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**BAHÇEŞEHİR UNIVERSITY**

**ANALYSIS OF THE READMISSION AGREEMENT**  
**BETWEEN EUROPEAN UNION AND TURKEY**

**Master's Thesis**

**EMİN TOPCU**

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**THE REPUBLIC OF TURKEY**  
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**Thesis Advisor: ASSIST. PROF. DR. CENGİZ AKTAR**

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Bu tezin Yüksek Lisans tezi olarak gerekli şartları yerine getirmiş olduğu Enstitümüz tarafından onaylanmıştır.

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**İmzalar**

  
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## **ABSTRACT**

### **ANALYSIS OF THE READMISSION AGREEMENT BETWEEN EUROPEAN UNION AND TURKEY**

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Nowadays, main topics of internal security problems of EU are international terrorism, organize crime and illegal immigration. The EU believed it necessary to balance two conflicting needs: distancing itself from an outside perceived as insecure and strongly controlling its external border lines versus establishing closer relationships with the neighboring non-EU countries in order to stabilize its surrounding world. It is a predicament that made the EU develops a new security approach understood as the explicit attempt to balance between internal security concerns and external stabilization needs.

With widening, one of the most important problems that the European Union is facing is illegal immigration issue. The factors of European Union such as “freedom, security and justice area” quality, economic wealth level etc. costs European Union 500,000 foreign people enter by illegal ways.

The EU prioritizes two methods while fighting against illegal immigration; distancing illegal immigrants from its borders and the re-admission of these individuals to their countries of origin. In this sense, the EU signs re-admission agreements with geographically close countries which seem like a source for refugees and asylum seekers. With these agreements, any illegal immigrant caught inside EU borders can be sent back to its country of origin. The most difficult issue to agree upon is the readmission of third country nationals and stateless persons. The contestable points lie in approving the travel route of those migrants and providing evidence of the fact that they had transited the country before entering the EU’s territory.

The main advantage of readmission agreements from the EC’s points of views is that the Community gets hold of a legal instrument in order to force transit countries to readmit not only their own but also third country nationals. However, from the point of

view of non-EC countries, EC readmission agreements as such only bring about negative consequences, which in the end might put their economic, social and political stability at risk.

Also, Turkey is a transit state position for Middle East and Asian states where economic and political issues are worse. Turkey is a transit point with respect to illegal migration current, too. Because of being a transit state position, the EU wants Turkey to carry out some arrangements. On the other hand, approach of EU's illegal immigration policy influenced legal and administrative arrangements of Turkey that is in membership process.

The problem of the readmission agreement between EU and Turkey is the main theme of this dissertation. This paper has two chapters.

**Keywords:** Readmission Policy; European Neighborhood Policy; Visa Facilitation; Return Policy; Transit Countries; Irregular Migration; Illegal Migration.

## ÖZET

### AVRUPA BİRLİĞİ VE TÜRKİYE ARASINDAKİ GERİ KABUL ANLASMASININ ANALİZİ

Topcu, Emin

Avrupa Kamu Hukuku ve Entegrasyonu

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Günümüzde, AB nin iç güvenlik sorunlarının başlıcalarını terörizm, organize suçlar ve yasadışı göç oluşturmaktadır. AB'de dışarıda güvensiz olarak algılananla arasında mesafe koymak ve dış sınırların sıkı kontrolü ile dünyadaki istikrar için AB üyesi olmayan ülkelerle daha yakın ilişkiler kurulması ihtiyacını dengelemenin gerekli olduğuna inanılır. Ancak AB'nin iç güvenlik kaygıları ve dış istikrar ihtiyaçları arasında denge olarak anlaşılan yeni güvenlik yaklaşımı bir çıkmaz içerisinde.

Avrupa Birliği'nin genişlemesiyle beraber karşı karşıya kalacağı en önemli sorunlardan biri de yasa dışı göç olgusudur. AB'nin 'özgürlük, güvenlik ve adalet alanı' niteliği, ekonomik refah seviyesinin iyi bir durumda olması gibi faktörler, AB'ne yılda 500.000 civarında yabancıların yasa dışı olarak girmesine neden olmaktadır.

AB yasadışı göçe karşı mücadele ederken iki öncelikli yöntemi vardır; bunlar kaçak göçmenleri sınırlarından uzak tutmak ve bu kişilerin kendi ülkelerine geri göndermektir. Bu anlamda, AB coğrafi olarak AB'ne Mülteci ve sığınmacılar için kaynak olan ülkelerle Geri Kabul anlaşmaları imzalamaktadır. Bu anlaşmalar ile, AB sınırlarında yakalanan herhangi bir yasadışı göçmen geri ülkesine gönderilebilmektedir. Bu konunun en sıkıntılı yanı ise üçüncü ülke vatandaşlarının ve vatansız kişilerin geri gönderilmesidir. İtiraz noktaları o göçmenlerin seyahat güzergahlarının yanlış olması ve AB topraklarına girmeden önce transit geçtiği ülke hakkında kanıt sıkıntısı olmasıdır.

AB için Geri Kabul anlaşmalarının asıl avantajı, transit ülkelerin sadece kendi vatandaşını değil aynı zamanda üçüncü ülke vatandaşlarını da geri kabul edeceğini taahhüt eden yasal bir araç olmasıdır. Ancak, AB üyesi olmayan ülkeler açısından ise; AB Geri Kabul anlaşmalarının sadece olumsuz sonuçlar doğurup; ekonomik, sosyal ve siyasi olarak istikrarına risk getirebilir.



Ayrıca, Türkiye'ye komşu olan ve siyasi açıdan çeşitli sorunlar yaşayan, ekonomik refah seviyesi düşük olan Orta Doğu ve Asya Ülkeleri için Türkiye, transit bir ülke konumundadır. Yasadışı göç akımları açısından da Türkiye bir geçiş noktasıdır. Bundan dolayı AB Türkiyeden bazı düzenlemeler yapmasını istemektedir. Diğer taraftan AB'nin yasadışı göç politikası yaklaşımını üyelik sürecinde bulunan Türkiyenin yasal ve idari düzenlemeler yapmasını gerektirmektedir.

AB ile Türkiye arasındaki Geri Kabul anlaşması problemi bu tezin ana temasıdır. Bu çalışma iki bölümden oluşmaktadır.

**Anahtar Kelimeler:** Geri kabul Politikası; Avrupa Komşuluk Politikası; Vize kolaylığı; Transit Ülkeler; Düzensiz Göç; İlegal Göç.

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## ABBREVIATIONS

African, Caribbean and Pacific	: ACP
Article	: Art.
Central and Eastern European	: CEE
Costumes Information Service	: CIS
Directorate General	: DG
European Convention on Human Rights	: ECHR
European Grouping of Cross-border Co-operation	: EGCC
European Neighborhood Policy	: ENP
European Parliament	: EP
European Union	: EU
Federal Republic	: FR
Human Resource Development Foundation	: HRDF
International Organization for Migration	: IOM
International Catholic Migration Commission	: ICMC
Justice Home Affairs	: JHA
Member States	: MS
National Action Plan	: NAP
North Atlantic Treaty Organization	: NATO
Non-governmental Organization	: NGO
Refugee Status Determination	: RSD
Readmission Agreements	: RAs
Schengen Information System	: SIS
Single European Act	: SEA

Single European Market	: SEM
Social Services Child Protection Agency	: SHÇEK
Treaty on the European Communities	: TEC
Turkish Grand National Assembly	: TGNA
Turkish Penal Code	: TPC
United Kingdom	: UK
United Nations	: UN
United Nations Development Program	: UNDP
United Nations High Commissioner for Refugees	: UNHCR

## 1. INTRODUCTION

Up to date, the EU has understood a greater role in dealing with security concerns inside the EU. To be answer nation states decreasing capabilities to deal effectively with problems at the national level, internal policy fields such as migration and asylum have been at least partially transferred to supranational task. One of the issues that receive increasing attention at the supranational level is irregular migration. Every year, an estimated 30 million people cross an international border irregularly, of which, according to Europol, between 400,000 and 500,000 enter the EU. The stock of irregular populace in the EU is currently probable to be around three million (Council of Europe 2003). In recent years, EU countries have come to the conclusion that they are no longer able to properly react to the phenomenon of irregular migration on the domestic level and alternatively require to combine their efforts about return policies on the European level. Thus, in the EU's efforts to establish an 'area of freedom, security and justice'. Values against irregular immigration became an important point.

Readmission agreements are one of the oldest instruments used by Member States to control migratory flows. Indeed, Member States (MS) of European Economic Community (EEC) signed a first generation of readmission agreements in the 1960s in order to cope with irregular movements of persons amongst MS. After the fall of the Berlin wall and the opening of the borders in the east, MS have thus concluded a second generation of bilateral readmission agreements with the Central and Eastern European countries (CEEC's) in order to send back irregular migrants who have come from or passed through these countries. However, this bilateral policy did not have the expected effectiveness in terms of migration controls. Also, it raises serious concerns regarding refugee protection, since the use of readmission agreements has been combined with the 'safe third country' principle, alternatively referred to by European States as 'first country of asylum' or 'safe haven' (www.statewatch.org 2009)

While bilateral agreements are still applied, MS have seized the opportunity of the broader debate on a Common European Asylum and Immigration Policy launched at the Inter-Governmental Conference in 1996 to improve the efficiency of their return policy, and to develop the harmonization process in the field of readmission agreements. At the same time, the EU's role in the outside world has changed. With the Eastern enlargement, new regions and countries became neighbours of the EU. New frameworks of cooperation, such as the Stabilisation and Association Process (SAP) and the European Neighbourhood Policy (ENP) were set in motion to closely affiliate neighbouring states with the EU (Emerson & Noutcheva 2005). The EU tried to assume a greater responsibility in the stabilisation of the neighbourhood and sought to “promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations” (European Security Strategy 2003, p. 8). To find a proper balance with the internal security concerns was a major challenge in the EU's efforts to stabilise the neighborhood. Whereas the EU's foreign and security policy was interested in advancing regional integration and good neighborly relations, the EU justice and home affairs ministers were primarily guided by their interest in keeping problems out and the external border closed.

Since 2001, the Council has justified Community competence in affairs of readmission agreements as a “more cost-effective”(www.statewatch.org, 2002), “extremely useful and efficient instrument in the EU's fight against illegal immigration” (JHA Council Press Release 2002).

This thesis addresses the fact that EU asks Turkey to admit Readmission agreement as it is, each year, mentioned in the report proposed by the EU since 1998. This thesis actually inquires into the reasons why the Readmission agreement was not signed off even though it has been 12 years since this settlement was firstly introduced. Firstly, the definition of Readmission agreement, its range, its actors, and its historical background are introduced. Secondly, this thesis examined the relationship between Turkey and the EU in terms of the



readmission agreement. Next, this study touched upon the reasons why the Readmission agreement was not finalized.

## 2. READMISSION POLICY OF THE EUROPEAN UNION

### 2.1 BASIC TERMS INVOLVED IN READMISSION POLICY

**Readmission:** The transfer by the requesting State and admission by the requested State of persons (own nationals of the requested State, third-country nationals or stateless persons) who have been found illegally entering, being present in or residing in the requesting State. The process in which a third-country national is reintegrated into his or her country of origin.

**Readmission Agreement:** Agreement which addresses procedures for one State to return aliens in an irregular situation to their home State or a State through which they passed *en route* to the State which seeks to return them.

**Requesting State:** The State submitting a readmission application.

**Requested State:** The State to which a readmission application is addressed.

**Irregular Migrants:** Irregularity is defined by national immigration rules, and is not a fixed condition. Irregularity arises in a number of ways. Migrants may enter a country illegally, without valid visas, by avoiding border controls or with false documents. Those who enter legally but overstay their visas, become illegal; this is likely to account for most irregular migration, including those who are trafficked. Migrants may also enter on a non-working visa, then work, and this may make the entry illegal retroactively.

**Illegal Immigration:** Illegal immigration is the movement of people across national borders in a way that violates the immigration laws of the destination country. Illegal immigrants are also known as illegal aliens to differentiate them from legal aliens. Conversely, illegal emigration refers to unlawfully leaving a country.

**Refugee:** Refugee is a person who is in search of a refuge in a country other than his own birth land. This is done in order to get away from persecution, war, terrorism, extreme poverty, famines, and natural disaster. Under the United Nations Convention Relating to the Status of Refugees from 1951, a refugee is a person who (according to the formal definition in article 1A of this Convention), "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country".(www.unhcr.org.au/basicdef 2010). The concept of a refugee was expanded by the Convention's 1967 Protocol and by regional conventions in Africa and Latin America to include persons who had fled war or other violence in their home country.

**Asylum Seeker:** An "asylum seeker" is someone that is running away from a dangerous lifestyle and seeks to live in a country where they will be safe. It is not a person that is seeking a better or more prosperous life! It is someone that has fear of death or injury.

**Stateless Persons:** A stateless person is someone with no citizenship or nationality. It may be because the state that gave their previous nationality has ceased to exist and there is no successor state or their nationality has been repudiated by their own state, effectively making them refugees. People may be stateless also if they are members of a group which is denied citizen status in the country on whose territory they are born, if they are born in disputed territories, if they are born in an area ruled by an entity whose independence is not internationally recognized, or if they are born on territory over which no modern state claims sovereignty.

**Transit:** 'Transit' shall mean the passage of a third country national or a stateless person, through the territory of the Requested State while travelling from the Requesting State to the country of destination.

## **2.2 READMISSION AGREEMENT POLICY**

### **2.2.1 Readmission Agreements**

Readmission agreements are the standard method of ensuring that persons are expelled from Member States individually, or from the EU as a whole. There are two ways in which the EU has become involved with such agreements. Firstly, since the entry into force of the Treaty of Amsterdam in 1999, the European Community has had the power in its own name to enter into such agreements (www.statewatch.org 2003).

Secondly, the EC inserted clauses into a number of its relationship and cooperation agreements since 1995 insisting that the other country readmit its own citizens when any EU Member State asked, and also agree to negotiate a extra readmission treaty with any Member State that wishes dealing with two further issues. These issues were the details of the obligation to readmit citizens and a further obligation to readmit persons who are not citizens of the requested State but who have only passed through that State on their way to the EU.

After the Amsterdam Treaty transferred competences for readmission to the EU member states decided to sign only those Community readmission agreements that provide for the return of not only citizens of contracting states but also third country nationals (Trauner 2008). Such an obligation to readmit third country nationals cannot be reason from international law. When a new norm is widely accepted, it will be integrated into accepted international law.

After 1999, the last policy was updated. Firstly, there is now an obligation to negotiate a supplementary treaty with the complete Community while there is still an obligation to negotiate with individual MS's in the meantime pending an agreement with the EC as a whole. Secondly, the EU policy is now that such clauses are mandatory: it will no longer sign any association or cooperation agreement unless the other side agrees to the standard obligations. (Peers 2003) When EU actors increasingly became aware of the problems in negotiating readmission agreements with transit countries and of the problematic result that readmission agreements involve for them, EU documents began to frequently refer to the

responsibility of each nation state to control its borders efficiently (EU Council 1999). States take responsibility for the failings of their border control systems” (Council of the EU 2001, p. 9). So that readmission agreements function as encouragements for more strict border controls in the transit country.

### **2.2.2 The Area of Readmission Agreements**

In its attempt to develop return mechanisms for all categories of irregular migrants, the 2002 Commission Green Paper on a Community Return Policy on Illegal Residents sought “solutions when a direct return to the country of origin is not possible or appropriate” (EC Green Paper 2002). EU as well as Member States return policy is often delayed by the fact that persons to be returned are most of the time undocumented, having lost, either by design or circumstance, any proof of citizenship from their country of origin.

The Commission views Readmission agreements with transit countries as an alternative to repatriation to countries of origin of irregular migrants, whose route, but not their identity, can be established. With readmission agreements in place, nationality may no longer be the decisive factor for return, if transit through a country can be “proved or may be validly assumed” (RA, EC and Algeria, Art. 5).

The Commission Communication on ‘Integrating Migration Issues in the European Union’s relations with third Countries’ reveals how instrumental the Commission believes the inclusion of non-nationals in readmission agreements could be in the EU’s fight against illegal immigration (www.maweng.unblog.fr 2007). The major problem with illegal residents are the lack of identification documents and the corresponding difficulty in establishing his/her nationality, it would often be appropriate to extend that [readmission] obligation to cover also third country nationals (EC Communication 2002, Art. 11).

The EU Council can offer the Commission a readmission agreement negotiation mandate for a specific country based on both origin and transit criteria, such as “the migration pressure exerted by flows of persons from or via third countries”, (EC Conclusion 2002, Art.2i ) the location of a country on the EU’s external frontier (EC Conclusion 2002) or the ambiguous

need for a “geographical balance . . . between the various regions of origin and transit of illegal migration flows” (EC Conclusion 2002, Art.2). For the EC, concluding readmission agreements that engage third countries as both countries of origin and countries of transit to readmit nonnationals would resolve the return dilemma of countless numbers of stateless and undocumented irregular migrants present in the territories of EU Member States and therefore reduce this weight.

In 2001, EU has located greater highlighting in recent years on the EU fight against illegal immigration, the conclusion of EC readmission agreements has risen to the top external relations preference (JHA Council 2002). The Council has elaborated the EU’s commitment to systematically address migration issues through political dialogue, information sharing, and joint monitoring with countries of origin and transit, with the final aim of “*establishing a prevention policy*” (EC Conclusions 2002, p.3). “*Strict obligations on the readmission of illegal immigrants*” underline this goal of the prevention of new illegal arrivals. With the EU’s effort to integrate migration issues into its relations with third countries in mind, the conclusion of readmission agreements with “*all the main transit and origin countries*” would fulfill the Council’s aim for a global reach for its return policy. (EC Conclusions 2002, p.4).

### **2.2.3 Actors of the EC readmission Agreements**

EC Readmission Agreements have three sides: first, the state that requests readmission, second, the state that is requested to readmit, and third, the person to be readmitted (either irregular migrant or rejected asylum seeker). Their interests are very different. While the first two actors decide upon the legal framework of readmission, the third one is its only object (Trauner 2008). The returning state usually refers to the integrity of its asylum system or its migration control system. Although the forced return is expensive, failure to implement the forced return is more costly in the long financial terms. Requested state to readmit may have economic, demographic or social interests in not readmitting its own citizens and even more so third country nationals. The person to be readmitted is faced with the choice between staying in irregularity or returning.

When the Treaty of Amsterdam took effect, readmission questions constitute a segment of those policy issues became part of the *acquis* in the 1st pillar. The authority to conclude readmission agreements on behalf of EU member states was shifted to the European Community. The European Commission received the mandate by member states to negotiate readmission agreements with non-member countries on their behalf. However, not all of the EU members participate in readmission policy. “Readmission makes the Member States and the third States responsible for controlling their borders efficiently” (Council of EU 2002). Since Community readmission agreements are based upon the provision of Title IV of the Treaty Establishing the European Community (TEC), they are not applicable to the UK and Ireland unless these countries opt-in in the manner provided for by the Protocol to the TEC” Also Community readmission agreements will not extend to Denmark by virtue of the Protocol on the position of Denmark. (www.ceps.eu 2009).

#### **2.2.4 Historical Background of Readmission Agreements and Clauses**

The origins of EC readmission agreements shed light on current Commission aims for the inclusion of non-nationals. Daphne highlights the fact that readmission agreements are actually one of the oldest instruments employed by Member States to control migratory flows. (Bouteillet 2003, pp. 359–377). The earliest generation of readmission agreements in the 1950’s and 1960’s addressed irregular movement of persons between EC States in the pre-Schengen area. This policy was externalized with the second generation of bilateral readmission agreements with the Central and Eastern European Countries (CEECs). In the early nineties the Council aimed to counteract the potentially destabilizing effect of uncontrolled migratory and asylum seeker flows after the fall of the Berlin Wall and the breakup of the USSR and Yugoslavia (EU Council 1992).

The Council and Working Group on Immigration initiated negotiations with the Central and Eastern European Countries, as the chief countries of origin and transit along the EU’s eastern border. The main objective of the second generation of readmission agreements was to create a ‘cordon sanitaire’ along the EU’s eastern border through bilateral readmission agreements covering nationals and non-nationals (Crepeau 1995, p. 285).

The containing of non-nationals was imported to the next set of readmission agreements with all third countries, known as the third generation readmission agreements. At the policy level, the European Union developed a two point approach to readmission: first, the adoption of a common example bilateral readmission agreement and last, the insertion of readmission clauses into EC cooperation agreements. The Council adopted an EC specimen bilateral readmission agreement between an EC Member State and a third country that covered citizens and non-nationals In November 1994, (Council Recommendation 1996, pp. 20–24). EU Member States were to use this document in conjunction with the Council Recommendation concerning the adoption of a standard travel document for the expulsion of third country nationals (Council Recommendation 1994, pp. 18–19). The EU harmonised Member States approaches to readmission agreements through the adoption of common texts. During 1996, the EC planned a variety readmission clause to be inserted in Community Agreements (EC and one third country) and “mixed agreements” aimed at compelling contracting parties to readmit their own nationals, provide them proper travel documents and cooperate on the prevention and control of illegal immigration.

The scope of the proposed readmission clause covered nationals of contracting parties only. However, the specimen also included ‘enabling clause.’ The enabling clause requested the third country to negotiate bilateral agreements with MSs regarding non-nationals. In this case, Member States could ask for and negotiate further obligations regarding non-nationals who passed through the contracting party on their way to an EU Member state ([www.statewatch.org/news/ 2003](http://www.statewatch.org/news/2003)).

The European Community received the competence to negotiate and conclude on behalf of its Member States readmission agreements with third countries in 1999. The entry into force of the Amsterdam Treaty on 1 May 1999 conferred competence on the Community to take “measures on immigration policy in the area of illegal immigration and illegal residence, including repatriation of illegal residents” (Amsterdam Treaty 1999, Art. 63). With the new competence in mind, the Tampere Summit Conclusions, October 1999, called on the Council to integrate either readmission clauses covering nationals into cooperation agreements or



conclude readmission agreements with third countries or a group of third countries (Tampere Summit Council Conclusions 1999, paragraphs 26 and 27).

In December 1999, Justice and Home Affairs (JHA) Council meeting require a new standard Community readmission clause, which mirrored the 1996 (bilateral) two sides specimen. The 1999 specimen clause re inserted the 1996 enabling clause for the future negotiation of an agreement with the Community on behalf of its Member States regarding the readmission of non-nationals (EU Council Decision on RC 1999, Art.B).

According to the 2002 Seville Council Conclusions the standard readmission clauses (RC) would be inserted into all future cooperation agreements with third countries or groups of countries (EU Council Presidency Conclusions 2002, Paragraph 33). The Council established a mandate and approval procedure for the negotiation of readmission agreements with third countries. Based essentially on the case-by-case recommendations of the cross-pillar High Level Working Group's country action plans issued in 1998, the Council gave the Commission a mandate to invite a country or group of countries for bilateral or multilateral negotiations on an EC readmission agreement (Council Conclusions 2005, 13704/04 draft, p.5).

Member States must hand over negotiating power with regard to that particular country. The Commission and some Member States disagreed over the meaning of this mandate. A few Member States, led by Germany, asserted that Member States retained the right to continue negotiations simultaneously on particular categories of persons (Martin 2003, p. 350). Germany tested this interpretation when it concluded re-entry clauses with China concerning tourist visa over-stayers in 2003, after the granting of an EU mandate concerning all categories of persons. Once the Commission initiated infringement proceedings, Germany acquiesced to the mandate's exclusive nature before formal procedures were undertaken. (Agence Europe 2003).

Pre-existing bilateral agreements between Member States and the contracting party could remain in force, provided they complemented RA's concluded by the Community. Once the Commission receives its own negotiating mandate (ECJ 2002).

Previously the Council has authorized the Commission to sign the agreement on behalf of the Community; the Parliament must be consulted under Article 300 (3) of the EC Treaty. That time, the role of the EP in EC readmission agreements has been minimal. In most cases, the Parliament was neither consulted nor kept informed during negotiations and found itself delivering a post-facto opinion. The EP simply approved readmission agreements with Macao and Sri Lanka without additional comment. The Parliament's Resolution on the signature of the Hong Kong agreement did express serious concern over the respect of human rights during return procedures, the need for stronger reference to the 1951 Geneva Convention and other international human rights instruments, the monitoring of readmission practice, criteria for the determination of a country of readmission as safe and the potential role of UNHCR. The EP further elaborated these concerns in its Report on the signature of the Albania agreement (EC and Albania RA report 2005).

## **2.2.5 Negotiations of Readmission Agreements and Clauses**

### **2.2.5.1 Readmission Clauses**

Readmission clauses (RC) are different from the readmission agreements (RA). They set out the principle of the return of nationals and establish a framework for negotiating further implementing agreements. These later agreements detail the obligations to readmit nationals as well as possibly specify the obligation to readmit non-nationals who only passed through the contracting state on their way to the EU. Because readmission clauses are not self-executive, these implementing agreements are essential to their entry into force. Readmission agreements, on the other hand, contain not only the principle of return but also the implementation agreements which make them self-executive.

The first readmission clauses emerged in Partnership and Cooperation Agreements with the countries of Central Asia and the Caucuses in the mid- nineties. Vague reference to “*taking into account the principle and practice of readmission*” (PCA Kyrgyzstan 1995 Art.20) in the 1995 Partnership and Cooperation Agreements (PCA’s) with Kazakhstan and Kyrgyzstan later gave way to the first full readmission clauses in the 1996 PCA’s with Armenia ( OJ L 239 of 1999, p. 22), Georgia ( OJ L 205 of 1999, p.22), and Uzbekistan (OJ L 229 of 1999 p.22). Since 1996, the EC has inserted the 1996 and 1999 standard readmission clauses for nationals into agreements with Algeria (Signed on 2001), Azerbaijan (OJ L 246 of 1999, p.23). Chile (IP/02/1696 2002, p.25), Croatia (COM 371 final 2001, p.46), Egypt (OJ C 204 E 2001, p.16), Lebanon (Signed 2002), Macedonia (OJ C 213 E 2001, p.44), Syria and Tajikistan. Multilateral Partnership and Cooperation Agreements with regional organisations allowed the EU to cast a wider net on readmission with all the countries of the Africa-Caribbean-Pacific (ACP) Countries, Andean Community and the Central American countries.

The EC has also concluded other type of non-committing readmission clauses with certain states, such as Belarus, Kazakhstan, Kyrgyzstan, Moldova, Tunisia, and Vietnam. The contents of these clauses different from agreeing to enter into dialogue or co-operation in readmission at a later stage (Vietnam), to a declaration on readmission of own nationals only (Morocco, Yemen, Laos, Cambodia and Pakistan) or negotiations of further agreements concerning third country nationals (Syria).

Taken as a whole, the mandatory inclusion of readmission clauses in all EU external agreements has rapidly increased the number of countries of origin that fall under EU readmission clauses covering nationals from five in 1999 to 102 to date. Simultaneously, the number of bilateral readmission agreements between EU Member States and third countries soared from fifteen in 1990 to 2004 in 2000 with 58 third countries (Report on RA 2002, p.10).

**2.2.5.2 Practice Of The EC Readmission Clauses:** Until now many EU association and cooperation agreements contain clauses on readmission, at the EU's insistence. These are usually similar or identical to the standard clauses described above, even in a few cases the EC has had to settle for a enough declaration instead of a binding obligation (Peers 2003). The following summary sets out the current state of play on this issue: a) Unilateral statement by EC on readmission; **Vietnam,**

b) Agreement to dialogue or cooperation on readmission only; **Tunisia, Israel, Russia, Ukraine, Moldova, Kazakhstan, Kyrgyzstan, Belarus, Slovenia, three Baltic republics**

c) Declaration on readmission of own nationals; **Morocco** (also with binding obligation to enter into dialogue), **Yemen, Laos, Cambodia, Pakistan**

d) Declaration on readmission of own nationals and negotiation of further treaties concerning third-country nationals; **Jordan**

e) Treaty obligation to readmit own nationals and negotiate further treaties concerning third-country nationals (1995 and 1999 standard EU clauses); **Egypt, Lebanon, Algeria, Armenia, Georgia, Azerbaijan, Uzbekistan, Croatia, former Yugoslav Republic of Macedonia, African, Caribbean and Pacific (ACP) states (including South Africa), Chile.**

f) Application of internal EC rules; **Norway, Iceland; planned with Switzerland, Liechtenstein** ([www.statewatch.org](http://www.statewatch.org) 2009)

### **2.2.5.3 Readmission Agreements**

Up to now, the Council has given the Commission a mandate to negotiate readmission agreements with fourteen third\_countries: Morocco, Sri Lanka, Russia and Pakistan (September 2000), Hong Kong and Macao (May 2001), Ukraine (June 2002), Albania, Algeria, China and Turkey (November 2002) and Bosnia and Herzegovina, Montenegro and Serbia (July 2006). So far, only five of these fourteen mandates have resulted in signed

readmission agreements. With countries that do not exert major migration-pressures on the EU, the EU swiftly completed its first round of readmission agreement negotiations.

The readmission agreement with the Hong Kong Special Administrative Region was concluded within six months in November 2001 and approved by the Council and the EP by November 2002. The Hong Kong readmission agreement, the EC's first such agreement, entered into force on 1 May 2004. Negotiations were concluded with Macao after two years on 13 October 2003, Sri Lanka after three years on 25 November 2003 and Albania after two years on 18 December 2004. Five years on, the EU and Russia finally concluded a readmission agreement on 12 October 2005 and signed it on 25 May 2006. The Finnish Presidency initialed a readmission agreement with Ukraine on 27 October 2006, four years after the issuance of its mandate. In addition to Hong Kong, the agreements with Macao (1 June 2004), Sri Lanka (1 May 2005), and Albania (1 May 2006) have entered into force. (Roig & Huddleston 2007)

The majority third countries have attempted to delay each step of the negotiation process from the launch to the signature and the entry into force. In most cases, an average of two years passed without even a formal response to the invitation to open negotiations. The launch of negotiations took **two years with Turkey**, three years **with Morocco**, and **four years with Pakistan**. The Commission describes negotiations with these countries as *ongoing states* (Commission Press 2005 and Roig 2007).

The Commission still awaits any response on the launch of formal negotiations with two countries, China and Algeria. Moreover, the conclusion of a readmission agreement does not guarantee that the agreement will enter into force without further delay. Albania negotiated a two-year suspension clause (COM 2004, Art. 22 -3) as regards the readmission of non-nationals, while Russia secured a similar three-year transition period. These transition periods have been justified as capacity-building phases although improvements will likely be minimal. The EP Report on the Albania readmission agreement took note of the International Organization for Migration's assessment that Albania will continue to suffer considerable capacity and infrastructure difficulties after the transition period. These extensive

shortcomings span from a shortage of human and material resources to weak reception and management mechanisms. Remarks by the Russian Foreign Minister suggest that this transition phase is intended as a strategy, however temporary, to circumvent Russia's obligation to readmit nonnationals.

#### **2.2.5.4 Practice Of The EC Readmission Agreements:**

The European Commission has negotiated three readmission agreements on behalf of the European Community. Firstly, **Hong Kong**, November 2001, secondly, **Sri Lanka** May 2002 and lastly **Macao**, October 2002. Of these, the treaty with Hong Kong was signed by the Council in November 2002, and the Commission has recently proposed that the Council sign and conclude the other two agreements. All three treaties will therefore be in force shortly. The core part of each agreement provides that:

The contracting parties have to take back their own nationals have entered or stayed illegally in the other party. The parties must also readmit nationals of non-contracting parties or stateless persons who have illegally entered or stayed on their territory, subject to certain conditions.

The parties must permit transit of persons back to a non-contracting party if necessary. There are detailed rules on the procedure for handing back persons, including the types of documents which constitute proof or evidence that a person is a national or was on the territory.

The parties must either issue their own travel documents or use of the EC's standard travel document. Article 16 of each agreement provides that the agreement is 'without prejudice to the rights, obligations and responsibilities' of the parties arising from 'International Law', but there is no specific reference to human rights or refugee law. EC Countries can prepare special implementing protocols with the non-EC countries, however each agreement takes precedence over any incompatible bilateral agreement between a Member State and the non-EC States. All three treaties can be denounced, but there is no procedure for settling disputes that might arise.

Generally when one State wishes to sign an agreement with another State, there are advance consultations to see if the other State is interested. But in this area, the EU has actually never consulted the other State. The result is that, Morocco, Pakistan and Russia had not even agreed to begin negotiations, more than two years after the Council gave the Commission a mandate (Commission report 2002)

### **2.2.6 Readmission Agreements with Third Countries**

Under the Maastricht Treaty, issues relating to return of person illegally residing in the European Union fell solely in the competence of the Member States. This legal situation changed on 01 May 1999 with the entry into force of the Amsterdam Treaty, which conferred explicit powers in this field to the European Community. Art.63 (3) (b) EC now enables the Council to adopt measures within the area of “illegal immigration and illegal residence, including repatriation of illegal residents” (Martin 2003). The Community’s new powers under this article include the external competence to conclude readmission agreements with relevant third countries in order to speed up and facilitate the return of such persons.

To facilitate the readmission of third-country nationals to their country of origin, the Member States decided in 1994 to use a common specimen agreement as a basis for negotiation when a Member State wished to establish this type of relation with a third country. Guiding principles for implementing readmission agreements were adopted in 1995.

Agreements must comply with the 1951 Geneva Convention and the 1967 Protocol on the status of refugees, internal treaties concerning extradition, transit, readmission of foreign nationals and asylum (Dublin Convention 1990) and the 1950 European Human Rights Convention (www.europa.eu 2009).

A readmission agreement facilitates the expulsion of third-country nationals. Contracting parties will readmit to their territory without any formality persons with the nationality of that country who are residing without authorisation in the other country or who have crossed its frontier illegally (www.europa.eu 2009).

Until application, transit is possible through the territory of the two contracting parties without any special documents. Time limits are fixed for submission of an application for readmission and a reply. The costs of readmission are borne by the requesting contracting party. In its conclusions of 4 March 1995, the Council also envisages the inclusion, on a case-by-case basis, of a readmission clause in joint agreements concluded by the Community with third countries (www.europa.eu 2009).

Readmission of applicants is subject to proof or presumption, depending on the available identity documents. A number of other documents may be used to establish a deduction of nationality (driving license, extract from civil register, statements by witnesses, particulars supplied by the person concerned or information from the authorities) (www.europa.eu 2009 and Official Journal C 274 1996).

On 15 December 1997, the Schengen Executive Committee adopted a decision on the guiding principles to be followed with regard to evidence to be provided under readmission agreements between Schengen States. A common list of the types of evidence making it possible to determine that a person in an illegal situation has spent time in or transited through a State has been drawn up, as well as a list of the kinds of evidence enabling it to be presumed that such events have taken place. These lists are to be taken into account when future readmission agreements are concluded.

On 2 December 1999, the Council adopted a decision relating to readmission clauses in Community agreements and in joint agreements (not published in the Official Journal). After the entry into force of the Amsterdam Treaty, the readmission clauses set out in 1995 were updated. They will be incorporated in all Community agreements and in all agreements between the European Community, its Member States and non-member States.

On 7 December 1999, Finland presented a proposal for a Council regulation determining obligations as between the Member States for the readmission of third-country nationals (Official Journal C 353 1999). Consultation procedure this regulation will lay down Community rules relating to the readmission of nationals of non-member states who have



illegally entered or stayed for a period in the Community. The point is to determine, when there are several possibilities, which Member State is responsible for the repatriation of that person.

### **2.2.7 Change of Mandate on EC Readmission, Including Visa Facilitation**

EU states started to call for the speeding-up of ongoing readmission negotiations In 2002. At the end of the year, the Commission conceded that negotiations on readmission agreements had not led to quick results. In the following months, the Commission repeatedly asked the Council to think about incentives, e.g. more generous visa policies, or increased quotas for migrant workers, that might help to obtain the cooperation of third countries in the negotiation and conclusion of readmission agreements. Alongside the difficulties in readmission negotiations, at least standard readmission clauses had been approved in 1999 as mandatory elements for inclusion in all future association and cooperation agreements by the EC.

Ongoing difficulties in negotiating readmission agreements forced the governments of EU member states to consider how to expand the Commission's margin during negotiations. Gradually it became clear that concessions had to be made and more attractive packages would have to be linked to the policy field of migration. In the months that followed, visa facilitation became the major compensation matter introduced by third countries in negotiations with the EU. Besides the very special, cases of Hong Kong and Macao, the most successful link between readmission and visas have been made by the Russian Federation. In July 2004, the Council authorized the Commission to negotiate not only on readmission but even on visa facilitation (Commission of the EC 2004, p.12). Shortly afterwards, the link between readmission and visa facilitation became official for Ukraine, too. Even China officially asked the Community, in May 2004, to negotiate on visa facilitation in parallel with negotiations on readmission.

In the multi-annual programme on strengthening freedom, security, and justice (the so-called Hague Programme), member states finally referred to the Commission's call and agreed to further examine a possible link between readmission and visa facilitation: The European Council invites the Council and the Commission to examine, with a view to developing a common approach, whether in the context of the EC readmission policy it would be opportune to facilitate, on a case by case basis, the issuance of short-stay visas to third-country nationals, where possible and on a basis of reciprocity, as part of a real partnership in external relations, including migration-related issues (Council of the European Union 2004, p.18).

As Table 1 shows, by the time the negotiations with the Western Balkan countries started in 2006, the link between readmission and visa facilitation had become acceptable for EU member states so that negotiations were combined from the very beginning.

**Table 2.1. EC Visa Facilitation and Readmission Agreements: State of Negotiations:**

<b>Country</b>	<b>Type of Agreement</b>	<b>Negotiation Mandate</b>	<b>Start of Negotiations</b>	<b>End of Negotiations</b>	<b>Entering into Force</b>
Albania	RA	Nov 2002	March 2003	April 2005	May 2006
	VF	Nov 2006	Nov 2006	Nov 2007	Jan 2008
Bosnia	RA	Nov 2006	Nov 2006	Nov 2007	Jan 2008
	VF	Nov 2006	Nov 2006	Nov 2007	Jan 2008
Hong Kong	RA	May 2001	June 2001	Nov 2002	March 2004
	VF*	--	--	--	--
Macao	RA	May 2001	July 2001	Oct 2003	June 2004
	VF*	--	--	--	--
Macedonia	RA	Nov 2006	Nov 2006	Nov 2007	Jan 2008
	VF	Nov 2006	Nov 2006	Nov 2007	Jan 2008
Moldova	RA	Dec 2006	Feb 2007	Nov 2007	Jan 2008
	VF	Dec 2006	Feb 2007	Nov 2007	Jan 2008
Montenegro	RA	Nov 2006	Nov 2006	Nov 2007	Jan 2008
	VF	Nov 2006	Nov 2006	Nov 2007	Jan 2008
Russia	RA	Sept 2000	April 2001	May 2006	June 2007 <sup>o</sup>
	VF	July 2004	June 2005	May 2006	June 2007
Serbia	RA	Nov 2006	Nov 2006	Nov 2007	Jan 2008
	VF	Nov 2006	Nov 2006	Nov 2007	Jan 2008

Sri Lanka	RA	Sept 2000	April 2001	Feb 2002	May 2005
	VF	--	--	--	--
Ukraine	RA	Feb 2002	August 2002	Oct 2006	Jan 2008 <sup>^</sup>
	VF	Nov 2005	Nov 2005	Oct 2006	Jan 2008

**Source: CASE Network Studies and Analyses No. 363, 2008**

\* Hong Kong and Macao were exempted from visa requirements in December 2000

° The provisions on the readmission of third country nationals and stateless people will only become applicable after a transitional period of 3 years.

^ The provisions on the readmission of third country nationals and stateless people will only become applicable after a transitional period of 2 years. (Kruse and Trauner 2008)

**Table 2.2. EC Visa Facilitation and Readmission Agreements: Ongoing Negotiations**

Country	Type of Agreement	Negotiation Mandate	Start of Negotiations	End of Negotiations	Entering into Force
Algeria	RA	Nov 2002	June 2005		
	VF				
China	RA	Nov 2002	April 2004		
	VF				
Morocco	RA	Sept 2000	May 2001		
	VF				
Pakistan	RA	Sept 2000	April 2001		
	VF				
Turkey	RA	Nov 2002	March 2003		
	VF	--	--	--	--

**Source: CASE Network Studies and Analyses No. 363, 2008**

(Kruse and Trauner 2008)

### **2.2.8 Controlling EU Frontiers while Stabilizing the Neighborhood:**

Since the Amsterdam Treaty, the EU has worked on the establishment of a common “area of freedom, security and justice”. Political actors have developed a common understanding of security threats based on the idea that a safe inside should be most effectively protected from an unsafe outside (Monar 2001). Accordingly, a strong and effective control of external frontiers became a vital objective of EU cooperation in justice and home affairs. At the same time, with the Central and Eastern European countries becoming new EU member states, the stabilization of the neighborhood gained in importance.

#### **2.2.8.1 The Birth of the European Area of Freedom, Security and Justice**

The Treaty of Amsterdam first introduced the idea of establishing a “European area of freedom, security and justice”: barriers to the free movement of people across borders should be minimized, the EU’s internal security enhanced, and the human rights of all EU citizens respected (Kruse and Trauner 2008).

The EU was to create an “internal security regime” (Anderson & Apap 2002, p. 4) consisting of three main pillars: First, the creation of a common territory without internal borders along with the setting-up of a common external border policy; Second, the strengthening of international police cooperation, particularly in cross border regions; Final, the pooling of police data and information among national law enforcement bodies (Schengen Information System – SIS; Costumes Information Service – CIS, Europol’s computerized system of collected information, Eurodac) (Anderson & Apap 2002, p. 4).

Since the 1980s co-operation in kinds security issues has led to close interaction between national interior ministers and their officials. These political actors promoted their action in very different policy areas, such as terrorism, organized crime, trans-border crime, irregular immigration, asylum seekers and minority ethnic groups, as different elements to deal with one general security threat. As a matter of fact, different groups of people and problems were categorized “too quickly and too emphatically” (Anderson & Apap 2002, p. 1) as security

threats. This categorization of various phenomena as security threats concerned first and foremost migrants and asylum seekers. Migration was increasingly described as a danger to domestic security, representing a threat” (Huysmans 2000 and Vink 2002).

While the free movement of persons within the EU was actually promoted, the discursive logic drew a clear distinction between EU-nationals and non-EU-nationals. The EU-space was presented as the “safe(r) inside” and contrasted with the “unsafe(r) outside” (Monar 2001, p.762). The EU’s borders were increasingly established as the dividing line between inside and outside, and “law enforcement and border controls (became) key instruments to keep and further enhance the distinction” (Monar 2001, p.762). The control of the external borders became the one major objective of EU cooperation in justice and home affairs.

#### **2.2.8.2 Extending the EU’s Border Control Policies to the East:**

In the Amsterdam Treaty the EU15 took a major decision with regard to justice and home affairs and the EU’s external relations. Because of security concerns in the Central and Eastern European countries, the EU15 decided to include the Schengen regulations and rules into the EU’s *acquis communautaire* to be integrated in the legal order of the countries seeking accession. Article 8 of the Schengen Protocol annexed to the Amsterdam Treaty states that the “Schengen *acquis* and further measures taken by the institutions within its scope [...] must be accepted in full by all States candidates for admission.” Opt-outs like those of the UK and Ireland were no longer permissible for new member states. EU’s member states based this decision on the dual motivation to bring the applicant border policies progressively in line with the Schengen *acquis* and also to address immediate EU concerns about threats perceived by its member states. The most evident and pervasive of these concerns is the potential for illegal immigration by east Europeans or third-country nationals travelling through the applicant countries (Grabbe 2000, p. 9).

Moreover, after the fall of the Berlin Wall, the governments of the Central European states had follow an open borders policy as an important element to maintain good relationships with neighboring countries. Sustained by Western European states as part of regional and

bilateral integration, these countries have built up strong relations across borders and allowed citizens of countries such as Russia, Ukraine or Belarus to travel easily to Central and Eastern Europe.

The EU's external security concerns have caused it to encourage regional integration at all levels in eastern Europe, but at the same time its emerging internal security policies (contained in the newly integrated Schengen Convention, and justice and home affairs cooperation) are having contrary effects by reinforcing barriers between countries (Grabbe 2000, p. 1).

The EU tried to minimize the negative side-effects of enlargement. In the European Security Strategy, the neighboring countries moved to the centre of attention. In March 2003, a new framework of relations was proposed with the countries neighboring the enlarged Union to the East and South. The objective was to “develop a zone of prosperity and a friendly neighborhood – a ‘ring of friends’ – with whom the EU enjoys close, peaceful and co-operative relations” (Commission of the EC 2003, p. 4).

### **2.2.8.3 EU Strategy on Visa Facilitation and Readmission in the European Neighborhood Policy**

When Russian Federation and the Ukraine negotiations on an EC readmission agreement did not advance, the EU linked the negotiations to the motivation of visa facilitation. With Moldova being the next neighbouring state, visa facilitation and readmission were commonly negotiated right from the start. The EC and Moldovan negotiations on visa facilitation and readmission started in February 2007 and lasted until November 2007 with both agreements entering into force on 1 January 2008 ([www.ceps.eu](http://www.ceps.eu) 2008).

The basic set-up of the European Neighborhood Policy was outlined in the European Commission's Communication on a ‘Wider Europe’, published in March 2003, followed by the more developed strategy on the ‘European Neighborhood Policy’, published in May 2004. In the documents, the Commission did not delineate a clear strategy on visa facilitation

and readmission. The 'Wider Europe' document only vaguely mentioned that the "EU could also consider the possibilities for facilitating the movement of citizens of neighboring countries participating in EU programmes and activities" (Commission of the EC 2003). Holders of diplomatic and service passports should also possibly benefit from visa facilitation. On readmission, the documents were more exact. "Concluding readmission agreement with all the neighbours, starting with Morocco, Russia, Algeria, Ukraine, Belarus and Moldova, will be an essential element in joint efforts to curb illegal migration" (Commission of the EC 2003). Over time, the EU shaped a more exact strategy in the field. EC visa facilitation and readmission agreements are now considered a standard instrument in the ENP. The reasons for this strategic shift are twofold. On the one hand, the negotiations on an EC visa facilitation and readmission agreement with Ukraine, the Russian Federation and Moldova clarified how useful the incentive of visa facilitation is to achieve the objective of signing readmission agreements. On the other hand, more and more reports emphasising the negative perceptions of the ongoing visa practices made EU member states rethink their visa policy. The EU had to admit that "the length and cost of procedures for short-term visas (e.g. for business, researchers, students, tourists or even official travel) is a highly 'visible' disincentive to partner countries, and an obstacle to many of the ENP's underlying objectives" (Commission of the EC 2006, pp.3-4).

In its communication on how to strengthen the ENP, the Commission proposed that the "Union should be willing to enter negotiations on readmission and visa facilitation with *each neighbouring country* with an Action Plan in force, once the proper preconditions have been met" (Commission of the EC 2006, p.6).

Therefore, a major precondition is an ENP Action Plan in force. Now most participating countries fulfill this requirement. Action Plans were agreed with Israel, Jordan, Moldova, Morocco, the Palestinian Authority, Tunisia and Ukraine in 2005, with Armenia, Azerbaijan and Georgia in 2006, and with Egypt and Lebanon in 2007. The other countries neighbouring the EU do not yet have such an agreement: Belarus, Libya and Syria are still excluded from the ENP structures; Algeria has decided not to negotiate an ENP Action Plan yet; and Russia

refrained from participating in the ENP but agreed with the EU on a Strategic Partnership covering four “common spaces” (Kruse and Trauner 2008).

**Table 2.3. Specific Action on Visa Facilitation and Readmission in the ENP Action Plans**

	<b>ENP Action Plan</b>	<b>Specific action on visa facilitation in ENP Action Plan</b>	<b>Specific action on readmission in ENP Action Plan</b>
<b>Algeria</b>	No		
<b>Armenia</b>	Yes	“exchange views on visa issues”	“initiate dialogue on readmission which could possibly lead to an EC – Armenia readmission agreement”
<b>Azerbaijan</b>		“exchange views on visa issues”	“initiate dialogue on readmission which could possibly lead in the future to an EC-Azerbaijan agreement in this area”
<b>Belarus</b>	No		
<b>Egypt</b>	Yes	“Cooperate in the field of improving the movement of persons, including to facilitate the uniform visa issuing procedures for certain agreed categories of persons”	“Develop the cooperation between Egypt and EU on readmission, including negotiating readmission agreements between the parties, building on Article 69f the Association Agreement”
<b>Georgia</b>	Yes	“exchange information on visa issues”	“Strengthen the dialogue and cooperation in preventing and fighting against illegal migration, which could possibly lead in the future to an EC Georgia agreement on readmission”



<b>Israel</b>	Yes	No short stay visa requirements	No specific action
<b>Jordan</b>	Yes	“In order to facilitate the circulation of persons, examine ... possibilities of facilitation visa issuing (simplified and accelerated procedures in conformity with the <i>acquis</i> )”	No specific action
<b>Lebanon</b>	Yes	“Cooperate on facilitating the movement of persons ... in particular examining the scope for facilitating visa procedures for short stay for some categories of persons”	“Improve cooperation ... on all forms of readmission including the possibility of negotiating a readmission agreement”
<b>Libya</b>	No		
<b>Moldova</b>	Yes	“initiate a dialogue on the possibilities of visa facilitation”	“Initiate a dialogue on readmission in the perspective of concluding a readmission agreement between Moldova and EU”
<b>Morocco</b>	Yes	“constructive dialogue including examination of visa facilitation”	“conclusion and implementation of balanced readmission agreement with the EC”
<b>Palestinian Authority</b>	Yes	No specific action	No specific action
<b>Syria</b>	No		
<b>Tunisia</b>	Yes	“facilitating the movement of persons ... by looking in particular at possibilities of relaxing short-stay visa formalities for certain categories of persons”	“initiate a dialogue on return and readmission with a view to concluding a readmission agreement with the EU”
<b>Ukraine</b>		“establish constructive dialogue on visa facilitation”	“need for progress on the ongoing negotiations for an EC-Ukraine readmission agreement”

**Source: ENP Action Plans and Country Reports**

([www.ec.europa.eu/world/enp/documents\\_en.htm](http://www.ec.europa.eu/world/enp/documents_en.htm) 2008).

Table shows that even though theoretically each neighbouring state may conclude an EC visa facilitation and readmission agreement, the concrete action in this field differ amongst them. In the visa domain, most often the clauses are rather vague referring to commonplaces such as “establishing constructive dialogues” or “exchange views”. In an interview for this analysis, a Commission official stated that if new EC visa facilitation and readmission agreements are to be negotiated, the Black Sea area would be treated as a priority. There is a tendency to consider this “fashionable area” first, according to an EU official.

In contrast, the ACP (African, Caribbean and Pacific) countries are not considered as qualifying for EC visa facilitation and readmission agreements. The Cotonou agreement is regarded as a sufficient basis to make ACP countries cooperate on readmission. “The readmission obligations contained in Article 13 Cotonou is crucial, and is an appropriate basis for supplementary bilateral readmission agreements between EU Member States and selected ACP countries” (Commission of the EC 2006, p.9).

### **2.3 THE CONTENT OF EC READMISSION AGREEMENTS**

Readmission agreements generally cover procedural provisions regarding return procedure, transit return arrangements, responsibility criteria, standard of proof, time limits and cost distribution, although the exact nature of these procedures can vary significantly. The most difficult issue to agree upon is the readmission of third country nationals and stateless persons. The contestable points lie in approving the travel route of those migrants and providing evidence of the fact that they had transited the country before entering the EU’s territory. The proof of nationality is highly critical, too. According to the European Commission, other controversial technical issues include the time limits applicable, the use of the EU standard travel document for expulsion, the means of evidence including prima facie evidence, and the use of charter flights (Schieffer 2003, p.354).

The European Commission pursues a standard approach in negotiating readmission agreements with third countries and seeks to achieve final texts that have as many common features as possible. Thus, the EU's set of demands and expectations is the same for each of the third countries. The first draft of the texts that the Commission transmits to its negotiation partners typically does not vary widely. During negotiations, single adjustments are required according to the respective country's objections and demands, so that ultimately agreements will differ.

The readmission agreements the Community signed so far with Bosnia, Albania, Hong Kong, Macao, Macedonia, Moldova, Montenegro, Russia, Serbia, Sri Lanka, and Ukraine are splitted into seven or eight sections with 21 to 23 articles altogether:

The purposes of the agreement are rapid and effective procedures for identification and repatriation of persons who do not, or no longer, conform the conditions for entry, residence or presence. In this perspective, the readmission obligations are about covering own nationals, third country nationals and stateless persons. The readmission procedure regulates time limits, common application forms, means of evidence, transfer modalities, modes of transport. Transit operations mean extent of support to be given by the requested state, circumstances to refuse, or withdraw transit permission. In the meantime, costs, data protection and non-affected of international rights and obligations are considered a part of the readmission process (Kruse and Trauner 2008)

All agreements include several annexes concerning documents considered as proof or prima facie evidence of nationality, and of proof or prima facie evidence of the circumstances for readmission of third country nationals and stateless persons. Some of them also include common statements regarding the meaning of the agreement for, Denmark, Norway, and Iceland. Besides this overall similar structure, substantial differences in the agreements exist:

*Readmission obligations of the signatories:* Ukraine is the only country for which the agreement does not differentiate between the obligations by the Community on the one hand and the contracting state on the other hand.

*Persons to be readmitted:* The agreements with Bosnia, Macedonia, Moldova, Montenegro and Serbia explicitly state that signatories shall also readmit minor unmarried children of the person to be readmitted as well as spouses holding another nationality unless they have an independent right of residence. The agreements with Russia and Ukraine require readmission “irrespective of the will of the person to be readmitted” ([http://europa.eu/legislation\\_summaries](http://europa.eu/legislation_summaries) 2007 and [www.europa.eu/14163\\_en.html](http://www.europa.eu/14163_en.html) 2007).

*Readmission procedure:* Several states have introduced an accelerated procedure if a person has been apprehended in the border region after irregularly crossing the border coming directly from the territory of the requested state (Macedonia, Moldova, Russia, Serbia, and Ukraine). In this case, the requesting state may submit a readmission application within two working days of this person’s apprehension ([http://europa.eu/legislation\\_summaries](http://europa.eu/legislation_summaries) 2009).

*Time limits:* The time limit for submitting a readmission application varies between six (Moldova) and twelve (Albania) months. The time limit for replying to the application varies between 10 working days (Serbia) and 25 calendar days (Russia). Possible extensions lay in between 2 working days (Moldova) and 60 calendar days (Russia). The requested validity of readmission travel documents lies between 30 days (Russia) and six months (Albania). The requesting state has to decide about a transit procedure in a certain time period, which varies between 4 (Moldova) and 10 (Ukraine) working days. For Russia, no time limit has been specified ([http://europa.eu/legislation\\_summaries](http://europa.eu/legislation_summaries) 2009).

*Transit procedure:* Ukraine is the only country specifying conditions for escorts in case of transit of third-country nationals or stateless persons ([http://europa.eu/legislation\\_summaries](http://europa.eu/legislation_summaries) 2009).

*Entry into effect:* The obligations regarding the readmission of third-country nationals and stateless persons defined in the agreements between the EC and Albania, Russia and Ukraine shall only become applicable after a certain transition period. For Albania and Ukraine, this transition period was agreed to be two years after the agreement entered into force; in the case of Russia, this is a three-year period. In contrast to the Albanian agreement, which was

signed in 2005, the agreements for Russia and Ukraine signed in 2007 anticipate that during the transition period, these obligations shall only be applicable to stateless persons and nationals from third-countries with which unilateral arrangements on readmission exist ([http://europa.eu/legislation\\_summaries](http://europa.eu/legislation_summaries) 2009).

On the one hand, these differences relate to the different geographic conditions, political situations and histories of the signatory countries. On the other hand, however, changes evolved over time when the EC became increasingly experienced in negotiating readmission agreements.

Here, pressure from the European Parliament and NGOs resulted in revision of the wording over time. In the case of Hong Kong and Macao, the clause had the following wording: This Agreement shall be without prejudice to rights, obligations and responsibilities arising from International Law applicable to the Community, the Member States and the Hong Kong SAR (Council of the EU 2002, p.23).

After the European Parliament and several human rights organizations had strongly criticized this non-affectation clause for not explicitly referring to human rights or refugee law, the agreement with Sri Lanka included the following wording: This Agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Sri Lanka arising from International Law and, in particular, from any applicable International Convention or agreement to which they are Parties (Council of the EU 2003, p.24).

Again, criticism was harsh. In consequence, the wording of the Albanian agreement became more precise: This Agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Albania arising from International Law and, in particular, from the European Convention of 4 November 1950 for the Protection of Human Rights, the Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees, and international instruments on extradition (Council of the EU 2005, p.22).

The agreement, which was signed next, was with the Russian Federation. Even though it does not call it “non-affected clause” but “relative to other international obligations”, the list of legal documents to be considered became even longer:

This Agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and the Russian Federation arising from International Law and, in particular, from: First, the Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees; Second, the European Convention of 4 November 1950 for the Protection of Human Rights; third, the Convention of 10 December 1984 against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; fourth, international treaties on extradition and transit; and fifth multilateral international treaties containing rules on the readmission of foreign nationals, such as the Convention on International Civil Aviation of 7 December 1944 (Council of the EU 2007, Art.18).

The agreements with Bosnia, Macedonia, Moldova, Montenegro and Serbia additionally refer to the international conventions determining the state responsible for examining applications for asylum. Instead, the agreement with Ukraine additionally refers to the Universal Declaration of Human Rights of 10 December 1948 and the International Covenant on Civil and Political Rights of 19 December 1966 ([www.ceps.eu](http://www.ceps.eu) 2008).

For the first time, the readmission agreement with Russia makes explicitly clear that provisions of the EC readmission agreement shall take precedence over provisions of any bilateral arrangements on readmission. Since then this clarification has been part of all new agreements.

After being in force, each EC readmission agreement will establish a readmission joint committee, which shall consist of representatives of the third country and of the Commission acting on behalf of the European Community. The latter shall be assisted by experts from member states. The joint committee will be responsible for the implementation of the agreement. Furthermore, The European Commission’s Directorate General ‘Justice, Freedom, and Security’ is supported by the European Agency for the Management of

Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), which coordinates, along with others, the operational aspects of removal of irregular third country nationals and thus plays a decisive role in the implementation of readmission agreements (Kruse and Trauner 2008).

## **2.4 THE IMPLICATIONS ON THE READMISSION SIDE**

Data on return is scarce. On the one hand, only limited consistent EU-wide data exist which differentiate between voluntary and forced return; on the other hand, countries of origin most often lack information about the numbers of returnees. Only recently, the European Commission published a working text on “Preparing the next steps in border management in the European Union” containing national statistical data on refused entry, apprehension of irregular migrants, and removal. The data can only serve as a vague indicator because EU member states did not agree upon common criteria and definitions, and some of them provided only incomplete information. Therefore, we have to suppose that actual numbers are higher than indicated here implication (Kruse and Trauner 2008).

**Table 2.4. Total Number of Removed Aliens (EU-27)**

<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
<b>246,893</b>	<b>215,161</b>	<b>209,409</b>	<b>201,870</b>

**Source: Commission of the European Communities, 2008.**

Unfortunately, the data has not been broken down into rejected asylum seekers and irregular migrants. Furthermore, because no information has been given about the countries to which removal was implemented, we have to consider that out of the total, an indeterminate number of individuals were simply being re-cycled within the EU, which means they were returned to another EU country from which they had arrived. The total numbers of removed aliens were distributed among member states as follows:

**Table 2.5. Total Number of Removed Aliens (2003-2006)**

	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
Austria	11,070	9,408	5,239	4,904
Belgium	9,996	9,647	10,302	9,264
Bulgaria	814	1,271	1,608	1,501
Cyprus	3,307	2,982	3,015	3,222
Czech Republic	2,602	2,649	2,730	1,228
Denmark	3,100	3,093	2,225	1,986
Germany	30,176	26,807	19,988	15,407
Estonia	171	101	60	91
Finland	2,773	2,775	1,900	1,410
France	11,692	15,672	18,120	21,271
Greece	40,930	35,942	51,079	54,756
Hungary	4,804	3,980	4,348	3,057
Ireland	n.a.	n.a.	n.a.	n.a.
Italy	31,013	27,402	24,001	16,597
Latvia	375	234	162	141
Lithuania	846	306	182	168
Luxembourg	n.a.	n.a.	n.a.	n.a.
Malta	847	680	962	781
Netherlands	23,206	17,775	12,386	12,669
Poland	5,879	6,042	5,141	9,272



Portugal	2,798	3,507	6,162	1,079
Romania	500	650	616	680
Slovenia	3,209	2,632	3,133	3,173
Slovakia	1,293	2,528	2,569	2,185
Spain	26,757	27,364	25,359	33,235
Sweden	7,355	11,714	8,122	3,793
United Kingdom	21,380	n.a	n.a.	n.a
<b>Total</b>	<b>246,893</b>	<b>215,161</b>	<b>209,409</b>	<b>201,870</b>

**Source: Commission of the European Communities 2008.**

Because data is scarce and EU member states do not provide any data or estimations for the future, the transit countries with which the EU signed or seeks to sign Community readmission agreements face great difficulties assessing the numbers of returnees – both their own nationals as well as third country nationals – they have to expect from EU member states after the Community readmission agreement takes effect (Commission of the EC 2008).

This table clearly shows that countries around the Mediterranean Sea have higher repatriation rates compared to other countries, for example the ones in the Baltic Region. This is simply because these countries are closer to African countries; illegal immigrants from Africa and Middle East have transportation channels over islands in the Mediterranean region. This data also refer that Turkey could play important roles on decreasing illegal immigration because its neighbours have high repatriation rates (i.e., Greece).

According to Kruse and Trauner (2008, p.29-30) the problems transit countries face based on readmission agreements with the EU relate to three different groups of people: their own state nationals, third country nationals, and asylum seekers:

**Own State Nationals;** As agreed in international usual law, each state is obliged to take back its own nationals. However, since most often the number of nationals from EU neighboring countries who migrated irregularly to the EU is substantially high, their return creates major difficulties for the home country. Firstly, remittances often play a major role in the transit country's economy meaning that many families simply depend upon money transfer from relatives who work abroad irregularly. Return may very well result in the destruction of their economic basis and their deterioration into poverty. Secondly, irregular migrants most often stem from remote or rural areas, but when being returned, these migrants prefer to stay in or around the capital or major cities. As a result, their families may leave their villages to join their relatives so that authorities have to deal with internal migration and rapid urbanization. Another important implication of return is re-emigration. At least in the case of forced return, many migrants look for possibilities to go abroad again because they lack an acceptable prospect in their home country. In all these dimensions, even the return of its own nationals is a rather complex issue that brings about a lot of challenges for transit countries.

**Third Country Nationals;** Even more challenging is the return of third country nationals to transit countries. Almost none of the transit countries around the EU have any experience in readmitting third country nationals to their home countries, and in most cases, readmission agreements with countries of origin are lacking. Because neither the governments of the transit countries nor relevant international organisations nor the EU itself are in a position to reliably predict the potential level of third country nationals that will be returned by EU member states, measures providing for the implementation of third country national readmission are subject to uncertainty. The institutional infrastructure of government authorities is insufficiently developed, and the personnel lack experience in carrying out the various steps of the return procedure. Proper communication among various organisational units is not provided for, the technical equipment is insufficient, and the staff is untrained regarding human rights aspects of the situation and respect for migrants and their needs. Facilities for adequate lodging and accommodation are non-existent, and the return of migrants to their home countries is nearly impossible given all the administrative, organisational, and financial implications of readmission. Therefore, transit countries are in the risk of being left with substantial numbers of aliens posing a social and economic burden and turning these countries into countries of destination in the end.

**Asylum Seekers;** Readmission agreements not only provide for the return of irregular migrants but also for that of rejected asylum-seekers. Sending an asylum-seeker to another state where no persecution is feared is not explicitly forbidden by international law – and that is exactly what readmission agreements are about. According to the Geneva Refugee Convention and its principle of non-refoulement, receiving states are obliged to examine the claim before returning the applicant to a third country, to verify that the individual applicant will really be safe. However, cases of expulsion without prior examination of the claim are common, and in many cases return procedures are rather informal and the returning state merely informs the receiving country of the planned return (Landgren, 1999, p. 26). The majority of bilateral readmission agreements between EU member states and third countries do not contain any explicit reference to the principle of non-refoulement. Even though the notion of 'safe third countries' requires that these countries have signed international agreements, most importantly the Geneva Refugee Convention and the European Convention for the Protection of Human Rights and Fundamental Freedoms, their proper implementation is not considered. Readmission agreements do not explicitly oblige the 'safe third country' to assure asylum seekers access to a fair refugee determination procedure in line with international standards. In addition, returning states might not even make clear that the individual is an asylum seeker who has been refused on

*formal grounds of the 'safe third country' rule. Chain deportation might be the consequence.*

Governments in transit countries already have severe difficulties adhering to time limits, providing interpreter services communicating promptly with applicants, and running shelters for asylum seekers. These difficulties will get even worse when the number of applications rises. Also, sustainable local integration of refugees is very difficult, especially because of the often disastrous economic situation in the transit countries. Moreover, not only rejected asylum seekers but also irregular migrants can apply for asylum upon return, and it can be assumed that substantial numbers of irregular migrants might have a severe claim for protection (Kruse and Trauner 2008).

If one assumes that most of the transit countries are not 'safe third countries' of asylum according to UNHCR criteria we can conclude that the return of rejected asylum seekers might imply a lowering of asylum standards below internationally accepted standards. The rights of asylum seekers might be violated on the part of EU member states.

In sum, readmission agreements as such mainly bring about negative consequences and difficult challenges of varying dimensions for countries of origin or transit (EC Commission 2002, p.26). The negative effects for transit countries very much outweigh those of sending countries because transit countries have to deal with the onward repatriation of third country nationals.

We have seen that it is unclear how many irregular migrants and rejected asylum seekers EU member states intend to readmit. In addition, it is still an open question how many they really can readmit in the end, for two reasons. First, if the limited capacities of transit countries are exhausted, it might no longer be in the interests of the EU to continue readmitting people because the Union has a basic interest in economic, social, and political stability in neighbouring regions. Second, it is difficult to assess in how many cases member states' authorities have the ability to unambiguously identify the individual's nationality or to provide sufficient proof of migration routes (UNHCR 2001; Rogers & Peers 2005).

Whether readmission agreements are at all an effective tool for managing migration flows, however, also in cases where a sufficiently certain testing of nationality of irregular migrants could be found. If readmitted migrants do receive no support to reintegrate themselves in their home countries or, even worse, run ashore in a foreign transit country, there is nothing that prevents them from trying to enter a EU member state again. Similarly, it seems to be questionable at least that readmission agreements function as a deterrent and will substantially decrease the flow of irregular migrants to the EU as long as the reasons that make people leave their country and migrate towards the EU continue (Kruse and Trauner 2008).

## **2.5 THE COMMISSION'S 'PACKAGE APPROACH'**

The Commission has requested a greater “level of political and diplomatic support” from Member States in order to achieve more real results in its negotiation process regarding the conclusion of readmission agreements (Commission communication 2002). This support has taken the form of negotiating tools and incentives that could be collected into a ‘package approach’. The Commission’s current toolbox for the negotiation of readmission agreements varies from visa facilitation regimes to open or enhanced channels for legal migration for nationals, development and migration aid, financial and technical support and trade concessions. The Commission attempts to tailor the final negotiation incentive packages to meet the specific interests of each third country. This assortment of compensatory measures should in principle offer the Commission the leverage to secure third country cooperation on the return of non-nationals to their territories (Roig and Huddleston 2007)

### **2.5.1 The Lure of EU Membership**

Bouteillet cites visa waiver regimes and the lure of membership as the two key components in the packages for the second-generation readmission agreements with the CEEC countries. Member States secured CEEC compliance by progressively lifting visa obligations for their nationals in exchange for greater CEEC responsibility for migratory flows (Readmission of Illegal Aliens 1991). Other incentives also contributed to CEEC agreement, such as the

partnership policy of Germany with neighboring Poland and the Czech Republic, which offered substantial technical and financial assistance for capacity-building (Agreement between Germany and Poland 1993). The enlargement framework was thus instrumental in the EC's first readmission agreements with third countries. As one process within the greater relationship of enlargement negotiations, MS's could use the various enlargement carrots and sticks to demand more of candidate countries than of other third countries. Definitely, adaptation to the EU migration regime is a required and integral condition for membership (Lavanex and Uçarer 2002).

### **2.5.2 Visa Facilitation Agreements**

The most successful reward in the package approach is by far the visa facilitation regime. Visa facilitation agreements offer faster decision processes, simplified documents and reduced visa fees for short-stay visas, as well as simplified criteria for multiple-entry visas for certain categories of persons. Cross-border mobility and people-to-people contacts are priorities for third countries, particularly those along the EU's external borders. Combination visa facilitation agreements with readmission agreements permits the EU to negotiate returns of non-nationals to a country of transit in exchange for ease travel and short-stay residence for certain categories of nationals of that country (Lavanex and Uçarer 2002).

Macao and Hong Kong expressed marked interest in the conclusion of visa facilitation agreements before reaching a decision on readmission agreements. Both countries offered their cooperation on readmission as "*compensation*" for the lifting of visas. After three years of Russian resistance, readmission agreement negotiations were launched in January 2003, negotiations remained at a standstill for another ten months until the EU initiated a parallel visa facilitation negotiation. Coupling has also been credited for the breakthrough in negotiations with Ukraine. Countries already engaged in negotiations and future priority countries such as Moldova, have also requested that the readmission of non-nationals be made conditional upon a coupling proposal (Agence Europe 2003).

Nevertheless, the Commission has great difficulties in negotiating a visa facilitation regime, since this domain remains within the MS's national competences. In fact, Member States cannot give to allow the Commission to give very high packages like visa facilitation agreements in exchange for readmission agreements with most third countries. The Commission observed that coupling hinges on the “*substantial cooperation and coordination from and between the Member States*” (EC Communication 2002, Art.11). Some Member States hesitate to close a door on irregular immigration only to open a window on new potential irregular flows of visa overstayers, already the largest category of irregular migrants in the EU. Moreover, the majority of these incentives touch on the most sensitive national sovereignty policy realms, such as visas and legal migration. Given the cost for Member States, it is not surprising that the Commission finds many unwilling to hand over substantial incentives for readmission agreements. The Commission admits that it generally received the cooperation of Member States on visa facilitation with negligible countries of transit or origin like Hong Kong and Macao (COM 2002) or potential West Balkan candidate countries like Albania. Major ‘problem countries’ for irregular migration are another matter. Frattini confessed that coupling was essentially a feasible policy instrument for certain countries with a “*European perspective*” (Frattini 2006), that is, candidate status.

Member State political concerns will keep visa facilitation off the readmission agreement table with even EU candidate countries like Turkey, or with third countries such as Algeria, China, Morocco or Pakistan, whose large migratory pressures on EU Member States make the conclusion of EC readmission agreements most urgent. If anything, the already meagre visa facilitation packages will appear with an extremely narrow range, such as only “*certain categories of personnel*” for China (COM 2005, p.4).

### **2.5.3 Exhausting All Other Positive Incentives**

With visa facilitation agreements never on the table in most cases, one or both parties consider other incentives unacceptable. Pakistani as well as Moroccan officials have repeated the request for open or facilitated channels for the legal migration of their citizens (Shahid 2004). As an example, the Italian government successfully concluded a bilateral readmission

agreement with Albania by opening up a legal migration quota for Albanian citizens. During its Presidency in 2003 the Italian government attempted to transfer this positive bilateral experience to the European level through the introduction of a Commission-backed proposal for the pooling of legal immigration quotas from each Member States. Minimal support has come from other M.S.'s, for whom legal immigration channels carry more controversial costs than visa facilitation agreements. Such opportunities also do not address the underlying problematic costs of the management of readmitting non-nationals. The Senegalese government recognized this fact when it refused to sign a bilateral readmission agreement agreed with Spain covering non-nationals. A substantial offer of cooperation aid (15m euros over five years) and greater open legal migrant channels would accompany the agreement for Senegalese. The Spanish government asserted that legal migration would stem the irregular migration flux. Until now in the estimation of the Senegalese, the migration benefits for nationals would not offset the significant return costs for non-nationals (www.news.bbc.co.uk 2006).

The Commission may also take advantage of the AENEAS programme, for financial and technical assistance in the migration and asylum field, earmarked inter alia for third countries with which the Community is negotiating a readmission agreement. Nevertheless, the AENEAS five-year instrument for 2004–2008 consists of a rather modest budget of 250 million euros or an average of fifty million per year. The EP has pointed out the unfortunately limited capacities of the AENEAS's programme's budget (EC Report 2005, p.7)

In all other cases, Schieffer and the Commission Special Representative for Readmission Policies admit that “*carrots have not always been easy to find*” (Kovanda 2006). In fact, it is highly doubtful that the Commission can devise a package of carrots that satisfies the palate of third countries and whose costs Member States are also willing to swallow.

#### **2.5.4 The Temptation of Negative Incentives**

The Council has been tempted to adopt sanctions for non-cooperation. The Council introduced the conditionality concept to readmission agreements, whereby “*insufficient cooperation by a third country (to manage migration) could hamper the establishment of closer relations between that country and the Union*” (Council Conclusion 2003).

Sanctioning tools included the threat to withdraw or cut assistance or suspend previously-granted allocations. In the June 2002 Seville Conclusions, the European Council stated that “*retaliation measures could be taken under Common Security and Foreign Policy and other EU Policies in case of persistent and unjustified denial of such cooperation*”. This policy was generally assessed as harmful not only to third countries, but also to the EU’s comprehensive approach to external relations (Council Conclusion 2004).

Lower assistance levels for trade, development, human rights programs and democracy-strengthening would only exacerbate the root causes of irregular migration and diminish a third country’s capacity to prevent and control it. Although the Council finally dropped the approach, it should not be disregarded.



### **3. THE RELATIONS BETWEEN THE EU AND TURKEY IN THE FIELD OF READMISSION POLICY**

Turkey is a candidate country for EU membership following the Helsinki European Council of December 1999. Accession negotiations started in October 2005 with the analytical examination of the EU legislation (the so-called screening process). Since then the EU closed provisionally one chapter: Science and Research (June 2006). In addition the EU opened negotiations on seven chapters: Enterprise and Industry (March 2007) and Financial Control and Statistics (June 2007), Trans-European Networks and Consumer and health protection (December 2007), Intellectual property and Company law (June 2008). On 18 February 2008 the Council adopted a revised Accession Partnership with Turkey ([www.ec.europa.eu](http://www.ec.europa.eu) 2009).

Turkey has had a long association with the project of European integration. The European Economic Community (EEC) signed in 1963 the Ankara Association Agreement for the progressive establishment of a customs union. The Ankara Association was supplemented by an Additional Protocol signed in November 1970. **Because of the Turkish failure to apply to Cyprus the Additional Protocol to the Ankara Agreement the Council decided in December 2006 that eight relevant chapters will not be opened and no chapter will be provisionally closed until Turkey has fulfilled its commitment.** The eight chapters are: Free Movement of Goods, Right of Establishment and Freedom to Provide Services, Financial Services, Agriculture and Rural Development, Fisheries, Transport Policy, Customs Union and External Relations ([www.ec.europa.eu](http://www.ec.europa.eu) 2010).

The EU established a Customs Union with Turkey in 1995. The scope of the Customs Union covers trade in manufactured products between Turkey and the EU, and also entails alignment by Turkey with certain EU policies, such as technical regulation of products, competition, and Intellectual Property Law. Trade between the EU and Turkey in agriculture and steel products is regulated by separate preferential agreements. The Customs Union has significantly increased the volume of trade between Turkey and EU member states ([www.ec.europa.eu](http://www.ec.europa.eu) 2010).

### **3.1. READMISSION AGREEMENTS IN THE PROGRESS REPORTS**

#### **3.1.1 1998 Progress Reports From The Commission On Turkey**

The 1998 Report stated that as Turkey is a transit country for quite a number of illegal immigrants, mainly from Asia and northern Iraq, its refusal to conclude any readmission agreements, pleading constitutional grounds, is a serious problem. It has, however, introduced a new passport complying with the International Civil Aviation Organisation (ICAO) standards and optical scanning of passports, measures that could prove helpful in controlling immigration (www.dpt.gov.tr 1999).

#### **3.1.2 1999 Progress Reports From The Commission On Turkey**

The 1999 Report stressed that, so far as immigration is concerned, in 1998 the number of persons caught while transiting illegally through Turkey exceeded 40.000. This figure represents a significant increase in comparison to 1997 (30.000) and 1996 (18.000). The majority of these people come from Pakistan, Bangladesh, Sri Lanka, Afghanistan and first and foremost from Iraq. Coast guards, Land forces, Gendarmerie and Police are responsible for the prevention of illegal immigration (www.dpt.gov.tr 2009).

Turkey is not a country of final destination: almost all the persons caught try to reach Western European countries and the majority of them are caught at the land border between Turkey and Greece at Edirne since most illegal immigrants try to enter Greece as a first step. The number of illegal crossing attempts in Bulgaria is negligible. The sharp increase in the number of immigrants caught calls for a development of the facilities and an increase of the financial means to accommodate the illegal's (www.ec.europa.eu 2009).

The fight against illegal immigration is on the agenda of the talks, which started in July 1999 between Turkey and Greece. Turkey participates in the Budapest Process against illegal immigration and also co-operates with the Office for International Migrations in the field of training. **The objection of Turkey to conclude readmission agreements remains a serious difficulty.**

Also report worried that Turkey still maintains a geographical reservation to the 1951 Geneva Convention and only grants refugee status to people coming from European countries, thus largely rendering the asylum machinery ineffective. The conditions in which asylum-seekers are held need to be improved. It would also have to be able to gather and evaluate figures on the number and origin of asylum seekers and on the reasons for refusal of asylum (www.ec.europa.eu 2009).

### **3.1.3 2000 Progress Reports From The Commission On Turkey**

In its November 2000 Report, the Commission noted that as regards migration, efforts need to be seriously stepped up to decrease the number of illegal persons who try to reach Western European countries.

Compared to 1999, no major progress has been made in the field of *justice and home affairs*. As regards migration, efforts need to be seriously stepped up to decrease the number of illegal migrants trying to reach Western European countries. It is recommended that the various departments in Turkey are better co-ordinated in order to increase the efficiency of checks, particularly exit checks (www.dpt.gov.tr 2009).

### **3.1.4 2001 Progress Reports From The Commission On Turkey**

The 2001 report noted that with regard to **migration**, bilateral negotiations with a number of countries, both of destination and origin, for readmission agreements have started. On 10 September 2001 Turkey signed, a readmission agreement with Syria. Iran, Pakistan, Bangladesh, India, Sri Lanka China, Romania and Bulgaria, all countries of origin, have been approached about draft readmission Protocols. A Protocol on readmission with Greece is well advanced. In the context of the EU Action Plan for Iraq, the EU made a proposal to Turkey to improve co-operation in transit matters (www.ec.europa.eu 2009).

According to report with a view to the reinforcement of **external border** controls, a process of co-operation and co-ordination between the various Ministries and bodies involved has begun. A number of actions have been taken to strengthen border management, in particular to prevent and deter illegal border crossings. Such measures relate to the setting-up of new checkpoints, the assignment of additional sea patrols and the enhancement of vigilance and pursuit of suspicious vessels anchored at harbors. The construction of watchtowers along the Iranian border has been started.

In the **field of police co-operation and the fight against organised crime**, an Agreement between Turkey and Greece on co-operation on combating crime entered into force in July 2001. The focus is on terrorism, organised crime, drug trafficking and illegal migration. This Agreement is to be supplemented by the above-mentioned protocol on readmission currently being negotiated with Greece ([www.ec.europa.eu](http://www.ec.europa.eu) 2009).

As regards **external borders** and preparations for alignment with the **Schengen** Agreement, efforts to strengthen border management should continue. The question of the establishment of a non-military professional body specifically responsible for the control of borders should be addressed. It is important to adopt a strategy for the effective control and management of all Turkish borders, as well as for the upgrading of the technical equipment. In order to foster the administrative capacity of the various actors involved in the protection of the borders, special attention should be given to training, including language training, in particular for border police at land, sea and air borders ([www.ec.europa.eu](http://www.ec.europa.eu) 2009).

As for **migration**, clarifications are needed on the possible scope, contents and timing of readmission agreements signed by Turkey. Given the recognition of Turkey's status as a transit country, a significant step in alleviating the immigration problem would be the adoption of cooperation measures with the EU in transit matters, in line with the proposals put forward by the EU to Turkey in July 2001. As a matter of priority, Turkey needs to strengthen the efficiency of its fight against illegal migration and trafficking in human beings. In that respect the signing of a readmission agreement between Turkey and the EU

would be a step in the right direction. Administrative capacity should be strengthened in the field of border controls and the fight against illegal immigration (www.ec.europa.eu 2009).

### **3.1.5 2002 Progress Reports From The Commission On Turkey**

The 2002 report stated that, a protocol was ratified between the two countries for the readmission of illegal migrants. It has entered into force but is not yet implemented fully. Efforts are continuing to promote new confidence building measures, such as the cancellation of military exercises in the Aegean Sea. Contacts have started between the intelligence agencies of both countries. Greece and Turkey organised a joint ceremony for the 50th anniversary of NATO in Brussels, and in April 2002 the Greek and Turkish Foreign Ministers made a joint visit to the Middle East. In March, the foreign ministries began exploratory contacts about the Aegean. The contacts were formally launched in Istanbul in the context of the EU-OIC (European Union-Organisation of the Islamic Conference) forum on the harmony of civilisations (www.ec.europa.eu 2009).

In the field of justice and home affairs, Turkey recently signed three important conventions of the Council of Europe on money laundering and the fight against corruption. A bilateral agreement with Greece to combat crime has entered into force. Turkey has taken initiatives to align with the EU's visa policy and to conclude readmission agreements in the field of migration. Administrative capacity should be strengthened in the field of border controls and the fight against illegal immigration.

In the area of migration, following the entry into force of the agreement between Turkey and Greece on co-operation in combating crime, terrorism, and illicit drug trafficking and illegal migration in July 2001, a protocol on readmission implementing Article 8 of the agreement was signed in November 2001. The protocol was ratified by Turkey and Greece respectively in April and in August. For third country nationals, this protocol gives the parties 14 days to inform each other of the number of persons to be returned after the date of illegal entry. For nationals of the two countries the authorities can make use of simplified procedures. Co-operation on the return of illegal migrants started in February and according to official

sources, Turkey has so far readmitted some 100 migrants. However, the total number of applications for readmission related to 6175 illegal migrants, which underlines the difficulties that Turkey experiences in applying the provisions of the protocol. This protocol does not prejudice the obligation assumed in the second paragraph of the same Article to conclude an agreement on readmission (www.ec.europa.eu 2009).

Transit arrangements have been concluded between a number of Member States and Turkey. This was carried out indirectly through the Anatolian Development Foundation and the International Organisation for Migration (IOM) and concerns the return of rejected Iraqi asylum seekers. 22 Iraqi asylum seekers have been successfully returned to Iraq, but the Member States concerned have recently reported difficulties in the application of these arrangements.

Turkey is an important transit and destination country for illegal migration flows, which have continued steadily in the last year. The authorities acknowledged having apprehended 92364 illegal migrants in 2001, as compared to 94514 in 2000. In the first six months of 2002, 40006 illegal migrants were apprehended (www.ec.europa.eu 2009).

There is some progress with regard to readmission. Apart from the November 2001 protocol on readmission between Turkey and Greece, bilateral negotiations with a number of countries, both of destination and origin, for readmission agreements are underway. The readmission agreement signed with Syria in September 2001, which has not yet been ratified by Turkey, has nonetheless been put into effect. Turkey has returned 178 migrants and has admitted 6 migrants back in this framework. Draft agreements were submitted to a number of countries during spring 2002 (April-May), including Egypt, the Russian Federation, Belarus, Georgia, Israel, Sudan, Nigeria, Ethiopia, Morocco, Tunisia, Libya, Algeria, Jordan, Lebanon, Kazakhstan, Uzbekistan, Kirghizstan and Mongolia.

In the area of migration, a number of positive initiatives have been taken. **However, the outstanding signing of a readmission agreement between Turkey and the EU, is a matter of the highest significance.**

Turkey needs to enhance its capacity to handle readmission in preparation for the implementation of the draft agreements submitted to a large number of countries, for which Turkey is either a transit or a destination country, as well as expulsions, including to remote countries of origin. According to official sources, in 2001, 77515 illegal migrants were expelled on grounds of violating the law, mostly for illegal entry. In the first six months of 2002, 29067 illegal migrants were expelled. With respect to readmission, Turkey needs to improve its existing cooperation with Member States of the EU, in particular the implementation of the readmission protocol with Greece (www.ec.europa.eu 2009).

Training programmes on Community law and the Community acquis have been developed, in particular in the areas of asylum and illegal migration. In the area of migration, some efforts were made to adopt the EU acquis, namely on readmission. There have been some initiatives on strengthening border management, but no preparations were made for full implementation of the Schengen Convention (www.ec.europa.eu 2009).

### **3.1.6 2003 Progress Reports From The Commission On Turkey**

In its 2003 Report, Authorities reported that as a result of the intensified efforts and initiatives targeting illegal migration, international routes for migration flows have been diverted away from Turkey in 2002 and 2003.

Turkey still experiences difficulties in applying the provisions of the Readmission protocol between Turkey and Greece and therefore needs to improve the implementation of this Protocol considerably. The figures on the number of requests and the number of accepted requests reported by Turkish authorities differ considerably from those provided by the Greek authorities. In this regard comparable databases should be set up.

With regard to the signing of readmission agreements with third countries, some progress can be reported. Turkey signed a readmission agreement with Kyrgyzstan in May 2003 regarding the readmission of the nationals of the two countries. Negotiations with Bulgaria have advanced and the agreement with Romania has been initialled. Turkey is currently also

negotiating a readmission agreement with Uzbekistan. The agreement signed with Syria in September 2001 was ratified by Turkey in June 2003. **The EU asked Turkish authorities for the opening of the negotiations on an EU-Turkey readmission agreement. To date Turkey has not formally replied.**

The transit arrangement concluded between a number of Member States and Turkey on the voluntary return of rejected Iraqi asylum seekers in 2002 was terminated during the course of 2003 due to the war in Iraq and the subsequent establishment of a new authority in that country.

The Joint Action Programme on Illegal Migration between the EU and Turkey should be concluded as soon as possible. The legislative framework with regard to handling migration including admission of third country nationals for employment and for study purposes, the status of third-country nationals residing on a long-term basis and family reunification needs to be improved to achieve conformity with the *acquis* (www.ec.europa.eu 2009).

According to the 2003 report, concerning administrative capacity, Turkey has achieved considerable progress in increasing its efficiency in the fight against illegal migration through improved cooperation among authorities as well as with Member States and third countries and should continue this effective approach. In order to meet the minimum standards for the elimination of trafficking in human beings, Turkey needs to put in place the recommendations issued by its Task Force, in particular with regard to the protection of victims. As far as readmission and expulsion are concerned, Turkey needs to enhance its capacity to handle both. In 2002, 42 232 foreigners were expelled on grounds of violating Turkish law. Expulsions to remote countries of origin remain an issue to be addressed.

Since the EU considers that a readmission agreement between the EU and Turkey is a matter of utmost importance, a request to open negotiations on the signing of a readmission agreement was forwarded to Turkey in March 2003. To date Turkey has not formally replied. Turkey should also continue its efforts to conclude readmission agreements, and in particular, improve the implementation of the Readmission Protocol with Greece. The legislative



framework with regard to asylum needs to be revised ensuring the full implementation of the 1951 Convention and the EU *acquis*.

Turkey has improved and intensified its co-operation with the European Union and its Member States in many fields such as the fight against illegal migration and organised crime. Overall, Turkey should start implementing the strategies adopted and intensify its efforts to align its legal and institutional framework. Improving co-ordination and cooperation among institutions of justice and home affairs, the reform of the judiciary, intensified active co-operation with the European Union on illegal migration (including as soon as possible the conclusion of the Joint Action Programme on Illegal Migration) and lifting of the geographical limitation to the 1951 Geneva Convention on refugees, and co-operation with the EU in fighting trafficking are issues that need to be addressed more concretely. **Turkey should also start to negotiate a readmission agreement with the EU.**

In adopting initial strategies for alignment in the area of *justice and home affairs*, Turkey has made important progress. Co-operation has improved in many fields, such as the fight against illegal migration and organised crime. Turkey should start implementing the strategies already adopted and intensify its efforts to align its legal and institutional framework.

### **3.1.7 2004 Progress Reports From The Commission On Turkey**

In its 2004 report, in adopting initial strategies for position in the area of justice and home affairs, Turkey has made important progress. Co-operation has improved in many fields, such as the fight against illegal migration and organised crime. Turkey should start implementing the strategies already adopted and intensify its efforts to align its legal and institutional framework. **Turkey should start to negotiate a readmission agreement with the EU.**

With regard to migration, work has begun on drawing up a National Action Plan to implement the migration strategy adopted in 2003. In March 2004 Turkey agreed to open negotiations with the European Community concerning a readmission agreement. Negotiations are expected to start in autumn 2004. Turkey signed a readmission agreement

with Kyrgyzstan in May 2003; implementation has not yet begun. A readmission agreement with Romania was concluded in January 2004. Negotiations for readmission agreement are underway with Bulgaria, Libya, Uzbekistan and Ukraine. As regards the implementation of the readmission protocol between Turkey and Greece, the first meeting of the Co-ordination committee established under the readmission protocol was held in July 2004. Given difficulties encountered in implementation, the parties agreed to take measures to implement the protocol more effectively and to convene further meetings at expert level.

In the area of migration, negotiations on a readmission agreement with the EU are expected to start soon. Turkey should also continue its efforts to conclude readmission agreements with third countries. The Joint Action Programme on Illegal Migration between the EU and Turkey should be concluded as soon as possible. Turkey is invited to complete work on drawing up the National Action Plan to implement the migration strategy adopted in 2003. The establishment of a specialised, civilian authority for migration issues will be an important component of this plan. Concerning administrative capacity, Turkey has continued to achieve progress concerning the fight against illegal migration through improved co-operation among authorities as well as with Member States and third countries.

Turkey has continued to make efforts to align with the *acquis* in the area of *justice and home affairs*. Co-operation both at national level among all relevant administrative bodies and with the EU should be improved on issues such as illegal migration and trafficking, including through the negotiation of a readmission agreement. The geographic limitation to the Geneva Convention on refugees should be lifted and co-operation among the relevant institutions should be improved.

### **3.1.8 2005 Progress Reports From The Commission On Turkey**

In May 2005 Turkey opened negotiations with the EU concerning a readmission agreement, which is a welcome development. The readmission agreement with Romania, concluded in January 2004, was ratified. A readmission agreement with Ukraine was signed in June 2005. Negotiations to conclude readmission agreements with Bulgaria and Russia have continued.

Turkey continued to participate in the activities of the Centre for information, discussion and exchange on the crossing of frontiers and immigration and its early warning system. 54,810 illegal migrants were apprehended in Turkey in 2004 (compared to 48,055 in 2003).

The Turkish authorities apprehended 7,470 illegal migrants in the first quarter of 2005. Altogether 8,000 foreigners were refused admission at border crossing points in 2004 (compared to 5,720 in 2003). 955 organisers of illegal migration were arrested in 2004, and 175 in the first three months of 2005. 12 ships used for the purpose of illegal migration were detained in Turkish waters in 2004.

### **3.1.9 2006 Progress Reports From The Commission On Turkey**

**The 2006 Report noted that Negotiations to conclude a readmission agreement with the EC continued at a slow pace.** For a timely and successful conclusion of the negotiations, Turkey's efforts need to be considerably increased.

With regard to apprehension of illegal migrants, in 2005, 57 428 illegal migrants were apprehended in Turkey compared to 61 228 in 2004, where in the first six months of 2006, 18 441 were apprehended.

### **3.1.10 2007 Progress Reports From The Commission On Turkey**

**Another round of negotiations on a readmission agreement between Turkey and the EC took place in December 2006.** Some contacts on the issue have taken place since then, but no progress was made on negotiations. Turkey has not started negotiations on a visa facilitation agreement.

The bilateral readmission agreement with Syria, signed in 2001, was ratified by Turkey. The agreement lays down the procedures for the readmission of Turkish and Syrian citizens as well as third country nationals that are illegally present in the other country's territory.

Negotiations on bilateral readmission agreements are ongoing with Pakistan, Sri Lanka, Jordan, Uzbekistan, Lebanon and Libya.

The last round of negotiations on a readmission agreement between Turkey and the EC took place in December 2006. Some contacts on the issue have taken place since then. However, no actual progress in negotiations was made.

### **3.1.11 2008 Progress Reports From The Commission On Turkey**

**The 2008 report showed that, Turkey has not pursued the negotiations on a readmission agreement with the European Community since December 2006.** Turkey proposed a readmission agreement to Afghanistan. A first round of negotiations on a readmission agreement with Pakistan was held. However, Turkey has not pursued the negotiations on a readmission agreement with the European Community since December 2006.

No specific training or training curricula exist for staff working in the migration area. There is no compatible data system on migration. Overall, some progress can be reported, particularly to prevent drugs and human trafficking. The capacity to manage asylum and migration needs to be improved. Efforts need to be stepped up to implement the national action plan on integrated border management. **The negotiations for an EC-Turkey readmission agreement need to be re-launched.**

### **3.1.12 2009 Progress Reports From The Commission On Turkey**

**The 2009 report noted that Turkey recently accepted to resume formal negotiations on an EC-Turkey readmission agreement.** High migration inflows are putting pressure on the Turkish asylum and migration system. Hence, reorganisation of this system and conclusion of readmission agreements with source countries remain of key importance. Turkey continued to negotiate readmission agreements with Pakistan, Iran and Libya. No further progress was made on the readmission agreement with Afghanistan during the reporting period. Concluding negotiations on an EC readmission agreement with Turkey is a priority

for the EU. Turkey recently accepted to resume formal negotiations blocked since December 2006. Until the EC readmission agreement with Turkey is concluded, and in line with the conclusions of the European Council, already existing bilateral agreements should be implemented.

Turkey has achieved limited progress on external borders and Schengen. Limited progress can also be reported in the field of migration and asylum. In the face of a sharp increase in asylum seekers efforts need to continue to reorganise the system. As to the EC-Turkey readmission agreement, Turkey recently accepted to resume formal negotiations blocked since December 2006. Turkey has shown efforts with a view to conclude a working arrangement with FRONTEX. There has been little progress on visa policy and none on judicial cooperation in criminal and civil matters (www. europa.eu 2009).

### **3.2 TURKEY'S ANSWER TO THE EU ABOUT READMISSION AGREEMENTS**

Within the framework of illegal migration, in the medium scope, Turkey shall put into force arrangements aligned with the EU Acquis in connection with practices like readmission, deportation etc. Turkey follows a policy of undersigning readmission agreements with primarily the source countries and progressively transit countries and countries of destination and is expecting a reply for her proposals dated 2001 and 2002 to conclude readmission agreements with various countries (Ay, Tokcan, Öztürk & Alp 2005, pp.22-23).

In this context, firstly the neighboring countries in the west and east and then other source countries are targeted in concluding readmission agreements. As for readmission of Turkish citizens, Turkey exercises a very practical method and accordingly, pursuant to ICAO Convention, illegal migrants departing from Turkey are readmitted if they are returned by the same flight of departure or the next flight to Turkey. Information on the agreements and protocols to which Turkey is a signatory as regards readmission of illegal migrants is specified below:

Turkey and Greece undersigned “Cooperation Agreement Against Crimes Particularly Terrorism, Organized Crimes, Drug Trafficking, and Illegal Migration” on 20 January 2000 and it became effective on 17 August 2001 in Turkey. Subsequently, for the purposes of implementing Article 8 thereof regarding readmission of illegal migrants “Protocol on Readmission of Illegal Migrants” was concluded on 8 November 2001 and the implementation stage commenced as of the beginning of 2002. Following its approval on the basis of the Cabinet Decree 2002/3914 of 12 March 2002, the Protocol was published in the Official Journal 24735 of 24 April 2002. It was approved also by the Greek Parliament at the beginning of August.

An agreement on readmission of illegal migrants was undersigned with Syria on 10 September 2001. This agreement was approved on the basis of the Law No 4901 of 17 June and put into force following its publication in the Official Journal 251482003 of 24 June 2003.

An agreement on readmission of illegal migrants was undersigned with Ukraine on 07 June 2005. This agreement was approved on the basis of the Law of 24 June and put into force following its publication in the Official Journal 26926 of 04 July 2008.

A readmission agreement exclusive for the citizens of Kirghizstan and Turkey only, was concluded on 6 May 2003. The said agreement was approved on the basis of the Law No 5097 of 12 February 2004 and became effective following its publication in the Official Journal No 25376 of 17 February 2004.

Moreover, negotiations with Russian Federation, Uzbekistan, Belarus, Hungary, Macedonia, Lebanon, Egypt, Libya and Iran are underway. Negotiations with Russian Federation was completed has come to the stage of signing

Readmission agreements were proposed to Pakistan, Bangladesh, Afganistan, India, People’s Republic of China, Tunisia, Mongolia, Israel, Georgia, Ethiopia, Sudan, Algeria, Morocco, Nigeria and Kazakhstan. Pakistan adopted the proposed draft readmission agreement on 7 June, 2007 and the first round of talks was held in Ankara on 04 February 2008. Also, an

agreement on readmission of illegal migrants was undersigned with Romania on 19 January 2004. (Ay, Tokcan, Öztürk & Alp 2005, pp.22-23).

With EU in Brussels on May 27, 2005, on 28 March 2006 in Brussels, 30 June 2006 in Ankara and 7 to 8 December 2006 in Brussels, has held four rounds of talks and continues the negotiation process.

The text of readmission agreement was sent to Iran on 2001 but can not get any results. A new proposal has been forwarded on May 29, 2008 and then the text of readmission agreement was sent to Irak on 2001 but can not get any results. A new proposal has been forwarded on July 22, 2009.

### **3.3 EU and TURKEY READMISSION AGREEMENT PROCESS**

The first discussions between the delegations on a draft Agreement on Readmission proposed to our country by EU Commission were held in Brussels on May 27, 2005. The second round of talks concerning Readmission agreements with the EU was held in Brussels on March 28, 2006, and the third round of talks was held in Ankara on June 30, 2006. The discussions, which were carried out, went over the draft text, and suggestions were especially made to ensure the protection of the interests of our citizens living in European countries. Finally, when the draft text was reviewed in talks held in Brussels at 7 to 8 December 2006, we have taken a posture to retrieve unreasonable propositions in the readmission process. Also, readmission process will be subject to connect guarantees of basic rights of people. During this meeting, Turkey will propose to the EU side, the agreement should not be effective through past (www.egm.gov.tr 2009).

In order to respect to nationals of third countries, this is only a bilateral readmission agreement between countries to take effect after the conclusion. If the EU readmission agreements with third countries are possible, EU is to send illegal immigrants to these countries directly. Travel expenses are met by the requesting country until the men reach to

the country of origin. The EU has not responded yet to the proposals of Turkey discussed above.

The European Commission suggested to Turkey by draft readmission agreement on readmission requests for "human rights" in the context of emergency situations in the two days, and normally be answered within the 14 days. Because it is positioned as, the illegal aliens could not be held in custody for a long time. However, Turkey claimed, now that the nationalities of third countries are subjected to prosecution, amount of the time proposed by EU could not be acceptable. Briefly, this type of trial and deportation processes requires longer times.

Nevertheless, the time span projected by EU over Turkey did not have a standard stand point in EU. This time limit to 40 days in Spain, in Ireland 30 days, 60 days in Italy, Greece and Malta in the 18 months to 90 days is implemented. At this point, it is assumed that the European Union is in the process of an imposition policy against Turkey ([www.ec.europa.eu](http://www.ec.europa.eu) 2009).

The planned readmission agreement between the EU and Turkey is installing financial burden and the major responsibilities in the international arena to our country. Before becoming a member state of EU, the signing of readmission agreements will pave a way for illegal immigrants of the EU to use Turkey as a free gate. In continuation of this state, some social problems subjected to illegal immigrants will overcome. In this case, some human rights organizations may severely criticize Turkey because there will be no standard in handling of illegal immigrants ([www.usak.org.tr](http://www.usak.org.tr) 2009).

Turkey could not handle hundreds of thousands of illegal immigrants because the creation of living space, accommodation and living expenses, sending them back to their country, placing, or modifications to the second address may be some of the issues to face by Turkish government. Moreover, granted legal settlements will open the door for illegal exploitation of the labor force (Özcan 2009).



### **3.4 THE COUNTRIES WERE UNDERSIGNED, PROPOSED AND ACCEPT BIDS RECEIVED READMISSION AGREEMENT WITH TURKEY**

*Turkey undersigned readmission agreement* with Syria, Greece, Romania, Ukraine and Kyrgyzstan. Also *proposed Readmission Agreements to* Iran, Pakistan, India, SriLanka, Bangladesh, China, Bulgaria *in 2001*. Moreover, *in 2002 to* Jordan, Tunisia, Uzbekistan, Mongolia, Egypt, Israel, Georgia, Ethiopia, Belarus, Sudan, Algeria, Libya, Morocco, Lebanon, Nigeria, Kazakhstan and Russia. At last Turkey *proposed Readmission Agreements to* Azerbaijan in 2003, Afghanistan in 2008 and Iraq in 2009.

Other hand *Turkey accept bids received Readmission Agreement;* Croatia in 2001, Slovenia in 2002, Albania in 2003, Hungary, Macedonia, Switzerland, Bosnia Herzegovina in 2005 and Moldova in 2008 (www.tobb.org.tr 2009).

#### **3.4.1 Readmission Agreement Between Greece And Turkey**

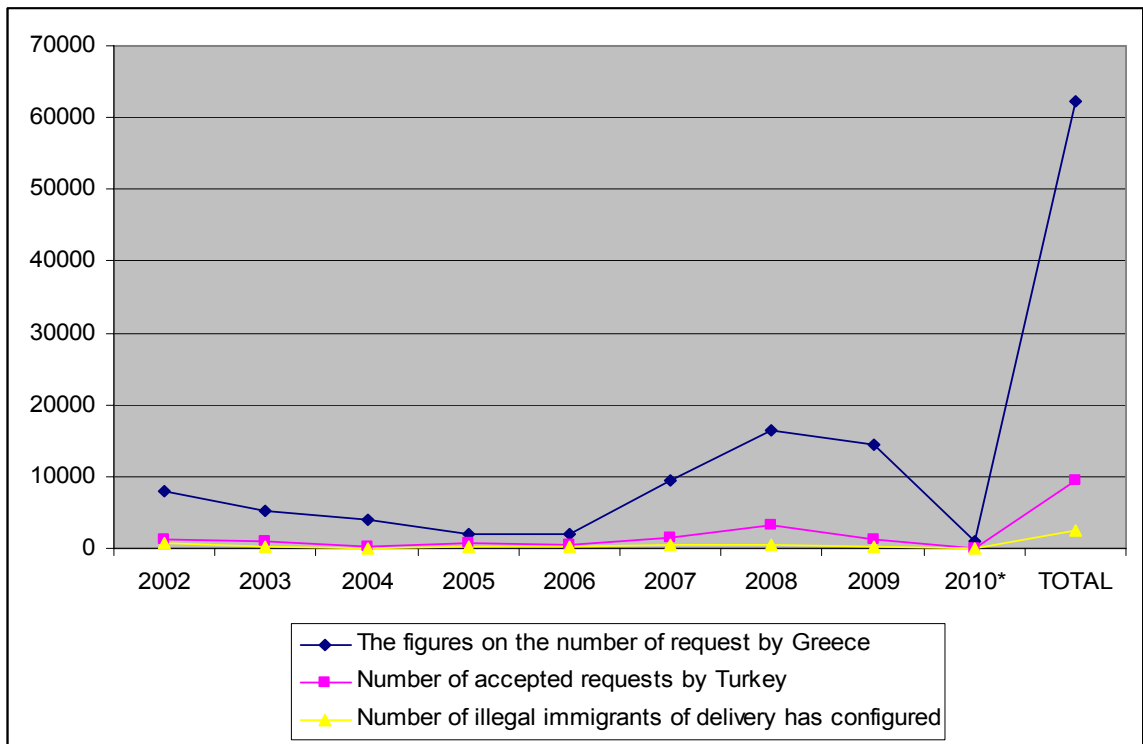
Turkey still experiences difficulties in applying the provisions of the Readmission Protocol between Turkey and Greece and therefore needs to improve the implementation of this Protocol considerably. The figures on the number of requests and the number of accepted requests reported by Turkish authorities differ considerably from those provided by the Greek authorities (www.ec.europa.eu 2009).

**Table 3.1. The figures on the number of requests and the number of accepted for Readmission Agreement between Turkey and Greece (2002-2010)**

<b>According to the number of Years, request by Greece</b>	<b>The figures on the number of request by Greece</b>	<b>Number of accepted requests</b>	<b>Number of illegal immigrants of delivery has configured</b>
2002	8045	1302	645
2003	5190	978	333
2004	4015	206	45
2005	2002	706	135
2006	2023	521	125
2007	9439	1414	390
2008	16386	3168	398
2009	14328	1189	276
2010*	884	77	21
<b>TOPLAM</b>	<b>62312</b>	<b>9561</b>	<b>2368</b>

\* : only 2010 January

**Source: Ministry of Public Order data**



\* : only 2010 January

**Source: Ministry of Public Order data**

The table and figure above clearly show that Greece initiated to repatriate more illegal immigrants to Turkey; however, Turkey accepted few of these illegal immigrants. The demand and acceptance figures in 2008 and 2009 implies that there might be a lack of coordination between Greece and Turkey in handling of illegal immigrants because these numbers are increasing in the past years. Even though there is an settlement about exchanging of illegal immigrants between Turkey and Greece, it seems that some more and concrete cooperation means should be implemented to reduce this dilemma. The results in the figure and table suggest that Turkey and Greece, probably the EU, should work on a more concrete information sharing agenda which might include intelligence sharing, implementation of CCTV and electronic detectors on the borders.

### **3.5 IMPROVEMENTS IN STRUGGLE AGAINST ILLEGAL MIGRATION STATISTICAL ASPECTS OF THE ACTIVITIES IN TURKEY**

Turkey proves its position in this field by taking measures against illegal migration at the national level and actively participating in international processes of identifying problems, exchange of information, joint struggle and cooperation and effectively struggles to prevent illegal migration over Turkish territory and deport illegal migrants staying in Turkey (Turkish national Action Plan 2005).

Turkey shifted migrant traffickers to southern (Iraq-Syria-Lebanon) and northern (Iran-Caucasus -Ukraine) routes particularly in 2000 and 2001. Additionally, boats carrying illegal migrants changed their routes and recently boats departing primarily from African countries are destined to Italy and France and those coming from Sri Lanka and India are following the Suez Canal to reach the coasts of Southern Greek Cyprus, Greece and Italy (www.ir.metu.edu.tr 2009).

For the years between 1995 and 2004, respectively 11362, 18804, 28439, 29426, 47529, 94514, 92362, 82825, 56219 and 50529 illegal migrants totaling to 512009 were captured attempting to illegally enter or leave Turkish territory or staying illegally in Turkey (Ay,Tokcan,Öztürk & Alp 2005, pp.22-23).

Because of activities carried out in this field, more concentrated operations were conducted against migrant trafficker organizations. 98 organizers were captured in 1998 with an increase to 850 in 2000, 1155 in 2001 and 1157 in 2002 (grand total for 1998- 2002: 3895). The year 2003 witnessed the capture of 937 illegal migrant traffickers and up to now for 2004 their number has been 520 and they all have been subjected to judicial action (Turkish national Action Plan 2005).

Aliens willing to enter Turkish territory at the border gates but suspected to be involved in illegal migration or attempting to use false documents are not admitted into Turkey. Because of the training seminars provided to the personnel on counterfeiting, 6069 aliens in 1999, 24504 in 2000, 15208 in 2001 and 11.084 in 2002 were rejected at the borders. It was the

case for 9.362 aliens in 2003 and 7888 in 2004 (1999-2004: 74.700) (Turkish National Action Plan 2005).

Preventive activities against illegal migrant trafficking via maritime transportation have been accelerated due to the measures taken and within this framework, the number of boats allegedly departing from Turkey to Europe decreased from 19 in 2000 to 17, 2 and 1 in 2001, 2002 and 2003, respectively. On the other hand, 20 vessels/boats about to leave Turkey were ceased in 2003 and a total of 1529 illegal migrants and 20 organizer migrant traffickers planning to escape were captured both on-board and ashore. (Ay, Tokcan, Öztürk & Alp 2005, pp.22-23).

Transit migration from Turkey to Europe is practiced primarily by vessels and boats illegally leaving territorial waters over the Aegean Sea and the Mediterranean. Illegal migration via maritime transportation has been avoided to a considerable extent thanks to the coastal controls and air-borne preventive operations carried out in coordination by helicopters of Coastal Security units and police helicopters deployed in İzmir, Antalya and Muğla (www.ir.metu.edu.tr 2009).

### **3.5.1 Improvements In the Legislation**

As an addition to the revisions in the Law on Employment of Aliens in Turkey and the Turkish Citizenship Act; Turkey ratified on 13 December 2000 the Convention against Transnational Organized Crime and two Protocols regulating trafficking in migrants and human beings undersigned in Palermo on 12 December 2000. The Convention and its protocols were approved in Turkish Grand National Assembly and published in the Official Journal No 25052 of 18 March in full-text format (www.egm.gov.tr 2009).

Accordingly, as it is the case for trafficking in human beings, the arrangement based on Article 201/a of the Turkish Penal Code became effective in advance following its publication in the Official Journal No 4771 of 9 August 2002. This Article foresees that migrant traffickers be sentenced to 2-5 years of imprisonment (4-10 years under aggravating conditions) and a fine of minimum TL 1 billion, relevant tools be confiscated and economic

activities of front organizations be suspended. New version of the Turkish Penal Code to become effective as of April 2005 incorporates associated arrangements. (Turkish National Action Plan 2005).

Management of and practices against illegal migration are in harmony with the EU Acquis and deterrent arrangements are made to combat illegal migration in Turkey, which is at the junction of regional routes of illegal migration at the global and regional level.

### **3.5.2 Lifting of the Geographical Limitation**

Lifting the geographical limitation is an issue which should be resolved without giving harm to the economical, social and cultural conditions of Turkey, since Turkey had been a country very widely affected by the group population movements, which took a rise in 1980s, and which changed the world's conjuncture. (Ay, Tokcan, Öztürk & Alp 2005, pp.22-23).

Within this framework a total of 934,354 aliens were granted residence permits with the right to work in Turkey including:

- 51,542 people during the Iran-Iraq war of 1988,
- 20,000 people during the civil war, the disintegration of former Yugoslavia and the events which took place in Bosnia-Herzegovina between 1992 - 1997,
- A total of 345,000 people including 311,000 people deported from Bulgaria and 34,000 people arriving with visas between May – August 1989
- 7,489 people between 2nd August 1990 and 2nd April 1991 before the Gulf Crisis and War, and 460,000 afterwards,
- 17,746 people after the events which took place in Kosovo in 1999,
- 32,577 Ahiska Turks on exile from their countries, who were dispersed to a large geographical area. The children of these families born in Turkey enjoyed the same rights (Turkish National Action Plan 2005).

Turkey, which has always been subject to intense population movements, which may be equal to the sum of all movements towards of EU, should not be expected to handle issues of asylum and irregular migration on its own. A proposal for lifting the geographical limitation may be expected to be submitted to the TGNA in 2012 in line with the completion of Turkey's negotiations for accession to the EU following the finalization of the abovementioned projects and meeting the abovementioned conditions. (Ay, Tokcan, Öztürk & Alp 2005, pp.22-23).

If Turkey have removed the geographical limitation unplanned, Turkey will have been installing financial burden and the major responsibilities in the international arena to our country.

### **3.6 EXAMPLES OF READMISSION AGREEMENTS**

#### **3.6.1 Readmission Agreement Between EU and Russia**

The Associated Press reported that Russia and the European Union signed agreements on visa facilitation and readmission, or mutual extradition of illegal immigrants, at the EU-Russia summit in Sochi on May 25. The EU agreed to ease visa rules for some categories of Russian travelers in return for Russia accepting the return of any illegal migrants who have entered EU territory from its borders.

The result of long negotiations that will see visa issuing procedures relaxed for certain categories of citizens on both sides - as the first step toward eventual visa-free travel. To start with, the simplified visa issuance procedure will be available to students, journalists, businessmen, those involved in culture, scientists and athletes (www.belgium.iom.int 2009).

Russia will readmit, upon application by a Member State, any person not, or no longer, fulfilling the conditions in force for entry or residence, provided that it is established that the person concerned is a Russian national. Russia will also readmit any third-country national or stateless person not, or no longer, fulfilling the conditions in force for entry or residence, provided that evidence can be furnished that this person: a) holds a valid visa issued by

Russia; b) holds a valid residence authorisation issued by Russia and c) unlawfully entered the territory of the Member States directly from Russian territory (www.europa.eu 2007).

The readmission obligation does not apply if: a) the third-country national or stateless person has only been in airside transit via a Russian international airport; b) a Member State has issued a visa or residence authorisation to the person concerned; c) the person concerned enjoyed visa-free access to the territory of the requesting Member State For 3 years following the entry into force of the agreement, the readmission obligation will be applicable only to stateless persons and nationals from third-countries with which Russia has concluded bilateral arrangements on readmission.

The application for readmission must be submitted to the authority of the requested State within a maximum of 180 days from the date when the requesting State's competent authority has gained knowledge that the person concerned does not fulfill, or no longer fulfills, the conditions for entry or residence (www.europa.eu 2009).

A reply must be given in writing within a maximum of 25 days which, on request, may be extended to 60 days. In the case of a readmission application submitted under the accelerated procedure, a reply has to be given within two days. Reasons must be given for refusal of a readmission application. If the reply is positive, the person concerned will be transferred within 90 days. In the case of a transfer under the accelerated procedure, the time limit is two days (www.assembly.coe.int 2010).

After the requested State has given a positive reply to the readmission application in respect of its own nationals, the competent diplomatic mission or consular office, without delay, will issue a travel document required for the return of the person concerned with a period of validity of 30 days.

All transport costs incurred in connection with readmission and transit as far as the border-crossing point of the requested State are borne by the requesting State. This Agreement enters into force on 1 June 2007.



This Decision was adopted at the same time as that on the conclusion of an agreement to facilitate the issuing of visas with Russia. These two Agreements are part of the introduction of the "four common spaces" between the EU and Russia, one of which is the Common Space of Freedom, Security and Justice (www.europa.eu 2009).

Council Decision of 19 April 2007 on the conclusion of the agreement between the European Community and the Russian Federation on the facilitation of issuance of short-stay visas. It is designed to reduce administrative formalities, speed up processing of visa applications and make visas free of charge for some groups. Another agreement on readmission of illegals entered into force on the same date. On the day that this agreement was concluded, 19 April 2007, a readmission agreement was also concluded.

In sum this decision concludes the agreement between the European Community and the Russian Federation to facilitate on a mutual basis the issuance of short-stay visas to citizens of the European Union (EU) and the Russian Federation for intended stays of no more than 90 days per period of 180 days (www.belgium.iom 2007).

### **3.6.2 READMISSION AGREEMENTS BETWEEN EU WITH SERBIA**

Serbia is a potential candidate country for EU accession following the Thessaloniki European Council of June 2003. On 1 January 2008, the readmission agreement signed between the European Communities and Serbia has entered into force. It sets out the conditions for the forced repatriation of individuals to Serbia who are either from Serbia or who have transited via Serbia to the EU. According to estimates, the agreement will affect between 50,000 to 100,000 people from Serbia residing in the EU. This includes rejected asylum seekers and refugees, most of them Roma. Already in the past, Serbia had signed bilateral agreements with most of the old and some of the new EU member states. On this basis, some 15.000 people have been forcibly repatriated to Serbia via the Belgrade airport, 120 deportees arrive in Serbia every month.

The Council of Europe Parliamentary Assembly has repeatedly dealt with the issue of forced returns of Roma to Serbia. In its last recommendations from 27 June 2007, the Assembly

expresses particular concern at the situation of displaced Roma in Serbia and points out to the fact that the readmission agreements do not set out clear conditions for the reception of returnees.

On 1 January 2008, a visa facilitation and a readmission agreement between Serbia and the EU came into force. On 18 February 2008 the Council adopted the new European partnership for Serbia. Consultations with the Serbian authorities across the range of reform issues are conducted through the Enhanced Permanent Dialogue process (EPD). On 19 December 2009 Visa liberalisation entered into force with Serbia ([www.ec.europa.eu](http://www.ec.europa.eu) 2010).

**Table 3.2 List of Community Readmission Agreements with EU**

Community readmission agreements and mobility partnerships

<b>Third country</b>	<b>Mandate</b>	<b>Date of signature</b>	<b>Entry into force</b>
Albania	11/2002	07/11/2005	01/05/2006
Algeria	11/2002		
Bosnia and Herzegovina	11/2006	08/11/2007	01/01/2008
China*	11/2002*	12/02/2004*	01/05/2004*
Georgia	09/2008		
Macedonia	11/2006	08/11/2007	01/01/2008
Hong Kong	04/2001	11/12/2003	01/03/2004
Macao	04/2001	21/04/2004	01/06/2004
Moldova	12/2006	22/11/2007	01/01/2008
Montenegro	11/2006	08/11/2007	01/01/2008
Morocco	09/2000		
Pakistan	09/2000	09/09/2008	
Russia	09/2000	09/04/2007	01/06/2007
Serbia	11/2006	08/11/2007	01/01/2008
Sri Lanka	09/2000	03/03/2005	01/05/2005
Turkey	11/2002		
Ukraine	06/2002	08/04/2007	01/01/2008

<http://www.mirem.eu/datasets/agreements/european-union>, 2010

**Source: [www.ec.europa.eu](http://www.ec.europa.eu), 2010**

## 4. CONCLUSION

Nowadays, main topics of internal security problems of EU are international terrorism, organize crime and illegal immigration. The EU believed it necessary to balance two conflicting needs: distancing itself from an outside perceived as insecure and strongly controlling its external border lines versus establishing closer relationships with the neighboring non-EU countries in order to stabilize its surrounding world. It is a predicament that made the EU develops a new security approach understood as the explicit attempt to balance between internal security concerns and external stabilization needs. EC visa facilitation and readmission agreements were a chief means in doing so since they were regarded as beneficial to both sides.

In this perspective, the review of the readmission process between the EU and some candidate states exposed that there is no standard way of handling of readmission process. Because of this reason, the EU should shift to a different two-pronged point readmission policy. Readmission agreements covering nationals and non-nationals should be reserved for only EU acceding and certain advanced candidate countries.

With the first generation of readmission agreements among EC Member States, the EC put into place a de facto transfer of responsibilities system for the return of nonnationals. The second generation of readmission agreements enlarged this mechanism to cover the CEEC countries. EU officials rightly assumed that the lure of membership would bring a rising tide of human rights standards and border and migration management practices in the candidate countries that are required for accession and eventual final integration into the Schengen Zone and a common immigration and asylum policy. The enlargement basket, brimming with carrots and sticks, also secured CEEC countries' interest in the second-generation of readmission agreements covering non-nationals (Roig and Huddleston 2009).

Following this logic, the EU can only justify any responsibility sharing arrangement for the return of non-nationals with candidate countries well on the road to accession. In that case, coupled readmission and visa facilitation agreements should be integrated into the greater

enlargement negotiation framework. Given the current state of enlargement negotiations, new readmission agreement negotiations should therefore be limited to Croatia and the Former Yugoslav Republic of Macedonia for the moment.

Skepticism over the outcome of Turkish enlargement talks may make the inclusion of Turkey in this allocation of responsibility for return mechanism problematic. With all other countries, the EU should pursue effective readmission clauses covering only nationals of the contracting parties, based on the logic of shared responsibility, joint ownership and common interests. The EU should drop stateless persons and most categories of non-nationals from its current readmission policy with third countries such as Algeria, China, Morocco, and Pakistan. On a policy level, the EU cannot assure that cooperation outside of the enlargement process will raise the living and human rights standards of noncandidate countries to such a point of convergence that these countries could be considered viable destinations for the return of non-nationals. The Commission could attempt to make the case to third countries for the inclusion of non\_nationals holding a valid visa or a residence authorisation issued by that country (www.europa.eu 2009)

Any severely limited inclusion of non-nationals with non-candidate countries ought to be founded on evidence of strong and current links to the country of transit. The EU could revive earlier discussions to consider the legality and duration of residence or immediate family ties as grounds for such third-country national returns.

If the EU would drop non-nationals from the scope of these readmission agreement negotiations, it could put its readmission policy back on track and conclude more readmission clauses covering nationals with a wider range of countries of origin. IOM also encourages the insertion of standard readmission clauses in all future Association or Cooperation agreements. These would provide the “enabling” anchorage for operational arrangements in separate agreements on return (Roig and Huddleston 2009).

The EU possesses its strongest diplomatic force and international legal foundation for readmission clauses covering nationals, especially when negotiating Association, Cooperation and other forms of bilateral or regional agreements. In most cases, concentrated efforts on readmission clauses could bear faster and greater fruit with a greater number of countries. The EU could launch readmission clause negotiations with countries that, at present, are not covered under any EU readmission policy. This list includes such migrant-producing countries as Bangladesh, Brazil, China, India, and Mexico. The EU should reengage the fifteen countries, such as Belarus, Kazakhstan, Moldova, Morocco, Tunisia and Vietnam with whom earlier bilateral negotiations settled for non-binding declarations on readmission. Binding commitments with these fifteen would target irregular migration at its source with significant countries of origin. This new policy shift would develop the number of countries covered by readmission clauses from 102 to nearly 120, counting ten major countries of origin (Roig and Huddleston 2009). This shift would produce the cost-effective, useful and efficient instrument envisioned by a European readmission policy.

The EU should complement new readmission clauses negotiations with the development of efficient and humane guidelines for the implementation of readmission in full respect of the human rights and dignity of the returnee. The negotiation of safe return and readmission conditions, which satisfy both parties, will assure a functioning readmission system.

With the necessary safeguards, readmission clauses would not be subject to the diplomatic obstructionism from third countries that arise from complaints of returnee mistreatment, as occurred in summer 2006 between Spain and Senegal. The EU should focus financial and technical assistance packages to raise human rights and living standards in as many countries of origin as possible. In return, these countries should commit to accepting the return of their own citizens and above all facilitating their re-integration. These efforts will cover all the countries in delayed readmission negotiations and expand the global reach for the safe and humane readmission of returnees and their sustainable reintegration into their home communities ([www.news.bbc.co.uk](http://www.news.bbc.co.uk) 2006).

Investment in this return objective would more contribute to the EU's broader objective to address the root causes of illegal migration, ensure sustainable returns and develop a comprehensive migration management approach. A sustainable reintegration policy in home communities leads in turn to their sustainable development. Such new opportunities will reduce the push factors not only for the returnee contemplating a secondary movement, but also for his or her neighbors who may no longer be forced to turn in desperation to irregular migration.

The EU was given a strong lever to make third countries sign readmission agreements and pressure for domestic reforms in justice and home affairs, whereas in the target countries a major cause of discontent was softened by relaxing the tight visa regime and allowing facilitated travel opportunities for bona fide travelers. Moreover, governments of third countries got the opportunity to present themselves domestically as successful negotiators on the international level. The link between visa facilitation and readmission was made for the first time with the Russian Federation and the Ukraine. Since their negotiations on an EC readmission agreement did not advance, the EU linked the negotiations to the incentive of visa facilitation ([www.europa.eu](http://www.europa.eu) 2009).

In the Western Balkans, visa facilitation and readmission were commonly negotiated right from the start (with the exception of Albania). This regional setting in South-Eastern Europe provided the EU with a model to be used from now on in several neighbouring states. EC visa liberalization and readmission agreements may become a standard foreign policy instrument in the European Neighborhood Policy.

In terms of Readmission agreements, the most difficult issue to agree upon is the return of third country nationals and stateless persons. In this regard, three countries have reached concessions in terms of time. While Albania and Ukraine negotiated for a two-year transitional period before the obligations concerning the readmission of third-country nationals and stateless persons shall become applicable, Russia attained a three-year delay.

The main advantage of readmission agreements from the EC's points of views is that the Community gets hold of a legal instrument in order to force transit countries to readmit not only their own but also third country nationals. However, from the point of view of non-EC countries, EC readmission agreements as such only bring about negative consequences, which in the end might put their economic, social and political stability at risk.

With regard to readmission, the EC should carefully balance costs and benefits for both sides. The EC's responsibility does not end the moment the persons are readmitted. Returning substantial numbers of irregular migrants to neighboring countries that are overburdened financially, administratively and socially by the challenge of either reintegrating their own nationals or further readmitting third-country nationals to their countries of origin might put their often weak economic, political and social stability at risk.

Hence, the EC should take a step further and think about supporting its neighbors in the process of implementation of visa and readmission agreements. Otherwise, the dominant focus on strong and effective control of frontiers might put the stability of neighborhood regions at risk again.

Nowadays, with widening, one of the most important problems EU will face is illegal immigration issue. The factors of EU such as "freedom, security and justice area" quality, economic wealth level etc. costs EU 500,000 foreign people enter by illegal ways. This number rises to 2 million general in the world. EU is considered as a source state is exposed to illegal immigration on this side.

Also, Turkey is a transit state position for Middle East and Asian states where economic and political issues are worse. Turkey is a transit point with respect to illegal migration current, too. Because of being a transit state position, the European Union wants Turkey to carry out some arrangements. On the other hand, approach of European Union's illegal immigration policy influenced legal and administrative arrangements of Turkey that is in membership process.

According to the report published by the UN in 2006, 127 countries are declared source countries and 98 ones were accepted as transit countries in terms of illegal immigration. While Turkey is placed as a moderate source country, it has been grouped in the risky position likewise Albania, Bulgaria, Poland, and Thailand. Additionally, Turkey is one of the rarest countries which could be source, transit, and victim country in terms of illegal immigration.

As Criticized the planned readmission agreement between the EU and Turkey is installing financial burden and the major responsibilities in the international arena to our country. Before becoming a member state of EU, the signing of readmission agreements will pave a way for illegal immigrants of the EU to use Turkey as a free gate. In continuation of this state, some social problems subjected to illegal immigrants will overcome. In this case, some human rights organizations may severely criticize Turkey because the will be no standard in handling of illegal immigrants (www.usak.org.tr 2009).

According to Özcan (2009) Turkey could not handle hundreds of thousands of illegal immigrants because the creation of living space, accommodation and living expenses, sending them back to their country, placing, or modifications to the second address may be some of the issues to face by Turkish government. Moreover, granted legal settlements will open the door for illegal exploitation of the labor force.

In addition, the Readmission agreement would be void even if it was signed because the administration of Greek Cyprus has suspended 6 titles, on 8 December 2009, which includes obstruction of the areas for Freedom, Security and Justice (www.usak.org.tr 2009). Since the readmission agreement is in this title, unless the obstruction over this title is suspended, the acceptance of the Readmission agreement will be void.

One of the factors that effects the relation between EU, that has a unique 'sui generis' structure, and Turkey , that is a transit state position at illegal immigration challenge and is a candidate state that is trying to be a member, is illegal immigration phenomenon. **First of all, trust environment should be established in the relation between Turkey and EU.**



On the frame of pre-participation, application to prevent illegal immigration from Turkey can be realized in a base that depends on reciprocal trust and win-win situation. For this purpose, the east border of Turkey should be considered as the border of European Union, firstly.

Before the membership of Turkey, for being successful against the illegal migration, could only be possible to solve the problem behind the border and financial expense which is much important to EU.

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