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Indice-Sommario

2019, n. 1

Editoriale

L'incidenza *virtuosa* dei diritti fondamentali nel completamento dello *spazio europeo di giustizia* p. 1
Angela Di Stasi

Saggi e Articoli

EU Readmission Agreements as Tools for Fighting Irregular Migration: An Appraisal Twenty Years on from the Tampere European Council p. 11
Eugenio Carli

L'incidenza sulla *Brexit* della sentenza della Corte di giustizia UE del 10 dicembre 2018 p. 30
Maria Cristina Carta

Governing Asylum with (or without) Solidarity? The Difficult Path of Relocation Schemes, Between Enforcement and Contestation p. 55
Luisa Marin

La protezione dei dati nel settore della cooperazione giudiziaria e di polizia in materia penale alla luce della direttiva (UE) 2016/680: frammentazione ed incertezze applicative p. 75
Gabriele Rugani

Sulla im(mobilità) sanitaria transfrontaliera nel contesto della (il)libertà di circolazione e di cura all'interno del territorio europeo: il "caso" inglese del piccolo Alfie Evans p. 93
Sabrina Vannuccini

Accordi informali con Stati terzi in materia di gestione dei flussi migratori: considerazioni critiche con riferimento alla prassi dell'Unione europea e dell'Italia p. 119
Valentina Zambrano



EU READMISSION AGREEMENTS AS TOOLS FOR FIGHTING IRREGULAR MIGRATION: AN APPRAISAL TWENTY YEARS ON FROM THE TAMPERE EUROPEAN COUNCIL

Eugenio Carli*

SUMMARY: 1. Introduction. – 2. Legal and Procedural Aspects Related to the Conclusion of Readmission Agreements. – 3. The Relationship between EURAs and Bilateral Readmission Agreements Concluded by Member States. – 4. The Content of the Agreements. Aspects of International Law. – 5. An Empirical Evaluation of EURAs: Some Statistics on Enforcement of Immigration Legislation. – 6. Concluding Remarks.

1. Introduction

At the European Council held in Tampere (Finland) on 15 and 16 October 1999 – which marked the establishment of the European Union(EU)'s Area of Freedom, Security and Justice (AFSJ) – the then Presidency declared itself determined «to tackle at its source *illegal immigration*, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants» and invited the Council to conclude «*readmission agreements* or to include standard clauses in other agreements between the European Community and relevant third countries or groups of countries»¹ to this end.

Following Tampere, several EU policy developments against illegal immigration have taken place, stressing the importance of concluding and implementing EU readmission agreements (EURAs) with third countries.² Among the most important

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¹ Tampere European Council, 15-16 October 1999, Presidency Conclusions, paras. 23 and 27 (emphasis added).

² Several readmission clauses are also included in agreements binding the EU (EC) and a third country other than EURAs. For example, the 2000 Cotonou Agreement concluded between the African,

advances, The Hague Programme of 2005 to strengthen the AFSJ,³ the 2009 Stockholm Programme to guarantee an open and secure Europe,⁴ the 2014 Council strategic guidelines for legislative and operational planning within the AFSJ⁵ and the renewed action plan of 2017 on a more effective return policy in the EU⁶ can be mentioned. These acts show – as the title of this contribution also reveals – that the agreements concluded by the EU with third countries with the primary aim of regulating the readmission of respective nationals are one of the most prominent tools the EU has at its disposal for fighting irregular immigration towards its territories,⁷ insofar as it acts both as a deterrent and an actual solution. Moreover, EURAs are probably the most important means of implementation of the 2008 Return Directive,⁸ which sets out common standards and procedures to be applied in Member States (MSs) for returning illegally staying third country nationals and that can be considered “the lynchpin of the EU’s return policy.”⁹

Caribbean and Pacific (ACP) countries and the EU provides that “each [MS] of the [EU] shall accept the return of and readmission of any of its nationals who are illegally present on the territory of an ACP State, at that State’s request and without further formalities;” and that “each of the ACP States shall accept the return of and readmission of any of its nationals who are illegally present on the territory of a [MS] of the [EU], at that [MS]’s request and without further formalities.” *Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part*, signed in Cotonou on 23 June 2000 – Protocols – Final Act – Declarations, in OJ L 317, 15 December 2000, Art. 13, para. 5, c). Furthermore, the EU has concluded arrangements on readmission (in the form of Standard Operative Procedures) with six countries of origin of irregular migrants (Afghanistan, Guinea, Bangladesh, Ethiopia, Gambia and Ivory Coast). See European Commission, *State of the Union 2018 – A stronger and more effective European return policy*. However, those arrangements are not actual international agreements and therefore are not legally binding on the parties. In this paper we will not deal with readmission obligations included in these agreements nor with the Standard Operative Procedures, but only with EURAs.

³ European Council, *The Hague Programme: Strengthening freedom, security and justice in the European Union*, of 3 March 2005, OJ C 53, p. 1, in which the European Council calls for “the timely conclusion of Community readmission agreements”, par. 1.6.4., p. 6.

⁴ European Council, *The Stockholm Programme – An open and secure Europe serving and protecting citizens*, of 4 May 2010, OJ C 115, p. 1, in which the European Council maintains that the focus should be placed on “the conclusion of effective and operational readmission agreements, on a case-by-case basis at Union or bilateral level” and stresses the importance “to ensure that the implementation of [...] the readmission agreements in force [...] is closely monitored in order to ensure their effective application”, par. 6.1.6., p. 31.

⁵ European Council, Conclusions of 26-27 June 2014, EUCO 79/14, in which the European Council maintains that the focus should be on “establishing an effective common return policy and enforcing readmission obligations in agreements with third countries”, p. 3.

⁶ Communication from the Commission to the European Parliament and the Council, *On a more effective return policy in the European Union – A renewed action plan*, of 2 March 2017, COM(2017) 200 final, in which the Commission notes the progress made on the negotiations of new readmission agreements and the need to monitor and address related issues. See pp. 12 and 13.

⁷ See also Communication from the Commission to the European Parliament and the Council, *Evaluation of EU Readmission Agreements*, of 23 February 2011, COM(2011) 76 final, p. 2.

⁸ Directive 2008/115/EC of the European Parliament and of the Council, *on common standards and procedures in Member States for returning illegally staying third-country nationals*, of 16 December 2008, in OJ L348, 24 December 2008, p. 98. Recital n. 7 in fact underlines “[t]he need for Community [EU] and bilateral readmission agreements with third countries to facilitate the return process”.

⁹ European Commission, *EU Readmission Agreements – Facilitating the return of irregular migrants*, Briefing of April 2015.

The present paper provides an overall analysis, especially from a legal and a political perspective, of these agreements and evaluates their actual contribution to the fight against irregular immigration as an integral part of the activities covered by the AFSJ. We will first touch on their legal basis and the negotiating process established under EU law (§ 2). Then, we will briefly account for the relationship with bilateral readmission agreements concluded by single MSs, with a special focus on Italy (§ 3). In the fourth paragraph, some aspects related to the content of those agreements and the application of International law standards are dealt with, while the final section (§ 5) is devoted to a survey of the concrete results achieved by these agreements, on the basis of some relevant data. Finally, some conclusions will be drawn.

2. Legal and Procedural Aspects Related to the Conclusion of Readmission Agreements

To date, the EU has concluded seventeen readmission agreements with Azerbaijan,¹⁰ Turkey,¹¹ Armenia,¹² Cape Verde,¹³ Georgia,¹⁴ Pakistan,¹⁵ Moldova,¹⁶ Bosnia and Herzegovina,¹⁷ Montenegro,¹⁸ Serbia,¹⁹ Macedonia,²⁰ Ukraine,²¹ Russia,²² Albania,²³ Sri

¹⁰ *Agreement between the European Union and the Republic of Azerbaijan on the readmission of persons residing without authorization*, of 28 February 2014, in OJ L128, 20 April 2014, p. 17, entered into force on 1 September 2014.

¹¹ *Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization*, of 16 December 2013, in OJ L134, 7 May 2014, p. 3, entered into force on 1 October 2014.

¹² *Agreement between the European Union and the Republic of Armenia on the readmission of persons residing without authorization*, of 19 April 2013, in OJ L87, 27 March 2013, p. 1, entered into force on 1 January 2014.

¹³ *Agreement between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorization*, of 18 April 2013, in OJ L282, 24 October 2013, p. 15, entered into force on 1 December 2014.

¹⁴ *Agreement between the European Union and Georgia on the readmission of persons residing without authorization*, of 22 November 2010, in OJ L52, 25 February 2011, p. 47, entered into force on 1 March 2011.

¹⁵ *Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorization*, of 26 October 2009, in OJ L287, 4 November 2010, p. 52, entered into force on 1 December 2010.

¹⁶ *Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorization*, of 10 October 2007, in OJ L334, 19 December 2007, p. 149, entered into force on 1 January 2008.

¹⁷ *Agreement between the European Community and Bosnia and Herzegovina on the readmission of persons residing without authorization*, of 18 September 2007, in OJ L334, 19 December 2007, p. 66, entered into force on 1 January 2008.

¹⁸ *Agreement between the European Community and the Republic of Montenegro on the readmission of persons residing without authorization*, of 18 September 2007, in OJ L334, 19 December 2007, p. 26, entered into force on 1 January 2008.

¹⁹ *Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorization*, of 18 September 2007, in OJ L334, 19 December 2007, p. 46, entered into force on 1 January 2008.

Lanka,²⁴ Macao²⁵ and Hong Kong.²⁶ Other EURAs are currently being negotiated.²⁷ In 2004 the Council stated that migration pressure and the geographical position of the country were the most important criteria to establish with which State a readmission agreement should be reached.²⁸ In this regard, it is clear that all third countries involved, except for Cape Verde, are located in the eastern part of the globe and one can distinguish between neighboring States²⁹ and more distant countries.³⁰ Most of the EURAs were concluded between 2002 and 2009 by the then European Community,³¹ while only five agreements have been concluded by the EU from 2010 to date,³² the one with Azerbaijan being the most recent.³³

Unlike the Treaty establishing the European Community (TEC),³⁴ the Treaty on the Functioning of the European Union (TFEU) now explicitly provides the competence to conclude readmission agreements. According to its Art. 79, para. 3, in fact “[t]he Union may conclude agreements with third countries for the readmission to their countries of

²⁰ *Agreement between the European Community and the Former Yugoslav Republic of Macedonia on the readmission of persons residing without authorization*, of 18 September 2007, in OJ L334, 19 December 2007, p. 7, entered into force on 1 January 2008.

²¹ *Agreement between the European Community and Ukraine on the readmission of persons*, of 18 June 2007, in OJ L332, 18 December 2007, p. 48, entered into force on 1 January 2008.

²² *Agreement between the European Community and the Russian Federation on readmission*, of 25 May 2006, in OJ L129, 17 May 2007, p. 40, entered into force on 1 June 2007.

²³ *Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorization*, of 14 April 2005, in OJ L124, 17 May 2005, p. 22, entered into force on 1 May 2006.

²⁴ *Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorization*, of 4 June 2004, in OJ L124, 17 May 2005, p. 43, entered into force on 1 May 2005.

²⁵ *Agreement between the European Community and the Macao Special Administrative Region of the People’s Republic of China on the readmission of persons residing without authorization*, of 13 October 2003, in OJ L143, 30 April 2004, p. 99, entered into force on 1 June 2004.

²⁶ *Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People’s Republic of China on the readmission of persons residing without authorization*, of 27 November 2002, in OJ L17, 24 January 2004, p. 25, entered into force on 1 March 2004.

²⁷ The Council has authorized the EU to negotiate readmission agreements with the following States: Morocco (2000), China (2002), Algeria (2002), Belarus (2011), Tunisia (2014), Jordan (2015) and Nigeria (2016). Negotiations have not yet led to a RA with any these countries and some of them are currently stalled (with Morocco) or never formally opened (with Algeria).

²⁸ General affairs and external relation Council, Conclusions of 2 November 2004, press release n. 13588/1/04 REV 1, par. 3.

²⁹ Macedonia, Albania, Montenegro, Bosnia and Herzegovina and Serbia in the Western Balkans; Moldova, Ukraine, Russia, Azerbaijan, Armenia, Georgia and Turkey in the Central and South Caucasian Asia.

³⁰ Sri Lanka, Pakistan, Macao, Hong Kong and Cape Verde.

³¹ In chronological order, from the newest to the oldest one: Pakistan, Macedonia, Moldova, Bosnia and Herzegovina, Montenegro, Serbia, Ukraine, Russia, Albania, Sri Lanka, Macao and Hong Kong.

³² In chronological order, from the newest to the oldest one: Azerbaijan, Turkey, Armenia, Cape Verde and Georgia.

³³ But the EURA with Cape Verde was the last one to enter into force.

³⁴ Art. 63, para. 1, point 3(b) attributed to the Council the competence to adopt *measures* on immigration policy aimed at regulating “illegal immigration and illegal residence, including repatriation of illegal residents,” while Art. 300, para. 2 laid down the procedural rules for the signing of agreements between the Community and one or more States or international organizations.

origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the [MSs].” The provision should be read in connection to Art. 78(g), which stipulates that “the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising: [...] partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.”

The negotiating procedure is quite similar to the one which was provided in the TEC, with Art. 218 TFEU establishing that the Council shall authorize the opening of negotiations upon the receipt of recommendations from the Commission, adopt negotiating directives, authorize the signing of agreements and conclude them. The only difference is the more relevant role attributed to the European Parliament, now being its consent necessary for the decision concluding the readmission agreement to be taken (Art. 218, para. 6(a), v)).³⁵ The prior approval by the European Parliament is due to the fact that EURAs cover fields in which the ordinary legislative procedure applies.³⁶

As regards the type of competence to conclude such agreements, the vast majority of literature believes that it is a shared one³⁷ and we cannot but agree with this position for two main reasons. First, it should be pointed out that Art. 4, para. 2(j) TFEU includes the AFSJ among the principal areas in which shared competence between the EU and MSs applies. Doubtlessly, EURAs are part and parcel of this sector, although in this case the competence has an external nature.³⁸ Secondly, practice shows that MSs do conclude bilateral readmission agreements with third countries.³⁹ Customary practice also demonstrates that competence on readmission matters remains shared between the EU and MSs. In fact, although the European Commission is responsible for the negotiation of EURAs, the overall phase of implementation, including the decision to return an irregular migrant, the issuance of a request of readmission and the enforcement of a removal order, rests entirely with the MSs.⁴⁰

³⁵ Prior to the entry into force of the Lisbon Treaty the European Parliament was only consulted by the Council (Art. 300, para. 3 TEC).

³⁶ TFEU, Art. 78, para. 2.

³⁷ G. CELLAMARE, *Gli accordi di riammissione dell'Unione europea*, in *Studi sull'integrazione europea*, 2010, n. 2, p. 379 ff.; I. OTTAVIANO, *Gli accordi di riammissione dell'UE*, in F. CHERUBINI (a cura di), *Le migrazioni in Europa. UE, Stati terzi e outsourcing migration*, Roma, 2015, p. 104 ff.; S. NICOLIN, *Contrasto all'immigrazione irregolare negli accordi di riammissione dell'Unione europea*, in L. ZAGATO, S. DE VIDO (a cura di), *Il divieto di tortura e altri comportamenti inumani e degradanti nelle migrazioni*, Padova, 2013, pp. 210-211; M. GIUFFRÉ, *Obligation to Readmit? The Relationship between Interstate and EU Readmission Agreements*, in F. IPPOLITO, S. TREVISANUT (eds.), *Migration in Mare Nostrum: Mechanisms of International Cooperation*, Cambridge, 2015, pp. 279-280; M. PANIZZON, *Readmission Agreements of the EU Member States: A Case for EU Subsidiarity or Dualism?*, in *Refugee Survey Quarterly*, 2012, n. 4, p. 132.

³⁸ See Court of Justice, Opinion of Advocate General Bot of 30 January 2014, *European Parliament v. Council of the European Union*, Case C- 658/11, par. 110.

³⁹ On this point, see below, § 3.

⁴⁰ See the letter of 23 March 2009 from the European Commission, DG Justice, Freedom and Security to the President of Migreurop.

Finally, according to Art. 216, para. 2 TFEU, “[a]greements concluded by the Union are binding upon the institutions of the Union and on its [MSs],” and EURAs certainly fall into the scope of this provision.

3. The Relationship between EURAs and Bilateral Readmission Agreements Concluded by Member States

As we have said earlier, EU MSs can conclude – and have been widely doing so – readmission treaties with third States, provided that no agreement concluded by the EU is already binding that same third State with regard to readmission matters. This is pursuant to the principle of sincere cooperation, in particular to the norm establishing that MSs shall “refrain from any measure which could jeopardize the attainment of the Union’s objectives” (TEU, Art. 4, para. 3). This provision also requires MSs not to conclude such agreements – at least without European Commission prior consultation – with third countries with which that institution was authorized to initiate negotiations on the same subject matter.⁴¹ In other words, and in accordance with the aforementioned principle of shared competence, MSs “shall exercise their competence to the extent that the Union has not exercised its competence. The [MSs] shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.”⁴²

Moreover, all the EURAs contain a specific article – in most cases entitled “Relation to bilateral readmission agreements or arrangements of Member States” – that stipulates that the provisions of the readmission agreement “shall *take precedence* over the provisions of any legally binding instrument on the readmission of persons residing without authorization which [...] have been or may be concluded between individual [MSs] and [the third country concerned], in so far as the provisions of the latter⁴³ are incompatible with those of [the EURA concerned].”⁴⁴ The text of the EURA with Russia is slightly different on this point as it widens its scope of application, by establishing the precedence system insofar as the provisions of other readmission treaties or arrangements “cover issues that are dealt with” by the EURA.⁴⁵ Therefore, in this case it is not necessary that an incompatibility between norms exists for the EURA’s provisions to take precedence over those of other legally binding instruments on readmission.

⁴¹ S. NICOLIN, *Contrasto all’immigrazione irregolare*, cit., p. 210.

⁴² TFEU, Art. 2, para. 2.

⁴³ In the EURA with Cape Verde, the words “of the latter” are replaced by “of any such legally binding instrument” (Art. 20). The EURA with Albania does not specify that the provisions of another readmission bilateral agreement have to be incompatible with those of the EURA for the latter to take precedence (Art. 20).

⁴⁴ See, e.g., Art. 20 EURA with Cape Verde, Art. 21 EURA with Turkey (emphasis added).

⁴⁵ EURA with Russia, Art. 18, para. 2.

Evidence shows that, in practice, both EURAs as well as national bilateral agreements are used by MSs in parallel. Where both a EURA and a bilateral national readmission agreement are in place with a specific third country, most MSs prefer to rely on the EURA.⁴⁶ However, some MSs also reported to prefer the use of national bilateral readmission agreements. According to the 2015 briefing on EURAs prepared by the European Commission, these MSs claim that they do not apply those agreements because there are no corresponding bilateral implementing protocols and/or that they only use EURAs if they facilitate returns.⁴⁷ As to the first claim, one explanation can be the existence of a bilateral readmission agreement that has already been signed with the third country before the EURA entered into force.⁴⁸ However, we will see in the next paragraph that EURAs are directly applicable by MSs and normally do not need any further act, being “self-standing, directly operational instruments which do not necessarily require the conclusion of bilateral implementing protocols with the third country.”⁴⁹ The second argument put forth by MSs could mean that bilateral readmission agreements are generally preferred since they probably envisage swifter and lighter procedures for the return to be carried out, being specifically tailored on the parties involved. Be it as it may, the European Commission has condemned the practice of MSs to use their bilateral arrangements instead of the EURAs, claiming that it can undermine the credibility of the EU Readmission Policy towards the third countries and jeopardize the effectiveness of human rights and international protection guarantees, and has recommended MSs to apply EURAs for all their returns.⁵⁰

For example, Italy has stipulated bilateral readmission treaties,⁵¹ among others, with Albania,⁵² the former Federal Republic of Yugoslavia (then succeeded by the State Union of Serbia and Montenegro)⁵³ and Bosnia and Herzegovina⁵⁴ – that is with third

⁴⁶ European Migration Network, *Synthesis Report for the EMN Focussed Study 2014, Good practices in the return and reintegration of irregular migrants: Member States’ entry bans policy and use of readmission agreements between Member States and third countries. A Study from the European Migration Network 2014*, p. 29.

⁴⁷ European Commission, *EU Readmission Agreements*, cit., p. 4.

⁴⁸ J.-P. CASSARINO, *Readmission Policy in the European Union*, 2010, Committee on Civil Liberties, Justice and Home Affairs, European Parliament, Brussels, p. 19, available at <<https://ssrn.com/abstract=1893005>>.

⁴⁹ *Ibidem*.

⁵⁰ Communication from the Commission to the European Parliament and the Council, *Evaluation of EU Readmission Agreements*, cit., p. 4.

⁵¹ For a review of readmission agreements concluded by Italy, see *Diritto, immigrazione e cittadinanza*, 2016, vol. XVIII, nn. 1-2, in part. p. 373 ff.

⁵² *Accordo tra il Governo della Repubblica Italiana e il Governo della Repubblica d’Albania sulla riammissione delle persone alla frontiera*, Tirana, 18 November 1997 (hereinafter, Italy-Albania RA), in *Gazzetta Ufficiale*, Suppl. Ord. n. 241 of 15 October 1998, entered into force on 1 August 1998.

⁵³ *Accordo tra il Governo della Repubblica Italiana e il Governo Federale della Repubblica Federale di Jugoslavia sulla riammissione delle persone*, Belgrade, 28 January 2003 (hereinafter, Italy-Yugoslavia RA), in *Gazzetta Ufficiale*, Suppl. Ord. n. 153 of 15 September 2005, entered into force on 1 April 2005.

⁵⁴ *Accordo tra il Governo della Repubblica Italiana e il Consiglio dei Ministri della Bosnia Erzegovina sulla riammissione delle persone in situazione irregolare*, Sarajevo, 12 May 2004 (hereinafter, Italy-Bosnia and Herzegovina RA), in *Gazzetta Ufficiale*, Suppl. Ord. n. 179 of 10 August 2007, entered into force on 1 April 2007.

States that have also concluded a RA with the EU – as well as implementing protocols to the respective EURAs with Montenegro⁵⁵ and Serbia.⁵⁶ The abovementioned treaties provide for implementing protocols inserted in annexes to the agreement, in which the specific procedures mentioned in the various articles are thoroughly explained and described.⁵⁷ In all three readmission agreements, in particular, Section I⁵⁸ determines that the requested party shall readmit without particular formalities any persons who do not meet, or no longer meet, the conditions for entry or residence on the territory of the requesting State, provided that the person in question is properly identified and it is proven or presumed that he or she is a citizen of the requested State. On the other hand, Section II⁵⁹ sets up the obligation to readmit, without unnecessary formalities, third country nationals if they do not, or no longer, fulfil regulations of entry or residence on the territory of the requesting State. Both provisions are therefore very similar to those of the EURA concluded with the respective third countries and no incompatibility can be envisaged. Moreover, all three bilateral readmission agreements concluded by Italy contain a non-affected clause, whereby the provisions of the agreement in question are without prejudice to provisions on readmission of other international treaties binding upon the parties, such as the EURAs.⁶⁰ Yet provisions regarding the protection of human rights are regrettably absent in almost every bilateral readmission agreement concluded by Italy.⁶¹ Therefore EURAs afford much more guarantees on this very relevant aspect, which will be further explored hereunder.

4. The Content of the Agreements. Aspects of International Law

⁵⁵ *Protocollo tra il Governo della Repubblica Italiana e il Governo del Montenegro per l'Attuazione dell'Accordo tra la Comunità Europea e la Repubblica del Montenegro sulla riammissione delle persone in posizione irregolare*, Podgorica, 28 July 2014.

⁵⁶ *Protocollo d'attuazione dell'Accordo di riammissione delle persone in posizione irregolare tra i Ministeri degli Interni (in attuazione dell'art. 19 dell'Accordo del 18 settembre 2007 tra la Comunità Europea e la Repubblica di Serbia sulla riammissione delle persone in posizione irregolare)*, Rome, 13 November 2009.

⁵⁷ The implementing protocol (“Protocollo esecutivo”) of the Italy-Albania RA, for instance, provides that the readmission of nationals of the other contracting party is immediately implemented through direct contact between the respective border policy offices (par. A)-1).

⁵⁸ Section II in the Italy-Yugoslavia RA.

⁵⁹ Section III in the Italy-Yugoslavia RA.

⁶⁰ Art. 21 Italy-Bosnia and Herzegovina RA; Art. 12 Italy-Yugoslavia RA; Art. 11 Italy-Albania RA.

⁶¹ The only agreement that mentions the duty to respect international human rights law is the Italy-Albania RA, which includes (but only in the preamble) the obligation to respect international conventions on human rights protection and in particular the rights of migrant workers. See Italy-Albania RA, Recital n. 5. Art. 21, para. 2 of the Italy-Bosnia and Herzegovina RA provides a non-prejudice clause limited to the 1951 Refugee Convention provisions, while the Italy-Yugoslavia RA says nothing about international human rights obligations on the parties. For a survey on readmission agreements concluded by Italy and some critical remarks on human rights’ protection, see M. BORRACCETTI, *L'Italia e i rimpatri: breve ricognizione degli accordi di riammissione*, in *Diritto, immigrazione e cittadinanza*, 2016, vol. XVIII, nn. 1-2, pp. 33-58.

EURAs aim to establish “rapid and effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territories” of the third country concerned or one of the MSs of the EU, “and to facilitate the transit of such persons in a spirit of cooperation”.⁶² They are all divided into eight sections,⁶³ respectively dealing with: 1. Readmission obligations by the third country concerned; 2. Readmission obligations by the EU; 3. Readmission procedure; 4. Transit operations; 5. Costs; 6. Non-affected clause and data protection; 7. Implementation and application; and 8. Final provisions.

Among the most important provisions included in the first two sections, we should mention those requiring the third State or the EU to readmit, upon application by the counterpart “and without further formalities,” all persons who do not, or no longer, fulfil the conditions in force for entry into, presence in, or residence on, the territory of the requesting party, provided that it is proved, or may be validly assumed on the basis of *prima facie* evidence furnished, that they are nationals of the requested State.⁶⁴ The EURAs concluded with Russia, Ukraine and Turkey slightly differ on this point, providing specific indications as to the evidence regarding nationality,⁶⁵ while the readmission agreement with Pakistan requires that the persons to be readmitted hold a valid visa or residence authorization issued by the requested State or entered the territory of the requesting State unlawfully.⁶⁶ Readmission obligations on both parties also apply with reference to third-country nationals and stateless persons under the same conditions seen before, provided that such persons possess a valid link with the requesting State (hold a valid visa or residence permit/authorization or illegally entered the territory of the requesting State after having stayed on, or transited through, the territory of the requested State), subject to some exceptions.⁶⁷ Again, the EURAs concluded with Russia, Ukraine and Turkey are more detailed since they contain specific provisions establishing the means of evidence regarding third-country nationals and stateless persons.⁶⁸

In the light of the above, the main condition for the readmission procedure to take place in accordance to all the EURAs is the illegality, or at least the non-compliance with the applicable law of the requesting State, of the entry, presence or residence of the individual to be readmitted. Another important aspect in the case of readmission of one State’s nationals is the proof of the concerned person’s nationality of one of either of the two parties to the EURA or, in the case of readmission of third-country nationals and

⁶² See the preambles of all the EURAs, with the only exception of the readmission agreement with Turkey, in which the word “swift” in place of “rapid” is used.

⁶³ With the exceptions of the EURAs with Pakistan and Ukraine, that only have seven sections, due to the merger into one of the two sections regarding the readmission obligations of the parties.

⁶⁴ Art. 2, para. 1, EURAs with Montenegro, Moldova, Bosnia and Herzegovina, Cape Verde, Georgia, Hong Kong, Macao, Macedonia, Sri Lanka, Serbia and Albania; art. 3, para. 1, EURAs with Azerbaijan and Armenia.

⁶⁵ Art. 9 EURAs with Turkey and Russia; art. 6 EURA with Ukraine.

⁶⁶ Art. 3, para. 1 EURA with Pakistan.

⁶⁷ See, e.g., Art. 3, para. 1, EURA with Russia.

⁶⁸ Art. 10 EURAs with Russia and Turkey; Art. 7 EURA with Ukraine.

stateless persons, the proof of one of a series of conditions, which vary from one EURA to another. Those different conditions indeed work as fundamental linkages between the individual to be readmitted and the requested State, and upon their existence the readmission is fully dependent. Precisely due to the relevance of this aspect, all the EURAs have an annex listing the documents whose presentation is considered as proof of (*prima facie*) nationality and those which are considered as proof of the conditions for the readmission of third-country and stateless persons.

As to the readmission procedure, the competent authority of the requesting State shall submit an application, to which the requested party shall reply in writing. The time limits for the requesting State to submit the application for readmission to the competent authority of the requested States vary, ranging from a maximum of one year,⁶⁹ to nine⁷⁰ or six months,⁷¹ and they are usually calculated from the date the requesting State's competent authority has gained knowledge of the unlawful presence of a third-country national or stateless person. Many EURAs envisage an accelerated procedure, whereby the requesting State may submit a readmission application within two days⁷² following the apprehension in its border region of the individual concerned, provided that he or she came directly from the territory of the requested State.⁷³ The time limits regarding the reply to the application in cases other than those regulated by the accelerated procedure are also quite heterogeneous,⁷⁴ while all the EURAs establish that the transfer of the person concerned should take place with undue delay and, at the most, within three months. Furthermore, all the EURAs regulate the transfer modalities, including what modes of transportation shall be used, and many of them provide for the eventuality that the requesting State takes back any person whose readmission requirements are not (anymore) met.⁷⁵

Leaving aside the sections on transit operations and costs, which do not interest us here, we shall now focus on the non-affected clauses⁷⁶ that are included in all the EURAs. These are very important provisions from a legal perspective, since they establish that the readmission agreement in question “shall be without prejudice to the

⁶⁹ Art. 8, para. 1, EURAs with Pakistan and Ukraine and Art. 10, para. 1, EURAs with Albania, Montenegro, Bosnia and Herzegovina, Cape Verde, Hong Kong, Macao, Macedonia, Sri Lanka and Serbia.

⁷⁰ EURA with Armenia (Art. 11, para. 1).

⁷¹ EURAs with Russia (Art. 11, para. 1); Turkey (Art. 11, para. 1); Azerbaijan (Art. 11, para. 1); Georgia (Art. 10, para. 1) and Moldova (Art. 10, para. 1).

⁷² Five days are granted by the EURA with Turkey (Art. 7, para. 4).

⁷³ Art. 7, para. 3, EURAs with Azerbaijan and Armenia; Art. 6, para. 3, EURAs with Russia, Moldova, Serbia, Georgia and Macedonia; Art. 6, para. 5, EURA with Cape Verde.

⁷⁴ 25 days EURAs with Turkey and Russia; 15 days EURA with Azerbaijan; 14 days EURA with Macedonia; 12 days EURAs with Armenia and Georgia; 11 days EURA with Moldova; 10 days EURA with Serbia; 8 days EURA with Cape Verde.

⁷⁵ The only EURAs that do not regulate the readmission in error are those with Sri Lanka, Hong Kong, Macao and Russia.

⁷⁶ This is the heading used in most of the EURAs. In some cases, another heading is employed – such as “Relation to other international obligations” in the EURAs with Russia, Armenia and Azerbaijan (Arts. 18), “Consistency with other legal obligations” in the EURA with Pakistan (Art. 15) and “Without prejudice clause” in the EURA with Cape Verde (Art. 17). However, the content of the norm is similar.

rights, obligations and responsibilities of the EU [Community], the [MSs] and [the third State concerned] arising from International Law.” This formula replicates, although more in detail, the one used in the preambles of the same agreements. Importantly, many non-affected clauses – in particular starting with the 2005 EURA with Albania⁷⁷ – specify the conventions imposing rights, obligations and responsibilities that shall not be affected by the implementation of the EURA in question,⁷⁸ while the others just refer to applicable international law in general⁷⁹ or to the conventions binding the parties, naming them only in the preamble.⁸⁰ For example, the agreement with Russia – which is one of the most lengthy and detailed – mentions the 1951 Convention on the Status of Refugees and the related Protocol, the 1950 European Convention on Human Rights, the 1984 Convention against Torture, international treaties on extradition and transit as well as any other treaty regarding the readmission of foreign nationals, such as the 1944 Convention on International Civil Aviation.⁸¹ Other EURAs also refer to the 1955 European Convention on Establishment⁸² and international conventions on determining the State responsible for examining applications for asylum.⁸³

As aptly noted, the inclusion in the text of EURAs of specific obligations referring to the protection of human rights presents several advantages: first, it clearly determines the conventional source of obligations for the contracting parties, especially for the third country in question, which may not be bound by the same legally binding instruments on human rights as the EU; second, it increases legal certainty for both governments involved; and lastly, it facilitates the possible use of Art. 60, para. 1 of the Vienna Convention on the Law of Treaties, according to which “a material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.”⁸⁴

Moreover, the EURAs concluded with Azerbaijan and Armenia in 2014 and 2013 respectively include a provision – entitled “Fundamental Principles” – which imposes on the contracting parties to “ensure respect for human rights and for the obligations and responsibilities following from relevant international instruments applicable to [them],⁸⁵” with particular reference to the 1948 Universal Declaration of Human Rights; the 1950 European Convention on Human Rights and Fundamental Freedoms and its

⁷⁷ With the remarkable exception of the 2009 EURA with Pakistan, which simply provides that the agreement “shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Pakistan arising from or under international law, and international treaties to which they are Parties.” (Art. 15, para. 1). It should be pointed out that Pakistan is not party, among others, to the 1951 Convention on the Status of Refugees.

⁷⁸ See, e.g., the EURAs with Russia, Turkey, Bosnia and Herzegovina, Georgia, Cape Verde, Serbia, Macedonia, Moldova, Montenegro and Albania.

⁷⁹ E.g., Art. 16, para. 1 EURA with Hong Kong.

⁸⁰ E.g., fifth recital and Art. 14, para. 1 EURA with Ukraine.

⁸¹ EURA with Russia, Art. 18, para. 1.

⁸² EURA with Turkey, Art. 18, para. 1.

⁸³ E.g., EURA with Cape Verde, Art. 17, para. 1.

⁸⁴ M. GIUFFRÉ, *The European Union readmission policy after Lisbon*, in *Interdisciplinary Political Studies*, Vol. 1, February 2011, p. 17.

⁸⁵ EURAs with Azerbaijan and Armenia, Art. 2.

Protocols; the 1966 International Covenant on Civil and Political Rights; the 1984 UN Convention Against Torture; the 1951 Geneva Convention relating to the Status of Refugees and its Protocol of 1967. The norm partially replicates the content of the ensuing non-affection clause, with the difference that it specifically deals with human rights obligations.

Despite these provisions, some authors believe that the protection afforded against possible human rights violations is insufficient or at least that some issues could arise.⁸⁶ We think that those concerns are justified,⁸⁷ if one considers that some of the third countries bound by EURAs have difficulties in ensuring the respect of fundamental rights within their borders. In particular, the most general non-affection clauses included in several EURAs seem too weak and likely to leave gaps as to human rights protection, because there is no meaningful way to ensure that people with protection claims will be properly guaranteed in their implementation in the requested State.⁸⁸

One of the most relevant norms emerging in such a scenario is the obligation of *non-refoulement*, according to which States are precluded from expelling or returning an individual to territories where his or her life or freedom would be threatened or where (s)he could be tortured or treated in a degrading or inhumane manner. The importance of the abovementioned obligation was also stressed by the European Commission in the 2011 communication on the evaluation of EURAs, when it stated that the various conventions on human rights binding all MSs should “guarantee that no person may be removed from any MS if it would be against the principle of *non-refoulement* if in the recipient country, the person could be subject to torture or to inhumane or degrading treatment or punishment” and that “[i]n such cases no readmission procedure can be initiated.”⁸⁹ Furthermore, the aforementioned Return Directive provides for the respect of *non-refoulement* at several points.⁹⁰ In this regard, a safeguard clause is included in all the EURAs, providing that the transit of a third-country national or stateless person may be refused if the individual, among other things, “runs the real risk of being subjected to torture, to inhuman or degrading treatment or punishment, or to the death penalty or of being persecuted because of his or her race, religion, nationality,

⁸⁶ C. BILLET, *EC Readmission Agreements: A Prime Instrument of the External Dimension of the EU's Fight against Irregular Immigration. An Assessment after Ten Years of Practice*, in *European Journal of Migration and Law*, 2010, p. 72 ff.; I. OTTAVIANO, *Gli accordi di riammissione dell'UE*, cit., p. 115 ff.

⁸⁷ The problem of irregular migrants' human rights protection is perceived also by international entities other than EU institutions. See, *inter alia*, Council of Europe, Parliamentary Assembly, *Readmission agreements: a mechanism for returning irregular migrants*, Doc. 12168, 16 March 2010, in part. paras. 6 and 7 of Draft Resolution.

⁸⁸ See S. CARRERA, *Implementation of EU Readmission Agreements. Identity Determination Dilemmas and the Blurring of Rights*, Brussels, 2016, p. 55.

⁸⁹ Communication from the Commission to the European Parliament and the Council, *Evaluation of EU Readmission Agreements*, cit., p. 11

⁹⁰ Directive 2008/115/EC of the European Parliament and of the Council, *on common standards and procedures in Member States for returning illegally staying third-country nationals*, cit., recital n. 8 and Arts. 4, para. 4(b), 5 and 9, para. 1(a).

membership of a particular social group or political conviction in the State of destination or another State of transit.”⁹¹

In any case, readmission – and the accelerated procedure in particular – is quite challenging as regards the respect of this principle, as it may be very difficult for the requesting State to ascertain (in a proper manner) whether the individual being transferred will be at risk of maltreatment, torture or whatsoever once on the territory of the requested State.⁹² Furthermore, irregular migrants who are returned to a country which is not their country of origin might risk to be subject to chain *refoulement* and therefore be shuttled back to their country of origin without having had the possibility to submit an asylum application or having had the asylum claim reviewed in any of the countries through which they pass, even more so in the case of accelerated procedures at borders.

Of little help seems to be the setting up of a joint readmission committee (JRC), established by all the EURAs. This body is composed by representatives of both parties and should have the task, among others, “to monitor the application” of the EURA in question, probably including the possibility for the EU to raise some specific problems regarding the violation of the readmitted persons’ rights by the third country concerned.⁹³ Notwithstanding this, the task of the committee is not specifically that of safeguarding human rights (at least not in a systematic way) and, in any case, it has no executive authority in this respect so that its powers are, as the European Parliament recognized in the past, “visibly wanting and intrinsically skewed.”⁹⁴ In this regard, in 2011 the European Commission rightly recommended the setting up of a “post-return” monitoring mechanism in the countries of return with the aim of gathering information about the situation of the persons readmitted and reporting them to the JRC,⁹⁵ but regrettably there’s no sign of such a mechanism in the post-2011 EURAs.

In light of the existing risk of violation of the readmitted persons’ rights and following a specific recommendation from the European Commission,⁹⁶ the EURAs concluded with Armenia and Azerbaijan include a suspension clause. According to that, each contracting party may, “by officially notifying the other Contracting Party and after prior consultation of the [JRC] completely or partly, temporarily suspend the implementation of [the EURA],” but both clauses do not specifically mention persistent

⁹¹ See, e.g., Art. 14, para. 3(a) EURA with Turkey.

⁹² It should be noted that many MSs usually conduct assessments of the risk of *refoulement* during the asylum and return procedures, leading to delays in the effective return of irregularly staying third-country nationals. On this point, see European Migration Network (2017), *The effectiveness of return in EU Member States: challenges and good practices linked to EU rules and standards* – Synthesis Report. Brussels: European Migration Network, pp. 52-53.

⁹³ The European Commission stated that “JRCs should play, to the extent possible, an important role in [ensuring that the human rights of returnees are fully respected at all times].” See *ibidem*.

⁹⁴ Report on the proposal for a Council decision concerning the conclusion of the Agreement between the European Community and the Russian Federation on readmission of 6 February 2007, COM(2006)0191 – C6-0168/2006 – 2006/0064(CNS), Explanatory Statement, par. 3.2.2.

⁹⁵ Communication from the Commission to the European Parliament and the Council, *Evaluation of EU Readmission Agreements*, cit., pp. 13-14.

⁹⁶ *Ivi*, pp. 12-13.

human rights violations as a possible reason for suspension.⁹⁷ Actually, the EURAs concluded with former Yugoslavian countries prior to the issuance of the evaluating document by the European Commission also included such a provision, but the reasons for suspension were limited to security, protection of public order and public health issues,⁹⁸ therefore with no specific reference to human rights violations. Interestingly, the EURA with Turkey does not provide any suspension clause, despite the fact that it was concluded after the European Commission's recommendations.

Finally, mention should be made of the provisions regarding the implementing protocols, which can be found in the Section on "Implementation and Application" of all the EURAs. These protocols are drawn up jointly by the requested and the requesting States, and usually contain rules on the designation of the competent authorities, the border crossing points and the exchange of contact points; the modalities for returns under the accelerated procedure; the conditions for escorted transfers. Some EURAs, such as the ones with Russia and Turkey, provide for more detailed protocols (e.g., they also cover rules on the languages in communication⁹⁹ and the procedure for interviews.¹⁰⁰) Under a practical point of view, the implementing protocols are quite relevant, since the functioning of several EURAs seem to be dependent upon them.¹⁰¹ In other cases, especially in the less recent agreements, the implementing protocols are declared optional¹⁰² or it is clearly stated that their drafting is without prejudice to the direct applicability of the EURA in question.¹⁰³ However, from an international law perspective, EURAs enter into force and are binding on the parties – and therefore they do produce rights and obligations on the latter – even when the relative implementing protocols have not been drawn up yet.¹⁰⁴ The questions whether EURAs are directly applicable and capable of producing direct effects once introduced into national legal

⁹⁷ See, e.g. Art. 23, para. 6 EURA with Armenia and Art. 23, para. 5 EURA with Azerbaijan.

⁹⁸ See Art. 22, para. 4 EURAs with Serbia, Macedonia and Montenegro.

⁹⁹ EURA with Russia, Art. 20, para. 1(a).

¹⁰⁰ EURA with Turkey, Art. 20, para. 1(e).

¹⁰¹ This is not explicitly stated, but the agreements concerned say that the parties *shall* draw up an implementing protocol, maybe implying that the protocol is necessary (and mandatory) for the EURA to take effect. See, e.g., Art. 20 EURA with Russia and Arts. 19, para. 1 EURAs with Georgia and Macedonia.

¹⁰² See Art. 19, para. 1 EURA with Albania; Arts. 18, para. 1 EURAs with Sri Lanka, Macao and Hong Kong; Art. 17, para. 1 EURA with Pakistan and Art. 16, para. 1 EURA with Ukraine, all saying that the parties *may* draw up an implementing protocol.

¹⁰³ See Arts. 20, para. 1 EURAs with Armenia and Azerbaijan.

¹⁰⁴ All the EURAs enter into force "on the first day of the second month following the date on which the Contracting Parties notify each other that the procedures [of ratification or approval] have been completed." However, the EURAs concluded with Russia and Turkey establish further conditions: both agreements provide that the obligations on the readmission of third countries nationals and third persons by the contracting parties become applicable three years after the date on which the parties notify each other that the ratification or approval procedures have been completed. See EURA with Russia, Art. 23, para. 3 and EURA with Turkey, Art. 24, para. 3. Furthermore, the EURA with Russia stipulates that if the notification between the contracting parties takes place before the entry into force of the agreement between Russia and the European Community on the facilitation of the issuance of visas to citizens of both Parties, the EURA enters into force on the same date of the latter Agreement. EURA with Russia, Art. 23, para. 2.

systems are different matters,¹⁰⁵ which we cannot examine in any depth here.¹⁰⁶ Suffice it to say that the norms included in these agreements (at least the main ones), in our opinion, are meant to be self-executing, being sufficiently complete in their material content, so that no further implementing activity by the State should be necessary.¹⁰⁷

5. An Empirical Evaluation of EURAs: Some Statistics on Enforcement of Immigration Legislation

In this paragraph we will have a look to some relevant statistics of 2017 related to the enforcement of EU immigration legislation,¹⁰⁸ with a particular focus on third countries that have concluded a EURA. Although they do not necessarily and faithfully reflect the actual implementation of those agreements, they can help to understand whether and how much EURAs have been useful in tackling irregular immigration. Many factors indeed should be taken into consideration when evaluating the functioning of a readmission agreement,¹⁰⁹ but also due to the fact that specific statistics on returns implemented under EURAs are difficult to find, our analysis will mainly focus on the total number of returns carried out.

At the outset, it should be pointed out that Albania was the top one of citizenships of non-EU citizens found to be illegally present in the EU,¹¹⁰ followed by Ukraine¹¹¹ and Pakistan.¹¹² Individuals illegally staying in the EU also came from Serbia, Turkey, Russia, Georgia and Moldova, albeit in smaller numbers. The total number of non-EU citizens ordered to leave EU territories in 2017 was a bit more than half a million,¹¹³ slightly rising compared to 2016 (493,785), but less than the orders to leave registered

¹⁰⁵ According to the European Court of Justice, “[a] provision in an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure.” Court of Justice, judgment of 30 September 1987, *Meryem Demirel v. Stadt Schwäbisch Gmünd*, case C-105/14, par. 14.

¹⁰⁶ On this interesting point, see the recent contribution by N. GHAZARYAN, *Who Are the ‘Gatekeepers’?: In Continuation of the Debate on the Direct Applicability and the Direct Effect of EU International Agreements*, in *Yearbook of European Law*, 2018, vol. 37, pp. 27-74.

¹⁰⁷ This is what also emerges from the tenor of the texts of all the EURAs, in which their direct applicability, if not expressly declared, seems to be implicit, regardless of the drafting of implementing protocols. However, this assertion can be subject to interpretation, depending on which State is involved in the implementation of a certain EURA.

¹⁰⁸ The data emanate from EUROSTAT and are to a great extent available at <https://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_enforcement_of_immigration_legislation#Non-EU_citizens_ordered_to_leave_the_EU>. Data for 2018 will be available in June 2019.

¹⁰⁹ Such as: which MS and third country are involved, whether they have an already existing bilateral readmission agreement in place, what are the numbers of immigrants flowing between those two countries, etc.

¹¹⁰ 40,025 persons.

¹¹¹ 33,795 persons.

¹¹² 33,580 persons.

¹¹³ 516,115 persons.

in 2015 (533,395). However, the increase in the number of return decisions was not matched by a similar increase in the number of actually implemented returns. On the contrary, the information provided by the MSs clearly indicates that the number of implemented returns in 2017 decreased by almost 20%.¹¹⁴ This translates into a considerable decrease in the rate of return throughout the EU from 45.8% in 2016 to merely 36.6% in 2017.¹¹⁵ More precisely, in 2017 almost 190,000 non-EU citizens who had been issued with an order to leave the territories of an EU MS were returned outside of the EU.¹¹⁶ If one compares the data on the numbers of orders to leave EU territories and the actual returns effected, one can see that almost the total amount of Albanians¹¹⁷ and Serbians¹¹⁸ that were ordered to leave have actually returned to their country of origin, while a smaller percentage is for Ukrainians¹¹⁹ and Russians.¹²⁰ Alarming figures can be registered for Pakistan, accounting for about only 23% of returns occurred.¹²¹ As regards the country of issuance of the readmission request, data show that, in 2017, the vast majority of people returned under a EURA were illegally staying in Italy,¹²² Hungary¹²³ and Poland¹²⁴ and, to a lesser extent, in Luxembourg,¹²⁵ Bulgaria¹²⁶ and Slovakia.¹²⁷

Although it can't be said that all the returns were implemented under a EURA, in all likelihood these data show that EURAs with Albania, Serbia and – to a lesser extent – Russia and Ukraine, are apparently working well, while the same cannot be said for the EURA with Pakistan.¹²⁸

¹¹⁴ From 226,150 in 2016 to 188,920 in 2017.

¹¹⁵ Communication from the Commission to the European Parliament, the European Council and the Council, *Progress Report on the Implementation of the European Agenda on Migration*, of 16 May 2018, COM(2018) 301 final, pp. 14-15.

¹¹⁶ Albanians again topped the list with little more than 30,000 individuals returned, maintaining their top position from 2016. The next highest numbers of returns were recorded for Ukrainians (25,775), Serbians, Pakistanis and Russians, the last three counting all for little more than 5,000 returns. A comparison between 2016 and 2017 shows that the largest increases in absolute terms were in the total number of citizens returned to Ukraine, Moldova and Georgia – that is to three countries bound by EURAs – while the largest reduction was in the number of citizens returned to Albania.

¹¹⁷ 31,180 out of 32,395.

¹¹⁸ 8,065 out of 8,155.

¹¹⁹ 25,775 returns out of 32,795 orders, corresponding to 78%.

¹²⁰ 6,640 returns out of 11,670 orders, corresponding to 57%.

¹²¹ 6,840 returns against 29,650 orders to leave the EU.

¹²² 1,860 returns.

¹²³ 665 returns.

¹²⁴ 590 returns.

¹²⁵ 365 returns.

¹²⁶ 315 returns.

¹²⁷ 185 returns.

¹²⁸ This can be (also) due to the troubled history of this EURA, that has recently brought to the quasi-suspension of the agreement. Five years after its entry into force, in fact, the Pakistani authorities reportedly announced the unilateral suspension in the application of the EURA, arguing that some deportations were unfounded. In Greece, in particular, a blockage was identified, resulting from disputes concerning documentation. Many attempts by the EU to clarify the issue and to accommodate Pakistani position have followed. On this point, see S. CARRERA, *Implementation of EU Readmission Agreements*, cit., pp. 16-18.

6. Concluding Remarks

There is no doubt that readmission has turned out to be an underlying component of EU immigration and asylum policy and that EURAs represent important legally binding instruments for tackling irregular immigration. Their content is in most cases very much detailed and accurate, leaving almost no gap as to the conditions and procedures for the readmission to be implemented. We have also seen that MSs normally execute returns of illegally staying individuals under EURAs, albeit a certain tendency to rely on bilateral arrangements still exists. Furthermore, the EU was able to conclude readmission agreements with important countries of origin of illegal immigrants such as Russia and, in more recent times, Turkey. From the first EURA concluded with Honk Kong, levels of sophistication and detail have progressively increased (the growing attention towards the respect of human rights standards has probably been the most prominent development), although the structure and the basic content of the agreement has remained mostly unchanged. However, in our opinion two major issues regarding EURAs can still be identified.

The first has a purely legal nature and consists in the protection of human rights of readmitted persons, with particular reference to the respect of *non-refoulement* for third-country nationals. In this regard, readmission policy perfectly mirrors the nature of the AFSJ, by revealing the complexity in striking a balance between its core principles and, meanwhile, ensuring the full protection of fundamental human rights. We believe that difficulties in this case are not due to any normative shortage: we should recall that – apart from the (albeit not always exhaustive) non-affectation clauses included in the EURAs – human rights obligations binding the EU and its MSs also stem from EU primary law¹²⁹ as general principles of the Union’s law (TEU, Art. 6, para. 3 and EU Charter of Fundamental Rights), which prevail on conventional provisions (such as those included in the EURAs) and affect their interpretation, steering their content towards human rights protection.¹³⁰ Moreover, human rights obligations, binding MSs and third countries as well, derive from applicable customary and conventional international law too.

On the contrary, we think that human rights concerns are dependent upon the very implementing scenario underneath the EURAs, where the destiny of individuals returned to third countries eludes EU legal control, which can only get to a certain extent. In other words, it is practically impossible for the EU to monitor what happens to third country nationals after their readmissions. In this regard, we believe that the

¹²⁹ With specific regard to the respect of fundamental rights in the implementation of the AFSJ see also TFEU, Art. 67, para. 1.

¹³⁰ “[T]he requirements flowing from the protection of general principles recognised in the Community legal order, which include fundamental rights, are also binding on [MSs] when they implement Community rules, and that consequently they are bound, as far as possible, to apply the rules in accordance with those requirements”. Court of Justice, Grand Chamber, judgment of 27 June 2006, *European Parliament v. Council of the European Union*, case C- 540/03, par. 105.

setting up of a monitoring mechanism in the countries of return – possibly implemented by a supervisory body composed of independent experts – with the task of gathering information about the situation of persons readmitted under the EURAs, including in particular the respect for their human rights, and working as a sort of fact-finding commission reporting directly to the European institutions and/or to the States concerned, is all the more necessary and should be included in all future readmission agreements.¹³¹

The second problem has a more geopolitical nature and is the fact that most of Sub-Saharan and, more in general, African and Middle Eastern countries – representing two of the main geographical areas of origin of asylum seekers in the EU – have not concluded any EURAs yet. In particular, Syria, Iraq, Afghanistan, Nigeria and Pakistan are the top countries by origin of immigrants into EU territories¹³² and – except for Pakistan – none of these is legally bound by any obligation on readmissions towards the EU. Furthermore, asylum seekers from Eritrea, Bangladesh, Somalia, Iran and a number of Sub-Saharan countries are among the top ten countries of origin of those who have been applying for asylum in the EU since 2014. If one considers, for example, immigration to Italy, the vast majority of people come from Sub-Saharan countries, but only one of the top ten nationalities of immigrants (Nigeria) is covered by a legally binding instrument.¹³³ In short, the EURAs concluded so far bind third countries from which only a small percentage on the total number of illegal migrants into the EU come from. In the absence of any other bilateral arrangement between the MS concerned and the third State of origin, the return of illegally staying individuals becomes extremely complicated.

ABSTRACT: The EU has concluded so far seventeen readmission agreements with third countries with the aim of combating irregular immigration into its territories, as part of the strategic guidelines of the EU Area of Freedom, Security and Justice. Since the first EURA concluded with Hong Kong, some developments in the drafting of these agreements have occurred, and in particular a greater attention for respect of readmitted persons' rights can be identified. These agreements seem to be working quite well and their objective to regulate irregular immigration, according to statistics, is being met. However, the most relevant third States in terms of origin of immigrants are still not bound by any EURA and human rights issues – notably related to the respect of the principle of *non-refoulement* – are likely to arise.

¹³¹ Under this assumption, the JRC should have a purely technical role, whereas the “supervisory body” should deal with legal issues related to the implementation of the EURA in question.

¹³² For example, between 2014 and 2017, a total of more than 919,000 Syrians applied for asylum in the EU.

¹³³ *Accordo tra il Governo della Repubblica Italiana e il Governo della Repubblica Federale di Nigeria in materia migratoria*, Rome, 12 September 2000, in *Gazzetta Ufficiale*, Suppl. Ord. n. 183 of 4 August 2011, entered into force on 12 June 2011.

KEYWORDS: EU readmission agreements – irregular immigration – human rights protection – non-affectation clause – principle of *non-refoulement*.