Seasonal Workers in the European Agricultural Sector," EPRS | European Parliamentary Research Service, February 2021, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689347/EPRS_BRI\(2021\)689347_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689347/EPRS_BRI(2021)689347_EN.pdf)

15 ICMPD, "Inspire: Incubating Skills Partnerships Beneficial to Migrants, Countries of Origin and Destination," ICMPD Website, n.d., <https://www.icmpd.org/our-work/projects/inspire> (accessed April 28, 2023).

16 German federal government, "Make It in Germany," n.d., <https://www.make-it-in-germany.com/de/unternehmen/unterstuetzung/fachkraeftegewinnung> (accessed April 28, 2023).

17 EMN (European Migration Network), Bilateral Readmission Agreements, 2022, https://home-affairs.ec.europa.eu/system/files/2022-10/EMN_INFORM_bilateral_readmission.pdf

18 See analysis in European Court of Auditors, "Special Report No 17/2021: EU Readmission Cooperation with Third Countries," September 19, 2021, p. 48-49 and 66.

19 "A Fresh Start on Migration: Building Confidence and Striking a New Balance between Responsibility and Solidarity" (Brussels, September 23, 2020), https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706.

20 "Migration Outlook 2023: Ten Migration Issues to Look out for in 2023 Origins, Key Events and Priorities for Europe," ICMPD, 2023, p. 4, https://www.icmpd.org/file/download/58952/file/ICMPD_Migration_Outlook_2023.pdf.

Migration dialogues are another example of medium migration cooperation pursued by the EU, such as the Rabat or Khartoum process, which covers several areas of migration policies.

In large migration cooperation, migration is included in agreements next to other policy areas. Migration can be tied to other policy areas for strategic reasons to reach migration goals. For instance, the EU-Türkiye statement brought together commitments on migration management, a renegotiation of the customs union, and other benefits.²¹ Migration may also be included purposefully in a pre-existing cooperation in another policy field, perhaps in recognition of its rising relevance, for instance in the field of development cooperation. Or migration is simply one small element in a large cooperation framework, as for instance in the EU accession process, where the implementation of the migration acquis is one of the many criteria to be fulfilled by candidate countries.

The lines between these three scopes are blurry. As in all negotiations and agreements, the scope can increase and deflate again, based on the changing needs of the partners. Politicians and experts often call for comprehensive migration agreements.²² But (like all buzzwords) “comprehensive” is unspecific, and can mean both medium agreements (e.g., when legal pathways are offered in return for readmission arrangements) and large agreements (e.g., when elements from other policy areas are borrowed to reach migration goals).

Each type of migration cooperation, be it small, medium, or large, has advantages and limitations. In small cooperation formats, focusing on one issue reduces the complexity. There are fewer players, fewer potential chips on the table, and fewer possible outcomes, which makes negotiations more straightforward. However, the small scope also limits the number of trump cards and levers available toward negotiation partners and increases the likelihood of zero-sum game situations if the interests of the parties are misaligned. In contrast, bigger package deals

may yield more mutual benefits, and players have more levers up their sleeves.

This is why conditionality is common in the context of medium formats, where one migration area – such as visas – is used to get concessions on another, such as increased returns. It is also common in the context of large formats, for instance, when the EU promises development aid in exchange for increased migration control. Incentives or threats can, of course, also be used in small formats, for instance, when a country commits to increase returns in exchange for financial support to offset the administrative costs – such as the issuance of travel documents – that come with return management. But it is the medium and large formats where conditionality becomes a go-to option, because issue-linkage within or beyond migration makes negotiations more complex and brings potentially larger payoffs to both sides.

Yet a downside of the medium and large formats of migration cooperation is that they bring higher risks of disappointment when only parts of the commitment are implemented, while others fall by the wayside (as evidenced for instance by the EU-Türkiye statement). The EU is particularly prone to disappoint partners because key competencies for migration policy – such as visa delivery, asylum processing, and return procedures – remain in the hands of Member States. This can lead to frustration on all sides when the EU commits to actions that partner countries (and the EU itself) know will be unlikely to happen.

1.4. Formality Level: Why the EU Uses Informal Agreements

The fourth and final way in which migration cooperation differs is the degree of formality of the cooperation. Migration cooperation can range from formal agreements valid under international law, through soft law, to handshake deals. Agreements can be public or completely confidential.

21 Sibel Karadağ and İlker Bahar, “Ending up in a Cul-de-Sac?: Critical Junctures in the EU-Turkey ‘Deal’ on Its Sixth Anniversary,” March 1, 2022, p. 2, <https://ipc.sabanciuniv.edu/Content/Images/CKeditorImages/20220319-12032748.pdf>. Matthias Lücke et al., “EU-Turkey: Toward Sustainable Cooperation in Migration Management and Refugee Protection,” May 28, 2021, p. 17, <https://www.medam-migration.eu/publications/assessment-reports/eu-turkey-toward-sustainable-cooperation-in-migration-management-and-refugee-protection-16277/>.

22 For instance, the EU’s Special Envoy for External Aspects of Migration recently tweeted: “implementing a comprehensive approach to migration through mutually beneficial partnerships with countries of origin and transit is the way forward.” Luigi Soreca via twitter, <https://twitter.com/LSorecaEU/status/1646552687381446680?s=20> (accessed April 18, 2023). The 2020 New Pact foresees “tailor-made comprehensive and balanced migration dialogues and partnerships with countries of origin and transit.” See: European Commission, “Communication on a New Pact on Migration and Asylum,” p. 24; In 2017, experts had already called for “comprehensive, holistic and long-term approaches to cooperation with third countries.” Steffen Angenendt et al., “More Coherence! External Dimensions of a Comprehensive Migration and Refugee Policy – Insights from Germany,” 2017, p. 19, https://www.gmfus.org/sites/default/files/MSG_Kohaerenz_Paper_english%2520edited.pdf.

Formal agreements are struck and signed by governments and sometimes ratified by their parliaments. They spell out mutual binding commitments and obligations and outline corresponding institutions or accountability mechanisms. Formal agreements, especially when they are ratified, tend to be public, but not in all cases. For instance, status agreements between the EU and third countries regarding Frontex border management missions are confidential.²³

The bulk of migration cooperation does not rely on legally binding and enforceable agreements but on soft law, which details rules of conduct and commitments but does not have a binding force.²⁴ Recent multilateral soft law instruments on migration that involve the EU and its Member States are the 2015 Valetta Declaration, the 2016 New York Declaration for Refugees and Migrants, and the 2018 Global Compact for Safe, Orderly and Regular Migration.²⁵ These instruments define common goals and objectives shared by the signatory states, but implementation depends on the participating states' interpretation and the actions they take domestically.

Migration agreements are becoming increasingly informal, a phenomenon that has been intensifying since 2015. This is true for migration agreements the EU negotiates and for agreements that individual Member States strike with other countries.²⁶ Examples of informal administrative agreements between the EU and third countries include the "Joint Way forward" signed with Afghanistan in 2016, the "Standard Operating Procedures for the Identifica-

tion and Return of Persons without an Authorization to Stay" signed with Bangladesh in 2017, and the "Good practices on identification and return procedure" signed with The Gambia in 2018 (see Chapter 4 for more information). Examples of agreements between Member States and third countries include the 2017 Memorandum of Understanding between Italy and Libya and the 2023 "Annex on cooperation in the area of security and migration" to a Joint Declaration by Morocco and Austria.²⁷ These agreements are written documents, some available to the public and others confidential.

Migration cooperation can also be fully informal. Some recent migration agreements did not result in written and public agreements. Most famously, the EU-Türkiye deal from 2016 was announced via a press release from the European Council. The details of the agreement were widely reported, but they were not set down in a written document that was public.²⁸

Why choose informal agreements over formal ones? Because they give greater flexibility to the parties when implementing the agreement. Informal forms of cooperation, be they soft law agreements or handshake deals, are less constraining and less costly to defect from. They are faster and easier to negotiate, allow for swifter coordinated responses to crisis situations, and tend to be less exposed to public scrutiny. All of these are significant advantages, especially since migration discussions are often heated and ideological (see Chapter 2.1.). The less explicit

23 Such status agreements have been concluded with Albania, Serbia, Montenegro, North Macedonia and Bosnia and Herzegovina, Senegal, Mauritania and Moldova, and are the basis of a model agreement. See: European Commission, "Communication from the Commission to the European Parliament and the Council: Model Status Agreement as Referred to in Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and Repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624," Pub. L. No. COM(2021)829 final, 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0829>.

24 European Parliament, "Human rights protection and the EU external migration policy. European Parliament resolution of 19 May 2021 on human rights protection and the EU external migration policy (2020/2116(INI))", P9_TA(2021)0242, point L, p. 6, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0242_EN.html; Peter Slominski and Florian Trauner, "Reforming Me Softly – How Soft Law Has Changed EU Return Policy since the Migration Crisis," *West European Politics* 55, no. 1, January 1, 2020, pp. 1–21, <https://doi.org/10.1080/01402382.2020.1745500>.




25 "Valetta Summit, 11–12 November 2015 - Political Declaration," 2015, https://www.consilium.europa.eu/media/21841/political_decl_en.pdf; United Nations General Assembly, "New York Declaration for Refugees and Migrants," A/RES/71/1 § (2016), <https://www.unhcr.org/media/new-york-declaration-refugees-and-migrants-0>; General Assembly United Nations, "Global Compact for Safe, Orderly and Regular Migration, Resolution Adopted by the General Assembly on 19 December 2018," U.N. Resolution (United Nations, January 11, 2019), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/451/99/PDF/N1845199.pdf>.

26 Jean-Pierre Cassarino, "Investigation of a Post-Mandate Agreement above Suspicion: The July 2018 MoU on Readmission between Belgium and Tunisia," *European Politics and Society*, September 15, 2022, pp. 1–17, <https://doi.org/10.1080/23745118.2022.2123069>; Jonathan Slagter, "An 'Informal' Turn in the European Union's Migrant Returns Policy towards Sub-Saharan Africa," January 10, 2019, <https://www.migrationpolicy.org/article/eu-migrant-returns-policy-towards-sub-saharan-africa>; Eva Kassoti and Narin Idriz, eds., *The Informalisation of the EU's External Action in the Field of Migration and Asylum*, vol. 1, Global Europe: Legal and Policy Issues of the EU's External Action (The Hague: T.M.C. Asser Press, 2022), p. 2, <https://doi.org/10.1007/978-94-6265-487-7>.

27 Italian government and Libyan Government of National Accord, "Memorandum of Understanding on Cooperation in the Fields of Development, the Fight against Illegal Immigration, Human Trafficking and Fuel Smuggling and on Reinforcing the Security of Borders between the State of Libya and the Italian Republic. Translation by Sandra Uselli, Revised by Marcello Di Filippo, Elena Marati and Anja Palm," February 2017, https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf; Ministère de la Jeunesse, de la Culture et de la Communication, Département de la Communication, "Morocco, Austria Committed to Further Strengthen Cooperation on Security, Migration," Kingdom of Morocco, 2023, <https://maroc.ma/en/news/morocco-austria-committed-further-strengthen-cooperation-security-migration>.

28 The EU-Türkiye statement is a large form of cooperation since it included mechanisms to reduce irregular migration to the EU, a €3 billion facility to support Syrian refugees in Türkiye, but also visa liberalization, further development of the Customs Union, and Türkiye's EU accession process. See: European Council, "EU-Turkey Statement, 18 March 2016," March 18, 2016, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>.

Table 1 – Migration Cooperation by Scope and Degree of Formality

	Single migration issue	Migration overall	Beyond migration
DEGREE OF FORMALITY	SMALL	MEDIUM	LARGE
Formal 	EU Readmission agreements; Frontex deployment agreement; Inspire project	Germany-India migration and mobility agreement; German “Westbalkanregelung”	TFEU (Art. 77-80 on migration); Cotonou Agreement; Eastern Partnerships
Soft law 	2017 JWF between EU and Afghanistan; 2018 SOP between EU and Bangladesh; 2018 Good Practices between the EU and The Gambia	2015 Valetta Declaration; 2016 New York Declaration; 2018 Global Compact on Migration	2017 Italy-Libya MoU; 2023 Morocco-Austria agreement on cooperation in the area of security and migration
Informal / tacit 	N/A	2017 deal with Niger; Spain-Morocco cooperation on migration prevention	EU-Türkiye statement; EU-Libya maritime cooperation in the Central Mediterranean

Source: Authors own compilation

an agreement and the vaguer its language, the less opportunity for attacks – from left and right. A last advantage of informal agreements is that they allow negotiators to bundle together elements that each have their own legal basis in national, EU, and international law and would be difficult to link formally in a treaty. Think for instance of the EU-Türkiye statement linking FRIT, resettlement, border enforcement, and access to the EU market.

Yet informal agreements also come with a slew of downsides. They offer fewer guarantees to the parties compared to formal agreements with binding commitments, which come with high reputational costs in case of non-compliance. Formal agreements also reduce actors’ leverage by constraining their future options. Once the parameters of cooperation are spelled out in detail, perhaps even publicly, diverting from them becomes harder or more costly.

Perhaps most crucially, informal agreements come with fewer accountability mechanisms and judicial redress in case of non-compliance with the common objectives. Human rights violations can be contested in courts only in individual cases. They might make it easier for partners to operate in legal grey zones. This concern about the lack of democratic and legal control is the main reason why many NGOs and academics advocate for the formalization of migration cooperation. They argue that formal agreements guarantee more transparency and security to hold participating states and entities accountable. Prominently, the informal nature of the EU-Türkiye statement made it impossible to contest it in courts. Lastly, implementation of informal agreements can falter when the topic falls down the political priority list. The implementation of formal agreements does depend on political will, as well, but informal arrangements make it easier for one side to back out.²⁹

29 On informal agreements including their downsides, see: Charles Lipson, “Why Are Some International Agreements Informal?,” *International Organization* 45 (ed 1991): pp. 495–538. On accountability, interviewee 26 and European Parliament, “Human rights protection and the EU external migration policy. European Parliament resolution of 19 May 2021 on human rights protection and the EU external migration policy (2020/2116(INI))”, P9_TA(2021)0242, esp. letter P, p. 7 and point 5, p. 8, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0242_EN.html. On the EU-Turkey statement, see: Violeta Moreno Lax, *EU External Migration Policy and the Protection of Human Rights*, European Parliament (Brussels: European Union, 2020), pp. 43–44, <https://doi.org/10.2861/07288>; Aderanti Adepoju, Femke van Noorloos, and Annelies Zoomers, “Europe’s Migration Agreements with Migrant-Sending Countries in the Global South: A Critical Review,” *International Migration* 48, no. 3, January 1, 2010, p. 46, <https://doi.org/10.1111/j.1468-2435.2009.00529.x>.

Flexibility is thus both the main advantage of informal cooperation and the reason of its success, but also its main drawback.

Table 1 (p. 17) visualizes the findings of this chapter and gives examples of existing migration cooperation by their scope and degree of formality.

Given the immense variety of migration agreements this chapter outlined, and the countless interests that drive these agreements, it is obvious that the oft-heard demand for migration cooperation “at eye level” is a laudable goal. But it does fail to acknowledge the inherent power imbalances that drive the different actors to pursue migration cooperation in the first place, and the leverage that one side can have over the other, independently of the formal power they possess.

The next chapters thus turn to the politically contentious question of how migration cooperation can be shaped through the use of incentives and sanctions.

2. CONDITIONALITY IN MIGRATION COOPERATION: PRACTICAL EVIDENCE

The role that conditionality plays in migration cooperation is complex and contentious. This chapter 1. highlights the positions of proponents and critics of migration conditionality and illustrates the heated public debate; 2. analyzes the existing levers of the EU’s conditionality toolbox and those under discussion; and 3. puts forward a list of the intended and unintended effects of conditionality use.

2.1. The Debate: Fuzzy and Heated

Talking about migration has become increasingly difficult in Europe over the last decade. Not just because the migration challenges have increased, but also because many terms are loaded with an implied or perceived normative agenda. More and more terms are tied to political preferences and can cause backlash, such as “illegal migrants,” “vulnerable migrants,” or even “refugee.” As one interviewee pointedly finds: “It’s so easy to make a mistake in migration. Everyone takes what you say the wrong way.”³⁰

The term conditionality immediately provokes a strong and heated reaction among migration experts and policy-makers alike. The pro-conditionality camp tends to argue that all available legal means to further the EU’s migration priorities should be mobilized, including negative measures. For instance, a Swedish Ambassador to the EU stated, “We have to be a bit smarter in combining positive incentives and let’s call it negative incentives... We need to raise the bar a little bit here... we need to put everything on the table, we need to discuss everything.”³¹ While he does not use the term negative incentives or sanctions, the ambassador makes the case for using not just carrots but also sticks in cooperation formats and to combine policy fields (again suggesting the medium and large cooperation formats highlighted in Chapter 1).

In contrast, the anti-conditionality camp rejects the use of negative incentives and threats – especially regarding development aid, often judging it as ethically untenable or even amounting to neocolonialism. They also question the effectiveness of migration conditionality and point to the danger of collateral damage on other goals of the EU and its Member States. For instance, a member of the European Parliament argues that “the EU abuses its power by enforcing returns and readmission in a way that is often experienced as neo-colonial. [...] If countries refuse to cooperate, the EU suspends visa facilitation, development aid, or trade benefits. This perverse policy is destructive for the development of the poorest countries.”³²

Box 2 illustrates the wide range of opinion and the polarized discussion between proponents and opponents of the main conditionality levers.

Why is this public debate so heated? Three reasons matter most: the lack of a joint definition of conditionality, the untransparent use that makes it difficult to prove or disprove claims on both sides, and the political incentive to keep the debate heated – or even toxic.

The first problem is the fuzzy definition of the term. **Conditionality is often in the eye of the beholder. A joint definition is lacking,** and policy-makers have different perceptions of what actions amount to con-

30 Interviewee 36.

31 Vince Chadwick, “Swedish Envoy: EU Should Bolster ‘negative Incentives’ on Migration,” Devex.Com, January 9, 2023, <https://www.devex.com/news/swedish-envoy-eu-should-bolster-negative-incentives-on-migration-104750#Y77H8dsWhfd.twitter>

32 Tineke Strik (Member of the European Parliament, Greens/European Free Alliance Group), Statement published on Twitter on February 8, 2023, https://twitter.com/Tineke_Strik/status/1623348654969876481?s=20 (accessed on May 4, 2023).

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Box 2 – Heated Debate on Conditionality: The Range of Opinions

“ We have a new mechanism that we have been using for two years, the visa mechanism, so-called 25a. It works!”

Ylva Johansson, EU Home Affairs Commissioner
January 26, 2023^I



“ I have reservations. I think that migration agreements are the better way”

Nancy Faeser, German Interior Minister; commenting on the proposal to use the visa lever more extensively
January 26, 2023^I

“ I welcome that we now have a majority in favor of using European development aid as a broader tool for [...] migration management. It is an important shift away from the obsolete donor-recipient mentality we used to have”

Thomas Tobé, MEP
November 24, 2020^{II}



“ OMG these Swedes. Please don't use development aid as a 'negative incentive' on migration. It doesn't work. It's a waste of good money to tackle poverty. Oh, and it's a form of neocolonialism.”

Evelien von Roemburg, Head of EU office of Oxfam International
January 10, 2023^V

“ In the event of a deterioration of cooperation in the field of migration, especially readmissions, it is now possible to adjust the allocation of financial resources to partner countries”

Austrian Government Program
November 16, 2022^{IV}

“ The conclusion of possible [migration] agreements will not be made dependent on financial support in the framework of development cooperation”

German Government's Coalition Treaty
January 1, 2021^{VI}

“ We see GSP as one of the tools available to improve cooperation in this area.”

Johan Forssell, Swedish trade chief
February 1, 2023^{VII}



“ The EU's move to link trade benefits to the deportation of migrants goes completely against the initial goal of the scheme.” ... “It is the result of the continuous dehumanization and criminalization of migrants by the EU, fueled by anti-migration sentiments from the far right.”

Audrey Changoe Friends of the Earth Europe
February 1, 2023^{VII}

Sources Box 2:

- I Informal Meeting of Ministers for Justice and Home Affairs, Stockholm: Doorstep by Ylva Johansson, European Commissioner, Doorsteps (Stockholm, Skärholmen, 2023), <https://audiovisual.ec.europa.eu/en/video/I-236475>.
- II Jannis Gogolin, “Anreiz Oder Strafe? Faeser Streitet Sich Mit Der EU Um Die Richtige Abschiebepaxis,” Merkur.De, January 26, 2023, <https://www.merkur.de/politik/eu-innenministerkonferenz-faeser-abschiebung-migration-fluechtlinge-quote-nordafrika-news-92050608.html>.
- III Thomas Tobé, “Development Aid Must Come with Conditions,” EPP Group in the European Parliament, November 24, 2023, Development aid must come with conditions.
- IV Bundesministerium Europäische und internationale Angelegenheiten, “Regierung Beschließt Neues Dreijahresprogramm 2022-2024 - Das Neue Dreijahresprogramm Liefert Entwicklungspolitische Antworten Auf Globale Herausforderungen,” November 16, 2022, <https://www.bmeia.gv.at/ministerium/presse/aktuelles/2022/11/regierung-beschliesst-neues-dreijahresprogramm-2022-2024/>.
- V Evelien van Roemburg, Statement on twitter published on 10 January 2023, <https://twitter.com/evanroemburg/status/1612719690404462594?s=20> (accessed May 04 2023).
- VI SPD, Bündnis 90/die Grünen, and FDP, “Mehr Fortschritt Wagen: Bündnis Für Freiheit, Gerechtigkeit Und Nachhaltigkeit,” January 1, 2021, <https://www.bundesregierung.de/resource/blob/974430/1990812/04221173eef9a6720059cc353d759a2b/2021-12-10-koav2021-data.pdf>.
- VII Camille Gijs, Barbara Moens, and Sarah Anne Aarup, “Europe Looks to Wield Trade 'Stick' on Migration,” Politico, January 30, 2023, <https://www.politico.eu/article/europe-looks-to-wield-trade-stick-on-migration-sweden/>.

ditionality. Some practitioners interviewed during this research consider all uses of incentives, be they positive or negative, to be conditionality. Others only consider sanctions as conditionality, while positive incentives are simply part of their daily business. Perhaps not surprisingly, those interviewees most strongly opposed to conditionality also defined conditionality most narrowly as sanctions and pressure toward third countries. In consequence, practitioners and observers interpret the same situations differently. For instance, many see EU actions toward Afghanistan in the wake of the 2016 donor conference as a clear-cut case of migration conditionality, despite the EU's and Afghanistan's public denials the time.³³ The fuzziness of the term in the minds of both policy-makers and analysts is particularly concerning given the centrality of conditionality in the migration policy debate, and the EU's declared goal of expanding it.

The term conditionality also carries historical meanings. For a long time, it has been used regarding EU enlargement to describe the use of criteria countries must meet before they can join the EU. More recently, it has also described the withholding of EU funds for Member States like Hungary or Poland when they jeopardized the independence of their judiciary. Internationally, the EU has been using the term conditionality to describe situations when the union nudges other countries to respect human rights or climate protection standards in exchange for economic cooperation, investments, or aid.³⁴

Migration conditionality follows the same principle as other forms of conditionality: Conditions and benchmarks are defined that, upon fulfillment (or failure to comply), lead either to the release of bene-

fits (more for more) or sanctions (less for less). At its core, the purpose of conditionality is to uphold and expand declared EU norms and values, such as human rights, rule of law, and democracy. Opponents of migration conditionality argue that, unlike other forms of conditionality, it does not pursue the EU's norms and values, but only its interests. Proponents counter this argument by saying that upholding the rule of law – including enforcement of migration and asylum laws and court decisions, as well as other countries' obligations to take their citizens back (see Box 3) – is in fact a core EU norm and value.

BOX 3 – STATES' OBLIGATION TO READMIT THEIR NATIONALS

The EU and Member States insist that states are obliged under international law to readmit their nationals.³⁵ Most legal scholars agree. Their arguments can be grouped as follows:

First and foremost, the duty to readmit is regarded as part of the "sovereign right of States to regulate the entry and presence." States must readmit their nationals in respect of other States' territorial sovereignty of their right to expel foreigners.³⁶ It can also be derived from human rights instruments, in the form of the fundamental right to return to one's own country.³⁷

In addition, many legal scholars take the view that the duty to readmit one's own citizens is a principle of customary law since state practice and *opinio juris* are consistent and Courts in Europe have supported this view.³⁸

33 Interviewees 3, 4, 20, 25, 27, 28, 29, 31, 38, and 39. On the EU's communication at the time, see below Afghanistan case study (Chapter 4). Afghanistan's denial of having been pressured was described by interviewee 28, citing Afghan sources.

34 Peter Becker, "Konditionalität als Instrument europäischer Governance: Typen, Ziele, Implementierung," 2022, <https://doi.org/10.18449/2022S06>.

35 See: European Union, "Readmission agreements between the EU and certain non-EU countries", last updated on July 12, 2019 (accessed June 24, 2023) <https://eur-lex.europa.eu/EN/legal-content/summary/readmission-agreements-between-the-eu-and-certain-non-eu-countries.html>; German Federal Parliament, "Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Frank Tempel, Wolfgang Gehrcke, weiterer Abgeordneter und der Fraktion DIE LINKE. – Drucksache 18/7056 – Abkommen zur Erleichterung der Abschiebung Ausreisepflichtiger", June 01, 2016, p. 4, <https://dserver.bundestag.de/btd/18/071/1807198.pdf>;

36 Nils Philip Coleman, European Readmission Policy: Third Country Interests and Refugee Rights (Brill | Nijhoff, 2009), p. 30, <https://doi.org/10.1163/ej.9789004165540.i-396>. Kay Hailbronner, "Readmission Agreements and the Obligation on States under Public International Law to Readmit Their Own and Foreign Nationals," *Zeitschrift Für Ausländisches Öffentliches Recht Und Völkerrecht: ZaöRV* 57, no. 1, 1997, pp. 1–49. Mariagiulia Giuffrè, *The Readmission of Asylum Seekers under International Law*, 1st ed., Studies in International Law (Hart Publishing, 2020), p. 135, <https://www.bloomsbury.com/uk/readmission-of-asylum-seekers-under-international-law-9781509902491/>.

37 See e.g. Article 13(2) of the Universal Declaration of Human Rights (UDHR), Article 12(4) of the International Covenant on Civil and Political Rights (ICCPR); Article 3(2) of Protocol 4 of the European Convention on Human Rights (UDHR).

38 Yvonne Van Duyn v Home Office, Case 41/74 [1974] ECR 1337, p. 1351. As cited in Giuffrè, *The Readmission of Asylum Seekers under International Law*, p. 136. See Kay Hailbronner, "Readmission Agreements and the Obligation on States under Public International Law to Readmit Their Own and Foreign Nationals," *Zeitschrift Für Ausländisches Öffentliches Recht Und Völkerrecht: ZaöRV* 57, no. 1, 1997, pp. 1–49; David Martin, "The Authority and Responsibility of States" in Alexander Aleinikoff and Vincent Chetail (eds.), *Migration and International Legal Norms* (T.M.C. Asser Press, 2003) pp. 31 – 45;

Some scholars disagree,³⁹ yet UN member states adopted the Global Compact for Safe, Orderly and Regular Migration, a soft law instrument, which states: “We further commit to ensure that our nationals are duly received and readmitted, in full respect for the human right to return to one’s own country and the obligation of States to readmit their own nationals,”⁴⁰ which may be interpreted as consistent state practice.

In addition to multilateral agreements, the EU and its Member States have included clauses on a duty to readmit in bilateral readmission agreements, mobility partnerships, and other formats of cooperation, such as the Cotonou Partnership Agreement between the EU and the African, Caribbean, and Pacific countries (Article 13). States who signed these agreements also acknowledge their duty to readmit their citizens.⁴¹

Disagreement is in the details. While there is agreement on the existence of the obligation to readmit one’s own nationals, questions remain about the exact scope. Some states consider forced returnees to not be covered under the obligation, pointing to a conflict with the right to leave one’s own country.⁴² In addition, a number of countries also object to cooperating on readmissions on the basis of provisions in their national constitutions, when these guarantee

the right to migrate.⁴³ This right, however, needs to be balanced with the principle of territorial sovereignty.

There are also established limitations to the obligation to admit forced returnees: The GCM specifies that fundamental rights of the person must be respected, in particular due process obligations, the principle of non-refoulement, but also the rights of the child (best interests of the child, the right to family life and unity).⁴⁴

Questions also remain about what actions would constitute a breach of the obligation. In practical terms, does uncooperative behavior in the issuance of travel documents or landing rights for return flights by receiving states fall under the duty to readmit? For instance, with regards to the Cotonou Agreement, some argue that there needs to be a bilateral readmission agreement before the duty becomes operational.⁴⁵

While the abstract obligation to readmit nationals may serve as a rhetorical tool for countries of destination, as long as disagreements about scope and implementation persist, so will the debate around this obligation and its role in migration and return cooperation.

39 Mariagiulia Giuffrè, *The Readmission of Asylum Seekers under International Law*, p. 137.

40 United Nations, “Global Compact for Safe, Orderly and Regular Migration, Resolution Adopted by the General Assembly on 19 December 2018,” para. 37.

41 European Commission, “EU Action Plan on Return: COM/2015/0453 Final,” p. 10; IOM, “Readmission”, *Global Compact Thematic Paper* (2017), pp. 2-3, https://www.iom.int/sites/g/files/tmzbdl486/files/our_work/ODG/GCM/IOM-Thematic-Paper-Readmission.pdf.

42 The right to leave is also anchored in human rights treaties, next to the right to return in Article 13(2) of the UDHR, Article 12(1) of the ICCPR, Article 5(d)(ii) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and Article 2(2) of Protocol No 4 to the ECHR. See: Vincent Chetail, “The Global Compact for Safe, Orderly and Regular Migration: a Kaleidoscope of International Law” *International Journal of Law in Context* 16, no. 3 (2020), p. 264, <https://doi:10.1017/S1744552320000300>; Giuffrè, *The Readmission of Asylum Seekers under International Law*, p. 134; Coleman, *European Readmission Policy*. See also: Legal Service, Council of the European Union, “Legal Service Opinion: Standard Readmission Agreement between the Member States of the European Union, on the One Part, and a Third Country, of the Other Part. Impact of the Entry into Force of the Treaty of Amsterdam,” March 10, 1999, <http://data.consilium.europa.eu/doc/document/ST-6658-1999-INIT/en/pdf>. Cited in Giuffrè, *The Readmission of Asylum Seekers under International Law*, p. 135.

43 See case of Iraq. Source: Ministry of Foreign Affairs of Iraq, “Iraqi Chargé d’Affairs in Warsaw: Iraq refuses to use its People in International Conflicts. The Iraqi constitution Guarantees Citizen the Right to Travel and Voluntary Immigration”, August 14, 2021, <https://mofa.gov.iq/2021/08/?p=25184> (accessed June 24, 2023).

44 United Nations, “Global Compact for Safe, Orderly and Regular Migration, Resolution Adopted by the General Assembly on 19 December 2018,” para. 37e-g.

45 Eleonora Koeb and Henrike Hohmeister, “The revision of Article 13 on Migration of the Cotonou Partnership Agreement What’s at stake for the ACP?”, *European Centre for Development Policy Management (ecdpm)*, February 2010, pp. 6 f, <https://ecdpm.org/application/files/5416/5547/2598/Revision-Article-13-Migration-Cotonou-Partnership-Agreement-ACP-2010.pdf>.

The second reason for the heated debate is that **conditionality use is confidential and untransparent**. Information about when or toward which countries incentives are used is not public. When information is public, as is the case for visa restriction proposals, the Commission includes limited evidence, making it difficult to assess the adequacy of the conclusions it draws. For some practitioners, this confidentiality is necessary – for instance, to shield countries ready to cooperate from potential domestic backlash, and/or to not endanger ongoing negotiations.⁴⁶ But this research finds that even government units and elected Members of the European Parliament sometimes lack basic information about negotiations or the effects of conditionality use.⁴⁷ Also, relevant information about conditionality use does not always circulate within and among governments nor between the national and EU levels. Some practitioners lament this lack of transparency as disproportionate or even harmful. Others stress that this confidentiality is required for conditionality to be effective.

The effect is clear: As facts are not publicly available, the worries and claims of both the pro and con camps remain uncontested. **Echo chambers give the impression of conditionality as a powerful tool, be it evil or good, whose actual effects are feared by one side and hoped for by the other, but rarely measured and assessed based on evidence.**

The third reason for the heated debate is political. The ideological approach may not always be by accident, but by design. This research finds broad agreement among practitioners that some politicians use migration **conditionality primarily as a rhetorical tool** to please their domestic audience and voters. Put simply, the political right uses it to signal decisiveness and toughness toward countries of origin or transit, the political left to signal its commitment to equal partnerships at eye-level.⁴⁸

In line with this thinking along political orientation, the acceptance of conditionality use depends on the perceived legitimacy of the migration goal pursued. While much of the public debate centers on

conditionality to reach the goal of return and readmission, interviewees point out a wide array of migration goals they can pursue (and are pursuing) through incentives. These goals range from irregular migration prevention by origin countries and border controls in transit countries to the build-up of refugee protection or asylum systems in transit countries and the introduction of policies to protect migrants' rights (see Chapter 1.1.). Depending on the goal pursued, interviewees judge some instances of conditionality as more legitimate than others. For instance, some who are critical of using conditionality to reach prevention or readmission goals view equivalent nudges of third countries toward migrant protection policies (or other goals, such as human rights enforcement or climate protection) as legitimate.⁴⁹ This shows that some people who claim they are opposed to using sticks are actually open to using them when it supports goals they deem legitimate. It also shows that the end justifies the means: It is not the means itself – i.e., the migration conditionality – that triggers the rejection, but the ends – i.e., the migration goal.

To move beyond the heated debate this section illustrates, the next section puts forward research findings on conditionality use in practice and analyzes the effects and effectiveness of the different levers of the conditionality toolbox.

2.2. The Toolbox: Levers of Conditionality

Leverage is not the same as formal power. Negotiation partners, even unequal ones, generally have some leverage over the other side, since “in any negotiation, the other party controls something the bargainer needs: money, time, cooperation, communication, and so on.”⁵⁰ Leverage can thus come from offering something – or withholding it. The weaker or more vulnerable party may have leverage over the more powerful party, simply by acting as a spoiler or blocker in a negotiation progress. It is due to the potency of levers that literature on negotiation is rife with advice to identify the interests and levers each party brings to the table.⁵¹ A negotiation without levers is just haggling.

⁴⁶ Interviewee 37.

⁴⁷ Interviewee 10.

⁴⁸ Interviewees 8, 9, 10, 13, 14, 16, 17, 20, 28, 45, and 47. Dividing lines between the political left and right vary between and even within countries, so their positions on conditionality can be more complex than portrayed here and shift over time. But as practitioners and experts interviewed during this research frequently referred to this characterization of the position of the political right and left, this report reflects this idea.

⁴⁹ Interviewees 3 and 24.

⁵⁰ Deborah M. Kolb and Judith Williams, “Breakthrough Bargaining,” Harvard Business Review, February 1, 2001, <https://hbr.org/2001/02/breakthrough-bargaining>.

⁵¹ See David A. Lax and James K. Sebenius, 3-d Negotiation. Powerful Tools to Change the Game in Your Most Important Deals (Harvard Business Review Press, 2006); David A. Lax and James K. Sebenius, “3-D Negotiation: Playing the Whole Game,” Harvard Business Review, November 1, 2003, <https://hbr.org/2003/11/3-d-negotiation-playing-the-whole-game>.

The three levers most discussed in EU migration policy and academic writing are **visas, development aid, and trade – the holy trinity of migration conditionality**. It is thus unsurprising that, when asked about the levers Europe employs, most conversation partners during this research discussed these three.

But the exclusive focus on these three levers is artificial. Countries de facto also use other levers, especially security-related levers such as police or military cooperation and training (see, for example, the case of Iraq in Chapter 4), even though they might not explicitly label them as conditionality levers. Also used but less openly acknowledged are naming and shaming, or the opposite approach of high-level visits and increased attention, which can also go along with softening criticisms of bad governance and questionable human rights records – a lever one could call the TLC-lever (Tender Loving Care), which creates windows of opportunities and acts as a door-opener. Further theoretically possible levers include health policy (including vaccination diplomacy) and funds for research and development, agriculture, or other investments.⁵² Recently, another migration-related lever, namely legal pathways, joined the debate. Although legal pathways are generally discussed as a more for more lever – meaning they should be a positive incentive to increase the benefits for third countries when they cooperate on less attractive migration goals like readmissions – they can also be used as a negative lever.

Figure 2 (p. 24) illustrates these different levers Europe can (and does) use to reach migration goals. The visual shows examples for both the positive and negative use of each lever.

The use of these levers is not new, but the growth of negative levers and their formalization are a recent phenomenon, dating back less than ten years. Conditionality was of course in use before 2015, but usually in its more for more version. One interviewee recounted, “Before 2015, conditionality was always

positive: We offered countries in Africa, especially in the Horn and Western Africa, to do more for them – encourage mobility, student visas, work and travel visas facilitation. We also brought new development aid. We offered nice, beautiful packages with a beautiful pink ribbon on top. Then, on the back of the package, we mentioned ‘it would be great if you could also readmit your nationals.’”⁵³ After the migration crisis⁵⁴ triggered the EU’s outside focus on the external dimension, the EU and its Member States intensified their diplomatic engagement with their counterparts in countries of origin, including at highest level.

The use of levers became more central in migration cooperation, especially the positive lever of funding: One innovation of the EU under the Juncker Commission (2014–2019) was to create new flexible funding instruments, such as the European Trust Fund for Africa (EUTF), the Facility for Refugees in Turkey (FRIT), and the Madad Fund (see Box 1).⁵⁵ These funds allowed the EU to tailor projects to the demands of its partners in return for their cooperation, and they went to a broad range of migration projects, including border management, anti-smuggling and anti-trafficking, readmissions, and capacity building in the security sector. Trainings, missions, and intelligence via Frontex also became a coveted offer to get buy-in from partners. In addition to funds, the EU also used the possibility of visa facilitation and visa liberalization as an incentive, for example, in the EU-Türkiye statement or toward countries of the Western Balkans. Negative conditionality also started playing a stronger role. “We realized collectively that we needed to use both rewards and punishments,” one interviewee said.⁵⁶

The EU turned to visas as a lever in three ways. First, for countries that enjoyed visa-free travel, the EU sharpened a so-called suspension mechanism that allowed it to temporarily re-instate visa obligations for travelers from those states when irregular arrivals suddenly increased or when the country stopped

52 Agriculture was mentioned as a lever in the case of Iraq. See: Kelly Bescherer, “Statewatch | Tracking the Pact: Implementation Reports on Iraq and Nigeria,” Statewatch.org, April 6, 2023, <https://www.statewatch.org/news/2023/april/eu-tracking-the-pact-council-reports-on-externalisation-efforts-in-iraq-and-nigeria/>.

53 Interviewee 39.

54 The use of the term “migration crisis” is contested among migration experts, many of whom argue that Europe experienced a crisis of its asylum and reception systems, or more generally a governance crisis, and rightly warn against representing migrants themselves and migration in general as the source of the crisis. The authors acknowledge this critique, yet chose to use the term “migration crisis,” because it is well-established in policy circles and understood by the general population.

55 In a resolution adopted in 2021, the European Parliament “Note[d] the increasing use since 2016 of enhanced conditionality between development cooperation and migration management, including return and readmission,” European Parliament, “Human rights protection and the EU external migration policy. European Parliament resolution of 19 May 2021 on human rights protection and the EU external migration policy (2020/2116(INI))”, P9_TA(2021)0242, point 21, p. 12, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0242_EN.html

56 Interviewee 39.

Figure 2 – Levers of Migration Conditionality

	<p>“More for more”</p> <p>POSITIVE</p>	<p>“Less for less”</p> <p>NEGATIVE</p>
 <p>VISAS</p>	<p>Visa facilitation (lower fees, simpler procedures, multiple entry) or visa liberalization (visa-free entry)</p>	<p>Visa restrictions, measures, or sanctions, such as higher fees, more paperwork</p>
 <p>AID</p>	<p>Providing additional aid</p>	<p>Cutting existing aid</p>
 <p>TRADE</p>	<p>Trade benefits, easier access to the single market</p>	<p>Trade barriers or suspension of trade benefits</p>
 <p>MILITARY COOPERATION</p>	<p>Offering material support, defense cooperation, or military missions</p>	<p>Withdrawing or cutting military cooperation or missions</p>
 <p>POLICE COOPERATION</p>	<p>Trainings, exchange programs, joint patrols, Frontex missions, or liaison officers</p>	<p>Exclusion from trainings, end of cooperation, cutting access to intelligence</p>
 <p>TENDERNESS, LOVE AND CARE („TLC“)</p>	<p>Official visits of heads of state or high-level delegations, subdued criticism on human rights violations or internal affairs</p>	<p>Official complaints, cancellation of official visits or summits</p>
 <p>LEGAL PATHWAYS</p>	<p>New legal pathways or widening existing pathways</p>	<p>Decrease of legal pathways or migration opportunities, more red tape</p>

Source: Authors own compilation

accepting readmission requests.⁵⁷ With the 2017 reform, the EU introduced a new automatism: If a simple majority of Member States raised issues with a third country, visa-free travel was automatically suspended for at least nine months. This suspension mechanism gives the EU considerable leverage over countries with visa-free travel, though it has not been used to date. Second, for countries without visa-free travel but with a visa facilitation agreement with the EU, the EU could pause such agreements with them.⁵⁸ Third, for countries that enjoyed neither visa-free travel nor had a visa facilitation agreement with the EU, a new idea emerged: An informal mechanism was tested by Member States, through coordination in COREPER. The goal was to be able to delay or reduce the number of visas issued for countries on an ad-hoc basis. They tested the idea toward a few countries, among them Bangladesh (details in Chapter 4) and others, and found the results satisfactory.⁵⁹

This experiment with the visa lever led to its formalization in 2019. The visa lever was codified through the reformed Schengen Visa Code in June 2019.⁶⁰ Article 25a of this code includes both positive and negative readmission conditionality (visa facilitation and visa sanctions, called visa “measures” in EU parlance), and applies to all Schengen visas – i.e., short-term visas for tourism or business. This formalization of the visa lever meant that the European Commis-

sion must regularly assess partner countries’ cooperation with the EU and Member States on readmission (three such reports have been produced to date; see the timeline in Figure 3). DG Home takes the lead on these reports but must consult all relevant departments of the Commission, especially EEAS, DG INTPA, and DG TRADE. The European Council then agrees on a list of countries to whom visa restrictions (or visa facilitation, at least in theory) might apply. After diplomatic outreach, if the country does not improve its cooperation, the Commission publishes a proposal for visa restrictions, which, if not followed by improvement, is adopted by the Council. This lever has been used toward a few countries since then: Visa restrictions were proposed by the Commission for Iraq, Bangladesh, and The Gambia in 2021, and Senegal was added to the list in 2022. They were adopted against The Gambia in 2021, and further escalated in 2022.⁶¹

The formalization of other levers followed suit. The development aid lever was formalized shortly thereafter through the so-called “NDICI – Global Europe” (Neighbourhood, Development and International Cooperation Instrument, 2021-2027). This new instrument incorporated readmission cooperation as a general principle (Article 8(10)) and allocates 10 percent of its financial volume to the topic of migration, spelling out that it “shall combine all appropriate tools and the necessary leverage through a flexible

57 See: Council of the European Union, “Visas: Council Adopts a Revision of the Visa Waiver Suspension Mechanism,” February 27, 2017, <https://www.consilium.europa.eu/en/press/press-releases/2017/02/27/revision-visa-waiver-suspension-mechanism/>.

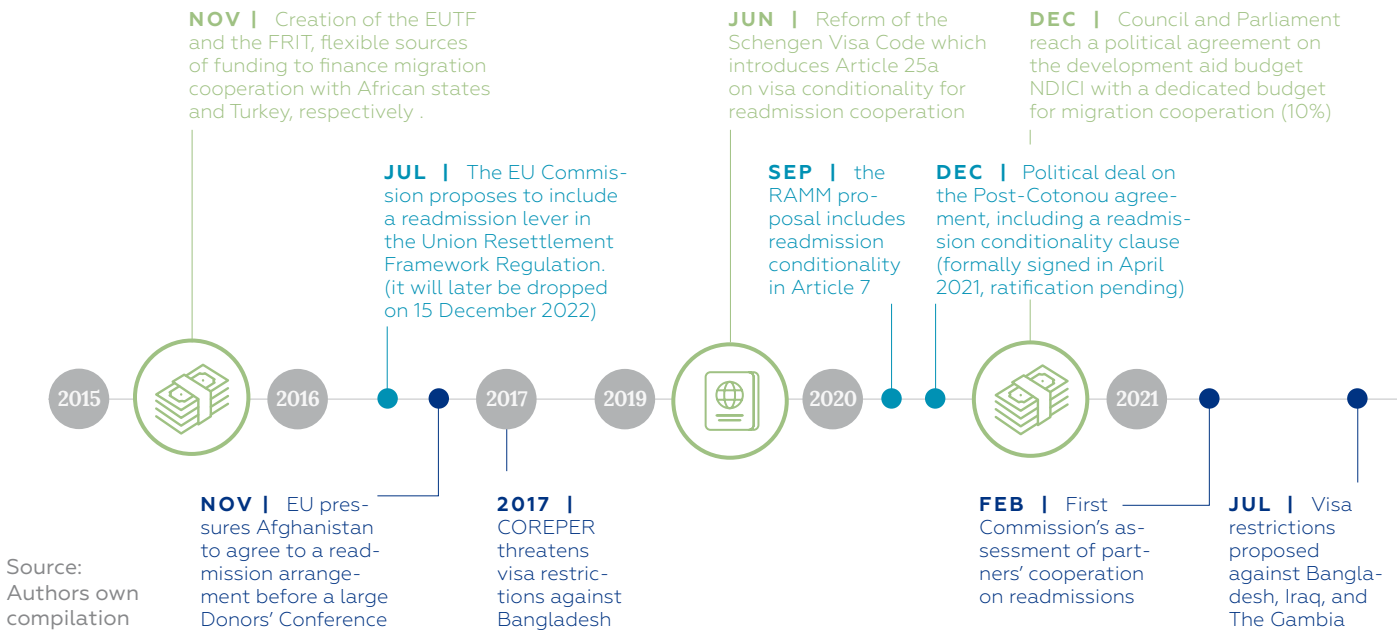
58 So far, such visa facilitation agreements have been paused in three cases, though none of them primarily because of readmissions: Belarus in October 2021 on the grounds of security concerns after the border crisis, Vanuatu in March 2022 (partially) and November 2022 (fully) due to the country’s golden passport scheme, and Russia in September 2022 after it invaded Ukraine. See Council website, <https://www.consilium.europa.eu/en/infographics/eu-visa-agreements-with-non-eu-countries/> (accessed June 26 2023).

59 According to the European Commission in 2018: “To date a decision leading to a set of measures being agreed on has been made with regard to only one third country in September 2017. The mere launch of the process proved successful in negotiations on a return arrangement and it was decided not to implement the agreed measures pending signals of improvement of cooperation on readmission.” European Commission, “Impact Assessment Accompanying the Proposal for a Regulation Amending Regulation (EC) No 810/2009 Establishing a Community Code on Visas (Visa Code): SWD(2018) 77 Final,” (Brussels, March 14, 2018), p. 23, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2018:0077:FIN:EN:PDF> Further countries threatened with such visa measures reportedly include Côte d’Ivoire (See: Olivia Sundberg Diez, “Conditionality for Readmission Cooperation,” in European and African perspectives on Asylum and Migration Policy: Seeking Common Ground: 2020 MEDAM Assessment Report on Asylum and Migration Policies in Europe, by Mercator Dialogue on Asylum and Migration, ifW ed. (Kiel, 2020), p. 28; Kipp et al., “Negative Sanctions and the EU’s External Migration Policy: ‘Less for Less’ Not Fit for Purpose,” p. 3.); and Ethiopia (Interviewees 27, 2, and 43).

60 Article 25a, “Cooperation on readmission,” European Union, “Regulation (EU) 2019/1155 of the European Parliament and of the Council of 20 June 2019 Amending Regulation (EC) No 810/2009 Establishing a Community Code on Visas (Visa Code), OJ L 248, 13.7.2021, p. 11–87” (2019), pp. 36–38, <https://eur-lex.europa.eu/eli/reg/2019/1155/oj>.

61 European Commission, “Proposal for a Council Implementing Decision on the Suspension of Certain Provisions of Regulation (EC) 810/2009 of the European Parliament and of the Council with Respect to Bangladesh”, COM/2021/412 Final, 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0412&qid=1681740016320>; European Commission, “Proposal for a Council Implementing Decision on the Suspension of Certain Provisions of Regulation (EC) 810/2009 of the European Parliament and of the Council with Respect to Iraq”, COM(2021) 414 Final, 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0414>; European Commission, “Proposal for a Council Implementing Decision on the Suspension of Certain Provisions of Regulation (EC) 810/2009 of the European Parliament and of the Council with Respect to The Gambia”, COM/2021/413 Final, 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0413&qid=1681739524198>; European Commission, “Proposal for a Council Implementing Decision on the Suspension of Certain Provisions of Regulation (EC) 810/2009 of the European Parliament and of the Council with Respect to Senegal”, COM/2022/631 Final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0631&qid=1678699942079>; Council of the European Union, “Council Implementing Decision (EU) 2021/1781 of 7 October 2021 on the Suspension of Certain Provisions of Regulation (EC) No 810/2009 of the European Parliament and of the Council with Respect to The Gambia”, OJ L 360, October 11, 2021, pp. 124–127, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021D1781>; Council of the European Union, “Council Implementing Decision (EU) 2022/2459 of 8 December 2022 on the Application of an Increased Visa Fee with Respect to The Gambia”, ST/15216/2022/INIT”, OJ L 321, December 15, 2022, pp. 18–21, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022D2459&qid=1678698430770>.

Figure 3 – Timeline: The EU’s Conditionality Talk and Use since 2015



incitative approach with [...] possible changes in allocation of funding related to migration.”⁶² This amount of 10 percent represents a sizable budget of €8 billion.⁶³ The scope of this aid conditionality covers all areas of migration, including the prevention of irregular departures, addressing root causes of forced migration and returns and readmissions.

would make it possible for the EU to suspend current preferential trade privileges of countries if their governments fail to cooperate sufficiently on returns and readmission. Things are still in flux: The majority of the Council is in favor, though some Member States remain skeptical.⁶⁵ The European Parliament is opposed to the formalization of the trade lever.⁶⁶

In contrast, the trade lever formalization is still in the making. Discussions to link trade and readmissions to use it as a lever started in 2018, but it was not until September 2021 that the European Commission proposed a clause to establish readmission conditionality in the EU’s Generalized Scheme of Preferences (GSP Regulation).⁶⁴ This clause (in Article 19(1)(c))

One example of a lever that was proposed and discarded is refugee resettlement. In 2016, the Commission proposed a readmission clause in the Union Resettlement Framework to make countries’ cooperation on prevention and readmissions a factor when deciding where refugees should be resettled from.⁶⁷ Turning resettlement into another conditionality lever was

62 Article 8(10), General Principles, European Union, “Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 Establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, Amending and Repealing Decision No 466/2014/EU of the European Parliament and of the Council and Repealing Regulation (EU) 2017/1601 of the European Parliament and of the Council and Council Regulation (EC, Euratom) No 480/2009 (Text with EEA Relevance)”, OJ L 209, June 14, 2021, pp. 1–78, p. 23, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0947&from=EN>.

63 ECRE, “Tightening the Screw: Use of EU External Policies and Funding for Asylum and Migration. ECRE’s Assessment of Changes to EU External Relations Brought about by the Pact, the Visa Code and the NDICI, Policy Note Nr. 34,” 2021, <https://ecre.org/wp-content/uploads/2021/03/Policy-Note-34.pdf>.

64 This proposal built on the European Council’s commitment to trade conditionality in 2021. DG Trade included a readmission clause in Article 19(1)(c) of the GSP Regulation, next to existing conditionality on the respect of human rights and international law. See: European Commission, “Proposal for a Regulation of the European Parliament and of the Council on Applying a Generalised Scheme of Tariff Preferences and Repealing Regulation (EU) No 978/2012 of the European Parliament and of the Council”, COM/2021/579 Final” (Brussels, September 22, 2021), p. 31, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:0579:FIN>.

65 General Secretariat of the Council, “Regulation on Applying a Generalised Scheme of Tariff Preferences and Repealing Regulation (EU) No 978/2012 of the European Parliament and of the Council (GSP) - Mandate for Negotiations with the European Parliament”, 16270/22, December 20, 2022, <https://data.consilium.europa.eu/doc/document/ST-16270-2022-INIT/en/pdf>.

66 European Parliament, “Review of the Generalised Scheme of Preferences (GSP) Regulation,” Legislative Train Schedule, European Parliament, March 20, 2023, <https://www.europarl.europa.eu/legislative-train/theme-an-economy-that-works-for-people/file-new-gsp-regulation>.

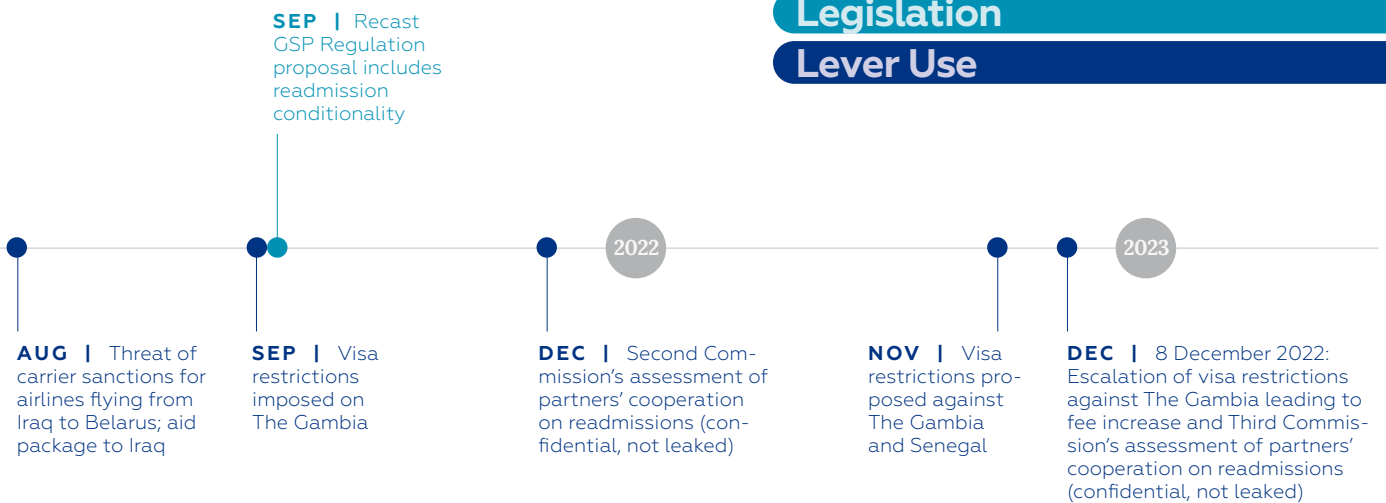
67 Article 4(d)(iv), European Commission, “Proposal for a Regulation of the European Parliament and of the Council Establishing a Union Resettlement Framework and Amending Regulation (EU) No 516/2014 of the European Parliament and the Council,” Pub. L. No. COM/2016/0468 final, 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0468>.

Legend

New Lever

Legislation

Lever Use



opposed by many actors, especially in Parliament, because it would divert from the humanitarian goal of resettlement. In practice, receiving states' cooperation with UNHCR on resettlement is, of course, influenced by their geopolitical priorities, but formalizing this practice in the Resettlement Framework Regulation was politically untenable. The deal struck in trilogue⁶⁸ in December 2022 thus deleted the clause that spelled out the link between the choice of countries from which to resettle and their migration management cooperation with the EU.⁶⁹ This shows that the trend to formalize levers is not linear.

Today, the formalized levers frequently appear in other EU legislation and agreements. For instance, the Regulation on Asylum and Migration Management (RAMM) , which was proposed as part of the

New Pact in September 2020 to replace the Dublin Regulation, includes a mention in Article 7 that, if countries are deemed not to cooperate on readmitting their nationals, the EU can adopt “appropriate actions.”⁷⁰ Such actions remain unspecified to date; they could include any incentives or sanctions (see Figure 2). Similarly unspecified are the details of conditionality in the Post-Cotonou Agreement, which was finalized in April 2021 by the EU and the Organization of African, Caribbean, and Pacific States (OACPS). It spells out that measures could be adopted if state parties do not respect their obligation to readmit their nationals (see box 3).⁷¹

Figure 3 visualizes the EU's lever development and use since 2015, highlighting central events to the formalization of conditionality levers and their use.

68 “Trilogue” is an EU term which describes the situation after both Council and Parliament have adopted a negotiating position, when the rapporteur from the European Parliament and the Presidency of the Council sit at the negotiation table with the Commission to craft a political compromise. Deals agreed in trilogue then have to be validated in Council and by the Parliament's plenary to be adopted.

69 Emiliya Bratanova van Harten, “EU Law Analysis: The New EU Resettlement Framework: The Ugly Duckling of the EU Asylum Acquis?,” EU Law Analysis (blog), February 3, 2023, <https://eulawanalysis.blogspot.com/2023/02/the-new-eu-resettlement-framework-ugly.html?spref=tw>.

70 The assessment would be that conducted under Article 25a of the Schengen Visa Code. See: European Commission, “Proposal for a Regulation on Asylum and Migration Management,” Pub. L. No. COM(2020) 610 final (2022), p. 48, https://eur-lex.europa.eu/resource.html?uri=cellar:2a12bbba-ff62-11ea-b31a-01aa75ed71a1.0001.02/DOC_1&format=PDF.

71 The Cotonou agreement from 2000 provides a framework for cooperation between the EU and 74 states, focusing on development cooperation, economic and trade cooperation, and political cooperation. See: Article 74 and Annex I, European Union and Organisation of African, Caribbean and Pacific States, “Partnership Agreement between [the European Union / the European Union and Its Member States], of the One Part, and Members of the Organisation of African, Caribbean and Pacific States, of the Other Part, Negotiated Agreement Text Initiated by the EU and OACPS Chief Negotiators on 15th April 2021,” April 15, 2021, pp. 54–55; pp. 182–83, https://international-partnerships.ec.europa.eu/system/files/2021-04/negotiated-agreement-text-initialled-by-eu-oacps-chief-negotiators-20210415_en.pdf.

What are the pros and cons of these levers? **The visa lever** brings three main advantages. First, it does not require tools from other policy areas, but only buy-in. For instance, home affairs departments have to coordinate with foreign ministries, which are responsible for issuing visas and are often reluctant to prioritize migration control and readmissions. Resulting turf wars are common (see Chapter 3 for details). But in contrast to other levers, the visa lever is a tool that is clearly most central to migration policy, not to development, trade, or other areas. Second, sanctions can be targeted to hit a country's elites without negative consequences for the wider population. Different interviewees emphasize this as an effective strategy with quick and satisfactory results. "Sanctions work well if you address them to the administration and political elites. That has facilitated returns and migration management. I have seen it work," one interviewee stated.⁷² Third, the visa lever is seen as useful not just as a stick, but also a carrot, because visa facilitation and liberalization tend to be attractive incentives for countries of origin.

Despite these advantages, the limitations of the EU's visa lever are severe. Visa restrictions according to Article 25a lack bite for two main reasons:

- First, the EU can only delay visas or increase visa fees, but not take away visas effectively. One interviewee argued that "conditionality works if it is clear and credible. EU conditionality is often not clear because they cannot introduce the binary choice of visa or no visa."⁷³
- Second, the EU cannot use visa restrictions nimbly, but only with long delays, because the stock-taking of countries' cooperation happens on a yearly basis and negotiations are lengthy and involve many veto players. What is more, different EU Member States put forward vastly different priority lists. One interviewee lamented that visa restrictions ultimately are "only applied... to very small or very weak countries. When we propose to apply them to bigger countries, other extra-migratory considerations enter into play and then there were always some EU countries saying no."⁷⁴

This makes the EU's visa restrictions a blunt and unwieldy sword. An oft-cited comparison are visa sanctions of the United States, which are harsher because they can and do take visas away entirely, are faster to adopt, and are applied more consistently, because the United States does not have to coordinate its visa measures with other countries. The US Department of Homeland Security (DHS) regularly updates a list of so-called "recalcitrant countries," and the Department of State (DOS) uses this list to determine which countries receive visa sanctions, weighing the country's interest in returns with its other political priorities. Both departments cooperate to adapt the measures every six months to account for changes.⁷⁵ Unsurprisingly, many interviewees assessed the US' visa lever use as more credible and effective. If European countries try to copy this national approach, however, they run into the Schengen limitation: If one Member State stops issuing Schengen visas to a third country, the citizens of that country can simply apply for that visa in another Member States' Embassy and then travel onwards from there.⁷⁶ This problem was visible for instance when France imposed visa sanctions against Algeria and Morocco in 2021 (see Chapter 3.1.).

Not blunt but equally unwieldy are visa liberalizations. They are a powerful lever, but only apply to the small group of countries that enjoy visa-free travel to the EU, so they cannot be used often or toward most countries where it would be useful. On top of that, visa liberalization requires political agreement in the Council, which can take years (as in the case of Kosovo, where it took over a decade). Countries like Moldova, Kosovo, Georgia, or Albania at first cooperated with EU countries on readmission and returns of their own citizens because they saw themselves on a path towards a Schengen visa waiver. Once this visa liberalisation materialised, they remained cooperative to avoid losing this advantage.

In short, the visa lever is powerful in its more for more version (i.e., visa liberalizations), but much less so in its less for less version (i.e., visa restrictions of Article 25a).

72 Interviewee 13, discussions at a closed-door DGAP workshop.

73 Interviewee 13.

74 Interviewee 18.

75 Interviewee 41, discussions during a closed-door DGAP workshop. Also see Congressional Research Service, "Immigration: 'Recalcitrant' Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals," In Focus (Washington, July 10, 2020), <https://crsreports.congress.gov/product/pdf/IF/IF11025>.

76 Interviewees 16 and 45.

The **development lever** comes with a different set of pros and cons. Development funds are central to the EU's engagement with third countries, and more development aid is routinely offered as the icing on the cake to make readmission agreements more palatable (see cases of The Gambia, Afghanistan until the Taliban takeover, and Iraq). But many interviewees emphasized that they had never seen development conditionality used as a negative lever in practice, despite the loud rhetoric around it. A few interviewees reported having seen this lever in use but said the overall amounts that were to be withheld had been small. Therefore, the threat of withholding development aid to reach migration goals seems to exist more in the minds of the observers than in the real world of the doers, one interviewee argued.⁷⁷

The **third lever, trade**, triggers high hopes since trade with the EU is a powerful incentive. Many interviewees agree that it may indeed be a powerful tool to have at hand. Several noted that the proposal itself to include readmission conditionality in the GSP Regulation had already affected Bangladesh's readmission cooperation positively. Other interlocutors were skeptical as to whether this lever would or should be used, since the GSP Regulation covers the least developed countries in the world and the harm of interrupting trade preferences for them could outweigh the benefit of a slightly improved readmission cooperation. Another, perhaps even stronger, strike against the trade lever is that adding readmission as a condition for countries to receive trade preferences dilutes other conditions that are already included in the GSP Regulation and that countries should fulfill, especially the condition to protect human rights.⁷⁸ In addition, practical drawbacks abound. The process from the proposal of trade sanctions until their adoption was likely to take at least 18 months, and trade sanctions could not be easily phased in and out, since they involved and impacted private actors. As a result, a trade lever anchored in the GSP would lack flexibility even more than the EU's visa lever. And even if readmissions were included in the GSP Regulation, trade actors would likely be reluctant to let migration interests take a dominant place in their negotiations.

Given this mixed bag of levers' limitations and strengths, what are their practical results? The next section analyzes the effects of these levers, both their intended and unintended side effects.

2.3. The Effects: Paper, Process, People – and Unintended Consequences

Good policies are evidence-based. The effects of any policy intervention should be measured systematically, but this research finds that most practitioners do not measure the effects of their conditionality use. "We don't measure. We just hope for it," one interviewee quipped.⁷⁹ None of the interviewees mentioned a standardized or systematic procedure for the evaluation of conditionality in their day-to-day practice. Workshop participants concurred that measuring the effects of conditionality was complex, difficult, or even impossible.

The lack of measuring the effects of all levers should matter, but most discussion on this problem so far has focused only on the visa lever. The Commission found in a 2018 impact assessment prior to the formalization of the visa lever that "there [was] no hard evidence on how visa leverage can translate into better cooperation of third countries on readmission."⁸⁰ This problem seems to persist to date – or at least from the evidence that is public. Reportedly, the effects of the Article 25a mechanism are measured via the political reporting of EU Delegations on progress made with partner countries on return and readmission.⁸¹ Yet so far, no report that evaluates the effects of the mechanism systematically has been made public. This makes it impossible for researchers to verify whether "the visa readmission mechanism provided for in Article 25a of the Visa Code... is one of the most successful instruments available to the European Union.", as the French Presidency of the Council claimed in February 2022.⁸²

Because reliable evidence measuring the effects of conditionality is scarce and, where it exists, is not shared publicly, the researchers of this study asked their interlocutors about effects they had perceived anecdotally or could measure based on statistical information they possessed but was not public.

77 Interviewee 13.

78 Interviewee 10.

79 Interviewee 13.

80 European Commission, "Impact Assessment Accompanying the Proposal for a Regulation Amending Regulation (EC) No 810/2009 Establishing a Community Code on Visas (Visa Code): SWD(2018) 77 Final," p. 6.

81 Interviewee 43 (in writing, May 2023).

82 Presidency of the Council of the EU, "Annual Implementation of the Visa-Remission Mechanism and Perspectives on Readmission, 5983/22," February 14, 2022, p. 3, <https://data.consilium.europa.eu/doc/document/ST-5983-2022-INIT/en/pdf>.

The resulting pattern, visualized in Figure 4, shows that conditionality use seems to have **three types of intended effects: paper, process, and people.**

1. The first effect is the conclusion of an agreement, common document, or statement (i.e., paper), such as the 2016 Joint Way Forward with Afghanistan or the 2017 Standard Operating Procedure with Bangladesh. In these documents, both sides make a declaration of intent to cooperate on migration matters including on readmissions, with more or less detailed provisions on how this cooperation will look in practice.

2. The second type of effect is procedural or technical changes, (i.e., process), such as new administrative structures, setting-up dialogue formats or regular contacts and visits, the structured and plannable exchange of information, the adoption of agreed-upon principles in new legislation or internal regulations, and many other practical or managerial tools. Examples of such processes are the digitalized readmission processing system in Bangladesh, Afghanistan's acceptance of identification documents produced by the EU, or The Gambia's cooperation on landing rights for return charters.

3. The third layer of effects is on migration itself (i.e., people). This could be the number of voluntary and forced returns from or to a country, but also the increase or decrease of arrival numbers. It is difficult to achieve results, especially on this third layer. Even when readmission or other kinds of agreements are struck and translated into procedural changes or capacity-building, the numerical impact rarely is sizable nor lasting (the exceptions seem to be agreements with countries where visa-free travel is at stake). When it comes to returns, the annual increases following conditionality use tend to remain in the double or low triple digits, some interviewees shared. This is far from a volume of returns that would reduce the sizable (four- or five-digit) backlogs accumulated by some Member States.

The measurement of effects is further complicated by the fact that the levers are often not used, but rather the promise or threat of a lever. For instance, an informal phone call between a European representative and his counterpart from a third country may contain the promise of new funds or the diplomatically phrased concern or threat of future negative measures against the country. In fact, numerous interlocutors maintain that the main benefit of the levers is actually not their use, but the threat to use them, which may be enough to lead to the desired behavior change (see the case of Bangladesh in Chapter 4).⁸³

Measuring the effects is also difficult because the impact of one lever can hardly be isolated from that of other factors. Success, such as a country changing behavior after being faced with a lever, might not be due to the lever itself, but to other factors happening at the same time. Known in statistics as omitted variable bias, in practice, such omitted variables can range from major domestic developments like elections to a simple diplomatic conversation.

Besides intended and tangible effects, interviewees point to several unintended or collateral side effects they witnessed when EU Member States used negative conditionality. The side effect most discussed is so-called reverse conditionality, meaning the backlash from a third country in response to conditionality attempts. For instance, some third countries, upon feeling unduly pressured, have reacted by threatening a reduction of border patrols or actually reducing them, and in some cases by actively supporting irregular onward migration (e.g., Türkiye, Morocco).⁸⁴ Others have used strategic leaks to provoke a public outcry in their population and thus derail negotiations.⁸⁵ One interviewee called it “penny-wise but pound foolish” when conditionality use leads to a short-term gain at the expense of trust in the relationship that has been built over time.⁸⁶

⁸³ Discussion at closed-door DGAP workshop, September 29, 2023.

⁸⁴ Alia Fakhry, Roderick Parkes, and András Rácz, Migration Instrumentalization: A Taxonomy for an Efficient Response, vol. 14, Hybrid CoE Working Paper (Helsinki: The European Centre of Excellence for Countering Hybrid Threats, 2022), <https://www.hybridcoe.fi/wp-content/uploads/2022/03/20220308-Hybrid-CoE-WP-14-Migration-instrumentalization-WEB.pdf>.

⁸⁵ Interviewee 35. For more information about reverse conditionality, see Zanker, “A Typology of Resistance,” who describes strategies for countries unwilling to accept returns: “resist through inaction,” “reactive non-compliance,” and “proactive non-compliance”; See also: Jean-Pierre Cassarino, “The Instrumentalization of Migration in the Euro-Mediterranean Area: Between Past and Present,” in IEMed, Mediterranean Yearbook 2021, 2021, pp. 91–96, <https://www.iemed.org/publication/the-instrumentalization-of-migration-in-the-euro-mediterranean-area-between-past-and-present/>; Fanny Tittel-Mosser, “Reversed Conditionality in EU External Migration Policy: The Case of Morocco,” Journal of Contemporary European Research 14, no. 4, January 1, 2018, pp. 349–63, <https://doi.org/10.30950/jcer14i3.843>.

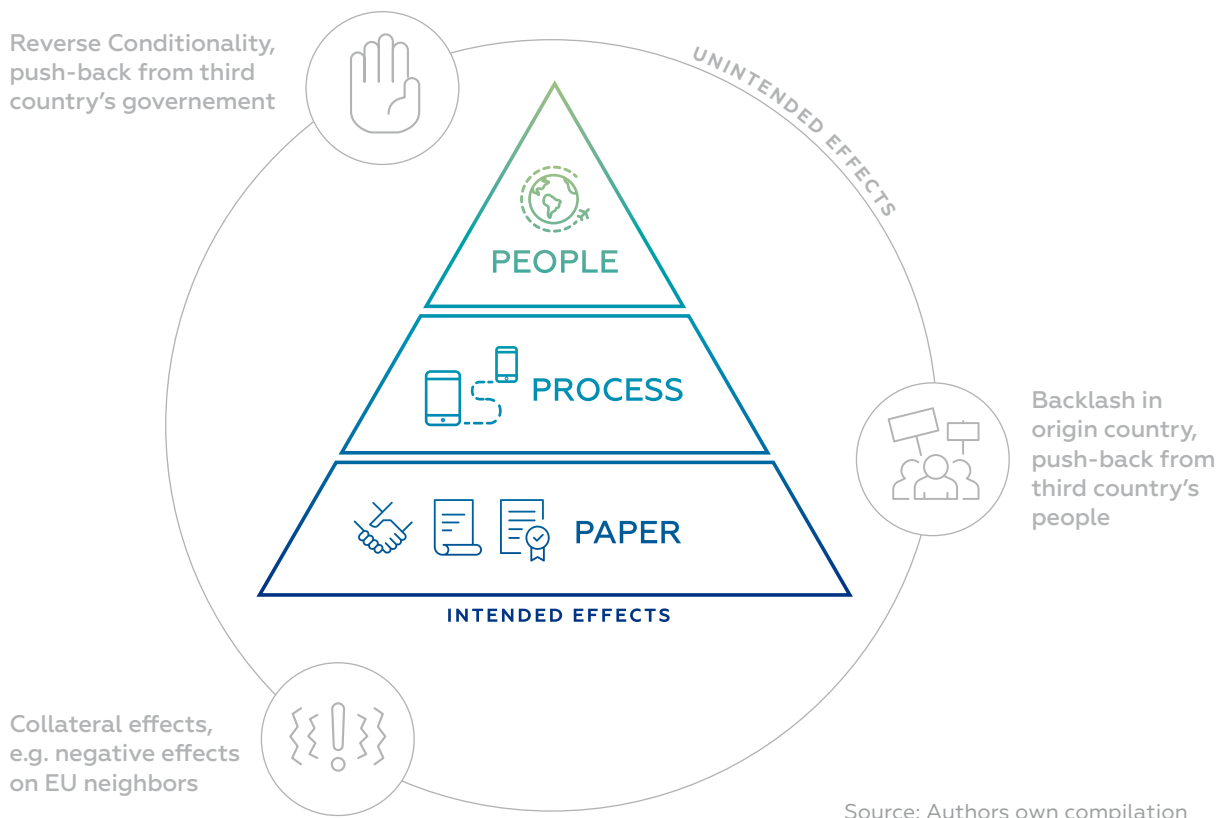
⁸⁶ Interviewee 27

Other unintended effects also merit mention, such as the backlash and push-back from the citizens of third countries. For instance, Tunisia’s active civil society is critical toward the conclusion of its government’s readmission agreement with the EU, which has been one of the many factors delaying the negotiations.⁸⁷ Such push-back from citizens or civil society is not always in the cards, of course. It is an uncomfortable truth that the EU is more successful at pushing countries to implement policies their populations oppose when they are autocratic or have weak governmental structures and accountability mechanisms. A telling example comes from

Niger, where people refer to an unpopular asylum and migration legislation that is not seen to be in Niger’s own interest simply as “the EU law.”⁸⁸

Lastly, using conditionality can also have unintended side effects on neighboring countries – for instance, if one EU Member State insists on negative conditionality use toward a third country and thereby unintentionally derails or worsens the migration relationship between that country and other EU countries. This collateral effect and other problems resulting from European countries’ incoherent use of conditionality are analyzed in the next chapter.

Figure 4 – Intended and Unintended Effects of Migration Conditionality



Source: Authors own compilation

87 Tasnim Abderrahim Alia Fakhry Victoria Rietig, “Walking a Tightrope in Tunisia: The Aspirations and Limitations of Migration Policy Reform” DGAP Report No 12, June 28, 2021, p. 7. https://dgap.org/sites/default/files/article_pdfs/Report-Tunisia_EN_2021_korr_1.pdf. See also: Philipp Stutz and Florian Trauner, “The EU’s ‘Return Rate’ with Third Countries: Why EU Readmission Agreements Do Not Make Much Difference,” *International Migration*, January 1, 2021, p. 12, <https://doi.org/10.1111/imig.12901>. Further: Interviewees 10 and 28.

88 Interviewee 3.

3. CHASING COHERENCE: UPHILL BATTLES AND DELUSIONS AT HOME

Achieving coherence is a major challenge for most, perhaps all, EU initiatives. Conditionality use is no exception. If the EU wants to be clear, consistent, and credible toward countries of origins, agree on incentives and sanctions, and coordinate external actions, it needs an adequate level of coherence. This chapter 1. analyzes the different levels of incoherencies in the EU's and its Member States' conditionality use, and 2. assesses existing strategies to counter them.

3.1. Three Levels of Incoherence

Migration conditionality is discussed and used remarkably inconsistently in Europe. Three levels of incoherence hobble a strategic and pragmatic use of conditionality: On the EU level, between different Member States, and within individual Member States.

First, there is **incoherence at the EU level, both between and within EU institutions, regarding which levers to use and which countries to target**. At first glance, the political messaging from the EU Commission and the European Council is straightforward: all tools, instruments, and policy fields should be used to achieve concessions from third countries to reach migration goals, in particular on returns and readmissions.⁸⁹ But this objective is not supported wholeheartedly across EU institutions, as many members of the European Parliament are highly critical of migration conditionality, particularly the use of the development and trade levers. The use of all levers is also not supported uncritically by the relevant DGs. For instance, interviewees in different DGs (including within DG Home) shared their doubts about the usefulness of the use of different levers and voiced the many competing interests of the EU, especially the need to preserve diplomatic relations with targeted countries and to avoid counterproductive effects on development.

Even when there is agreement on which levers to use, the Commission and Member States have trouble agreeing on which countries should be labeled as uncooperative in their Council discussion. Member states feed the Commission widely differing lists of

candidates for the Article 25a visa restrictions and tend to oppose the use of restrictions against countries that are of strategic importance to them. This explains, for instance, why Morocco and Tunisia have not seriously faced the threat of visa restrictions despite their low return rates. So far, the Commission only received support to propose visa restrictions on Bangladesh, Iraq, The Gambia, and Senegal. Other countries with low levels of cooperation, such as Egypt, Ethiopia, Iran, Nigeria, Pakistan, and Somalia, were discarded in the process. Only The Gambia faced visa restrictions in 2021 and 2022 (see Chapter 2.2 and Chapter 4). Most recently, in June 2023, the Council did not impose visa restrictions against Senegal nor Iraq, even though many Member States had repeatedly pushed for it.

Second, there is **incoherence between Member States' conditionality support and use**. Several Member States support conditionality overall but exclude some levers. For instance, the current German government is opposed to formalizing the trade lever, and it explicitly excludes aid conditionality in its 2021 Coalition Treaty. Other countries are also reluctant to use aid and/or trade conditionality, including the Czech Republic, Portugal, and Luxembourg. By contrast, Austria explicitly includes aid conditionality in its government program (see Box 2). National positions can change quickly though. Germany's government had actively supported the formalization of the trade lever until its government changed following the 2021 election. Vice versa, Sweden was previously opposed to aid conditionality, but has been actively pushing for the adoption and use of aid conditionality and other levers since its 2022 elections.

The effects of this incoherent support can be dire, especially when one Member State's preferred conditionality use is harmful to another. For instance, Spain's relationship with The Gambia regarding migration prevention was reportedly made more difficult by the EU's decision to use conditionality to increase readmissions. Concretely, one interviewee found that the increase in deportation flights had led to a decrease in migration prevention by The Gambia and higher arrivals in Europe.⁹⁰ This example shows the different prioritization between achieving a reduction in arrivals, which is a priority for Southern Member States of first entry, and enforcing returns,

⁸⁹ This has been the Commission's stance since the 2015 Action Plan on Return. See: European Commission, "EU Action Plan on Return: COM/2015/0453 Final," p. 14. Cited in European Court of Auditors, "Special Report No 17/2021: EU Readmission Cooperation with Third Countries," September 19, 2021, p. 65, https://www.eca.europa.eu/Lists/ECADocuments/SR21_17/SR_Readmission-cooperation_EN.pdf

⁹⁰ Source: Interviewee 14. Interviewee 26 interprets this episode differently, pointing at the end of travel restrictions imposed due to Covid and the economic impact of the pandemic on the Gambian tourist sector as more plausible explanations for increased arrivals on the Spanish islands.

which is a larger priority for Member States who are prime destinations for onward migration within Europe. Another example is the negative impact on Spain and Germany when France adopted visa restrictions unilaterally against Morocco and Algeria in September 2021. As France cut its issuance of Schengen visas to these countries by 50% to push for more readmissions, Spanish and German embassies faced a sudden increase in visa applications in Rabat and Algiers, which challenged their processing capacities. This example illustrates once more the crux of the visa lever within the Schengen area, since French visa sanctions did not prevent access to French territory, but rather cause a hassle to its neighbors (see Chapter 2.3. on unintended effects of conditionality use).

Third, there is **incoherence within individual Member States**, both horizontally between the different ministries or departments and vertically between the higher echelons of government who might favor conditionality use and the lower rungs of the administration that might (accidentally or on purpose) block such attempts. For example, one interviewee recounted that, after the European Council agreed to support Italy by funding the training and equipment of the Libyan coast guard, the government of a big Member State complained that the money release was stalling. That government then had to be made aware that its own ministry representative was vetoing the disbursement of the funds in the relevant Council body, arguing they were supposed to be for security and defense only.⁹¹

Horizontal inconsistencies between ministries or policy fields are even more common than vertical ones. The interdisciplinary struggle is at the heart of the debate on how to use conditionality. The vast majority of interviewees commented in some form on the **turf wars** between the different policy fields (interior and/or justice, exterior and/or development, trade and/or economy, etc.) and the constant clash of cultures that constitutes the well-rehearsed soundtrack to governmental conditionality discussions. Home affairs officials tend to feel isolated and obliged to twist the arms of their colleagues from

ministries of foreign affairs, development, or trade to get them to take irregular migration and returns seriously. In the words of one interviewee: “It is a fetish by interior people to say ‘We feel betrayed and sold down by the river by the globalist negotiators.’ Most of the foreign policy people are pro-migration. They have often a simplistic view of migration and rarely say that irregular migration is a problem.”⁹² This research confirms that, despite a strong mutual understanding among officials from different departments, the gravitational pull of each ministry’s culture tends to pull people back to toe the line once they have to formalize their positions or represent their institutions officially.⁹³ As one interviewee pointedly stated, considering the incompatibility between different ministerial cultures, the “whole of government approach has been political fantasy since the times of Babylon.”⁹⁴

3.2. Strategies to Counter Incoherencies

Well-aware of the endemic turf wars and many incoherencies, the EU’s declared goal is to counter them and create greater harmonization, coherence, and coordination. Its strategies to address the incoherencies can be grouped into three categories: 1. create coordination mechanisms, 2. use acute crises and political pressure, and 3. tolerate and manage incoherencies.

Strategy 1 – Create coordination mechanisms: The first strategy is to set up dedicated mechanisms and positions to improve coordination. Most recently, the French Council presidency in 2022 set up a Brussels-based working group called The Operational Coordination Mechanism for the External Dimension of Migration (MOCADDEM), in the hopes of increasing coherence of Member States’ operational approaches. This working group is supposed to add to other long-standing mechanisms, such as the capitals-based Working Party on External Aspects of Asylum and Migration (EMWP), which aims to develop coherent strategies. Other regular and established coordination formats in the European Council include the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), and the Working Party on Integration, Migration and Expulsion (IMEX).⁹⁵

⁹¹ Interviewee 36.

⁹² Interviewee 36.

⁹³ The position of ministries or departments can and does change over time, but substantial changes in their positions seem to be driven not primarily through exchange with the other ministries or departments, but rather by power shifts between them. For instance, the prioritization of returns and readmissions by European governments increased the relative agenda-setting power of home affairs officials, which, according to Interviewee 10 “puts foreign affairs in a more defensive position.”

⁹⁴ Interviewee 36.

⁹⁵ The EMWP was founded in 2021 to replace the High-Level Working Group (HLWG) on Asylum and Migration, which had been established in 1998 to prepare cross-pillar Action Plans for the countries of origin and transit of asylum seekers and migrants. See Council of the European Union: “Working Party on External Aspects of Asylum and Migration”, <https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/working-party-on-external-aspects-of-asylum-and-migration/> (accessed June 24, 2023).

Another recent coordination attempt is the newly created position of EU Return Coordinator. In March 2022, more than a year after the position was first announced, Mari Juritsch took up this role and proceeded to establish the new High-level Network for Return, which brings together representatives from EU Member States, Schengen Associated States, and the Frontex Deputy Executive Director for Return Operations. Earlier this year, her office published an initial strategy paper that calls for increased coherence and coordination in the EU's return strategy.⁹⁶ This echoes the European Court of Auditors' report on EU readmission cooperation with third countries, which stresses the urgent need to increase synergies between Member States and across EU policy areas.⁹⁷ Another new coordination position is the Special Envoy for External Aspects of Migration at the EEAS. Created in May 2022 and taken up by Ambassador Luigi Soreca, the position aims to materialize the EU's ambition to speak with one voice – the “Team Europe” approach. The goal is to coordinate diplomatic outreach of Member States' foreign ministries and EU institutions, to avoid situations where Member States play different tunes or can be played against one another. To do so, Soreca counts on a stronger role of EU Delegations (the EU's Embassies) in strategic partner countries. This envisaged alignment of diplomatic messaging also has its own coordination forum: the EU Member States' Network of Ambassadors and Special Envoys on Migration.⁹⁸

The perceived impact of these mechanisms varies. Some interviewees are optimistic that the new structured coordination efforts might bear fruits while others discard them as initiatives that will have little practical effect. Opinions range from “MOCADÉM is a good idea. It is helpful to have”⁹⁹ to “There is not much new thinking on what is proposed.”¹⁰⁰ The Return Coordinator is also seen as potentially helpful by some interviewees, but some see her impact as likely small because of her office's limited resources and her own limited political heft.¹⁰¹ The EEAS special envoy's ability to craft a “Team Europe” raises similar question marks.

Governance research supports the skeptics. It lays bare the many good reasons why incoherencies exist and, more importantly, why they so stubbornly persist despite coordination calls. “The notion that more coordination or optimal coordination can be produced through formal organization is misguided,”¹⁰² Hustedt and Veit find, because establishing formal coordination mechanisms does not address the real hindrances to cooperation. They find that “calls for ‘more’ or ‘better’ coordination are ... in circulation ... in an almost inflationary way and coordination has consistently positive connotations,” although coordination does come with downsides that are often not acknowledged, and therefore persist.

One of the main obstacles to functioning cooperation is its often-disproportionate cost, meaning the time and effort organizational units have to spend on coordination. This is unsurprising to anyone who has ever been part of an imposed working group. A rational cost-benefit-analysis of many cooperation formats shows that the cost of cooperation is high, because coordinating positions becomes lengthier the more cooperation partners are involved, but its benefit might be small or even negative, especially if the resulting output is a compromise that satisfies nobody.

A second obstacle is the “selective perception” of different organizational units, meaning that the attention of units typically is focused on their own area of responsibility, and that they evaluate all decisions and positions in coordination processes through the lens of their area. Yet again, this experience is known to anyone who has worked in an organization with different units. The more specialized the units' work is from each other, and the more different the perception of the organization's goals and mission prevalent in these units (think, for instance, of process-oriented units as opposed to outcome-oriented units), the more likely that selective perception dominates these units' interactions and hampers coordination.

96 European Commission, “Towards an Operational Strategy for More Effective Returns,” Policy Document (Brussels, January 24, 2023), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=COM:2023:45:FIN>.

97 European Court of Auditors, “Special Report No 17/2021: EU Readmission Cooperation with Third Countries,” September 19, 2021.

98 Information discussed at the event “Briefing with the EU special envoy for external aspects of migration, Ambassador Luigi Soreca,” on April 13, 2023. See: <https://www.egmontinstitute.be/events/briefing-with-the-eu-special-envoy-for-external-aspects-of-migration-ambassador-luigi-soreca/> (accessed April 15, 2023).

99 Interviewee 52.

100 Interviewee 46.

101 Interviewee 48.

102 Thuid Hustedt and Sylvia Veit, “Forschungsperspektiven auf Regierungs- und Verwaltungskoordination: Koordinationsprobleme und Erklärungsfaktoren,” *der moderne staat - dms: Zeitschrift für Public Policy, Recht und Management* 7, no. 1, 2014, p. 22, <https://doi.org/10.3224/dms.v7i1.16234>;

The result of these obstacles is the phenomenon of “negative coordination,” which could also be called “turf demarcation.”¹⁰³ Organizational units engage with policy proposals from other units merely to identify the impact that these proposals would have on their turf – their area of competence and action. Rather than investing their limited resources in developing jointly optimal policy solutions (positive coordination), organizational units tend to limit their engagement to protecting their turf from the potential negative fallouts of proposals pushed by others (negative coordination). The same goes not just for units within one organization, but for organizations within one policy field, such as migration policy. The organization in charge – say DG HOME – progressively amends its policy proposals to address the concerns of other branches of the Commission – say the EEAS, DG INTPA, and DG TRADE. Similar effects occur in the negotiations in the Council and between the Council and Parliament, and on the national level, between different ministries. The result of this tinkering is piecemeal reform that does not address the policy problems in a game-changing way.

Strategy 2 – Use acute crises and political pressure to increase coherence: An alternative strategy to increase coherence is to make use of crises as moments of greater readiness for change and to ramp up political pressure on high levels.

Acute crises help push coherence, both on EU and national levels. Crises tend to catalyze convergence, foster practical cooperation, and bring innovation that may elude formalized coordination mechanisms. Some of the most significant changes in external migration policy of the last years have been triggered by acute crises: The EU-Türkiye agreement in 2016, the set-up of flexible funds (EUTF, Madad), the quick return of Iraqis during the Belarus crisis in 2021, and the activation of the Temporary Protection Directive in 2022 have all been reminders that European countries are in fact able to move quickly and jointly on migration issues. One interviewee finds that “if the EU wants, they can do a lot, but without a crisis, they don’t move.”¹⁰⁴ In crisis mode, coherence increases.

Political will and a clear political direction can also increase coherence and decrease turf wars effectively, especially on a national level. This research finds that turf wars and disagreements on conditionality between different branches of government vary substantially between countries. In countries whose governments show strong political will, either to use punitive approaches or to abstain from them, the different branches rally more smoothly behind the mission. In fact, representatives from countries with a clear and streamlined approach to migration conditionality evaluate the success of their migration approaches more positively than representatives from countries whose governments are divided on the issue.¹⁰⁵ Therefore, in countries where the political direction is clearer, be it for or against conditionality use, the cooperation works better than in countries where political leadership is divided or disinterested in the issue. A clear political mandate that is accepted by all branches of government brings an additional key benefit: It makes it easier to speak with one voice, both at the EU-level and toward third countries.

Strategy 3 – Tolerate and manage inconsistencies: Finally, the third strategy is to change the perspective and view incoherence not as a problem to solve, but a challenge to manage or tolerate. After all, some incoherence is not bad but necessary to accommodate “diverging interests, values and actors” – otherwise, “EU policy will simply grind to a halt.”¹⁰⁶

An example of how to manage (rather than decrease) an inconsistency on conditionality comes from Germany. While its government excludes the negative development lever on paper (in its coalition treaty), it did not veto the recent European Council conclusions that call for the use of all levers. Similarly, knowing that it cannot prevent the adoption of the trade lever in the GSP reform, Germany might abstain in Council votes rather than put in their veto. Germany thus uses EU voting rules to reconcile seemingly irreconcilable differences on conditionality. It knows that the opposition or abstention of some Member States does not prevent the adoption of conditionality mechanisms if a qualified majority

103 Thuid Hustedt and Sylvia Veit, “Forschungsperspektiven auf Regierungs- und Verwaltungskoordination: Koordinationsprobleme und Erklärungsfaktoren,” 2014, p. 23; Fritz W. Scharpf, “Games Real Actors Could Play: Positive and Negative Coordination in Embedded Negotiations,” *Journal of Theoretical Politics* 6, no. 1, January 1, 1994, pp. 27–53, <https://doi.org/10.1177/0951692894006001002>; Fritz W. Scharpf, “Positive und negative Koordination in Verhandlungssystemen,” in *Policy-Analyse: Kritik und Neuorientierung*, ed. Adrienne Héritier, *Politische Vierteljahresschrift* (Wiesbaden: VS Verlag für Sozialwissenschaften, 1993), pp. 57–83, https://doi.org/10.1007/978-3-663-01473-7_3.

104 Interviewee 36.

105 Discussion at DGAP closed-door workshop, September 29, 2023.

106 Leonhard den Hertog, “In Defence of Policy Incoherence – Illustrations from EU External Migration Policy,” in *EU External Migration Policies in an Era of Global Mobilities: Intersecting Policy Universes*, ed. Sergio Carrera et al., *Immigration and Asylum Law and Policy in Europe* 44 (Leiden: Brill Nijhoff, 2018), p. 366, <https://brill.com/display/book/edcoll/9789004354234/BP000019.xml>.

supports it. Put simply, if blocking has no consequence, abstaining is the more diplomatic strategy. This is also visible in the example of parliamentarians who make concessions in trilogue to salvage reforms. One interviewee explained that it is difficult to rally colleagues against the readmission clause in the GSP proposal, because even left-wing parties opposed to conditionality worry the whole reform might fail if they take a hard stance.¹⁰⁷ Incoherencies are sometimes the price to pay to get large legislation over the finish line.

The assessment of these three existing strategies to counter incoherencies in the EU's conditionality use shows that the pursuit of coherence is at best an uphill battle and at worst a delusion. The next chapter illustrates Europe's conditionality use and its incoherencies with five concrete examples.

4. FIVE COUNTRY CASES: CARROTS AND STICKS IN ACTION

The devil is in the details when migration conditionality moves from theoretical musings to practical use. Interlocutors of this research describe five cases as clear-cut examples of conditionality use: 1. Bangladesh, 2. The Gambia, 3. Afghanistan, 4. Iraq, and 5. Nigeria.

This chapter analyzes when and how the EU and its Member States applied migration conditionality toward these countries, which levers they employed, and what the effects of this use were.¹⁰⁸ It then draws lessons from each case that should guide the future use of conditionality. The main takeaways of each country case study are summarized in Table 2 at the end of this chapter.

Figure 5 – Overview of Country Case Studies



¹⁰⁷ Interviewee 10.

¹⁰⁸ The labeling of events and developments as effects (i.e. as events caused by lever use, not just correlated to lever use) is based on interviewees' judgments, but could not always be verified by public sources (see limitations section in the introduction).

CASE 1

Bangladesh

Goals/Background: The relationship between Bangladesh and the EU is, overall, a positive one. Good commercial relations with the EU are vitally important for Bangladesh: the economic growth of the country relies on textile exports, which are helped by the preferential trade rules of the GSP.¹⁰⁹ At the same time, several Member States have been frustrated by what they see as Bangladesh's lack of cooperation with Europe on readmissions. According to Eurostat data, nearly 17,000 Bangladeshi nationals were ordered to leave the EU in 2022.¹¹⁰

Levers employed:



1. Threat of visa restrictions: EU Member States first agreed to threaten Bangladesh with visa restrictions in September 2017. As no formal sanction mechanism existed yet at EU level, EU ambassadors conveyed the threat informally following an agreement in COREPER. After the visa lever was formalized via Article 25a of the Schengen Visa Code, the Commission recommended the adoption of visa restrictions in May 2021.



2. Threat of trade sanctions: Similarly to the threat of visa sanctions, the EU signaled to Bangladesh in 2017 that it was considering

trade sanctions – a strong message given the country's dependency on trade with the EU. One interviewee commented it was “the first time we tried trade related conditionalities.”¹¹¹



3. Development aid: The EU has funded a number of projects in Bangladesh directly related to the goal of returns and readmissions. Since 2017, the Commission has been providing aid for the reintegration of returnees under the Prottasha project.¹¹² In 2018, it authorized a €4.8 million grant, managed by IOM, to build a digital Readmission Case Management System (RCMS) to improve the country's technical capacity to process returns and foster reintegration.¹¹³ And in April 2022, Frontex started its Joint Reintegration Services in Bangladesh.¹¹⁴



4. Political attention and diplomatic engagement: Besides regular diplomatic engagement,¹¹⁵ Home Affairs Commissioner Ylva Johansson visited Bangladesh in November 2022.¹¹⁶ She announced additional aid for Rohingya refugees, the possibility to withdraw the proposal to issue visa restrictions (which has not happened to date), and a comprehensive dialogue on migration and mobility.¹¹⁷ That same month, Enrique Mora, Deputy Secretary General of the EEAS, also visited the country for the launch of the EU-Bangladesh Political Dialogue, a comprehensive yearly format of diplomatic dialogue, which covers migration and other topics.

¹⁰⁹ Interviewees 24 and 39.

¹¹⁰ Eurostat, “Third Country Nationals Ordered to Leave - Annual Data (Rounded). Custom Selection: Citizens of Bangladesh, The Gambia, Iraq, Afghanistan and Nigeria; 2022,” May 5, 2023, https://ec.europa.eu/eurostat/databrowser/view/MIGR_EIORD_custom_6114491/default/table?lang=en.

¹¹¹ Interviewee 39.

¹¹² Prottasha first phase: 2017–2022, €15.9 million, implemented by IOM and BRAC; second phase, under the NDICI initiative approach: 2022–2024, €20 million, implemented mainly by BRAC. See: European Union, “Action Document for Prottasha II: Sustainable Reintegration of Bangladeshi Returnees and Improved Migration Governance, ANNEX V to the Commission Implementing Decision on the Financing of the Annual Action Plan in Favour of the Asia Pacific Region for 2022 Part 1,” 2022. This is not a Teams Europe initiative.

¹¹³ The RCMS is a case management system, via which EU member states submit readmission requests so the Bangladeshi authorities can proof them swiftly and digitally, instead of via consulates or identification missions. After the handover of the RCMS to the Bangladeshi authorities, a second phase of the project was approved to improve implementation via trainings in the responsible Ministry. Projects on same system were set up for Pakistan, Azerbaijan, and Sri Lanka. See: European Court of Auditors, “Special Report No 17/2021: EU Readmission Cooperation with Third Countries,” September 19, 2021, p. 48. The operation of the RCMS was facilitated via the Automated Fingerprint Identification System (AFIS) and the establishment of a data center. See: European Court of Auditors, p. 65.

¹¹⁴ Frontex, “Bangladesh - Reintegration Programme, Joint Reintegration Services,” JRS Country Information (blog), n.d., <https://files.returningfromgermany.de/files/JRS%20Country%20Information%20Leaflet%20BANGLADESH.pdf>.

¹¹⁵ Interviewee 37 reported an intensive informal engagement by DG Home, the EU's Delegation and Member States' diplomatic representations with Bangladesh, next to the yearly official meetings of the “Joint Working Group on the Standard Operation Procedures for return” emphasized by the Commission in its state of play report. See: European Commission, “Update on State of Play of External Cooperation in the Field of Migration Policy,” January 14, 2022, p. 22, <https://migration-control.info/internal-eu-document-update-on-state-of-play-of-external-cooperation/>.

¹¹⁶ European Commission, “Update on State of Play of External Cooperation,” February 2023, p. 45, <https://migration-control.info/wp-content/uploads/2023/02/Update.pdf>.

¹¹⁷ European Commission, “Daily News 09 / 11 / 2022,” Text, European Commission - Press Corner, November 9, 2022, https://ec.europa.eu/commission/presscorner/detail/en/mex_22_6729.

Effects:**1. Conclusion of a readmission arrangement:**

The initial threats of visa and trade sanctions contributed to persuading Bangladesh to sign an informal readmission arrangement, the so-called Standard Operating Procedures for the Identification and Return of Persons without an Authorisation to Stay (SOP) in 2017. The SOP is an informal and non-binding instrument aiming at accelerating readmission procedures (see Chapter 1 and Table 1).¹¹⁸

**2. Improved procedures:** Bangladesh committed to upscaling its readmission cooperation, and identification procedures

improved, especially when the Readmission Case Management System became operational. Yet despite these improvements following the SOPs, some Member States continued to evaluate the return cooperation from Bangladesh as overall unsatisfactory. Readmission numbers remained small, and the Commission flagged a return rate of only 9 percent in its 2021 report.¹¹⁹ It was only after the recommendation of visa restrictions in 2021 that the Commission acknowledged “substantial progress in cooperation on return.”¹²⁰ One interviewee also pointed to an increase in charter flights, citing confidential documents.¹²¹

**3. Dialogue on Migration and Mobility established between EU and Bangladesh:** During Commissioner Johansson’s visit, more intense cooperation was announced via a Dialogue on Migration and Mobility, launched in 2023, which would include the negotiation of a Talent Partnership to strengthen legal pathways to the EU Member States.¹²²**4. Diplomatic frustration:** Disagreements between the EU and Bangladesh were largely handled out of the public eye, but one interviewee stated that, behind closed doors, the Bangladeshi partners were frustrated: “The Bangla-

deshis said that they were doing what they could. I think they had a point. It was honestly never difficult to work with Bangladesh. Not as you compare with other countries.”¹²³

Lessons:**1 The informal threat of a sanction can be enough to get third countries to make concessions.**

Bangladesh reportedly feared the negative effects of visa or trade sanctions on its reputation and potential collateral damage on commerce. This concern for Bangladesh’s reputation was a decisive factor in the government’s agreement to sign the SOP.¹²⁴

2 Multiple rounds of conditionality may be needed to enforce agreements.

After the SOP was signed in 2017, readmission procedures remained lengthy and return numbers limited. Practical cooperation only started improving a few years later, likely due to the digitalization of readmission management via RCMS, the 2021 proposal of visa restrictions, and the signaling of potential trade sanctions.

3 Replicability is uncertain. Interviewees stated that the threats of sanctions worked for three main reasons:

First, Bangladesh’s economy heavily relies on low-cost textile exports to the EU;¹²⁵ second, government and public opinion both see Bangladesh’s international reputation as a priority;¹²⁶ and third, since the public has a rather positive image of the EU, the government does not benefit from snubbing the EU openly (in contrast to other countries, e.g., in North Africa).¹²⁷ Due to these factors, it seems likely that the EU picked Bangladesh out of the pool of countries with insufficient cooperation levels to test EU visa restrictions because it was a safe bet and a low-hanging fruit where threats were likely to be effective, rather than because the number of Bangladeshi nationals without legal status in the EU caused problems. As one interviewee puts it, the EU was “aware of the fact that it may work because Bangladesh is a country that cares about re-

118 General Secretariat of the Council, “Draft EU-Bangladesh Standard Operating Procedures for the Identification and Return of Persons without an Authorisation to Stay, 9118/16,” May 27, 2016, <https://data.consilium.europa.eu/doc/document/ST-9118-2016-INIT/en/pdf>

119 European Commission, “Report to the Council: Assessment of Third Countries’ Level of Cooperation on Readmission in 2019,” February 10, 2021, pp. 12–13, <https://www.statewatch.org/media/2297/eu-com-readmission-report-on-cooperation-restricted-com-2021-55-final.pdf>

120 European Commission, “Update on State of Play of External Cooperation in the Field of Migration Policy,” p. 22.

121 Interviewee 44.

122 European Commission, “Update on State of Play of External Cooperation,” pp. 45–46.

123 Interviewee 29.

124 Interviewees 29 and 30.

125 Interviewees 8, 29, and 37.

126 Interviewee 13.

127 Interviewee 29.

lations with the EU. Another country may not have been as responsive.¹²⁸ This low-hanging fruit approach shows that the EU's conditionality use can be effective, but not necessarily fair.

4 Cooperation may wane in the future. Bangladesh has been cooperating discreetly on readmissions to keep the issue out of the public eye, but a local expert opined that cooperation may dip after the February 2023 presidential elections.¹²⁹ In the same vein, Bangladesh's concern for its international reputation is closely linked to its upcoming graduation from a least developed country to a developing country in 2026.¹³⁰ An interviewee speculated that the country's readiness to cooperate might decrease after graduating from this status.¹³¹ This illustrates that even the effects of successful lever use might have a half-life of just a few years.

CASE 2

The Gambia

Goals/Background: The issue of return has been overshadowing the relationship between The Gambia and the EU for a few years. Following The Gambia's democratic transition in 2016 after two decades of autocratic rule, European countries began demanding that the new Gambian government start readmitting its nationals, but progress has been small.

EU countries have issued over 2,100 orders to leave to citizens of The Gambia in 2022, down from about 4,000 in 2019.¹³² To date, The Gambia is the only country facing formal EU visa restrictions.¹³³

Levers employed:



1. Development aid: To support "the new Gambia" after the first democratic election in 2016, the EU resumed development cooperation that had been largely frozen under the dictatorship of Yahya Jammeh. For instance, the EU invested €38.9 million in four EUTF projects to foster migration management and address the root causes of irregular migration through the creation of employment opportunities.¹³⁴



2. Intelligence and police cooperation: Via membership in the Africa-Frontex Intelligence Community (AFIC), founded in 2010, Gambian officials could participate in Frontex trainings, meetings in the EU and West Africa, and received equipment for border authorities for the purpose of information sharing and joint analysis. A cooperation with Interpol was also established.¹³⁵



3. Visa restrictions: A majority of Member States agreed that readmission cooperation of The Gambia was insufficient.¹³⁶ The Commission published its proposal in May 2021, and though some countries, including Spain, were opposed, the Council adopted the restrictions in October 2021.¹³⁷ In October 2022, the Commission proposed to escalate the restrictions, lamenting the practice of delaying the issuing of landing permits, and the Council confirmed the restrictions on De-

128 Interviewee 37.

129 Interviewee 30.

130 United Nations, "Bangladesh Graduation Status," LDC Portal - International Support Measures for Least Developed Countries, January 2023, <https://www.un.org/ldcportal/content/bangladesh-graduation-status>.

131 Interviewee 30.

132 Eurostat, "Third Country Nationals Ordered to Leave - Annual Data (Rounded). Custom Selection: Citizens of Bangladesh, The Gambia, Iraq, Afghanistan and Nigeria," 2022.

133 Other countries were considered for visa restrictions both years (Iraq and Bangladesh in 2021 and Senegal in 2022), but Member States only agreed to adopt them against The Gambia.

134 European Union, "The Gambia," Emergency Trust Fund for Africa, May 25, 2022, https://trust-fund-for-africa.europa.eu/where-we-work/regions-countries/sahel-lake-chad/gambia_en.

135 Interviewee 48; Frontex, "Eight AFIC Risk Analysis Cells Set a Benchmark in Africa," Frontex Media Centre - News Releases, February 22, 2023, <https://frontex.europa.eu/media-centre/news/news-release/eight-afic-risk-analysis-cells-set-a-benchmark-in-africa-uwXHJU>; Interpol and ECOWAS, "WAPIS Newsletter Number 19," April 2022, pp. 1–2, https://www.interpol.int/content/download/17508/file/WAPIS%20Newsletter%2019_EN-LR_.pdf.

136 Interviewees 9, 11, 26, and 35.

137 European Commission, "Proposal for a Council Implementing Decision on the suspension of certain provisions of Regulation (EC) 810/2009 [...] with respect to Iraq, COM(2021) 414 final." On Spain's opposition: Interviewee 14. The following measures were adopted: no waiving of documentary obligations, even where the person has a visa history; no waiving of visa fees for holders of diplomatic or service passports; lengthening of the standard processing time from 15 to 45 days; and suspension of the delivery of multi-entry visa. See: Council of the European Union, "Council Implementing Decision (EU) 2021/1781 of 7 October 2021 on the suspension of certain provisions of Regulation (EC) No 810/2009 [...] with respect to The Gambia", OJ L 360, October 11, 2021, pp. 124–127.

ember 15, 2022, increasing the visa fee from €80 to €120. This is the lower of two possible fee increases, meaning that a further escalation (to €160) is possible in the future.¹³⁸

Effects reported:



1. Readmission arrangement concluded:

The new government and the EU signed “Good Practices on identification and return procedures” in May 2018.¹³⁹



2. Protests and breakdown of cooperation in 2019:

After a few return flights were conducted following the readmission arrangement, protests and demonstrations led to a moratorium on cooperation with the EU in February 2019.¹⁴⁰ Since the Gambian economy is dependent on remittances from the diaspora and development aid, returns are vastly unpopular.¹⁴¹ Due to pressure from the Gambian public, further attempts to entice or pressure the country to comply with the Good Practices and accept return flights were unsuccessful.¹⁴² The moratorium was only lifted in March 2022.¹⁴³



3. Limited increase in return numbers and increase in administrative cooperation:

Some interviewees found that The Gambia stopped using delaying tactics following the visa restrictions in 2021 and no longer required intensive diplomatic and technical engagement to accept return flights.¹⁴⁴ In contrast, other interviewees found that the sanctions either had no effect at all,¹⁴⁵ or that it had little effect since The Gambia still refused the return of

large numbers of persons.¹⁴⁶ From March 2022, The Gambia reportedly accepted 30 to 40 forced returnees per year.¹⁴⁷ The contrasting interpretations of the progress on return numbers and administrative cooperation show not just the uneven knowledge about numerical effects, but also the differences between Member States when cooperation improves with one Member State, but not others. The Commission sided with the unhappy Member States, stating in 2022 that the visa restrictions “proved to be ineffective, on their own, to elicit action on the part of The Gambia to achieve substantial and sustained progress on re-admission cooperation.”¹⁴⁸



4. Negative side effect on migration management:

One interviewee stated that the EU’s visa restrictions on The Gambia had led to a halt in the good cooperation with Spain on migration control and to a surge in irregular arrivals in the Canary Islands.¹⁴⁹

Lessons:

1 Low stakes make sanctions easier to impose.

Many interviewees stressed that Member States could agree on visa restrictions because The Gambia is of limited economic, development, or strategic relevance to the EU.¹⁵⁰

2 The primary goal of the visa restrictions may have been to set an example.

The Gambia was the “low hanging fruit,” as one interviewee said, to demonstrate that Schengen visa restrictions were not an empty threat. They serve as a signal for the rest of the world that “the EU means business.”¹⁵¹

138 Council of the European Union, “Council Implementing Decision (EU) 2022/2459 of 8 December 2022 on the application of an increased visa fee with respect to The Gambia”, ST/15216/2022/INIT, OJ L 321, December 15, 2022, pp. 18–21. According to the Council, the delayed issuance of landing permits led “to organisational challenges and cancellations. Subsequently, only three return operations have taken place in June, July and September 2022”; European Commission, “Proposal for a Council Implementing Decision on the application of an increased visa fee with respect to The Gambia”, COM/2022/632 final, p. 2.

139 European Commission, “Report to the Council: Assessment of Third Countries’ Level of Cooperation on Readmission in 2019,” pp. 82–84.

140 Interviewee 28, and Zanker, “A Typology of Resistance,” 2023.

141 Interviewees 14, 28, and 15.

142 Interviewees 14 and 15.

143 European Commission, “Proposal for a Council Implementing Decision on the application of an increased visa fee with respect to The Gambia”, COM/2022/632 final, p. 2.

144 Interviewees 26, 11, and 15.

145 Interviewees 13, 14, 34, 49, and 20.

146 Interviewee 3.

147 Interviewee 3.

148 European Commission, “Proposal for a Council Implementing Decision on the application of an increased visa fee with respect to The Gambia”, COM/2022/632 final, p. 2.

149 Interviewee 14. Interviewee 26 points to other causes (the economic impact of the Covid-19 pandemic, and the end of travel restrictions).

150 Interviewee 36 stated: “Gambia came up because it was not strategically important at the time.”

151 Interviewees 3 and 37.

3 Current fee escalations are not a relevant threat. The EU's fee increase structure (first to €120, then potentially to €160) means that the EU can announce another escalation in the future, although the additional €40 probably do not matter in practice to visa applicants, since only well-to-do citizens can afford to travel to the EU regularly in the first place. The fee escalations thus seem to fulfill the function to signal toughness domestically and to create more levels of escalation rather than to nudge behavioral change.

4 Conditionality goals can collide. Pursuing readmissions may have collateral effects on migration enforcement efforts of the third country, as the alleged disrupted cooperation with Spain and increased arrivals in the Canary Islands show.¹⁵²

5 Elections make and break cooperation. The 2016 elections jumpstarted readmissions cooperation with the EU. One interviewee finds that The Gambia's new democratic government had an interest in having its citizens come back to participate in the democratization process and was concerned about brain-drain.¹⁵³ This overlap in the interest of return might explain why the government initially cooperated on returns. In contrast, the 2021 presidential elections campaign might have contributed to a lack of responsiveness to the sanctions because "it was important to appear tough towards the EU during the electoral campaign," one interviewee commented, "so whatever the Commission would have proposed most likely would not have worked."¹⁵⁴ "The president would have lost the elections if he had cooperated," another added.¹⁵⁵ Finally, after the 2022 parliamentary elections, The Gambia announced on its own initiative that it was ready to re-start readmissions.¹⁵⁶ This back and forth illustrates that some of the perceived effects of conditionality might also be effects of the electoral cycle.

CASE 3

Iraq

Goals/Background: The relationship of the EU with Iraq has been dominated by security and geopolitical concerns. Both military forces and development agencies of Member States are involved in the country. Migration has become a larger issue, especially after the surge of asylum seekers in Europe in and after 2015. As many of them were not granted asylum, EU countries have issued about 21,000 orders to leave in 2019, and almost 14,500 in 2022.¹⁵⁷ A big element of the EU's frustration is that Iraq has been refusing to readmit deportees for a long time. Already in 2012, the country's parliament had passed a law banning the forced return of its citizens.¹⁵⁸ A spokesperson of the Iraqi Foreign Affairs Ministry interviewed in the course of this research emphasized that this rule is non-negotiable: "We always say that we, as the Ministry of Foreign Affairs, are not in favor of the forced return of any Iraqi refugee. We are for voluntary return. This is the basic rule. Based on this rule, we build all our dialogues with Iraq's partners and friends."¹⁵⁹

The EU and Iraq did agree on a readmission arrangement as part of their Partnership and Cooperation Agreement yet progress has been sluggish to date.¹⁶⁰ Despite insecurity and instability in large parts of the country, most Member States want Iraq's cooperation on readmission to increase, especially on forced returns. The country thus appeared on the list of states considered for visa restrictions. "The level of satisfaction with returns to Iraq is very low," as one interviewee summarized.¹⁶¹

¹⁵² Interviewee 14.

¹⁵³ Interviewee 31.

¹⁵⁴ Interviewee 37.

¹⁵⁵ Interviewee 28.

¹⁵⁶ Interviewees 37 and 20.

¹⁵⁷ Eurostat, "Third Country Nationals Ordered to Leave - Annual Data (Rounded). Custom Selection: Citizens of Bangladesh, The Gambia, Iraq, Afghanistan and Nigeria; 2022."

¹⁵⁸ Interviewees 9, 14, 21, 32, 37, and 39. The EU has not managed to conclude a formal return agreement with Iraq. So far, "Iraqi authorities cooperate only on voluntary returns and in very exceptional cases (Iraqi nationals convicted for a criminal offence) on forced returns." See: European Commission, "Proposal for a Council Implementing Decision on the suspension of certain provisions of Regulation (EC) 810/2009 [...] with respect to Iraq", COM(2021) 414 final, 1. On the 2012 Iraqi law, see: Owen Bowcott, "Iraqi Parliament Refuses to Accept Nationals Deported from Europe," The Guardian, July 2, 2012, sec. World news, <https://www.theguardian.com/world/2012/jul/02/iraq-parliament-deported-nationals-europe>.

¹⁵⁹ Interviewee 40.

¹⁶⁰ Article 105(3)(a) of European Union and Republic of Iraq, "EU-Iraq Partnership and Cooperation Agreement," May 11, 2012, p. 48, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22012A0731\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22012A0731(01)&from=EN). This Agreement has been in force and thus binding since August 1, 2018.

¹⁶¹ Interviewee 14.

Iraq was thrown into the spotlight in Europe most recently during the Belarus migration instrumentalization crisis in 2021. The authoritarian regime of Alexander Lukashenko sought to retaliate against the EU for the economic sanctions they had imposed, citing a fraudulent election in 2020.¹⁶² It did so by instigating a humanitarian and diplomatic crisis at the EU-Belarusian border, starting in the summer of 2021. The regime organized flights from Bagdad and Erbil to Minsk, promising Iraqi citizens an easy passage into the EU. Member States responded with harsh border measures. As the months passed, multiple migrants died in the border zone, trapped in a forest without access to food and shelter, because Belarus refused their re-entry and Member States their entry. The crisis was defused finally in the fall of 2021, prominently by Iraq's willingness to cooperate in the evacuation of its citizens from the border region.

The relationship entered a hiatus after Iraq's October 2021 elections: An interim government led to political stalemate, which hindered negotiations with Iraq on furthering migration cooperation. It was only one year later, when the new government under Mohammed Shia al-Sudani took up its work, that the EU could take up its migration cooperation efforts again.¹⁶³

Levers employed:



1. Threats of visa restrictions: The Commission advised the Council to apply visa restrictions based on Article 25a of the Schengen Visa Code in July 2021, but the Belarus crisis derailed their adoption.¹⁶⁴ It was only after a renewed assessment of cooperation levels of the Commission in 2022 that the EU took up the proposal for visa restrictions again. At the end of April 2023, a majority of Member States wanted to adopt the restrictions at the Home Affairs Council in June 2023. But by that date, cooperation had improved notably in the view of some Member States, so it was taken off the agenda.



2. Threat of carrier sanctions: Facing the instrumentalization crisis, European countries and the EU threatened the airlines transporting people between Iraq and Belarus – especially Iraqi Airways, Turkish Airways, and Belavia – with carrier sanctions. As a consequence, Iraq installed a ban on flights to Minsk, which is still in force to date.



3. Promise of aid: The EU has been offering bilateral financial support for the reintegration of Iraqis for a few years.¹⁶⁵ Sums went up after the Belarus crisis, when DG INTPA reshuffled development funding to support reintegration (€1 million) and migration management (€2 million), which would be disbursed as a “retroactive incentive” to acknowledge Iraq's positive role in solving the Belarus crisis, one interviewee said.¹⁶⁶ Beyond the Belarus crisis, aid is also a key lever to incite further cooperation on migration management. Under the aid conditionality mechanism built into NDICI, the Commission plans a top up of €20 million to Iraq's €75 million of core funding for 2021–2027, with several tranches. Details are not yet clear, as the Commission is still negotiating the corresponding indicators of migration cooperation with Iraqi authorities.¹⁶⁷



4. Diplomatic engagement and political attentions: The EU intensified its political attention to Iraq at high levels after the Belarus crisis began, including diplomatic visits and invitations from Member States. For instance, EU top diplomat Josep Borrell in September 2021 and VP Margaritas Schinas in November 2021 discussed measures concerning Belarus during their Iraq visits. Several visits from Iraqi government officials to the EU followed in the winter of 2021 and 2022, and an EU delegation visited Bagdad and Erbil in May 2022.¹⁶⁸ Also, Germany's Foreign Minister Annalena Baerbock visited Iraq in March 2023. That same month, the EU-Iraq Ministerial Cooperation Council held its first meeting after seven years of interruption, with migration as one of its four focus areas.

162 Council of the European Union, “EU Restrictive Measures against Belarus,” [Consilium.europa.eu](https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-belarus/), February 27, 2023.

163 EEAS, “Iraq: Speech in EP Plenary on Behalf of the HR/VP Borrell on Bilateral Relations with the EU,” April 18, 2023, https://www.eeas.europa.eu/eeas/iraq-speech-ep-plenary-behalf-hr-vp-borrell-bilateral-relations-eu_en.

164 European Commission, “Proposal for a COUNCIL IMPLEMENTING DECISION on the suspension of certain provisions of Regulation (EC) 810/2009 of the European Parliament and of the Council with respect to Iraq, COM(2021) 414 final.” The direct link between dropping the sanctions and the Belarus crisis cooperation was described in detail by interviewees 14 and 37.

165 Interviewee 14 stated that “positive incentives (political attention and aid) helped momentarily.”

166 Interviewee 42.

167 Interviewee 42.

168 Interviewee 2 and European Commission, “Update on State of Play of External Cooperation,” pp. 54–55.

Borrell publicly lauded Iraq's actions: "We discussed openly more sensitive issues such as migration. In particular, we talked about returns and readmissions, including involuntary returns, protection and forced displacement, anti-trafficking or sustainable reintegration. The European Union welcomed Iraq's ban on flights to Belarus, still in force, which effectively stopped migratory flows orchestrated by the Belarussian regime in summer 2021 along its borders with the European Union."¹⁶⁹ The praise goes both ways: Several representatives from the governments of Iraq and the Kurdistan region interviewed during this research expressed satisfaction with the recognition of their constructive roles in the Belarus crisis. They underlined that the EU's intensified diplomatic engagement with Iraq and the Kurdistan Region of Iraq (KRI) was a positive development.¹⁷⁰

Effects reported:



1. No effect from the initial threat of visa restrictions: Some interviewees agreed that the threat of visa restrictions in 2021 had no leveraging effect on Baghdad. One interviewee from Iraq explained that the effects of those restrictions were low, not just because Iraqis are used to sanctions, having lived with them under Saddam Hussein's dictatorship, but also because many migrate irregularly anyways, as getting a visa is out of reach for many even without restrictions.¹⁷¹ Another suggested that the interim government did not have the authority to negotiate with the EU, which might explain the lack of progress.¹⁷² The threat level of visa restrictions is judged differently by different parts of Iraq's government: One local official (interviewed in April 2023) found that parts of the government, such as the Ministry of Migration and Displacement, maintained their opposition to forced returns at all cost, while others, such

as the prime minister and the Foreign Ministry, are more sensitive to the political repercussions of visa restrictions and may thus be more flexible on forced returns.¹⁷³ It appears that the opposition of the Ministry of Migration and Displacement was overruled in favor of more readmission cooperation – for now.



2. Flights to Belarus stopped: A clear effect of the lever use during the Belarus crisis was that Iraqi Airways reduced its flights to Minsk in August and stopped them altogether in October. The airline was also commissioned by Iraq to return Iraqis stranded in Belarus.¹⁷⁴ Iraq shut down the activities of travel agencies involved and two Belarussian consulates in Erbil and Baghdad to halt the issuance of visas.¹⁷⁵ Over 4,500 Iraqi nationals were repatriated.¹⁷⁶ Some interviewees said these actions were an effect of the threat of carrier sanctions and the promise of aid. Others disagreed and pointed to Iraq's own motivation to stop arrivals and readmit their nationals, considering their grave humanitarian situation.¹⁷⁷ By early 2023, no interviewee found an increase in Iraq's readiness to cooperate on the readmission of Iraqis present on EU territory.

Lessons:

1 Sudden migration events can catalyze cooperation. The Belarus crisis illustrates that crises can increase the readiness of countries of origin to cooperate and create a more joint and coherent approach by European actors.¹⁷⁸

2 Carrots and sticks worked well to deescalate the Belarus crisis. The Belarus situation also shows how acute crises bring out Europe's ability to use incentives and sanctions in a targeted way. The threat of carrier sanctions was effective, which supports the argument that negative conditionality can indeed play an effective role in reaching migration goals.

169 EEAS, "Iraq: Speech in EP Plenary on Behalf of the HR/VP Borrell on Bilateral Relations with the EU."

170 Interviewees 6, 32, 33, 40, and 51.

171 Interviewee 33.

172 Interviewee 26.

173 Interviewee 51.

174 Charlotte Bruneau, "As Iraqi and Syrian Migrants Leave Belarus, Some Are Afraid to Go Home," Reuters, December 8, 2021, sec. Europe, <https://www.reuters.com/world/europe/iraqi-syrian-migrants-leave-belarus-some-are-afraid-go-home-2021-12-08/>; AeroTime, "Iraq to Belarus Flights Suspended over EU Migrant Crisis," August 9, 2021, <https://www.aerotime.aero/articles/28552-iraqi-airways-flights-to-belarus-suspended>.

175 Viola Pulkkinen, "Notes from a Country of Origin: Iraq's Position in the EU-Belarus Border Crisis," Institute for Security and Development Policy (ISDP), ISDP Voices (blog), December 16, 2021, <https://isdp.eu/iraqs-position-in-the-eu-belarus-border-crisis/>.

176 Interviewee 51.

177 Interviewee 35.

178 Interviewee 2 stated that there was coordination and coherence between the EU and the Member States in getting Iraq to cooperate, especially Germany and Poland.

3 Honeymoons do not last – support for visa restrictions can wane (and re-appear) quickly.

The temporary success of readmissions of Iraqis from Belarus came at the expense of readmissions of Iraqis present in the Member States. Due to Iraq's cooperation, "the inclination to use the visa lever decreased among Member States," one interviewee explained.¹⁷⁹ Consequently, the Council did not adopt sanctions in 2021 nor in 2022. But postponed did not mean cancelled. When the grace period of the Belarus crisis was over and Iraq's new government was in office, the EU and its Member States increased the pressure again for more returns, including forced ones. Numerous EU countries pushed for the adoption of visa restrictions, including Finland,¹⁸⁰ Sweden,¹⁸¹ and the Netherlands.¹⁸² It seems the intensive engagement of the new Iraqi government had the desired effect to nudge the Iraqi government to cooperate. With much in flux, the question remains as to whether this new openness in Baghdad will translate into sustainable readmission cooperation, especially on the touchy subject of forced returns.

CASE 4

Afghanistan

Goals/Background: The EU's relationship with Afghanistan in the last decades has centered on security cooperation, the fight against terrorism, and establishing geopolitical stability. Irregular migration to Europe grew rapidly in 2015 when more and more

Afghans reached Europe via Iran and Türkiye, fleeing insecurity, violence, and poverty.¹⁸³ Emigration became a default choice among many Afghans, including from the young and educated middle class.¹⁸⁴ One interviewee claimed that some ministers in the Afghan government were even encouraging their citizens to migrate to Europe.¹⁸⁵ The EU issued over 24,000 orders to leave to Afghans in 2022.¹⁸⁶

In October 2016, The EU Commission organized a large donors' conference in Brussels to support state-building and development in Afghanistan.¹⁸⁷ Five years later, the chaotic withdrawal of NATO forces from Afghanistan and the Taliban's take-over in 2021 brought cooperation on all policy issues, including that of migration, to a halt.

Levers employed:



1. Threat of reducing and promise of additional development funds:

Frustrated by the high levels of irregular migration from Afghanistan in 2015, several Member States demanded that Afghanistan should cooperate to help control migration flows and readmit their nationals.¹⁸⁸ The 2016 donors' conference provided an opportunity to link development funds to the goal of readmissions. Interviewees reported that the EU promised additional development funds, but also threatened to withhold some.¹⁸⁹ The Afghan government explicitly debated the risk of funding cuts in its Parliament, where then-Finance Minister Hakimi stated: "If Afghanistan does not cooperate with EU countries on the refugee crisis, this will negatively impact the amount of aid allocated to Afghanistan. Germany cannot provide aid money and deal with the refugees at the same time."¹⁹⁰

179 Interviewee 34. Interviewees 24 and 10 concurred.

180 Interviewees 49 and 22.

181 Interviewee 20.

182 Interviewee 18.

183 Yalda Hakim, "President Ghani Calls for Afghans to Remain in Country," BBC News, March 30, 2016, sec. Asia, <https://www.bbc.com/news/world-asia-35928538>.

184 Robert Birsal and Mirwais Harooni, "Wave of Young Afghan Migrants Seen Hurting Economy They Leave Behind," Reuters, December 6, 2015, sec. everythingNews, <https://www.reuters.com/article/us-afghanistan-braindrain-idUSKBN0TPOVX20151206>; See also leaked non-paper: European Commission and European External Action Service (EEAS), "Joint Commission-EEAS Non-Paper on Enhancing Cooperation on Migration, Mobility and Readmission with Afghanistan" (Brussels, March 3, 2016), p. 2, <https://www.statewatch.org/media/documents/news/2016/mar/eu-council-afghanistan-6738-16.pdf>.

185 Interviewee 25.

186 Eurostat, "Third Country Nationals Ordered to Leave - Annual Data (Rounded). Custom Selection: Citizens of Bangladesh, The Gambia, Iraq, Afghanistan and Nigeria; 2022."

187 European Union and Afghanistan, "Joint Way Forward on Migration Issues between Afghanistan and the EU," October 4, 2016, https://www.eeas.europa.eu/sites/default/files/eu_afghanistan_joint_way_forward_on_migration_issues.pdf.

188 In particular Sweden, Germany, and Denmark, as well as non EU-Member Norway.

189 Interviewees 25, 3, and 20.

190 Jelena Bjelica, "EU and Afghanistan Get Deal on Migrants: Disagreements, Pressure and Last Minute Politics - Afghanistan | ReliefWeb," October 7, 2016, <https://reliefweb.int/report/afghanistan/eu-and-afghanistan-get-deal-migrants-disagreements-pressure-and-last-minute>.



2. Diplomatic attention and pressure: The EEAS, especially the EU Special Representative to Afghanistan, engaged at length with Afghan authorities prior to the 2016 donors' conference, insisting on the need to maintain the goodwill of European governments toward Afghanistan. Bilateral contacts between EU governments and President Ashraf Ghani included a phone call from German Chancellor Angela Merkel.¹⁹¹ Reportedly, the Afghan government was concerned with migration issues overshadowing the donors' conference, as it feared it might lower the willingness of donor countries to provide financial support.¹⁹²



3. Promise of development aid: From 2017 onwards, the EU provided additional aid for reintegration projects and support for capacity building.¹⁹³ Both were clearly more for more conditionality: the disbursement of this aid was tied to concrete deliverables such as information campaigns and trainings targeting prospective migrants, improvements in the readmission process, and giving reintegration support.

Effects reported:



1. Signing of an informal agreement: Afghanistan and the EU signed the Joint Way Forward, an informal readmission agreement, four days before the donors' conference.¹⁹⁴ Afghanistan committed to delivering travel documents within two to four weeks or, beyond that time limit, to accept travel documents issued by the EU (so-called laissez-passers), to issue visas for escort staff without delay, and to cooperate with the operation of return flights.¹⁹⁵ It also committed to increase the capacities of its consulates in the EU.¹⁹⁶



2. Increase in return numbers and improved cooperation: Following the signing of the agree-

ment, the EU started conducting joint return flights pooling Afghan returnees, both voluntary and forced, from all EU Member States. This offered opportunities for countries without bilateral agreements with Afghanistan, such as France, to start returning Afghans. Voluntary returns to Afghanistan increased fivefold in 2016 compared to the year prior, reaching more than 7,000, and forced return also increased, if less dramatically.¹⁹⁷ In addition, Afghanistan improved cooperation processes with the EU on returns. Return cooperation with Afghanistan was adapted in November 2020, when a Joint Declaration on Migration Cooperation replaced the Joint Way Forward,¹⁹⁸ and fully stopped a few months thereafter due to the Taliban takeover.

Lessons:

1 Crises trigger coherency but can also undo years of work. The crisis of high numbers of arrivals aligned EU Member States' interests to push for a migration agreement with Afghanistan. Both the EU's actions and messaging toward Afghanistan were unusually coherent in the run-up to the donors' conference. But the take-over of the Taliban brought all cooperation to a screeching halt, which illustrates how years of work to foster migration cooperation can be derailed by sudden political shifts in the country.

2 Find the lever the country is most sensitive about. Funding was to Afghanistan what reputation was to Bangladesh: the lever the country was most sensitive about.¹⁹⁹ The donors' conference was vital because aid made up 40 percent of Afghanistan's GDP.²⁰⁰ By leveraging development aid, "we could get a very clear effect without with-

191 Bjelica.

192 Interviewee 25.

193 Interviewee 29.

194 European Union and Afghanistan, "Joint Way Forward on Migration Issues between Afghanistan and the EU."

195 Sarah Collins, "Afghanistan Wins Aid Pledges after Sealing EU Migrant Deal," Euranet Plus News Agency (blog), October 5, 2016, <https://euranetplus-inside.eu/afghanistan-wins-aid-pledges-after-sealing-eu-migrant-deal/>

196 Interviewee 25.

197 Interviewee 39, and IOM, "Assisted Voluntary Return and Reintegration, 2016 Key Highlights," 2017, p. 20, https://www.iom.int/sites/g/files/tmzbd486/files/our_work/DMM/AVRR/AVRR-2016-Key-Highlights.pdf; Amy Pitonak and Mehmet Enes Beşer, "A Neglected Population: Afghan Migrants in Europe," Text, IAI Istituto Affari Internazionali, December 13, 2017, <https://www.iai.it/en/pubblicazioni/neglected-population-afghan-migrants-europe>.

198 Council of the European Union, "Joint Declaration on Migration Cooperation between Afghanistan and the EU," January 13, 2021, <https://www.statewatch.org/media/1801/eu-council-joint-declaration-afghanistan-5223-21-add1.pdf>.

199 Interviewees 29 and 4.

200 European Commission and European External Action Service (EEAS), "Joint Commission-EEAS Non-Paper on Enhancing Cooperation on Migration, Mobility and Readmission with Afghanistan," p. 5.

holding a single Euro,” an interviewee stated.²⁰¹ Indeed, the government was compelled to overcome internal opposition and comply with the EU’s demands, despite its limited reception capacities for returnees.²⁰²

3 A gap between public messaging and actions makes the EU less credible. The Commission vocally denied using less for less development aid sanctions to put pressure on Afghanistan. High Representative Federica Mogherini insisted: “There is no conditionality. There is no link. And, again, I will mention this very clearly, again, today with all of you, and I hope you help passing the message: There is no link between the two.”²⁰³ This denial of conditionality was disproved in a leaked non-paper of the Commission and the EEAS, which explicitly stated that the donors’ conference would be “used as a positive incentive” “to maximize the EU leverage.”²⁰⁴ This political messaging lacked credibility even at the time. Several interviewees emphasized there had been a clear link, and even cited Afghanistan as a textbook example of conditionality use.²⁰⁵ NGOs denounced the EU’s dealing with Afghanistan as blackmailing and bullying.²⁰⁶

4 Visibly complying with conditionality is a no-go. Despite the explicit discussion in the Afghan parliament where the EU’s lever use became clear,

the Afghan government publicly downplayed the conditionality they had faced. One interviewee argued they had to do so because they risked losing support if they were seen to give in to the EU’s pressure too easily.²⁰⁷

CASE 5

Nigeria

Goals/Background: Nigeria is an important partner for the EU and Member States, especially in the areas of security and energy, but also as a large democratic regional power player in Africa. The EU has repeatedly tried to partner with Nigeria on migration,²⁰⁸ but progress to date has been limited. One interviewee even dubbed the migration cooperation with Nigeria a “complete nightmare.”²⁰⁹ Nigeria’s large and young population is mobile: Nigerians are among the top five nationalities traveling irregularly toward Europe via Libya²¹⁰ and among the top 15 nationalities for asylum applications in the EU,²¹¹ but recognition rates are low.²¹² The EU issued 11,000 orders to

201 Interviewee 20.

202 Interviewee 25.

203 Collins, “Afghanistan Wins Aid Pledges after Sealing EU Migrant Deal.”

204 European Commission and European External Action Service (EEAS), “Joint Commission-EEAS Non-Paper on Enhancing Cooperation on Migration, Mobility and Readmission with Afghanistan,” pp. 8–10.

205 Interviewees 25 and 3. Interviewee 38 stated: “of course that was conditionality! The sequence of events is clear.” For interviewee 39, the “Joint Way Forward was a package with readmission against, in exchange, all sorts of projects. It was a mixed experience. It did give an alibi for most Member States for a while to actually return people back to Afghanistan. Also, the courts in the Member States were accepting the fact that returning people to Afghanistan was not against their interest.”

206 Interviewee 3 and Collins, “Afghanistan Wins Aid Pledges after Sealing EU Migrant Deal.”

207 Interviewee 28 recounted how the Afghan government had stated that the country needed to prevent the brain drain and take responsibility for migration management.

208 The EU invested in developing relations with Nigeria from 2004 with the “political dialogue sessions on migration” that took place as part of regular ministerial meetings. The country was then one of five priority countries for the Migration Partnership Framework in 2016, and the Council selected Nigeria as one of ten “partners for prioritised EU engagement” in 2021 (next to Tunisia, Morocco, Libya, Somalia, Sudan, Bosnia and Herzegovina, Türkiye, Afghanistan, and Iraq). An Action Plan on Nigeria was agreed in EMWP in December 2021, and an action file on Nigeria was discussed in MOCADDEM in March 2022. Sources: Council of the European Union and High Level Working Group on Asylum and Migration, “Summary of Discussion, Annex: GAMM Update: 7340/17,” March 17, 2017, <https://www.statewatch.org/media/documents/news/2017/mar/eu-council-gamm-update-7340-17.pdf>; “Follow-up to the Jumbo Meeting: Way Ahead for the Strengthening of Comprehensive Partnerships with Key Partner Countries: 8952/21” (Brussels, May 25, 2021), p. 2, <https://www.statewatch.org/media/2466/eu-council-pact-strengthening-comprehensive-partnerships-8952-21.pdf>; European Commission, “Update on State of Play of External Cooperation,” p. 7.

209 Interviewee 36.

210 According to recent data from IOM, 5 percent of migrants present in Libya are from Nigeria. This represents 32,049 persons. This is the fifth biggest group after Niger (25 percent), Egypt (19 percent), Sudan (18 percent) and Chad (13 percent). See: Moayad Zaghdani, “IOM Libya, Migrant Report, Round 41, February-April 2022,” IOM, April 2022, p. 8, https://dtm.iom.int/sites/g/files/tmzbd1461/files/reports/DTM_Libya_R41_Migrant_Report_FINAL.pdf. Core drivers are violence, insecurity, and conflict, personal or family reasons, and the lack of rights and/or economic prospects. See: Mixed Migration Centre, “MMC Europe 4Mi Snapshot – April 2022: The Journey towards Italy for Nigerians: Drivers, Routes and Use of Smugglers - Nigeria | ReliefWeb,” April 7, 2022, <https://reliefweb.int/report/nigeria/mmc-europe-4mi-snapshot-april-2022-journey-towards-italy-nigerians-drivers-routes-and>.

211 According to the EUAA, 16,980 new asylum applications were filed in the EU+ in 2021 (25,875 in 2019) and 31,060 cases were pending in 2021 (42,005 in 2019). See: European Union Agency for Asylum (EUAA), “Asylum Report 2022” (Luxembourg, 2022), pp. 375–77, https://euaa.europa.eu/sites/default/files/publications/2022-06/2022_Asylum_Report_EN.pdf.

212 Fourteen percent in 2019. The return rate from the EU was of 11 percent in 2020 (19 percent in 2019), but the issuance rate of travel documents by Nigeria was 43 percent. See: Annex III, “Key Figures and Trends” in European Commission, “Draft Action Plan: Nigeria: Operationalization of the Pact – Action Plans for Strengthening Comprehensive Migration Partnerships with Priority Countries of Origin and Transit” (Brussels, September 20, 2021), p. 8, <https://www.statewatch.org/media/2898/eu-council-migration-action-plan-nigeria-11951-21.pdf>.

leave to Nigerians in 2019 and nearly 6,000 in 2022.²¹³ Remittances are a considerable source of income, and returns are vastly unpopular in the population.²¹⁴ Whether some recent progress and the drafting of a readmission agreement in 2022 will translate into a lasting change remains to be seen.²¹⁵

Levers employed:



1. Development funds: The EU and its Member States are funding a variety of migration management programs in Nigeria to address the root causes of irregular migration, smuggling, and trafficking, to enhance border control capabilities, and to promote sustainable reintegration.²¹⁶ One interviewee deplored insufficient efforts to keep track of the projects in the past and argued that a centralized inventory could prove helpful in engaging with the Nigerian government.²¹⁷



2. Diplomatic attention and pressure: The last years have brought various diplomatic exchanges on high levels. For instance, Commissioners Ylva Johansson (Home Affairs) and Jutta Urpilainen (International Partnerships) met with the Nigerian Foreign Minister in November 2020 to discuss relaunching the readmission negotiations, and again in June 2021 to discuss their progress. The year 2022 brought a series of high-level meetings and further rounds of negotiations on the readmission agreement.²¹⁸



3. Threat of visa restrictions: Some Member States have put Nigeria repeatedly on the so-called “critical list” of countries to be considered for visa restrictions under Article 25a of the Schengen Visa Code, but political agreement has not been sufficient for the Council to propose them to date. Nevertheless, after the critical list was circu-

lated in January 2022, the EU Delegation reportedly used the possibility of visa restrictions to nudge Nigeria toward more cooperation on returns and readmissions both at the level of paper (progressing on readmission agreement negotiations) and people (accepting return flights).²¹⁹



4. Promise of legal pathways: The EU has signaled to Nigeria that, once a readmission agreement would be signed, work could progress on the creation of legal pathways via a Talent Partnership.²²⁰

Effects:



1. Declarations of intent, but no signed readmission agreement yet: The EU and Nigeria signed a Common Agenda on Migration and Mobility (Camm) in 2015, which includes the negotiation of a readmission agreement (EURA). Five rounds of negotiations took place between 2016 and 2018 and, after a pause during tumultuous elections in Nigeria, another five rounds in 2021 and two more rounds in 2022.²²¹ The parties finally agreed on a draft EURA in September 2022. One interviewee attributed this progress to the Article 25a process: the EU Delegation signaled the Nigerian government that agreeing on a EURA would help avoid visa restrictions.²²² Details of the draft agreement are not public, and it remains to be seen whether both sides will sign it.



2. Some recent increase in readmission numbers: Recent diplomatic efforts brought about a first Frontex charter flight returning 40 Nigerians from Germany, Austria, Italy, and the Netherlands.²²³ One interviewee argued that this also resulted from warning against potential visa restrictions.²²⁴

213 Eurostat, “Third Country Nationals Ordered to Leave - Annual Data (Rounded). Custom Selection: Citizens of Bangladesh, The Gambia, Iraq, Afghanistan and Nigeria; 2022.”

214 Equivalent to 83 percent of the federal government’s budget in 2017. See: Andrew S. Nevin and Omomia Omosomi, “Strength from Abroad. The Economic Power of Nigeria’s Diaspora,” PricewaterhouseCoopers, White Paper Series, 2019. <https://www.pwc.com/ng/en/pdf/the-economic-power-of-nigerias-diaspora.pdf>.

215 Interviewee 43.

216 Maite Vermeulen et al., “A Breakdown of Europe’s €1.5bn Migration Spending in Nigeria,” The Correspondent, December 9, 2019, <https://thecorrespondent.com/150/a-breakdown-of-europes-eur1-5bn-migration-spending-in-nigeria>.

217 Interviewee 43.

218 European Commission, “Update on State of Play of External Cooperation,” pp. 7–11.

219 Interviewee 43.

220 European Commission, “Update on State of Play of External Cooperation,” pp. 7–8.

221 European Commission, “Draft Action Plan: Nigeria: Operationalization of the Pact” (2021), p. 8. Further non-migration specific products of this cooperation include the EU-Africa Strategy (2021), the EU-Nigeria ministerial Roadmap (2021), and the EU Nigeria Ministerial Joint Communiqué (2020).

222 Interviewee 43.

223 European Commission, “Update on State of Play of External Cooperation,” p. 10. Nigeria was accepting charters from some Member States previously, but under its new mandate, the agency can now pool returnees from all Member States, regardless of whether they have a readmission agreement with Nigeria and/or good cooperation on returns.

224 Interviewees 43 and 4.

Lessons:

1 The Teflon effect: some states are too big to be easily impressed or enticed. A country of Nigeria's size, political weight, and economic relevance is hard to impress with the threat of sanctions nor likely to be moved much by positive incentives.²²⁵ Germany tried and failed to offer Nigeria an incentive package for more returns.²²⁶ The same happened with the EU in 2017 and 2018, when Nigeria turned down a one-billion-Euro-heavy package-deal, arguing this was not sufficient, and that Türkiye received much higher sums through the EU-Türkiye deal.²²⁷ This Teflon phenomenon, when threats slide off easily, is also visible in other cases, such as Algeria or Egypt. Such Teflon countries may cooperate, but they are able to set high prices and chose the timing when it suits their own countries' agenda, not the EU's.²²⁸ As one interviewee stated, Nigeria has a record of making small concessions occasionally to defuse the Europeans' insistence on returns and get more out of the cooperation: "Nigerians always wanted more. First, I had to listen to why this was a very bad policy for Europe, that the EU should be actually negotiating positive things, and that our great nations should be cooperating instead of returning poor Nigerians who had finally made it to Europe to find a better life. Honestly they were right, but that is a different discussion. Occasionally, Nigeria would accept a flight of returnees to get a photo op for Ministers of the Interior in Europe to show that they were returning migrants."²²⁹ It therefore remains to be seen whether the recent progress achieved in 2022 on bilateral negotiations will translate into more satisfactory results.²³⁰

2 High stakes in other policy areas deprioritize migration goals. EU states have a large range of interests in Nigeria. Security has been a top concern especially since the 2014 Boko Haram insurgency spurred insecurity and internal and regional displacement. Consequently, migration goals including readmissions have regularly taken a back seat.

3 It is unclear whether the Swiss partnership approach could be a blueprint. Some interviewees cited Nigeria's cooperation with Switzerland as an example of a well-working holistic migration partnership.²³¹ One said the number of Nigerians coming irregularly to Switzerland and those with return decisions had decreased considerably since the country had adopted long-term and comprehensive cooperation formats covering many policy fields beyond migration, but also pointed out that the actual returns numbers are small (in the double to small triple digits).²³² This raises doubts that the Swiss approach could be replicated successfully by EU Member States looking to enforce not a few dozen, but thousands of return decisions.

225 Interviewee 4.

226 Interviewees 14 and 9.

227 Interviewee 39.

228 Interviewee 14 and 2.

229 Interviewee 39.

230 Interviewee 4.

231 Interviewees 27, 13, 26, and the first workshop. Following the escalation of diplomatic tensions after a deadly incident during a forced return operation, Switzerland and Nigeria started a Dialogue at the highest level in 2001 and established new communication channels. Switzerland invested considerable positive incentives, from police cooperation to large infrastructure projects. The developing relationship was formalized under a 2011 Memorandum of Understanding (MoU) and further deepened through annual meetings in both countries. Over time, readmission became a small and politically insignificant chapter in a much wider partnership on migration. See: "Memorandum of Understanding Zwischen Dem Schweizerischen Bundesrat Und Der Regierung Der Republik Nigeria Über Den Abschluss Einer Migrationspartnerschaft," February 14, 2011, <https://www.ejpd.admin.ch/dam/sem/de/data/internationales/internat-zusarbeit/bilaterales/keine-sr-nr/20110214-mou-NGA-d.pdf.download.pdf/20110214-mou-NGA-d.pdf>

232 Interviewee 27.

Table 4 – Conditionality Use in Five Countries: Findings and Lessons at a Glance

	LEVERS	EFFECTS	LESSONS		
<h2 style="writing-mode: vertical-rl; transform: rotate(180deg);">Bangladesh</h2> <p>Goals: Improving readmission cooperation</p>	 Threat of visa restrictions  Threat of trade sanctions  Promise of development funds  Diplomatic attention	<p><u>INTENDED:</u></p>  Signing of informal arrangement (Standard Operating Procedures)  Improved compliance with the SOP  Establishment of EU-Bangladesh Dialogue on Migration and Mobility <p><u>UNINTENDED:</u></p>  Diplomatic frustrations  Low compliance with SOP after signing	<ol style="list-style-type: none"> The informal threat of a sanction can be enough to get third countries to make concessions. Bangladesh reportedly feared the negative effects of visa restrictions on their reputation and commerce. Multiple rounds of conditionality may be needed to enforce agreements. Replicability is uncertain. Cooperation may wane in the future when Bangladesh moves from LDC to developing country status. 		
	<h2 style="writing-mode: vertical-rl; transform: rotate(180deg);">The Gambia</h2> <p>Goals: Improving readmission cooperation</p>	 Development funds  Intelligence and policy cooperation  Visa restrictions  Escalation of visa restrictions	<p><u>INTENDED:</u></p>  Signing of informal readmission agreement (Good practices on identification and return procedure)  Some increase in return numbers and improvements in administrative cooperation  <p><u>UNINTENDED:</u></p>  Protests and demonstration  Negative side effect on migration management, e.g., increase of irregular migration to the Canary Islands	<ol style="list-style-type: none"> Low stakes make sanctions easier to impose. The primary goal of the visa restrictions may have been to set an example. Current fee escalations are not a relevant threat. Conditionality goals can collide: Pursuing readmissions can have collateral effects on migration enforcement efforts of the third country. Elections make and break cooperation. 	
		<h2 style="writing-mode: vertical-rl; transform: rotate(180deg);">Iraq</h2> <p>Goals: Limiting migration to Europe; Improving re-admission cooperation</p>	<p>2021:</p>  Threat of visa restrictions  Threat of carrier sanctions  Promise of development funds  Diplomatic attention and pressure	<p><u>INTENDED:</u></p>  No effect from initial threat of visa restrictions  Flights to Belarus stopped and readmission flights from Belarus began  Improved cooperation <p><u>UNINTENDED:</u> N/A</p>	<ol style="list-style-type: none"> Sudden migration events can catalyze cooperation. The combination of carrots and sticks worked well to deescalate the Belarus crisis. Honeymoons do not last – support for visa restrictions can wane (and re-appear) quickly.

	LEVERS	EFFECTS	LESSONS
<h2 style="writing-mode: vertical-rl; transform: rotate(180deg);">Afghanistan</h2> <p>Goals: Limiting migration to Europe; Improving readmission cooperation</p>	<ul style="list-style-type: none">  Threat of reducing and promise of additional development funds;  Diplomatic attention and pressure; Threat to reputation.  Promise of additional aid 	<p><u>INTENDED:</u></p> <ul style="list-style-type: none">  Signing of informal agreement (Joint Way Forward, October 2016) and of Joint Declaration on Migration Cooperation (2020)  Increase in return numbers and improved cooperation <p><u>UNINTENDED:</u> N/A</p>	<ol style="list-style-type: none"> 1. Crisis triggers action – but can also undo years of work: High arrival numbers in 2015 aligned EU MS interests to push for a migration agreement; but the 2021 Taliban take-over has brought cooperation to a virtual standstill. 2. Find the lever the country is most sensitive about. 3. A gap between public messaging and actions makes the EU less credible. 4. Visibly complying with conditionality is a no-go.
<h2 style="writing-mode: vertical-rl; transform: rotate(180deg);">Nigeria</h2> <p>Goals: Improving readmission cooperation</p>	<ul style="list-style-type: none">  Development funds  Diplomatic attention and pressure  Threat of visa restrictions  Development funds  Promise of legal pathways 	<p><u>INTENDED:</u></p> <ul style="list-style-type: none">  Signing of several agreements and arrangements  Agreement on a draft readmission agreement  Increase in readmission numbers <p><u>UNINTENDED:</u> N/A</p>	<ol style="list-style-type: none"> 1. Some states are too big to be impressed or enticed easily (the Teflon phenomenon: threats slide off easily). 2. High stakes in other policy areas deprioritize migration goals. 3. It is unclear whether the Swiss partnership approach could be a blueprint.

5. HOW TO USE CONDITIONALITY RESPONSIBLY AND EFFECTIVELY IN THE FUTURE

Migration conditionality, like it or not, is here to stay. This research shows that conditionality will be employed more frequently in the future, given the many political declarations to do so, and the palpable push to formalize visa, development aid, and trade levers in the last decade. So how can this growing push for conditionality be dealt with constructively?

Europe must apply conditionality more credibly, coherently, and effectively than in the past. Policy-makers must be realistic about what conditionality can deliver and where its limitations are. The following recommendations aim to improve Europe's migration conditionality use and debate. They address policy-makers and politicians in the EU and its Member States, but also experts and practitioners whose research and opinions shape the debate about conditionality and migration cooperation.



Stop Using Conditionality as a Rhetorical Tool and Start Using It as a Practical Tool that Has Legitimate Yet Limited Use. This research shows that conditionality is

neither a panacea, nor as bad as some make it sound. Therefore, policy-makers should stop using conditionality as a dog whistle to signal political virtues to their constituencies. Rejecting or embracing conditionality categorically, as happens so often, prevents a meaningful and nuanced debate on incentives in migration cooperation. Put simply, politicians should not use conditionality as a club against the other political camp. Instead, opponents should acknowledge its usefulness, and proponents its limited power.

The following three steps should guide a less ideological and more realistic conditionality debate:

First, opponents of conditionality should acknowledge that applying carrots and sticks can increase migration cooperation. The case studies in Chapter 4 show that the use of positive and negative incentives did indeed help bring about the intended effects at the level of paper (all case studies), process (all case studies, to varying degrees), and people (all

case studies, if on a small scale). The threat of sanctions was effective at least in the cases of Bangladesh and Afghanistan since it increased readmission cooperation. Effects are less clear in the other cases, but there appears to be a correlation between the threat and/or use of some levers and the behavior of The Gambia, Iraq, and Nigeria. The unintended side effects of the conditionality use opponents point to do in fact exist, but the dreaded negative effects on the development of the countries and the diplomatic relationship seem to be less pronounced in reality than suggested in the debate so far. Perhaps because development aid has rarely been withheld, and because diplomats from third countries – unlike some advocates in Europe – do not expect European diplomats to act altruistically.

Second, proponents of conditionality should acknowledge that conditionality only works in specific cases, and that large-scale replicability of successful cases is unlikely. This research shows that conditionality works well only toward countries that are highly dependent on the EU and that have either much to gain or much to lose. For instance, countries on the European continent that have a genuine interest and realistic chance to become part of the EU or receive visa-free entry are much more responsive to lever use than countries who know this option is off the table anyways. Similarly, countries whose economies depend more on trade with Europe will be more responsive than countries whose economies depend more on remittances from their citizens in Europe.

The uncomfortable truth is that, for many countries, the EU's sticks are not scary, and its carrots not sweet enough. The EU's visa restrictions hurt only symbolically, and the volume of incitative aid is too small to sway reluctant partners. Such symbolic threats and incentives are only effective if leaders of the targeted country care about the impact on the relationship or their reputation. Therefore, it is unlikely that the effects seen in Afghanistan and Bangladesh can be replicated easily (see Chapter 4). Some experts argue that the recipe used for a small country with little leverage like The Gambia can be replicated with a big country like Nigeria. But the Teflon phenomenon observed during this research counters this idea: If a country has decent leverage toward the EU, threats can slide off easily. This dynamic is visible in the Nigeria case (see Chapter 4), but also in the cases of Egypt, Morocco or Türkiye. "They are very self-confident partners. They are not really impressed by that," one European government

representative reported about the reactions of third country representatives when faced with conditionality attempts.²³³ In the past, Teflon-clad countries did change their behavior, but only when they saw a benefit in readmitting their citizens, or when an election or governmental change brought about new political priorities. From this it follows that if the EU tries to use similar recipes everywhere, it runs the risk of becoming known even more as a barking dog that cannot bite.

Third, both sides should be clear-eyed about the small numerical effects of conditionality but acknowledge double standards when judging whether these effects are worth the efforts. Based on both publicly available and confidential data obtained during this research, the authors find that the numerical impact of conditionality is usually small.²³⁴ After readmission agreements or arrangements, the effects are usually a few dozen or hundreds of returns more, while readmission backlogs are in the thousands or tens of thousands. This fact has been used as an argument that the costs and resources invested in conditionality may not be proportional to the benefits it brings.²³⁵

Yet this dominating idea that the “use of resources is disproportionate to effect” is flawed in two ways. First, the judgment depends on the effect you are most interested in. The argument may be correct if you primarily care about increasing returns. But it is not correct if you see the benefit in establishing working relationships and processes that can then be mobilized in situations of emergency. The case of Iraq raises the question whether the quick evacuation of citizens during the Belarus crisis would have been possible if the relationship had not been established and maintained through the prior sustained work on returns and readmissions. Second, the judgment is applied inconsistently. Interestingly, experts and NGOs often flag small numbers in the area of returns as proof of the ineffective use of resources. By contrast, they judge small numbers as promising and worth expanding when talking about triple-win initiatives in labor migration. It is important to recognize the subjectivity of these kinds of proportionality assessments, and the tendency toward double standards when evaluat-

ing numerical impacts. What is worth the effort and what is not will remain subjective.

If these three steps guided future conditionality debates, they would not only be less heated, but also more credible. Policy-makers should think about which audience they really are addressing when discussing migration cooperation. Do they want the external audience of the third country to hear them, or rather the internal, domestic audience of the EU? The rule of thumb is: If policymakers talk to external partners to make internal points, they should not be surprised if the external partners do not take them seriously. And if politicians continue to promise ambitious or unattainable goals to the European public – for instance, that the striking of migration agreements will strongly reduce irregular arrivals in Europe – it will only increase the public’s frustration and add to the disillusionment with their elected officials.



If You Use Conditionality, Use It Smartly. There is a time and a place for using conditionality and a way to do it right. Policy-makers

should go through the following checklist to use conditionality more effectively and credibly.

First, find the levers the country is most receptive to. Try and avoid path dependency and using a lever just because it is there or has worked elsewhere. The case studies in this research show that the effects of a lever can be vastly different in different countries. In the case of Bangladesh, the threat of the visa and trade levers were used, but any lever with some visibility might have worked as the country’s core concern was its reputation. In contrast, Afghanistan’s dependence on foreign aid made the aid lever most effective. In the case of Iraq, carrier sanctions worked in the Belarus crisis, while visa restrictions did not – at least not until a new government with new priorities came in.²³⁶ Conditionality levers can deliver the intended effects if they engage core interests in partners’ relationships with the EU.

²³³ Interviewee 2.

²³⁴ As described in Chapter 2.2., an exception to this rule of small numerical impact is the use of the visa lever in its positive form of visa-free travel (e.g., Balkans, Ukraine, Moldova, and Georgia) which have resulted in larger numerical impacts. The exception of large effects following the use of one specific type of lever confirms the rule of small effects following the use of most other levers.

²³⁵ Kipp et al., “Negative Sanctions and the EU’s External Migration Policy: ‘Less for Less’ Not Fit for Purpose.”

²³⁶ Interviewee 34.

In contrast, they tend to bring only small and short-term effects if the levers used are unimpressive to the countries, or if there is no overlap between their interests and the EU's.²³⁷

Second, engage with the right decision-makers in the partner country. Different levels and units of governance in partner countries will show different receptiveness to your wants and concerns, but beware engaging just those that are most sympathetic to your concerns since they might lack the power to sign or ensure follow-through of the agreement. For instance, if you engage with a centralized country where power is concentrated and working level officials have limited leverage, try and engage at the highest level of government to avoid negotiations that end in no agreement because the real decision-makers were not in the room. Also, pay attention to the turf wars between different ministries and groups in partner countries, which matter as much there as they do within the EU and Member States (Chapter 3). The case of Iraq (Chapter 4) shows that different parts of the Iraqi government hold fundamentally different views on readmission cooperation. To bring about the desired changes, the EU must engage and sway the skeptical decision-makers in the partner countries.²³⁸

Third, adapt the timing and sequencing of demands to the electoral calendar of the country. The cases of The Gambia, Iraq, and Nigeria all suggest that elections and governmental changes were the central determinants of these countries' behavior, possibly more so than the EU's lever use. Just like in European democracies, third countries are more likely to stick with the agreed upon plans if they have been struck by the government in power, not a prior one that had different political priorities. Also, election campaigns are a delicate time for any country where politicians – e.g., in North African countries – may want to signal toughness toward former colonial powers and where many politicians want to avoid migration and especially returns from dominating the news. You should therefore try to sequence demands to fit elections and changes in government in partner countries since they can give polit-

ical momentum to stalled negotiations, but also stall well-working ones.

Fourth, be consistent. The EU tends to send mixed messages and blur its messages. For instance, each new Commission reinvents the wheel by announcing new initiatives and formats for the external dimension of migration policy, which makes it harder for third countries – and any layperson not familiar with Brussels acronyms – to understand what the EU is trying to achieve and what is really new about it (see Box 1). On top of that, the EU's messages about migration become more urgent whenever migratory pressures at the EU's border increase and European politicians must show quick results. Rhetorically, they try to signal unity and consistency. But once migration is out of the news, the pressure deflates and EU unity and coherence crumbles (see Chapter 3). This flip-flopping hurts the EU's credibility with its partners. Several interviewees²³⁹ deplored that the EU's messaging toward partners was erratic: "This is why we don't see effects: We would flex muscles for a while, and one year later we would say something different. Many of our partners would tell it to our faces: Last year you wanted X, now it's different. What is this?"²⁴⁰

While changing majorities in Member States will (and of course should) impact the countries' migration priorities, zig-zagging hinders the consistency that is necessary for a credible and effective engagement with third countries. Policy-makers should thus try and send, to the degree possible in their respective positions, a clearer message toward third countries. One interviewee summed up the dilemma by saying that "not accepting conditionality is naïve in this day and age. But if you do it, do it properly and holistically. Think long-term. Foreign policy is not to be changed like socks."²⁴¹

Fifth, use threats credibly. Opponents of conditionality tend to recommend deeper and more intensive diplomatic engagement (partnerships approach) as opposed to using pressure (conditionality). They warn that the less for less approach is damaging for diplomatic relations. This posture dismisses how di-

237 Zanker, "A Typology of Resistance."

238 For more information on the different views on migration cooperation with the EU, see Rietig and Fakhry, "How to Talk About Migration in Africa: Classic Hurdles and Six Recommendations for European Policymakers"; Kwaku Arhin-Sam, Alia Fakhry, and Victoria Rietig, "Ghana as the EU's Migration Partner: Actors, Interests, and Recommendations for European Policymakers," DGAP Report N. 7, April 29, 2021, <https://dgap.org/en/research/publications/ghana-eus-migration-partner>.

239 Interviewees 13, 2, 24, 41, and 39.

240 Interviewee 39.

241 Interviewee 39.

plomacy works. The use of a negative lever is always the last step in a series of discussions and diplomatic engagements. When it is used, the difference between communicating concerns and exercising pressure can be miniscule. Good diplomatic engagement phrases threats in the language of concerns: “I also don’t want this to happen, so what can we do together to not make this happen?” In all case studies, the expression of such concerns, which are nothing but politely phrased threats, has resulted in an intensification of the exchanges between both sides. This research indicates that the benefit of negative conditionality is in fact often more the threat (see cases of Bangladesh and Afghanistan), and less the use (see case of The Gambia). This finding is confirmed, at least on the visa lever, by an EU official: “What Article 25a is there for is not to use it, but to threaten with it.”²⁴²

Threats should never be made out of emotion or anger, but to reach a specific behavior change from the other side. They should not be “adolescent, over-testosteroned moves that will destroy long-built cooperation” but rather an attempt to bring about change by forecasting a credible disadvantage to the other side. “It is nicer to be nice, but also safer,” one interviewee quipped.²⁴³ For these threats to work, they must be credible. If the message is that non-cooperation will have a cost that origin countries must be ready to heed, the EU must be able to impose that cost. This is often not the case. One way to increase credibility is to introduce a degree of automatism in the process. As one interviewee put it: “This isn’t personal – it’s just the rules’ is the motto of Article 25a. So that can be an argument to use in negotiations rather than ‘we want to punish you.’”²⁴⁴

Sixth, use negative levers consciously, not accidentally. Public shaming is a negative lever (see Chapter 2.1.), so make sure that you respect the counterparts’ need for discretion, especially when they have made concessions, and not accidentally embarrass your counterparts. This research finds that such accidental lever use has happened, for instance, toward a West African country. To buffer this danger, develop the communication on migration cooperation jointly to avoid backlash. Joint press releases and messaging, as in the case of Nigeria and Switzerland, are a good practice (see Chapter 4 for details).



Make the Visa Lever Fairer and More Daunting. This research finds that the visa lever is the one-eyed among the blind. It is the only lever that is both formalized and established at EU level, it

is easiest to use as it only requires buy-in from other policy fields, not their instruments, and it can be targeted well to a country’s decision-makers and elites (see Chapter 2.2.). EU policy-makers should continue the good practice of targeting their visa measures so they affect the right demographic. Rather than penalize the entire population of a country, the focus should be on members of the political and business elite that can influence decisions of policy-makers. “Good visa measures have a high stigmatizing effect. It makes shopping in Paris harder. It hits the right ones: the rich elites,” one interviewee stated.²⁴⁵ But the visa lever has serious flaws that should be addressed.

First, policy-makers should make the visa lever fairer. To date, visa restrictions under Article 25a are hobbled by three unfair elements that policy-makers should try to curb: the way cooperation is assessed, the way the visa lever’s success is measured, and the way countries are selected for visa restrictions.

- First, the Commission should adapt the indicators it uses to measure readmission cooperation. There is no objective measure of what good cooperation is. The EU’s first assessment of a third country’s cooperation relied disproportionately on the return rate.²⁴⁶ Yet the return rate is based on data that is notoriously patchy and lacks comparability. The number of irregular arrivals from these states, also often used as a proxy for cooperation, suffers from even greater deficiencies than the return rate. Focusing on these indicators to measure cooperation makes home-made problems in the EU Member States’ return policies and border management invisible (see recommendation 5). Given that the Article 25a process is still a work in progress that can be and is being adapted, the Commission should give more weight to reliable and relevant indicators, in particular the rate of issuance of requested documents (such as laissez-passers, other travel documents, and landing permits).

²⁴² dpa, “Mehr Abschiebungen - aber wie?”

²⁴³ Interviewee 36.

²⁴⁴ Interviewee 36.

²⁴⁵ Interviewee 26.

²⁴⁶ See methodology foreseen in European Commission, “Impact Assessment Accompanying the Proposal for a Regulation Amending Regulation (EC) No 810/2009 Establishing a Community Code on Visas (Visa Code)”: SWD(2018) 77 Final, p. 38.

- Second, the results of the visa lever should be monitored more systematically, controlling for intervening factors, to verify the effectiveness of visa restrictions, as requested by the French Presidency of the Council.²⁴⁷ Improving these insufficient monitoring mechanisms (see Chapter 2.3.) would also help make the visa lever fairer.
- Third, out of the 30+ countries included in the Commission's reports, visa restrictions have never been proposed for the countries that cooperate the least on returns, such as Iran or Eritrea, or those who count the most orders to return, such as Morocco, Algeria, or Pakistan.²⁴⁸ Rather, the countries targeted so far either are highly dependent on the EU, do not have a strong veto player friend among Member States, and/or cannot react with reverse conditionality. The reason for this unfair use is that policy-makers must weigh competing interests and priorities when contemplating visa restrictions.²⁴⁹ But it appears that the EU's goals of development and stabilization have taken a back seat: of the countries targeted, three are least developed countries (Bangladesh, The Gambia, and Senegal) and one is emerging from conflict (Iraq). In contrast, readmission goals matter less when countries are taken off the target list regardless of their level of cooperation, because they have decent leverage over the EU. While it might be easy to dismiss this dynamic as a reality to accept rather than to change, the EU and its Member States should be aware that this inherent unfairness of the visa lever in how the countries are selected is a liability: it justifies the anti-conditionality camp's blanket rejection. Conditionality loses its brittle legitimacy if it is never used against the countries that actually deserve it.

Second, the EU should try and make visa restrictions more daunting. As detailed in Chapter 2.2., the EU's visa restrictions are a blunt sword because the visa cannot be taken away, but only made harder to get. The hassle tied to Schengen visa applications is already high under normal circumstances, so increasing the required paperwork, banning multiple entry visas, and adding waiting time only seems to have a minimal impact on the number of applications. One interviewee quoted a third country official

who dismissed visa restrictions as soft: "It's already so difficult to get a visa to come to Europe – what do I care about two more weeks of waiting?"²⁵⁰

The EU should at least try and max out options to make visa restrictions more potent. For visa restrictions to be more daunting, the difference between normal circumstances and the circumstances when they are in place must be bigger. Granted, the possibilities to do so are limited, but two steps are possible.

First, the range of potential restrictions could be broadened in another reform of the Schengen Visa Code. For instance, the EU could increase wait times beyond the maximum 45 days which would help target well-to-do citizens for whom money is not an issue, or critically review the visa fee increase structure. Currently, visa fees can be increased from their baseline of €80 to €120 and then €160 (the remaining escalation for The Gambia). Such fee escalations are unlikely to matter much to the persons that can afford to travel to the EU regularly in the first place. The EU could increase visa fees substantially, for instance toward four digits, but then would also need to define narrow target groups, and backlash would be certain.

Second, Member States should improve the speed and efficiency of overall visa delivery (also see recommendation 5). This step would increase the impact of restrictions as it would change the reality for applicants more than just marginally. The rationale for this is simple: Making a well-working visa process more cumbersome has more impact on applicants than making an already cumbersome visa process even more cumbersome.

What if none of this happens? Without such adaptations of the restrictions, the process of their adoption, or the visa delivery, the main function of Article 25a may remain to intensify the relationship with countries of origin and to keep the conversation going until the next opportune (crisis) moment comes.

²⁴⁷ Presidency of the Council of the EU, "Annual Implementation of the Visa-Remission Mechanism and Perspectives on Readmission, 5983/22."

²⁴⁸ European Commission, "Report to the Council: Assessment of Third Countries' Level of Cooperation on Readmission in 2019."

²⁴⁹ They are legally bound to do so, and this is justified, for not doing so could generate another level of unfairness. At the Commission, all relevant DGs intervene with their input and respective policy priorities on the yearly assessment as part of considering the "overall relations" with candidates for visa restrictions.

²⁵⁰ Interviewee 13.



Let Realism Reign About Development, Trade, and Legal Pathway Levers. This research finds that the potential of the development, trade, and legal pathways

levers is overblown. Policy-makers should consider the following findings about these levers to come to a more realistic assessment:

First, this research shows that **less for less aid conditionality to date is rare and easy to buffer.** Apart from a few cases, such as Afghanistan in 2016 (see Chapter 4), the EU does not seem to routinely threaten the withholding of aid toward third countries. One reason for this is that even proponents of threatening with aid cuts acknowledge that this stick is rarely scary to the third countries. Indeed, the aid sums that can be withheld often pale compared to remittances or the total aid received. In other cases, countries do not receive aid anyways. Another reason is that when a less for less approach to aid is used, development actors, who tend to disagree with it, can use back doors to soften the blow for the EU's partners. For instance, they can set cooperation benchmarks as low as possible to protect their primary interest of ensuring development of partner countries. One interviewee described that the benchmark for cooperation that would trigger the release of funds was a set number of meetings, but no outcomes or deliverables were needed from these meetings. "We had a lot of couscous and meetings. And that is it."²⁵¹

Second, despite the political push, **it is unclear whether the trade lever will be formalized. Even if it is formalized, it is unlikely that it will be used.** One interviewee emphasized its great potential, calling it "the sleeping giant," while another sees the trade lever debate as "a symbolic discussion."²⁵²

Trade is one of the policy areas where the EU has genuine leverage, because many countries in its neighborhood depend on trade with the block. But this research finds (see Chapters 2.2. and 3) that representatives of DG Trade and national Ministries of Economics and Trade are not keen on having migration interests meddle with their work, that the pro-

cess of activating the trade lever would be even more arduous than that of the visa lever, and that the harm of interrupting trade preferences for the least developed countries would have an undue effect on the whole population. Also, the possibility to suspend GSP benefits already exists to react to grave human rights violations, but despite the poor record in some beneficiary countries, it has hardly ever been used.²⁵³

The trade lever is thus a cannon that might end up sitting unused in the garage. Whether this is useful depends on a person's perspective. One side argues that creating new instruments, even if you do not use them, is useful, because the process of creation shows that the EU cares about the topic and establishes dialogues with third countries. This side also argues that even migration instruments that are not used for a long time might eventually come in handy – as the activation of the Temporary Protection Directive in 2022 showed. The other side counters by arguing that creating instruments you do not use harms the EU's credibility, because third countries know the instrument itself is a bluff, and they can sit out the dialogues knowing that no harm will come their way.

One's opinion of whether the trade lever should be formalized therefore depends on which argument one finds more compelling. Is it useful to have a stick so heavy you can hardly lift it? Is a stick you can hardly lift better than no stick at all? Interestingly, those interviewees opposing it because they fear a slippery slope are more likely to believe that, once created, the trade lever would be used, than those supporting it. Fear of the trade lever seems to increase a person's estimate of the likelihood that it will be used.

Third, **legal pathways are now in the spotlight as a beacon of the EU's goodwill and its so-called partnership approach, but it is hazy how the EU can and will use this lever in practice.** Existing or potential ways to use legal pathways either were discarded (resettlement) or are underdeveloped (skills-based schemes). Refugee resettlement is off the table as a carrot – at least for now. As described in Chapter 2.2., the EU's Resettlement Framework Regulation, agreed on recently in December 2022 after six

251 Interviewee 50.

252 Interviewees 36 and 9.

253 "Myanmar in 1997, Belarus in 2007, and Sri Lanka in 2010 (downgraded from GSP+ to GSP) [...] Moreover, in February 2020, the Commission decided to partly withdraw Cambodia's tariff preferences under the EBA scheme." See: Katharina L. Meissner, "Requesting Trade Sanctions? The European Parliament and the Generalized Scheme of Preferences," *JCMS: Journal of Common Market Studies* 59, no. 1, 2021, pp. 91–107, <https://doi.org/10.1111/jcms.13142>.

years of negotiations, excludes any mention of resettlement as a lever for migration management or readmission goals.²⁵⁴ This is not for want of trying. The Commission expressly wanted to use resettlement as a lever to incentivize migration cooperation, but the Parliament, experts, and advocates opposed this, citing the need to preserve resettlement as a humanitarian duty that should not be instrumentalized for migration control.²⁵⁵ Despite this win for opponents of conditionality on paper, linking resettlement with migration cooperation remains relevant in practice, especially as offshore processing arrangements are (yet again) back on the table, and because Member States determine the regions they resettle from bilaterally and according to their own (readmission) priorities anyways.²⁵⁶

The other type of legal pathways, skills-based schemes, are a good idea in principle yet are hobbled by four persistent problems. First, Member States must be on board for them to have a solid foundation since they are the ones who give out visas and grant work permits and residency status, yet it is doubtful that many Member States would deliver on promises made by the EU. There is no legal pathways carrot here yet, and no sign of one growing in Brussels' infertile soil.

Second, skill-based projects are also notoriously difficult to scale up. Countless pilot projects show that the participation of several countries' administrations and of private actors they require is complex, costly, and slow. These obstacles have been the central reason for a sickness one could name "pilot projectitis" – legal pathway schemes produce small numbers, but since scaling them up is so difficult, investments are then not poured into a larger follow-on project, but rather into the next pilot project. Talent Partnerships are thus little more than a friendly gadget in otherwise uncomfortable negotiations.²⁵⁷

The third and biggest issue for talent and skills partnerships is the abysmal administrative capacity of Member States to process visa applications and provide services to their immigrant workforce. Especially in Germany, much of the current debate is about widening legal pathways through more generous laws, but it is not legislation that determines the actual width of pathways and how many people can walk on them, but administrative capacity.²⁵⁸ Fourth and last, legal pathways are in the process of becoming a reverse carrot. They are no longer something countries of destination can always graciously offer, but something they will need more and more. The EU's partners are conscious of the fact that the balance of power is tilting toward them.²⁵⁹ More and more countries of origin fear brain drain and have become less interested in emigration of their skilled people. When might one reach a tipping point, when, in migration negotiations, countries of origin will be the ones offering their labor force as a carrot to European countries desperate for workers?

Despite these problems, Europe should keep exploring talent and skills partnerships for two good reasons. First, because they are one puzzle piece of a comprehensive migration cooperation, and second, because they are an attractive negotiation chip toward governments who rely on remittances and fear their decrease if more citizens return than leave. But one should discard the delusion that such schemes can solve Europe's labor shortage on a grand scale and the hope that they can make a palpable dent into irregular migration.

254 Since the Resettlement Framework Regulation is part of the New Pact negotiations, its final adoption is expected to happen in the next year prior to the 2024 elections as part of an expected package deal.

255 European Parliament, "EU Resettlement Framework," Legislative Train Schedule, April 20, 2023, <https://www.europarl.europa.eu/legislative-train/theme-promoting-our-european-way-of-life/file-jd-eu-resettlement-framework>; Sundberg Diez, "Conditionality for Readmission Cooperation," 2020; Katharina Bamberg, "The EU Resettlement Framework: From a Humanitarian Pathway to a Migration Management Tool?," Discussion Paper, European Migration and Diversity Programme, European Policy Centre (EPC), June 26, 2018, https://www.epc.eu/content/PDF/180626_EUResettlement_KB.pdf; European Council on Refugees and Exiles (ECRE), "Untying the EU Resettlement Framework. ECRE's Recommendations on Breaking the Link with Migration Control and Preserving the Humanitarian Focus of Resettlement," Policy Note (Brussels, 2016), <https://ecre.org/wp-content/uploads/2016/10/Policy-Note-01.pdf>

256 Marie Walter-Franke, "External EU Hotspots: Why the Cat Keeps Coming Back," Jacques Delors Institut - Berlin, September 28, 2017, https://www.delorsinstitut.de/2015/wp-content/uploads/2017/09/20170928_EU-hotspots_Walter.pdf.

257 Interviewee 5.

258 With wait-times that are often months-long and Foreigners' Offices that are understaffed, Germany may well lose skilled workers from third countries to other destination countries whose administrative processes are less cumbersome.

259 Interviewee 5.



Create Alternatives to Decrease Dependency on Conditionality. European policy-makers should start getting serious about creating alternatives to conditionality.

Negotiation theory makes it clear that creating a so-called BATNA (Best alternative to negotiated agreement) is a key condition to entering a negotiation in which you do not depend on the outcome of the negotiation. “By cultivating a strong outside alternative, you gain the power you need to walk away from an unappealing deal.”²⁶⁰ To date, Europe stays seated at the negotiation table even though deals are unappealing.

What are good BATNAs for Europe? The best alternative to bad (stalling, vague, unimplemented) migration agreements is working to solve migration problems with other or fewer external partners. Three such solutions merit consideration.

First, European countries could piggyback on other countries’ established relations with third countries on readmissions. They should consider which other destination countries around the world have more functioning readmission relationships with a specific third country they are interested in and explore partnering with them. They could thus use a path already carved instead of having to carve new paths from scratch.

Second, European countries could reduce the pressure to strike migration agreements through internal improvements of their migration and return systems. Even if third countries’ cooperation was near perfect, home-made problems in the national systems would still hinder returns. The 2023 “Operational Strategy for more effective returns” shows that only one in six return decisions (16 percent) leads to a readmission request.²⁶¹ Issuing return decisions to persons with no chances of being returned results in artificially low return rates, not to mention the hardship endured by persons concerned.²⁶² Previ-

ous DGAP research on Germany’s return and deportation policies shows that the prime reasons returns are not enforced are not just third country’s unwillingness or immigrants’ recalcitrance, but also overly complex divisions of responsibility at home, lengthy and patchy procedures, and a political unwillingness to find pragmatic solutions to reform the broken system.²⁶³ What is true for Germany is also true for other European countries and the EU migration and asylum system writ large: Internal reforms could buffer challenges in the external dimension.²⁶⁴

Member States should also fix systemic dysfunctions in their visa processing – in particular, the lack of digitalization and overly long delays – and question the growing practice of delegating responsibilities to private companies that charge additional fees and can sometimes function as a hindrance rather than a help to applicants. This would not only make legal pathways a more attractive and realistic option, but also increase the impact of visa restrictions (see recommendation 3).

Another measure any European country can take that does not require partnerships is to decrease their population of irregular migrants through regularization efforts. When countries, by changing their own immigration laws, allow people without authorization to move into a legal status, they can reduce the pressure on return systems, and thus decrease their dependence on readmission cooperation. This is happening for instance in Germany, Spain, and Greece, where governments enable the regularization of people without legal status. This strategy does not and should not apply to all people without legal status, of course, but to a subset of people – in particular those that have been in the country for a long time or who are integrated well. This allows EU countries to focus their resources and attention on those people whose readmission should be prioritized, such as people with a criminal record, or those who have been in the country only for a short time.

260 Lax and Sebenius, 3-d Negotiation. Powerful Tools to Change the Game in Your Most Important Deals; PON - Program on Negotiation at Harvard Law School, “BATNA and Other Sources of Power at the Negotiation Table,” PON - Program on Negotiation at Harvard Law School, Daily Blog (blog), November 22, 2022, <https://www.pon.harvard.edu/daily/batna/negotiation-skills-three-sources-of-power-at-the-bargaining-table/>.

261 European Commission, “Towards an Operational Strategy for More Effective Returns.”

262 Bernd Parusel, “Afghan Asylum Seekers and the Common European Asylum System,” Bundeszentrale für politische Bildung, October 17, 2018, <https://www.bpb.de/themen/migration-integration/laenderprofile/english-version-country-profiles/277716/afghan-asylum-seekers-and-the-common-european-asylum-system/>.

263 Rietig and Günnewig, “Deutsche Rückkehrpolitik Und Abschiebungen: Zehn Wege Aus Der Dauerkrise.”

264 Improving policies starts with improving the data they are based on. Member States and the Commission should prioritize the roll out of the EU’s migration databases and their interoperability. They should also support the efforts of the EU’s return coordinator to generate better data. Also, European countries should make more and better data on readmissions publicly available. Concretely, clear and transparent analytics on the number of persons due to return, rather than the number of return decisions issued, would give a clearer picture of the policy challenge itself.

Third, EU actors should create an alternative to their current incoherent conditionality use, by making cooperation more attractive and less costly. The findings of Chapter 3 show that calling for more or better coordination within the EU is rather pointless. Policy-makers calling for more coordination resemble doctors calling for more health – what they need to do instead is identify the underlying reasons for the ailment and treat it.

The EU and Member States invest considerable resources in sharing and aligning their priorities and developing action plans to engage with countries of origin and transit. Several partly parallel formats of exchange exist to that end (EMWP, MOCADDEM, the High-Level Return Network, and IMEX at the EU level, and Lagebild and Lagebild+ at the German level). But the analysis in Chapter 3.2. shows that these many coordination formats bind considerable resources and do not always generate greater coherence. Instead of another call for more or better coordination, one needs a clear acknowledgment that coordination on the EU-level is not hampered by a lack of coordination instruments, but a lack of incentives to move from negative to positive coordination. Incentives for positive coordination could be:

- A greater **openness to people rotating between policy fields**. The more willingness and ability a person has to take a bird's-eye view instead of the narrow selective perception of their current unit, the better the coordination. Moving people more frequently across (and outside of) EU institutions or national ministries into other settings would increase their understanding of other sectors' institutional constraints and priorities.
- **A clear political direction**. If political leaders are unified in their direction, positive coordination between the implementers becomes more likely. Conversely, disagreements trickle down into the practitioners' work. Ideally, the political direction is supported by a strong democratic mandate from parliament, as is the case with Switzerland and its migration partnership approach, for instance (see Chapter 4).
- **Upgrading coordination formats** to bring in neutral, third-party moderators. Existing coordination formats should be improved by bringing in a moderator or mediator from a neutral external party, so they do not just bring together government units to exchange the same arguments they always hear from their peers. Ideally, such exter-

nal actors bring expert thematic knowledge to encourage new policy ideas and cut through some of the entrenched patterns of negative coordination. Such an upgraded coordination format would bring outsiders' perspectives, allow for corrective intervention, and enable feedback on and adaptations of interactions.

In short, if the goal is coordination, do not call for it. Instead, create incentives for positive coordination and bring in neutral third-party moderators to buffer negative coordination.

Europe is seeking migration solutions abroad. Conditionality is part of this increasingly desperate search for solutions in the external dimension. This research shows that the use of carrots and sticks is a common feature of migration cooperation, which is legitimate but limited in its effects. If the European Union wants its migration and asylum policies to become more effective, coherent, and credible, it needs to use conditionality more smartly and selectively than in the past and acknowledge how restrained most of Europe's levers are. The EU and Member States should keep exploring the use of their levers, both positive and negative, toward countries and actors outside of Europe, but they also need to try and solve their many home-made problems and test alternatives to conditionality. The use of carrots and sticks will continue. But it will hopefully be driven by more facts and fewer delusions.

Annexes

ANNEX I: LIST OF INTERVIEWS

This report relies on 53 interviews conducted online (50), over the phone (1), and in person (2), using a semi-structured interview questionnaire that focused on interviewees' backgrounds and specific experiences in migration cooperation; their experiences and observations relating to conditionality; and their personal and professional opinions on the topic of conditionality.

Of these interviews, 16 were on the record, with interviewees agreeing to being named and sharing information for use in the report; 33 were anonymous, with 30 interviewees not agreeing to being named but sharing information for use in the report, while 3 agreed to be included in this list but not to be referenced in the report; and 4 were off the record, with interviewees staying anonymous and sharing information only for background knowledge but not for use in the report.

The researchers interviewed 11 persons working in EU institutions, 15 officials from Member States, 12 third country officials, 8 working in academia or think tanks, 5 in civil society organizations, and 2 who were Members of the European Parliament. Of the EU and government representatives, 14 worked in ministries or DGs of Justice, Home Affairs, and the Interior, 6 worked in Foreign Affairs, 4 worked in development, and 2 in other branches of government.

The order of the interviews does not correlate with the numbering of the interviewees used in the footnotes, and all quotes are anonymized to respect the confidentiality of interviewees. The chronological order of the interviews was as follows.:

Virtual interview with EU official (anonymous) on July 29, 2022

Virtual interview with migration expert (anonymous) on August 1, 2022

Virtual interview with government official of a Member State (anonymous) on August 2, 2022

Virtual interview with government official of a Member State (anonymous) on August 3, 2022

Virtual interview with migration expert from the office of a non-EU country's parliament (anonymous) on August 3, 2022

Manuel Alhama Orenes, former Head of the Directorate General for International Relations, Immigration, and Foreigners, Spanish Ministry of Interior, virtual interview on August 5, 2022

Holger Schamberg, Leiter R3, German Ministry of the Interior, virtual interview on August 8, 2022

Virtual interview with two governmental officials from a Member State (anonymous) on August 8, 2022

Virtual interview with government official of a non-EU country (anonymous) on August 10, 2022

Virtual interview with EU official (anonymous) on August 11, 2022

Hugo Brady, Senior Strategic Advisor, International Centre for Migration Policy Development (ICMPD), virtual interview on August 12, 2022

Josephine Liebl, Head of Advocacy, European Council on Refugees and Exiles, virtual interview on August 12, 2022

Interview in person with government official from a Member State (anonymous) on August 17, 2022

Virtual interview with EU official (anonymous) on August 18, 2022

Virtual interview with government official from a Member State (anonymous) on August 18, 2022

Virtual interview (off the record) on August 24, 2022

Florian Trauner, Jean Monnet Chair, Institute for European Studies, Vrije Universiteit Brussel (VUB), virtual interview on August 24, 2022

Eduard Gnesa, former Director of the Swiss Federal Office for Migration (today State Secretariat for Migration) and Special Ambassador for international migration at the Swiss Agency for Development and Cooperation, Switzerland, virtual interview on August 30, 2022

Tineke Strik, Member of the European Parliament in the Greens/EFA Group and Professor of Citizenship and Migration Law at Radboud University, virtual interview on August 31, 2022

Virtual interview with Member of the European Parliament (anonymous) on August 31, 2022

Roberto Cortinovis, Researcher, CEPS, virtual interview on September 2, 2022

Virtual interview with EU official (anonymous) on September 5, 2022

Virtual interview (off the record) on September 6, 2022

Virtual interview with EU official (anonymous) on September 7, 2022

Hanne Beirens, Director of Migration Policy Institute Europe, virtual interview on September 12, 2022

Virtual interview with government official from a non-EU country (anonymous) on September 12, 2022

Mari Juritsch, Return Coordinator, DG Home, C1, Irregular Migration & Returns, virtual interview on September 13, 2022

Virtual interview with government official from a Member State (anonymous) on September 14, 2022

Virtual interview (off the record) on September 14, 2022

Michael Spindelegger, Director General, ICMPD, virtual interview on September 14, 2022

Virtual interview with a politician from a non-EU country (anonymous) on September 15, 2022

Virtual interview (off the record) on September 15, 2022

Virtual interview with EU official (anonymous) on September 16, 2022

Virtual interview with government official from a non-EU country (anonymous) on September 16, 2022

José Luis Pardo, Ambassador in Special Mission for Migration Issues, Ministry Foreign Affairs, EU and International Cooperation, Spain, virtual interview on September 27, 2022

Shakirul Islam, Chairman, Ovivashi Karmi Unnayan Program (OKUP) Bangladesh, virtual interview on October 4, 2022

Virtual interview with government official from a Member State on October 7, 2022

Interview in person with government official from a Member State (anonymous) on October 10, 2022

Virtual interview with EU official (anonymous) on October 10, 2022

Matthieu Tardis, RHead of the Center for Migration and Citizenship at the French Institute of International Relations (IFRI), virtual interview on October 17, 2022

Virtual interview with the representative of a civil society organization in a non-EU country (anonymous) on November 3, 2022

Virtual interview with EU official (anonymous) on November 9, 2022

Virtual interview with EU official (anonymous) on November 17, 2022

Virtual interview with government official from a non-EU country (anonymous) on November 17, 2022

Virtual interview with government official from a non-EU country (anonymous) on December 5, 2022

Virtual interview with government official from a Member State (anonymous) on January 12, 2023

Virtual interview with civil society representative in an EU country (anonymous) on March 7, 2023

Virtual interview with government official from a non-EU country (anonymous) on April 4, 2023

Georg Luke, Head of Unit V/A/5/a EU-Migration Affairs, Interior Ministry of Austria, virtual interview on April 12, 2023

Ali Jahangir, General Director for Branch Affairs Department, Ministry of Migration and Displacement of Iraq and Spokesman of the Ministry, phone interview on April 19, 2023

Ahmad Al-Sahhaf, official spokesperson for the Iraqi Foreign Ministry, Ministry of Foreign Affairs, Iraq, virtual interview on April 20, 2023

Sophia Wolpers, Manager, Labour Mobility Partnerships, virtual interview on April 26, 2023

Ambassador Obinna C. Onowu, Ambassador of the Federal Republic of Nigeria to the Kingdom of Belgium, Grand Duchy of Luxembourg, and Head of the Nigerian Delegation to the European Union and to the Organization of African, Caribbean and Pacific States, virtual interview on May 9, 2023

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