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DEPARTMENT OF EU INTERNATIONAL
RELATIONS AND DIPLOMACY STUDIES

EU Diplomacy Paper

05 / 2023



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About the Author

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Abstract

The Taliban takeover in summer 2021 and the subsequent exodus of Afghan nationals reminded the European Union (EU) of the so-called 'refugee crisis' in 2015, when many refugees, especially from the Syrian civil war, came to Europe via Turkey. To avoid repeating this past experience, the EU stated that it will re-engage with Afghanistan's neighbours, in particular Pakistan, to contain the flow of refugees from that country and to return those who cannot legally reside in the EU. In 2010, the EU and the Pakistani government had signed a European readmission agreement, which is one of the EU's main instruments to externalise its migration and asylum policy and to combat irregular migration.

This paper examines the extent to which the EU's dependency on a third country for containing refugee flows from a region changes the power dynamics in their relationship. The EU could, for instance, push for negotiating an informal arrangement with Pakistan to improve the effectiveness of their cooperation on readmission following the Taliban takeover, as it had done with Turkey a few years earlier. However, this is not a likely outcome. European readmission agreements are incentive-based instruments linking different issues. Whereas the EU uses conditionality (e.g. visa liberalisation or financial aid) to ensure cooperation on readmission, the third countries may in times of crisis employ 'reversed conditionality' to change the bargaining power in the negotiations. The more dependent the EU is on a third country to protect its borders and manage refugee and migration flows, the more this country will be able to use reversed conditionality to serve its own, unrelated interests.

Introduction: the Taliban takeover – a further step towards the informalisation of EU readmission policy?

In the summer of 2021, the withdrawal of the United States's armed forces from Afghanistan resulted in the Taliban taking control of the country. This event immediately triggered a new exodus of refugees from Afghanistan.¹ Ylva Johansson, European Commissioner for Home Affairs, stated in August 2021 that there were no massive flows of Afghan refugees yet, but that the risk of a large-scale exodus was still high if the Taliban applied the same policies as they did when they ruled the country between 1996 and 2001.²

In light of this situation, the Council of the EU suspended informal cooperation on readmission with Afghanistan under the Joint Declaration on Migration Cooperation because Afghanistan was no longer considered a safe country.³ The EU would instead increase its cooperation with Afghanistan's neighbours through the implementation of the Third-Country Nationals (TCN) clauses in the European readmission agreements (EURA) concluded with them.⁴ Pakistan is one of these neighbouring. In 2010, the EU and Pakistan had concluded an EURA with Pakistan to control migratory movements from the region.

The events in Afghanistan are reminiscent of the so-called 'refugee crisis' in 2015. Yet, in the discourse of the EU and member-state officials, the 'refugee crisis' was an "exceptional occurrence, never to be repeated".⁵ Although no longer in the headlines, the return to power of the Taliban still represents an urgent external migration challenge for the EU, as the situation on the ground risks worsening and could turn into a new 'refugee crisis' if the cooperation on readmission between the EU and Afghanistan's neighbouring countries is not effective.⁶

¹ George Pagoulatos, "A deadly exodus: Five trends to watch for in the evolving Afghanistan crisis", *Hellenic Foundation for European & Foreign Policy*, Policy Paper no. 78 (2021), 4.

² Samuel Petrequin and Mike Corder, "EU backs Afghanistan's neighbors cope with refugees", *ABC News*, 31 August 2021, accessed 21 April 2022. <https://abcnews.go.com/International/wireStory/eu-ministers-meet-discuss-afghanistan-refugees-79741045>

³ Council of the European Union, *Operationalization of the Pact – Action plans for strengthening comprehensive migration partnerships with priority countries of origin and transit. Draft Action Plan: Afghanistan*, 10472/2/21, Brussels, 8 October 2021.

⁴ Council of the European Union, "Statement on the situation in Afghanistan", *Statements and Remarks* 665/21, 31 August 2021.

⁵ Bruno Maçães, "Afghanistan's crisis will soon be Europe's too", *Politico* 13 August 2021, accessed 2 May 2022. <https://www.politico.eu/article/afghanistan-crisis-war-taliban-europe-problem>

⁶ Eleonora Milazzo and Jean-Louis De Brouwer, "Challenges and priorities of the EU's response to the situation in Afghanistan", *Egmont Royal Institute for Internal Relations*, no. 73 (2021), 1.

The objective of this paper is to assess the evolution of the balance of power in cooperation on readmission matters, particularly between the EU and Pakistan, to prevent an 'Afghan refugee crisis'. To what extent does the EU's dependency on a third country for containing refugee flows from a region lead to a change of power dynamics in their relationship? Comparing the EU's cooperation on readmission with Pakistan with its cooperation with Turkey will help answer this question as Turkey has been a major partner for the Union in migration management during the Syrian crisis. It has thus become a reference for analysing how the EU and third countries negotiate an informal readmission arrangement in times of crisis. Following the example of the 2016 EU-Turkey Statement, the EU could push for an informal arrangement with Pakistan to improve the effectiveness of their cooperation on readmission in the aftermath of the 2021 Taliban takeover. But is this likely to happen? The paper argues that the more dependent the EU is on a third country to protect its borders and manage refugee and migration flows, the easier it will be for this country to use reversed conditionality to pursue its own interests vis-à-vis the EU.

The paper first presents the analytical framework and the rationale for the selection of the case studies. It then analyses the negotiations and the implementation of the EU-Turkey readmission agreement. The subsequent section follows the same pattern with the case study on the EU-Pakistan readmission agreement. The last part compares the results of the two case studies and draws some conclusions from them.

Analytical framework: from conditionality to reversed conditionality

Political conditionality is a notion often associated with EU external action. According to Balfour, political conditionality is "a mechanism through which to decide how to implement EU tools".⁷ Her conception implies that conditionality is tailored to each third state according to its interests and those of the EU. This echoes the definition given by Schimmelfennig and Sedelmeier who describe political conditionality as a "bargaining strategy of reinforcement by reward, under which the EU provides external incentives for a target government to comply with its conditions".⁸ These two authors underline the strategic use of conditionality by the EU showing that compliance with the conditions it imposes results from a cost-benefit assessment by

⁷ Rosa Balfour, "EU Conditionality after the Arab Spring", *European Institute of the Mediterranean* 16 (2012), 7.

⁸ Frank Schimmelfennig and Ulrich Sedelmeier, "Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe", *Journal of European Public Policy* 11, no. 4 (2004), 670.

the third country. Political conditionality therefore covers a multitude of complementary meanings.

Conditionality can be either positive or negative. In the first case, the EU rewards the third country if it has fulfilled the conditions imposed. In the second case, if a state does not comply with the conditions, the EU may either suspend, reduce or take the benefits promised off the table. Positive conditionality works better when the EU's leverage is significant. This is a bargaining strategy that can produce a 'virtuous circle': when the targeted third country is rewarded, it is motivated to become more involved in the conclusion or implementation of an EURA, and in the respect of human rights and international labour standards. Conversely, the use of negative conditionality denotes a loss of leverage as the EU generally resorts to it when it is not satisfied with the non-compliance with an agreement signed or with an obligation under international law (e.g., the readmission of its own nationals). Consequently, negative conditionality is a means to 'threaten' a third country if conditions are not respected. It is thus characterised by a temporal element as the EU uses it when positive conditionality is not sufficient. It should be mentioned that negative conditionality in the case of readmission is difficult to apply as, on the one hand, the EU is more or less dependent on the assistance from third countries and has no other alternative. On the other hand, the use of negative conditionality is not worth considering with some countries which believe that the EU does not offer attractive enough incentives.

In recent years, it appears that EU incentives are less attractive and that consequently the EU's leverage is weaker.⁹ Many third countries, such as Morocco, have been avoiding the conclusion of a readmission agreement with the EU through different strategies and the formulation of pre-conditions.¹⁰ Conditionality can be manipulated by third countries to their advantage so as to pursue their interest and reduce the domestic costs that compliance entails.¹¹ This is what Cassarino calls "reversed conditionality".¹² The use of reversed conditionality bestows political leverage on the targeted governments and migration becomes a bargaining chip.¹³ In other words,

⁹ Fanny Tittel-Mosser, "Reversed Conditionality in EU External Migration Policy: The Case of Morocco", *Journal of Contemporary European Research* 14, no. 4 (2018), 353.

¹⁰ Lena Laube, "Diplomatic Side-Effects of the EU's Externalization of Border Control and the Emerging Role of 'Transit States' in Migration Diplomacy", *Historical Social Research* 46, no. 3 (2021), 83.

¹¹ *Ibid.*

¹² Jean-Pierre Cassarino, "Informalising Readmission Agreements in the EU Neighbourhood", *The International Spectator* 42, no. 2 (2007), 192.

¹³ Tittel-Mosser, *op. cit.*, 354.

the more dependent the EU is on a third country to manage refugee and migration flows, the more likely this country may employ reversed conditionality to push for its own interests. In general, the stronger reversed conditionality towards the EU, the greater the leverage of the third country and the weaker the EU's bargaining power.

All in all, both conditionality and reversed conditionality reveal that cooperation on readmission is based on an asymmetric power relationship. Their use might influence the leverage, dependency and interdependence of the EU vis-à-vis third countries. This incentive-based approach is useful to analyse the changing power dynamics in EURA negotiations.¹⁴ These changing power dynamics can be illustrated by the negotiation and implementation of the EURAs with Turkey and Pakistan.

Pakistan and Turkey share several similarities: they are both located in a politically unstable region and share a border with a country that is experiencing domestic conflict causing an increase in the number of persons fleeing, and both host a large number of refugees. As a result of the outbreak of the Syrian crisis, Turkey has become the world's largest refugee host country.¹⁵ After the Taliban takeover in 1996, Pakistan has become the country in the world which hosts the third highest number of refugees.¹⁶ Another similarity is that the two countries are not aligned with human rights, democracy, and rule of law standards, and according to Okyay and Zaragoza-Cristiani, it seems that the EU has turned a blind eye to these problems to cooperate with them to tackle irregular migration.¹⁷

Yet, Pakistan and Turkey differ on many points. While Turkey is a transit country, Pakistan is both a country of transit and of origin for migration flows, but also a destination for migrants and refugees. Moreover, the two countries do not have the same relationship with the Union. Turkey shares a border with the EU and has therefore developed deeper ties with the Union, notably through the accession negotiations for EU membership. Pakistan does not benefit from such a relationship with the EU because of its distance from European borders.

¹⁴ Balfour, *op. cit.*, 7.

¹⁵ European Commission, *Turkey, European Neighbourhood Policy and Enlargement Negotiations*, accessed 17 April 2022. https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/negotiations-status/turkey_en

¹⁶ UNHCR, *UNHCR in Pakistan*, accessed 18 April 2022. <https://www.unhcr.org/pk/unhcr-in-pakistan>

¹⁷ Asli Okyay and Jonathan Zaragoza-Cristiani, "The Leverage of the Gatekeeper: Power and Interdependence in the Migration Nexus between the EU and Turkey", *International Spectator* 51, no. 4 (2016), 58.

Both cases raise the question of the extent of the EU's dependency on their assistance in case of a rise of people migrating towards its borders. The central variable of this study will thus be the EU's dependency on a third country to fight irregular migration. According to Caporaso, dependency refers to "the absence of actor autonomy" which can create a form of external reliance and asymmetric power relations between two actors.¹⁸ He points out that a distinction must be made between this dependency and dependence.¹⁹ Dependence constitutes "a highly asymmetric form of interdependence" and is thus more related to interdependence than to autonomy.²⁰

In the case of readmission, it can be noted that dependence and interdependence are not opposed but rather intertwined because the use of conditionality binds the interests of the EU and the non-EU partner state. In this paper, the focus is on dependency as the aim is to analyse to what extent the EU's autonomy is limited when it must react to an external crisis causing an increase of migration flows. Dependency is relevant for analysing the EU's leverage for political conditionality. The notion of dependence will also be mentioned when relevant throughout this paper because it also can have impacts on the use of leverage and conditionality.

The EU-Turkey readmission agreement

This section analyses the negotiations and implementation of the EURA with Turkey. The first sub-section discusses the interests and expectations of each party during the negotiations. The second shows the obstacles that have hindered the smooth implementation of the EURA.

The negotiations of the EU-Turkey readmission agreement

The EU wanted to negotiate an EURA with Turkey as it is one of the main gateways for migrants, asylum seekers and refugees entering the EU. There have always been irregular migrants reaching Europe from Turkey.²¹ The country suffers from regional instability and its geographical proximity with countries of origin for migration flows,

¹⁸ James A. Caporaso, "Dependence, Dependency, and Power in the Global System: A Structural and Behavioral Analysis." *International Organization* 32, no. 1 (1978), 18–20.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Ahmet İçduygu and Damla B. Aksel, "Two-to-Tango in Migration Diplomacy: Negotiating Readmission Agreement between the EU and Turkey", *European Journal of Migration and Law* (2014), 347.

such as Syria and Iraq.²² The European Commission made a recommendation to the Council to open readmission talks with Turkey in 2002. The EU had various demands in this negotiation. According to İçduygu and Aksel, the Institution asked Turkey to reform its asylum system, change its visa policy and ratify additional protocols to the European Convention on Human Rights.²³ In return, the Union promised to the Turkish government visa liberalisation, the opening of a new chapter in the accession talks and financial aid.²⁴

Turkey has been reluctant to accept the proposition of the EU to jointly cooperate on readmission.²⁵ Turkey was concerned about becoming a buffer zone between the EU and the countries of origin in the region. The Turkish-Greek border being an important irregular transit route of migration for arriving in Europe, Turkey feared turning into a final destination if it signed an EURA.²⁶ At the beginning of the negotiations, the Turkish government was inclined to readmit Turkish nationals and former permanent residents in Turkey but refused to readmit TCN. This was one of the reasons why Turkey took some time to sign the agreement.

Yet, Turkey had a few interests in cooperating with the EU on readmission. The government's priority was to achieve visa liberalisation. To this end, it first demanded that the EU opens negotiations as soon as possible on a visa-free regime for its citizens.²⁷ As the negotiations dragged on and the promise of visa liberalisation was still far from being fulfilled, Turkish officials made a concession to achieve the lifting of Schengen visas for their citizens. They accepted to readmit TCN, but only three years after the ratification of the agreement and after convincing the EU to send them the final report on the Visa Liberalisation Dialogue's progress the same year.²⁸ Once the agreement was ratified in 2014, Turkish officials proudly presented it as a "diplomatic success" to the public.²⁹

²² Ahmet İçduygu and Deniz Yüksek, "Rethinking Transit Migration in Turkey: Reality and Representation in the Creation of a Migratory Phenomenon", *Population, Space and Place* 18 (2012), 443.

²³ İçduygu and Aksel, *op. cit.*, 356.

²⁴ Pinar Gedikkaya Bal, "The effects of the refugee crisis on the EU-Turkey relations: The Readmission Agreement and beyond", *European Scientific Journal* 12, no. 8 (2016), 15-16.

²⁵ İçduygu and Aksel, *op.cit.*, 352.

²⁶ Alexander Bürgin, "European Commission's agency meets Ankara's agenda: why Turkey is ready for a readmission agreement", *Journal of European Public Policy* 19, no. 6 (2012), 888.

²⁷ Zeynep Özler, "Breaking the Vicious Circle in EU-Turkey Relations: Visa Negotiations", *Turkish Policy Quarterly* 11, no. 1 (2012), 122.

²⁸ Okay and Zaragoza-Cristiani, *op.cit.*, 55.

²⁹ *Ibid.*

Against this backdrop, the ups and downs of the membership negotiations had an impact on the negotiations of the readmission agreement. The unstable dynamics of the accession talks taking place in parallel with the negotiations on the EU-Turkish readmission agreement thus also account for the time it has taken to reach a deal.

There have been delays at each step of the negotiation. This “delaying tactic”³⁰ was a way for Turkey to exert its leverage in the negotiations and to test the conditionality of the EU while securing certain of its interests. This strategy seems also to be an expression of distrust on the part of Turkey which doubted the EU's commitment to grant a visa-free regime to Turkish citizens.³¹ Yet, the EU enjoyed the position of a ‘hard bargainer’ as Turkey seemed more dependent on the EU. Visa liberalisation has been a top priority for the country. For this reason, it made concessions on the readmission of TCN despite its initial opposition and the uncertain promise of EU membership.³² However, while the EU kept the upper hand, the use of conditionality indicates that the Union relies to a certain extent on Turkey's assistance to manage the flux of migrants coming from the region.

The implementation of the EU-Turkey readmission agreement

Most of the Annual Progress Reports on Turkey reveal that the third country's level of cooperation on readmission has been inconsistent, although the cooperation has mostly worked. Since 2016, the European Commission has been expressing its dissatisfaction with Turkey's cooperation.³³ The institution denounces the lack of observance of all the provisions of the agreement “in a systematic and coherent manner by all Turkish diplomatic missions in the EU”.³⁴ In 2016, Turkish officials already warned that the implementation of the TCN provisions was conditional on the EU confirming that Turkey meets all the benchmarks for visa liberalisation.³⁵ Yet, one of these benchmarks is the effective and full implementation of the EURA. The EU and Turkey thus found themselves in a deadlock because the Union did not want to implement visa liberalisation as long as Turkey did not fully comply with the readmission agreement, and the Turkish government refused to readmit TCN until it obtained some

³⁰ Sarah Wolff, “The Politics of Negotiating EU Readmission Agreements: Insights from Morocco and Turkey”, *European Journal of Migration & Law* 16, no. 1 (2013), 90.

³¹ *Ibid.*, 91.

³² Gedikkaya Bal, *op.cit.*, 30.

³³ European Commission, *Turkey 2016 Report*, SWD(2016) 366 final, Brussels, 9 November 2016, 79.

³⁴ *Ibid.*

³⁵ *Ibid.*

guarantees that the EU would lift Schengen visas for its citizens. Indeed, the Turkey Progress Report published in 2018 notes that Turkey had not implemented the provisions related to the readmission of TCN since it entered into force in 2017 because the EU has not exempted Turkish citizens from the requirement of visa for short-term stays.³⁶ In its 2022 progress report, the European Commission states that Turkey still refuses to observe the provisions related to TCN readmission, since its citizens are still not exempt from Schengen visa requirements.³⁷

Therefore, the effective and full implementation of the readmission agreement is complex as both parties do not want to make concessions. Like all readmission agreements, the implementation is based on a delicate balance. If the EU does not offer the promised incentives, Turkey might suspend the implementation, and conversely, if Turkey refuses to implement the readmission agreement, the EU might not honour its promises.

When the 'refugee crisis' occurred in 2015, the EU felt that an EURA was not enough to deal with the urgency. Furthermore, the provisions on the readmission of TCN were still not in force, meaning that the Union could only return own nationals to Turkey. In this context of crisis, the problems with the implementation of the EURA impeded an efficient response from the EU. Moreover, the Union was internally divided with member states unable to reach a compromise on the repatriation of people fleeing the Syrian crisis, revealing the failure of the Dublin Convention's implementation.³⁸

For these reasons, the EU has engaged with Turkey to conclude an informal arrangement to swiftly facilitate the return of individuals who reached Greece from Turkey and are not in need of international protection,³⁹ and to fight the smuggling of migrants.⁴⁰ Turkey saw in these negotiations a second chance to persuade the EU to obtain the benefits it had been promised during the negotiations of the readmission agreement. Therefore, Turkey conditioned its participation in the containment of the 'refugee crisis' on the acceleration of visa liberalisation, the reactivation of the

³⁶ European Commission, *Turkey 2018 Report*, SWD(2018) 153 final, Brussels, 17 April 2018, 46.

³⁷ European Commission, *Turkey 2022 Report*, SWD(2022) 333 final, Brussels, 12 October 2022, 45.

³⁸ Danish Refugee Council, *Europe's 'refugee crisis' calls for a focus on rights and solidarity*, 22 September 2020, accessed 1 May 2022. <https://www.drc.ngo/it-matters/feature-stories/2020/9/eu-s-asylum-and-migration-pact/#main-wrapper>

³⁹ European Council, *EU-Turkey Statement*, Press Release 144/16, 18 March 2016, accessed 26 April 2022. <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement>

⁴⁰ Gloria Arribas Fernandez, "The EU-Turkey Agreement: A Controversial Attempt at Patching up a Major Problem", *European Papers* 1, no. 3 (2016), 1098.

accession talks, and a significant financial support to host the refugees.⁴¹ With no other alternative, the EU fulfilled all the conditions set by Turkey. It offered 6 billion euros under the Facility for Refugees and proposed the revitalisation of the visa liberalisation process and the EU accession talks.⁴² While this crisis was “framed as a one-sided security problem”,⁴³ the context of urgency pushed the Union to concede to Turkey all the incentives it wanted, as well as the resettlement of Syrian refugees living in Turkey to EU member states.⁴⁴ It can be said that Turkey thus turned into the EU's “gatekeeper” during the ‘refugee crisis’.⁴⁵ This position provided the country with a stronger leverage⁴⁶ which enabled it to support its domestic political agenda in exchange for its cooperation.⁴⁷

The EU and Turkey finally signed the deal on 18 March 2016. The Council published it on its website as a non-binding joint statement on 16 March 2016. The European Council immediately stated that it was “a temporary and extraordinary measure”.⁴⁸ The EU therefore took an important and urgent policy response by means of a press release and soft law.

In 2019, the Turkish authorities suspended the deal in retaliation of the sanctions imposed by the EU following gas drilling operations carried out by Turkey in Cypriot waters.⁴⁹ The country thus has stopped restraining illegal migration into the EU. The reluctance of Turkey in implementing the deal highlights the EU's dependence on its assistance to manage migration flows in a context of crisis. The use of soft law to solve the ‘refugee crisis’ shows that the EU seemed trapped in its conditionality.

The cooperation between the EU and Turkey thus has evolved from a standard readmission agreement to a comprehensive policy, consisting of an EURA and an informal statement to reinforce their cooperation. The power dynamics have also changed: the EU moved from a ‘hard’ bargaining position based on conditionality to

⁴¹ Lisa Haferlach and Dilek Kurban, “Lessons Learnt from the EU-Turkey Refugee Agreement in Guiding EU Migration Partnerships with Origin and Transit Countries”, *Global Policy* 8 (2017), 85.

⁴² Violeta Moreno-Lax et al., *The EU Approach on Migration in the Mediterranean*, PE 694.413 (Brussels: European Parliament, 2021), 123.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Okay and Zaragoza-Cristiani, *op. cit.*, 51.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, 60.

⁴⁸ European Council, *op.cit.*

⁴⁹ Daniel Eck, “Turkey suspends deal with the EU on migrant readmission”, *Euractiv*, 24 July 2019, accessed 26 April 2022. <https://www.euractiv.com/section/global-europe/news/turkey-suspends-deal-with-the-eu-on-migrant-readmission>

a strong dependence on Turkey. Through the politicisation and the instrumentalisation of the EU-Turkey Statement, Turkey has managed to shift the power balance by reversing the conditionality. Turkish officials had enough leverage to make their cooperation on readmission conditional on the satisfaction of their demands. The use of reversed conditionality by Turkey reveals the interdependence existing between the country and the EU. The 'refugee crisis' showed that Turkey is for the EU, at the same time, a threat because of its migration salience, and an ally regarding its proximity and its strategic location during the crisis.⁵⁰ It also showed that conditionality can empower a third country if the EU is highly dependent on its assistance. The EU's dependency is all the more obvious and important as the EU would like to renew the EU-Turkey deal that expired in March 2021.⁵¹ The EU's willingness to extend this deal despite the ambivalent results⁵² shows that, in the end, the 2016 EU-Turkey Statement was not an exceptional measure taken to solve a crisis on the short term, as certain EU member states want it to become a long-term solution.

Besides losing leverage, the EU also lost credibility in the eyes of Turkey and on the international stage. Many scholars have strongly criticised the EU-Turkey deal since, regardless of the growing authoritarianism in Turkey and the violations of fundamental rights such as the freedom of speech, the EU has considered Turkey as a safe country where individuals can be returned without endangering their life.⁵³ While concluding the deal with Turkey in 2016, according to Fernandez, the EU infringed international law, especially the *non-refoulement* principle, and European law as Turkey does not fulfill the conditions to be granted the status of first country of asylum according to the Procedures Directive.⁵⁴ Therefore, should this be the case, the implementation of the agreement could result in violations of the *non-refoulement* principle and human rights.⁵⁵ This loss of credibility further undermines the EU's bargaining power.

⁵⁰ Gedikkaya Bal, *op. cit.*, 20.

⁵¹ Daniele Albanese, "The Renewal of the EU-Turkey Migration Deal", *Italian Institute for International Political Studies*, 27 May 2021, accessed 1 May 2022. https://www.ispionline.it/en/pubblicazione/renewal-eu-turkey-migration-deal-30509#_ftn1

⁵² *Ibid.*

⁵³ Arribas Fernandez, *op. cit.*, 110.

⁵⁴ *Ibid.*, 1098.

⁵⁵ Asli Okyay and Jonathan Zaragoza-Cristiani, *op. cit.* 58.

The EU-Pakistan readmission agreement

This section analyses the negotiations and implementation of the EURA with Pakistan in the same manner as the previous case study on Turkey.

The negotiations of the EU-Pakistan readmission agreement

Pakistan is one very few states in the region engaged in a formal cooperation on readmission with the EU.⁵⁶ The Council and the Commission have selected Pakistan as a high priority partner for collaborating on readmission because of the high rate of unreturned irregular migrants residing in EU member states.⁵⁷

The negotiations of the readmission agreement lasted nine years. The Council gave a negotiating mandate to the Commission in September 2000.⁵⁸ The agreement was signed in 2009 and entered into force in 2010. The negotiations were so lengthy due to the opposing interests of the two parties.⁵⁹ Pakistan was interested in developing legal migration pathways into the EU for Pakistani nationals. The country notably asked for visa liberalisation.⁶⁰ Conversely, the EU was interested in reducing irregular migration as "migratory flows out of Pakistan principally head westwards".⁶¹ It also wished to foster cooperation and dialogue at the regional level in order to support peace and stability.⁶² Moreover, the Pakistani authorities imposed delays between the different rounds. For instance, the EU's first concession was made before the start of the first round of discussions. Pakistan did not want to start the negotiations as long as the EU did not guarantee the conclusion of the Cooperation Agreement on Partnership and Development signed in 2004.⁶³ These delays were a sign of its reluctance to negotiate an EURA.⁶⁴

⁵⁶ European Court of Auditors, *EU readmission cooperation with third countries: relevant actions yielded limited results* 17/2021, 2021, 12.

⁵⁷ *Ibid.*, 30.

⁵⁸ European Community, *Country Strategy Paper for 2007-2013*, European External Action Service, 16, accessed 29 April 2022. https://eeas.europa.eu/archives/docs/pakistan/csp/07_13_en.pdf

⁵⁹ Interview with a practitioner, online, 24 March 2022.

⁶⁰ *Ibid.*

⁶¹ European Community, *Country Strategy Paper for 2007-2013*, *op. cit.*, 10.

⁶² European Parliament, "Recommendation on the proposal for a Council decision on the conclusion of the Agreement between the European Union and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation", Committee on Civil Liberties, 2009/0036(NLE), 15 July 2010.

⁶³ Kim Gillade, *Readmission Agreements concluded by the EU*, Thesis, Universiteit Gent, 2011, 72.

⁶⁴ European Court of Auditors, *op.cit.*, 21.

Finally, the conclusion of the EURA with Pakistan might have taken some time because Pakistan had not much to gain in signing a readmission agreement with the EU.⁶⁵ For the first time since the conclusion of the EURA with Russia in 2007, the EU did not offer visa facilitation as an incentive to sign the agreement.⁶⁶ The EU's conditionality was built on the conclusion of the 2004 Cooperation Agreement on Partnership and Development.⁶⁷ In addition, the EU proposed to economically support the country through its thematic budget line on migration asylum.⁶⁸ For Pakistan's authorities, such an arrangement would rather represent a burden because it would bind them to take TCN back. According to Gillade, with the TCN clause, the EU intended to readmit Afghan nationals who passed through Pakistan before arriving in the EU.⁶⁹

The European Parliament was divided on the conclusion of an EURA with Pakistan given that the country does not ensure human rights protection and there is no mention of human rights protection in the readmission agreement.⁷⁰ Article 15 does not explicitly refer to human rights by stating that Pakistan must implement the agreement in "consistency with other legal obligations".⁷¹ The fact that the EU negotiates with a state that does not align with international human rights standards indicates a certain dependency of the EU on this partner to manage migration flows from the region.

All in all, according to Pagoulatos, the EU only had a 'stick' but not an interesting 'carrot' to offer to Pakistan.⁷² The EU's leverage to impose conditionality rooted in its

⁶⁵ Interview with a practitioner, online, 24 March 2022; and Interview with a practitioner, online, 8 March 2022.

⁶⁶ Gillade, *op.cit.*, 43.

⁶⁷ Council of the European Union, "Council Decision of 29 April 2004 concerning the conclusion of the Cooperation Agreement between the European Community and the Islamic Republic of Pakistan", *Official Journal of the European Union*, L 378/22, 23 December 2004.

⁶⁸ European Community, *Pakistan. Country Strategy Paper for 2007-2013*, *op. cit.*, 25.

⁶⁹ Gillade, *op. cit.*, 69.

⁷⁰ European Parliament, *op. cit.*

⁷¹ European Community, "Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation, *Official Journal of the European Union*", *Official Journal of the European Union*, L287/52, 4 November 2010, Art. 15.

⁷² Pagoulatos, *op. cit.*, 2.

worldwide recognition as an economic superpower⁷³ and aid provider⁷⁴ was not enough to convince Pakistan to swiftly conclude the agreement.

The implementation of the EU-Pakistan readmission agreement

The low return rate of 8% in 2022⁷⁵ points to generally ineffective implementation of the EURA by Pakistan,⁷⁶ although in EU official documents the discourse is rather positive. In general, the implementation of the EURA by Pakistan is not effective, with a return rate of 8% for 2022, although in EU official documents the discourse is rather positive. In the 2019 EU-Pakistan Strategic Engagement Plan, both sides commit to strengthen their cooperation to “ensur[e] the full and effective implementation of the EU-Pakistan Readmission Agreement”.⁷⁷ This means that the cooperation is well-functioning but joint efforts on both parties could guarantee a better implementation of the EURA. In January 2020, Pakistan and the EU jointly stated that the readmission agreement was generally well implemented, although implementation could be more effective if several improvements were made.⁷⁸

The 2015 ‘refugee crisis’ has highlighted the delicate balance on which the implementation of the EU-Pakistan readmission agreement is based. In November 2015, the Pakistani authorities decided to unilaterally suspend the readmission agreement because of “blatant misuse”, according to the Federal Interior Minister Nisar at that time.⁷⁹ They accused EU member states of returning Pakistani citizens on

⁷³ According to Khattak, Pakistan has a history of engaging diplomatically with third countries and organisations to tackle its security concerns and to influence the balance of power in the region (Khattak 2020). For Pakistan, the EU is a crucial trade and investment partner while being a promoter of the rule of law, democracy, and human rights in the country (ibid.). For instance, in January 2014, Pakistan became eligible for the Generalised System of Preferences Plus (GSP+) status (Shad, Muhammad Riaz, 2021). Through the GSP+, the Union gives customs duty reductions to non-EU states that have to comply with 27 international conventions upon human rights, good governance, environmental protection and labour rights in exchange (Ministry of Foreign Affairs Government of Pakistan, 2020). While for the EU, the GSP+ is an instrument of international norms promotion (European Community, 2013), for Pakistan, this trade incentive is precious as it gives to the country access to the European market.

⁷⁴ Pagoulatos, *op. cit.*, 2.

⁷⁵ European Commission, *EU irregular migration*, Atlas of Migration, accessed 12 April 2023. https://migration-demography-tools.jrc.ec.europa.eu/atlas-migration/country-profiles?selection=PAK#IRR_MIG

⁷⁶ European Court of Auditors, *op. cit.*, 15- 17.

⁷⁷ European Community, *EU-Pakistan Strategic Engagement Plan (SEP)*, European External Action Service, 27 June 2019, accessed 29 April 2022. https://www.eecas.europa.eu/sites/default/files/eu-pakistan_strategic_engagement_plan.pdf

⁷⁸ European Commission, *EU readmission agreements and other “EU arrangements” – State of Play*, *op. cit.*

⁷⁹ “Pakistan suspends readmission agreements with Western countries”, *Dawn*, 6 November 2015, accessed 30 April 2022. <https://www.dawn.com/news/1217897>

unfounded grounds.⁸⁰ There is therefore a difference between the expected outcome on paper and the practice. The resistance of the Pakistani authorities to collaborate is again indicative of a lack of political will. It could also be a sign of a loss of the upper hand by the EU, which may, however, not want to admit that in its official documents. In August 2021, following the US withdrawal, the Taliban takeover in Afghanistan constituted another crisis challenging the implementation of the readmission agreement.⁸¹ While Pakistan does not have enough capacities to host new refugees,⁸² the country sees this geopolitical event as an opportunity to improve its leverage and extract more concessions to the EU in terms of trade incentives, visa liberalisation and economic aid to support its domestic agenda.⁸³ On its side, the EU considers Pakistan as a key migration management partner in the region because it wants to avoid experiencing the same scenario as 2015-2016.⁸⁴ For this reason, in the aftermath of the Taliban takeover, the EU wanted to intensify its cooperation with Pakistan to contain a possible wave of refugees from Afghanistan.⁸⁵

Inspired by Turkey's strategy, Pakistan wants to condition its cooperation with the EU on the renewal of its GSP+ status.⁸⁶ As the current GSP framework will expire on 31 December 2023,⁸⁷ the European Commission adopted in September 2021 a legislative proposal to renew the GSP framework for the period 2024-2034. The latter has been approved by the Council's Permanent Representatives Committee (COREPER) in December 2022 and is now being amended by the Council and the European Parliament.⁸⁸ According to a practitioner speaking in a personal capacity, the GSP+ status would enable the EU to have a stronger leverage.⁸⁹ Using this trade scheme as

⁸⁰ Sergio Carrera, *Implementation of EU Readmission Agreements: Identity Determination Dilemmas and the Blurring of Rights*, Directory of Open Access Books, 2016, 16-17.

⁸¹ Saim Saeed, "Pakistan seizes chance to be Europe's best buddy in Afghan crisis", *Politico*, 3 September 2021, accessed 30 April 2022. <https://www.politico.eu/article/afghanistan-pakistan-europe-crisis-refugees-trade>

⁸² Petrequin and Corder, *op. cit.*

⁸³ Saeed, *op. cit.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ "EU to decide on Pakistan's GSP+ status after two-year review", *Dawn*, 15 October 2021, accessed 30 April 2022. <https://www.dawn.com/news/1652057/eu-to-decide-on-pakistans-gsp-status-after-two-year-review>

⁸⁸ Legislative Observatory, "Generalised scheme of tariff preferences 2021/0297(COD)", European Parliament, accessed 16/03/2023.

[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2021/0297\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2021/0297(COD)&l=en)

⁸⁹ Interview with a practitioner, online, 24 March 2022.

a 'carrot' for Pakistan could be a good strategy for the EU since the Pakistani government wants to continue to benefit from it but has made little progress to comply with several international human rights conventions.⁹⁰ Nevertheless, using the GSP+ status as an incentive could be problematic in the eyes of the World Trade Organisation as this is an instrument established with precise trade- and development-related objectives.⁹¹

Comparison of Pakistan's and Turkey's EURAs

This section assesses the use of conditionality and the EU's leverage as well as the degree of the EU's dependency on third countries in both readmission cooperations.

Assessment of the use of conditionality and the EU's leverage in both cases

Both EURAs are based on the principle of reciprocity. Yet, the use of leverage to extract conditionality illustrates that a readmission agreement is not interesting enough for Pakistan and Turkey to cooperate with the EU without securing advantages. The Union needs to compensate the costs of an EURA for both countries. Yet, the EU did not build its conditionality similarly, as it is tailored to the relationship the EU has with each third country, the geographic proximity of the third country and the EU's respective interests. The relations between Turkey and the EU are complex and often antagonistic as Turkey is an EU candidate country which has been taking a significant authoritarian turn in recent years. The EU's conditionality thus aims to transfer the *acquis communautaire* into Turkey's legal framework. Pakistan is further away from the EU and its relations between the EU are based on trade, aid programmes and development objectives.⁹² In line with the general use of conditionality in its relationship with Pakistan, the Union has employed conditionality in the readmission negotiations to induce the third country to comply with international law and the principles of democracy and the rule of law.

The EU had more incentives at its disposal for negotiating the readmission agreement with Turkey than for the one with Pakistan. Visa liberalisation and EU membership are the main incentives that probably influenced the outcome of the negotiations for the conclusion and implementation of the readmission agreement with Turkey. Then, after

⁹⁰ Saeed, *op. cit.*

⁹¹ Interview with a practitioner, online, 8 March 2022.

⁹² Sadia Khattak, *The European Union's external relations: example of EU & Pakistan*, Thesis, Université Paris-Saclay, 2020, 1.

the agreement was already in force, the EU added to this package of incentives the provision of a great amount of humanitarian aid in the EU-Turkey Statement. In the case of Pakistan, the main incentives offered was the conclusion of the Cooperation Agreement and the renewal of the GSP+ as visa liberalisation was off the table. The EU has therefore formulated a conditionality which is more attractive for Turkey than Pakistan.

The incentives are different and adapted to the EU's interests and relations with its partners although the third countries are mostly interested in visa facilitation.⁹³ Initially, Pakistan's priority was to negotiate visa liberalisation, but the EU did not put this incentive on the table. As a result, it can be assumed that the Union's leverage is stronger in its cooperation with Turkey than Pakistan, and this makes a great difference since, as Schiffer notes, the "successful conclusion [of a readmission agreement] depends very much on the 'leverage' at the Commission's disposal".⁹⁴

Nonetheless, it is interesting to note that even though the EU formulated a more attractive conditionality for the negotiations with Turkey, the conclusion of the readmission agreement took two years longer than for Pakistan. This could indicate the insufficiency of conditionality as a way to convince third countries to sign an EURA. Indeed, the EU faced similar obstacles in both negotiations. Pakistan and Turkey opposed the TCN clause and used delaying tactics to express their lack of political will. The use of such tactics indicates the importance of the cost-benefit calculation made by Pakistan and Turkey. The speed of conclusion of an EURA cannot be taken as an indicator of the weakness or strength of the conditionality formulated by the EU in a negotiation.

The two case studies demonstrate that the conclusion of an EURA does not necessarily imply a smooth cooperation.⁹⁵ Pakistan and Turkey have not always fully respected the provisions of their readmission agreement. Both have unilaterally suspended their respective EURA at least once. Turkey ignored the EU-Turkey deal at the beginning of the Covid-19 pandemic, and Pakistan refused to implement the readmission agreement in 2015 as a wave of refugees headed towards European borders. These

⁹³ Thomas Huddleston and Annabelle Roig, "EC Readmission Agreements: A Re-evaluation of the Political Impasse", *European Journal of Migration and Law* 9 (2007), 378.

⁹⁴ Martin Schieffer, "Community Readmission Agreements with Third Countries – Objectives, Substance and Current State of Negotiations", *European Journal of Migration and Law* 5 (2003), 356.

⁹⁵ European Court of Auditors, *op. cit.*, 11.

unilateral suspensions show that both countries have the final say in whether or not to implement their legally binding or non-binding readmission obligations towards the EU. Moreover, they are the expression of reversed conditionality in practice. There is a reversed, asymmetrical balance of power because reversed conditionality inverts the initial asymmetric power relations where the EU has the upper hand. Yet, the use of reversed conditionality by Turkey is more effective with the EU than it is in the case of Pakistan. Due to its geographical position vis-à-vis the EU and its status of candidate, Turkey's leverage is more important than Pakistan.⁹⁶ Pakistan seems to take the opportunity of the Afghan political crisis to redefine the balance of power and obtain more benefits from its cooperation on readmission with the EU.

Assessment of the degree of the EU's dependency on third countries

Pakistan and Turkey have built their reversed conditionality on the EU's dependency because the vulnerability of the Union allows them to strengthen their leverage and obtain more concessions. Two common factors show that the EU is dependent on Pakistan and Turkey. First, the EU has decided to cooperate with two countries that are known for committing human rights violations and do not fully align with its values and principles. Turkey does not respect the fundamental rights of the Kurdish communities in the southeast of the country⁹⁷ and is undergoing an authoritarian turn.⁹⁸ It is a party to the 1951 Refugee Convention but maintains the geographical limitation for refugees originating from Europe. Pakistan is not a party to the Refugee Convention and therefore does not comply with international standards in terms of asylum matters. Moreover, there are still many issues regarding the respect of democratic principles in the country. Yet, the EU is built on the values of democracy, the rule of law and the protection of human rights. Negotiating with Pakistan and Turkey, two states that do not share the same views on these values, is a sign showing that the EU might be dependent on them because it has no alternative to manage migration flows.⁹⁹

Second, in both cases conditionality is a tool to secure the implementation of the readmission agreements (and the EU-Turkey deal). EU conditionality does not aim to make Pakistan and Turkey change their political and legal framework. The ultimate

⁹⁶ İçduygu and Aksel, *op. cit.*, 339.

⁹⁷ Wolff, *op.cit.*, 85.

⁹⁸ Meltem Müftüler-Bac, "Backsliding in judicial reforms: domestic political costs as limits to EU's political conditionality in Turkey", *Journal of Contemporary European Studies* 27, no. 1 (2019), 61.

⁹⁹ Okyay and Zaragoza-Cristiani, *op. cit.*, 58.

goal of the use of conditionality is not the transfer of the *acquis* as is the case in the accession talks.

Third, the consequences of the dependency of the EU in both cases are quite similar. Turkey has seized the 'refugee crisis' as an opportunity to reverse the use of conditionality through demanding a significant amount of aid to welcome the Syrian refugees. Following the Taliban takeover, Pakistan seeks to replicate Turkey's strategy while conditioning its cooperation on obtaining concessions in trade and economic aid. The two cases studies show that reversed conditionality enabled Pakistan and Turkey to exploit the EU's dependency to increase their leverage and that this appears to be easier in a crisis situation.

However, the comparison of the two case studies shows that the EU seems to not depend to the same extent on Pakistan and Turkey. The EU-Turkey readmission agreement consists of 8 sections while the one with Pakistan has 7 sections. In the EURA with Pakistan, the first and second sections of the EU-Turkey readmission agreement are merged.¹⁰⁰ As a result, the EURA with Pakistan is much less detailed as it does not specify the operational procedure of readmission for Pakistani nationals, TCN and stateless persons. Yet, other factors may also explain the length of this agreement, such as the compromises needed during the negotiations, the fact that Pakistan agreement is older than the EURA with Turkey and the additional importance of the TCN clause for a bordering country like Turkey compared to a distant country like Pakistan.

Also, the EU's dependency on Pakistan's and Turkey's assistance differs due to their status of primary or secondary interlocutor in the region on migration matters. During the 'refugee crisis', Turkey was the only interlocutor of the EU in the region that could help manage the flows of migrants directly coming from the region since it was the main country of transit and shares common borders with the EU. Turkey generates what can be called 'primary migration flows'. The proximity of Turkey led the EU to resort to the conclusion of an informal arrangement. Pakistan is relatively remote and emits what can be called 'secondary migration flows'.¹⁰¹ Due to this remoteness and because the EU can ask for assistance from several third countries in the region, there

¹⁰⁰ Gillade, *op. cit.*, 50.

¹⁰¹ Interview with a practitioner, online, 8 March 2022.

has been no urgent need to conclude an informal agreement with Pakistan to contain the Afghani refugee flows.¹⁰²

The comparison of the two case studies leads to the conclusion that the EU can develop two types of dependencies on third countries in the context of a cooperation on readmission: a direct dependency towards a third country that poses a direct migration threat to the EU because it generates primary migration flows, and an indirect dependency on a geographically distant country that generates secondary migration flows.

Conclusion: the use of conditionality and reversed conditionality reflects the interdependency of the EU and third countries

This paper addressed the question about the extent to which the EU's dependency on a third country for containing refugee flows from a region changes the power dynamics in their relationship. It compared the EU-Turkey and the EU-Pakistan readmission agreements. The paper found that it is unlikely that the EU would push for negotiating an informal arrangement with Pakistan following the 2021 Taliban takeover. It argued that the stronger the EU's dependency on a third country to protect its borders and manage refugee and migration flows, the easier it will be for this country to use reversed conditionality to leverage its own interests vis-à-vis the EU.

Comparing the EURAs of Pakistan and Turkey, five key findings can be drawn. First and foremost, in the field of readmission, the EU is dependent on the political will of third countries such as Pakistan and Turkey to cooperate. The two case studies showed that the commitment of the third country is even more crucial in times of crisis, that is when there is an increase in the number of migrants arriving at EU borders, because the EU has no effective alternative to stem the flows. In such a context, the EU's dependency is stronger, and its leverage weaker.

Second, there are different degrees of dependency of the EU on third countries in cooperation on readmission, especially in times of crisis. The EU can develop either a direct dependency towards a third country that poses a direct migration threat to the EU because it generates primary migration flows, or an indirect dependency on a geographically distant country that generates secondary migration flows. Both types of dependency reveal the loss of leverage that is partly caused by the fact that the EU's incentives are less attractive. The comparison of the EURAs with Pakistan and

¹⁰² Interview with a practitioner, online, 24 March 2022.

Turkey has shown that obtaining visa liberalisation is a 'carrot' used by the EU to encourage them cooperate. Yet, it appears that Turkey has lost the hope that this EU promise will be fulfilled, and that Pakistan has similarly lost the hope that the EU would put this incentive on the table. Consequently, it seems that the EU's conditionality policy has lost credibility and leverage.

Third, the attractiveness of conditionality does not have an impact on the speed of conclusion of an EURA. The EU has offered a more appealing conditionality to Turkey than to Pakistan due to its geographical proximity and the fact that it is an EU candidate. However, the conclusion of the EURA with Turkey took two years longer than the one with Pakistan. The attractiveness of conditionality is therefore not necessarily an indicator of the weakness or strength of the EU's conditionality.

Fourth, the use of reversed conditionality by Pakistan and Turkey in times of crisis has shown that the EU no longer seems to be the only one with the 'carrot' and a 'stick' in readmission negotiations. An EURA is an instrument allowing the EU to externalise its migration and asylum policy in order to manage migration flows. Pakistan and Turkey initially agreed to sign such an asymmetric agreement at their expense in the hope of gaining some benefits and advancing parallel negotiations. Having realised that the fulfilment of the EU's promises is uncertain, both countries have used the 'opportunity' of a 'refugee crisis' and the EU's growing dependence on them to exert pressure and make demands for their domestic agenda. The use of conditionality is thus reversed, allowing them to exert leverage and gain power. Pakistan and Turkey use their cooperation on readmission with the EU as a 'carrot' and non-cooperation as a 'stick'.

Finally, the proximity of the EU to a country of origin or transit, the fact that this country is the EU's sole interlocutor in a region or not, as well as the intensity and urgency of a migration crisis also affect the EU's dependency on a third country. The current situation in Afghanistan has not yet caused massive migration flows compared to the 2015 'refugee crisis' when the EU had to deal with millions of Syrian refugees and migrants arriving at its borders. Besides, with the EU aiming to further engage with Pakistan but also with other neighbouring countries of Afghanistan, there seems to be no urgency to deal with Pakistan, which is also geographically distant from the EU. Therefore, an informal agreement to contain the Afghan refugee flows might not be the EU's preferred solution.

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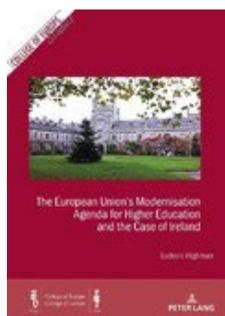
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