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EU-Morocco Negotiations on a Readmission Agreement: Obstacles to a Successful Conclusion

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Abstract

The European Union (EU) has increasingly sought to tackle irregular migration through cooperation with third countries. One of the key instruments in this regard have been EU readmission agreements (EURAs), which commit non-EU countries to take back irregular migrants. The European Commission obtained a mandate to negotiate an EURA with Morocco already in 2000, but negotiations have thus far remained inconclusive. This paper aims to shed light on the reasons for this failure. It argues that an EURA could not be concluded because the incentives offered by the EU have been insufficient, for instance in the case of legal migration and mobility, or they were granted despite the lack of cooperation. Considerable funding and the symbolically important 'advanced status' under the European Neighbourhood Policy were allocated to Morocco anyway because the EU is dependent on Morocco for migration control. This dependency puts the EU in a weak bargaining position as it cannot credibly withhold benefits in case of Morocco's non-compliance. The credibility of the EU's conditionality is further undermined by inconsistencies within its multilevel system of governance. The existence of bilateral alternatives to an EURA is particularly problematic in this regard. Based on these findings, the paper suggests that the EU should (1) conclude more readmission agreements with countries of origin to take some pressure off Morocco; (2) link the allocation of funding and the conclusion of new agreements to progress in the EURA negotiations; (3) lower its dependence on Morocco by enhancing its own border control capabilities; (4) relaunch the negotiations for a visa facilitation agreement and broaden their scope; and (5) increase coherence in order to present a united front to Morocco.

Introduction

Cooperation with third countries on return and readmission has long been considered an important element of the European Union's (EU) strategy to tackle irregular migration. However, with the advent of the so-called 'migration and refugee crisis' in 2015 the issue has really moved to the centre of political attention. In September 2017, the President of the European Commission Jean-Claude Juncker reaffirmed the importance of an effective readmission policy in his State of the Union Address: "People who have no right to stay in Europe must be returned to their countries of origin. When only 36% of irregular migrants are returned, it is clear we need to significantly step up our work."¹ The new focus on readmission is also reflected in the number of policy documents that have recently been published on the issue. The European Agenda on Migration (2015), the EU's Action Plan on Return (2015) and the New Partnership Framework (2016) all emphasise the importance of improving cooperation with third countries on return and readmission.

So far, the EU has managed to conclude readmission agreements (EURAs) with 17 countries and autonomous regions: Hong Kong (2004), Macao (2004), Sri Lanka (2005), Albania (2006), Russia (2007), Ukraine (2008), Macedonia (2008), Bosnia and Herzegovina (2008), Montenegro (2008), Serbia (2008), Moldova (2008), Pakistan (2010), Georgia (2011), Armenia (2014), Azerbaijan (2014), Turkey (2014) and Cape Verde (2014).² As can be seen from this list, EURAs mainly cover EU candidate countries and countries located in the EU's eastern neighbourhood. By contrast, the EU has had difficulties to conclude readmission agreements with countries in its southern neighbourhood. Negotiating mandates have been adopted for Morocco (2000), Algeria (2002), Tunisia (2014) and Jordan (2015).³ However, until now none of these negotiations has been successful.

The negotiations with Morocco constitute a particularly interesting case. Morocco has refused to sign an EURA for almost 20 years and an agreement is still not in sight. This is puzzling given the fact that Morocco has been one of the main countries of origin and transit of irregular migrants. One could assume that the EU would do anything to

¹ J.-C. Juncker, President of the European Commission, "Catching the wind in our sails", *State of the Union Address 2017*, Brussels, 13 September 2017, p. 4.

² European Commission, *Return and Readmission*, retrieved 27 April 2019, https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en.

³ Ministry of the Interior of Finland, *The EU or member states themselves are responsible for readmission agreements*, retrieved 27 April 2019, <https://intermin.fi/en/areas-of-expertise/migration/voluntary-and-forced-return/readmission-agreements>.

persuade such an important country to sign a readmission agreement. Morocco's resistance to sign an EURA is also surprising when considering that it has a long-standing history of cooperation on migration matters with the EU and its member states, including the signature of bilateral readmission agreements.

This paper aims to shed light on this issue and to answer the following research question: Why has the EU been unable to conclude a readmission agreement with Morocco? By examining the Moroccan case, the paper also intends to improve the general understanding of the obstacles related to EURA negotiations with the EU's southern neighbours.

Drawing on the 'external incentives model', the study argues that the EURA negotiations have not been successful because the incentives were either not strong enough to compensate for the considerable implementation costs or offered by the EU despite Morocco's refusal to sign an EURA. Furthermore, the EU's promises and threats have not been credible due to incoherence within the EU's multilevel system of governance and the EU's weak bargaining position *vis-à-vis* Morocco.

The paper first explains the central assumptions of the external incentives model and how they can be applied to the EURA negotiations with Morocco. It then evaluates Morocco's costs of implementing an EURA, before taking a closer look at the incentives that the EU has offered to compensate for these costs. Subsequently, the paper explores the different dimensions of coherence and explain how incoherence has weakened the EU's credibility. In the final section, the paper assesses the bargaining position of the EU *vis-à-vis* Morocco. The conclusions put forward some recommendations for advancing the negotiations.

The external incentives model

Readmission agreements are reciprocal, meaning that both parties have the same obligations. However, in practice these agreements mainly serve the interests of the EU and its member states. Therefore, the successful conclusion of an EURA "depends very much of the 'leverage' at the Commission's disposal, i.e. of sufficiently strong incentives to obtain the co-operation of relevant third countries on readmission".⁴

⁴ M. Schieffer, "Community Readmission Agreements with Third Countries – Objectives, Substance and Current State of Negotiations", *European Journal of Migration and Law*, vol. 5, no. 3, 2003, p. 356.

To analyse the Commission's leverage *vis-à-vis* Morocco, the study applies the so-called 'external incentives model'. This rationalist bargaining model was originally developed by Schimmelfennig and Sedelmeier in the context of enlargement. Their central assumption is that "a state adopts EU rules if the benefits of EU rewards exceed the domestic adoption costs".⁵ In the case of the candidate countries of Central and Eastern Europe, the decisive factor for the adoption of EU rules was the perspective of EU membership.⁶ This reward is not on the table for Morocco. However, Trauner argues that the absence of membership conditionality can be compensated by "policy conditionality", i.e. "material rewards that do not relate to EU accession".⁷ Hence, the logic of the external incentives model can also be applied to the EURA negotiations.

According to Schimmelfennig and Sedelmeier, two crucial factors for the effective use of conditionality are the benefits on offer and the compliance costs for third countries. Another factor to consider is the credibility of the EU's conditionality, i.e. the credibility of its promise to deliver a certain reward in case of compliance and its threat to withhold it in case of non-compliance.⁸ The credibility of the EU's promises rests on the 'consistency' or 'coherence' (this study uses the two terms interchangeably) of its actions. Schimmelfennig and Sedelmeier argue that "[i]f the EU were perceived to subordinate conditionality to other political, strategic, or economic considerations, the target state might either hope to receive the benefits without fulfilling the conditions or conclude that it will not receive the rewards at any rate".⁹ Following Gebhard, this paper further breaks down coherence into vertical, horizontal, internal/intra-institutional and external coherence.¹⁰

Furthermore, the threat to withhold or withdraw benefits will only be credible, if the EU possesses superior bargaining power.¹¹ Schimmelfennig and Sedelmeier conceive bargaining power as "a function of asymmetric interdependence between the

⁵ F. Schimmelfennig & U. Sedelmeier, "Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe", *Journal of European Public Policy*, vol. 11, no. 4, 2004, p. 664.

⁶ *Ibid.*, p. 669.

⁷ F. Trauner, "From Membership Conditionality to Policy Conditionality: EU External Governance in South Eastern Europe", *Journal of European Public Policy*, vol. 16, no. 5, 2009, p. 776.

⁸ Schimmelfennig & Sedelmeier, *op. cit.*, pp. 665-666.

⁹ *Ibid.*, p. 666.

¹⁰ C. Gebhard, "The Problem of Coherence in the European Union's International Relations", in Christopher Hill, Michael Smith & Sophie Vanhooacker (eds.), *International Relations and the European Union*, Oxford, Oxford University Press, 2017, 3rd edn., pp. 128-129.

¹¹ Schimmelfennig & Sedelmeier, *op. cit.*, p. 665.

actors".¹² For conditionality to be effective, "[t]he EU must be able to withhold the rewards at no or low costs to itself, and it has to be less interested in giving the reward than the target government is in getting it".¹³

Thus, the paper identifies four explanatory factors that can account for the success or failure of EURA negotiations. The first two variables are the costs for implementing an EURA and the incentives offered by the EU to Morocco. The incentives must be in line with the interests of the third country and exceed the domestic adoption costs. The third variable is the coherence of the EU's application of conditionality. This will be broken down into vertical, horizontal, internal/intra-institutional and external coherence. The fourth variable is the relative bargaining power of the Commission vis-à-vis Morocco. Together, coherence and bargaining power determine the credibility of the EU's conditionality.

The following sections further explore each of these explanatory factors, starting with the implementation costs, moving on to incentives and coherence and ending with bargaining power.

Implementation costs

When assessing the costs of implementing an EURA, one has to distinguish between the readmission of nationals and third-country nationals (TCNs). States are obliged to readmit their own nationals under customary international law. This obligation is derived from Article 13 of the Universal Declaration of Human Rights, which states that everyone has the right to return to his or her own country.¹⁴ In this respect, an EURA would not create any new obligations for Morocco but simply improve the implementation of an existing obligation. However, a higher return of Moroccan citizens would result in a loss of remittances, which represent an important source of income for the country.¹⁵ In 2017, the net outflow of remittances from the EU to Morocco amounted to € 3.3 billion.¹⁶ This amount is several times higher than the amount of € 189.5 million

¹² F. Schimmelfennig & U. Sedelmeier, *The Europeanization of Eastern Europe: The External Incentives Model Revisited*, Paper for the JMF@25 conference, EUI, 22-23 June 2017, p. 3.

¹³ Schimmelfennig & Sedelmeier, "Governance by Conditionality", *op. cit.*, p. 665.

¹⁴ A. Roig & T. Huddleston, "EC Readmission Agreements: A Re-evaluation of the Political Impasse", *European Journal of Migration and Law*, vol. 9, no. 3, 2007, p. 364.

¹⁵ E. Paoletti, *The Migration of Power and North-South Inequalities: The Case of Italy and Libya*, London, Palgrave Macmillan, 2010, p. 49.

¹⁶ R. Obrzut, *Personal Remittances Statistics*, Eurostat, November 2018.

that Morocco received under the European Neighbourhood Instrument (ENI).¹⁷ Many Moroccan families depend on remittances and would lose their financial basis if their relatives were forcibly returned to Morocco.¹⁸ The conclusion of an EURA is therefore highly unpopular among the Moroccan population.¹⁹ The massive return of Moroccan citizens would also put pressure on the country's labour market, which is already marked by low employment rates, and require expensive re-integration measures.²⁰

Even more problematic than the readmission of Moroccan citizens is the issue of TCNs.²¹ Contrary to the case of nationals, there is no international legal obligation to readmit TCNs. Morocco fears that the inclusion of a respective clause in the EURA would turn it into a 'dumping ground' for irregular migrants from Sub-Saharan Africa.²² The Kingdom is also concerned about negative repercussions for its relations with countries of origin. Morocco's cooperation on readmission would deprive them of valuable remittances and create negative images of Moroccan authorities using coercion to deport migrants on Europe's behalf.²³ That is why Moroccan authorities have repeatedly stressed that they have no intention of becoming 'Europe's policemen'.²⁴ Over the last decade, the Kingdom has invested heavily in improving its relations with African countries. This rapprochement has been motivated by economic as well as political interests. On the one hand, Morocco wants to diversify its economy and benefit from the high growth rates in African countries. On the other hand, it needs their political support for its contested claims over Western Sahara.²⁵ Morocco's Africa policy has already borne fruits with the country's re-accession to the African Union in January 2017. However, Morocco's application for membership of the Economic

¹⁷ European Commission, *Morocco*, Directorate-General for European Neighbourhood Policy And Enlargement Negotiations, 19 December 2018.

¹⁸ F. Trauner & I. Kruse, "EC Visa Facilitation and Readmission Agreements: A New Standard EU Foreign Policy Tool?", *European Journal of Migration and Law*, vol. 10, no. 4, 2008, p. 431.

¹⁹ D. Wunderlich, "Differentiation and Policy Convergence against Long Odds: Lessons from Implementing EU Migration Policy in Morocco", *Mediterranean Politics*, vol. 15, no. 2, 2010, p. 251.

²⁰ S. Carrera, R. Radescu & N. Reslow, *EU External Migration Policies: A Preliminary Mapping of the Instruments, the Actors and their Priorities*, Report prepared for the FP7 project 'Transnational Migration in Transition: Transformative Characteristics of Temporary Mobility of People' (EURA-NET), 2015, p. 12.

²¹ Interview with an EU official, DG Home, European Commission, via e-mail, 30 April 2019.

²² N. Coleman, *European Readmission Policy: Third Country Interests and Refugee Rights*, Leiden, Brill, 2008, p. 151.

²³ S. Carrera et al., "EU-Morocco Cooperation on Readmission, Borders and Protection: A Model to Follow?", *CEPS Paper in Liberty and Security in Europe*", no. 87, Brussels, Centre for European Policy Studies, January 2016, p. 6.

²⁴ European Council on Refugees and Exiles, *Morocco Plans to Deport Migrants Arrested at the Spanish Border Amid Wider Restriction of Immigration Policy*, 26 October 2018.

²⁵ Carrera et al., *op. cit.*, p. 6.

Community of West African States (ECOWAS) is still pending due to fears of some members states that it would dominate the organisation and act as a 'Trojan horse' for EU and US companies.²⁶ Therefore, Morocco does not want to alienate its West African neighbours through the implementation of an EURA.

This section has shown that the implementation of an EURA would imply significant costs for Morocco. Most importantly, it would result in a loss of remittances and burden Morocco's relations with its African neighbours. In the next section, the study looks at the incentives that the EU has offered to Morocco in order to compensate for these implementation costs.

Incentives

The EU's offer to countries in the southern neighbourhood essentially consists of '3 Ms': Money, Mobility and Markets.²⁷ This section looks at each of these incentives and assesses their impact or potential impact on the EURA negotiations. In addition, there is a 'fourth M' that was successfully used to persuade countries in the Western Balkans and the Eastern neighbourhood to sign an EURA, namely membership. In the case of Morocco, EU membership is not on the table. However, the country aspires to become a close and special partner of the Union. Therefore, the last sub-section takes a closer look at the 'advanced status' agreement with Morocco.

Money

The first and perhaps most obvious incentive is money. Morocco has received significant funding under the ENI and its predecessor, the European Neighbourhood and Partnership Instrument (ENPI). The EU assistance amounted to € 1.4 billion over the period 2007-2013 and € 807.5 million over the period 2014-2017. In 2016, the EU allocated € 35 million under the ENI to support Morocco's migration policies.²⁸ Cooperation in the field of migration has also been financed by the EU Emergency Trust Fund for Africa (EUTF Africa) and the Development Cooperation Instrument (DCI). Overall, the EU pledged € 232 million between 2014 and December 2018 to support migration-related activities in Morocco. Funds were used to support programmes in

²⁶ J. Chara, "The Tale of Morocco in ECOWAS – Analysis", *Eurasia Review*, 17 September 2018, retrieved 18 April 2019, <https://www.eurasiareview.com/17092018-the-tale-of-morocco-in-ecowas-analysis>.

²⁷ European Commission, *The EU's response to the 'Arab Spring'*, Press Release, Brussels, 16 December 2011.

²⁸ European Commission, *Morocco*, *op. cit.*

the following areas: socio-economic integration of migrants (€ 10.1 million); governance of migration policies, institutional support and capacity building (€ 28.5 million); protection, resilience and rights of migrants (€ 23.1 million); migration management, border management and mobility (€ 92.8 million); and fight against migrant smuggling and human trafficking (€ 77.3 million).²⁹ In December 2018, Morocco received an additional € 148 million from the EUTF Africa. The money was allocated to support Morocco's National Strategy for Immigration and Asylum, to improve the capacity of the Moroccan authorities to manage their borders and to fight against migrant smuggling and human trafficking as well as to help protect vulnerable migrants.³⁰

Although funding in the area of migration has been considerable, the EU has not been able to use it as a means of persuasion in the EURA negotiations. There are two factors that can explain this failure. First, Morocco has received the money despite its consistent refusal to sign an EURA. This is particularly problematic when it comes to the credibility of the EU's conditionality and will be further discussed in the section on bargaining power. Second, the 2015 'migration and refugee crisis' and especially the infamous EU-Turkey 'refugee deal' of March 2016 have revealed the vulnerability of the European Union. In exchange for Turkey's commitment to take back Syrian refugees, the EU promised to allocate € 3 billion for refugees in Turkey.³¹ This sum was later increased to € 6 billion, of which € 2.7 billion were disbursed by December 2019.³² Moroccan authorities know that they cannot expect to receive a similar amount of money as the number of migrants travelling to Europe via Morocco is much smaller.³³ However, they are likely to exploit the EU's vulnerability to extract more money. Hence, in order to effectively use money as leverage in the EURA negotiations, the EU would need to provide more funding and link it to the signing and implementation of a readmission agreement.

²⁹ European Commission, *EU Cooperation on migration with Morocco*, December 2018.

³⁰ European Commission, *Western Mediterranean Route: EU reinforces support to Morocco*, Press Release, Brussels, 14 December 2018.

³¹ European Council, *EU-Turkey statement*, Press Release, Brussels, 18 March 2016.

³² European Commission, *EU Facility for Refugees in Turkey: €6 billion to support refugees and local communities in need fully mobilised*, Press Release, Brussels, 10 December 2019.

³³ Frontex, *Migratory Routes*, retrieved 14 December 2019, <https://frontex.europa.eu/along-eu-borders/migratory-routes/western-mediterranean-route/>

Mobility

A second set of incentives is related to legal migration and mobility. Actions in this field are based on the Mobility Partnership (MP) that was concluded in June 2013 between Morocco, on the one hand, and the EU and nine member states (Belgium, France, Germany, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom) on the other hand.³⁴ In line with the four pillars of the EU's Global Approach to Migration and Mobility, the MP pursues the following objectives: (1) "to manage the movement of persons for short periods and legal and labour migration more effectively", (2) "to strengthen cooperation on migration and development", (3) "to combat illegal immigration, networks involved in the trafficking and smuggling of human beings, and to promote an effective return and readmission policy", and (4) to "comply with duly ratified international instruments concerning the protection of refugees".³⁵ The MP is implemented through specific projects that can be proposed either by the participating member states, the Commission or the partner country.³⁶ Migration is a shared competence between the EU and the member states (Art. 4(2)(j) TFEU), and the Commission can only propose projects that fall within exclusive EU competence. Projects related to legal migration must, by contrast, be submitted by the member states (Art. 79(5) TFEU).³⁷

However, member states are often hesitant to offer legal migration opportunities, which is why the Mobility Partnership falls short of its potential. A closer look at the proposed projects reveals a clear emphasis on the fight against irregular migration. Out of 60 projects, 27 concern the prevention of irregular migration and border management. 15 projects are listed under the heading of 'Mobility, legal immigration and integration'. However, most of them are related to information activities. None of the proposed projects aims at the creation of new opportunities for labour migration for Moroccan citizens.³⁸ Another problem of the MP is its voluntary nature, which,

³⁴ Council of the European Union, *Joint Declaration establishing a Mobility Partnership between the Kingdom of Morocco and the European Union and its Member States*, 6139/13, Brussels, 3 June 2013.

³⁵ *Ibid.*, p. 4.

³⁶ N. Reslow, "Deciding on EU External Migration Policy: The Member States and the Mobility Partnerships", *Journal of European Integration*, vol. 34, no. 3, 2012, p. 224.

³⁷ European Union, "Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union of 13 December 2007", *Official Journal of the European Union*, C115, 9 May 2008.

³⁸ Council of the European Union, *Joint Declaration establishing a Mobility Partnership*, *op. cit.*, pp. 15-32.

according to the Commission, “makes it difficult to secure a balanced and complete EU offer to third countries”.³⁹

The Mobility Partnership also foresaw the opening of negotiations for a visa facilitation agreement (VFA) with Morocco. In the case of the eastern neighbourhood and candidate countries, VFAs were successfully used as incentives for the conclusion of EURAs. The Commission hoped that the prospect of receiving a VFA would do the trick also in the case of Morocco.⁴⁰ Negotiations were launched in October 2013 and were supposed to be conducted in parallel with the EURA negotiations. However, the EU’s offer was not enough to get the EURA negotiations moving. This was partly related to the limited scope of the negotiations, as the proposal only concerned short-term visas.⁴¹ Another factor was the envisaged revision of the EU visa code that would have provided similar facilitations at lesser costs.⁴² The European Parliament finally adopted a new visa code in April 2019. The new regime establishes a clear link between visa policy and readmission. According to the new rules, “[t]he conditions for processing visa applications can be adapted depending on whether a non-EU country cooperates satisfactorily on the return and readmission of irregular migrants”.⁴³ The new visa code also envisages an increase in the visa fee from € 60 to € 80. According to an official from DG HOME, this could be a strong incentive for Morocco to return to the parallel negotiation of readmission and visa facilitation agreements that was agreed in the MP.⁴⁴

Visa facilitation and possibilities for labour migration could be powerful incentives as these are important concerns for the Moroccan population. However, the EU has not been able to make use of this potential due to the different interests of the member states and the Commission.

Markets

Market access is currently not linked to the EURA negotiations with Morocco. However, the EU’s Action Plan on Return, that was adopted in September 2015, suggests that

³⁹ European Commission, *Report on the implementation of the Global Approach to Migration and Mobility 2012-2013*, COM(2014) 96, Brussels, 21 February 2014, p. 20.

⁴⁰ Interview with an EU official, *op. cit.*

⁴¹ Carrera *et al.*, *op. cit.*, p. 7.

⁴² Interview with an EU official, *op. cit.*

⁴³ European Commission, *EU Visa Policy: Commission welcomes European Parliament adoption of stronger and more secure EU visa rules*, Press release, Strasbourg, 17 April 2019.

⁴⁴ Interview with an EU official, *op. cit.*

“leverage should also be identified outside the home affairs area to increase cooperation on readmission from third countries”. It further specifies that this should include “development assistance, neighbourhood policy, trade agreements and trade preferences (with the possibility to link the conclusion of free trade agreements or the granting of preferential treatment for certain third countries to the parallel conclusion of a readmission agreement)”.⁴⁵ Given the protracted nature of the EU’s EURA negotiations with Morocco, the Commission might be tempted to introduce such a link in future negotiation rounds. Therefore, it seems worthwhile exploring the potential impact of linking the negotiations on a free trade agreement and on readmission.

At first sight, this form of issue-linkage seems to be a promising strategy for the EU to increase its leverage. This becomes clear when we look at the economic figures. The EU is the largest economy in the world with a population of 500 million and a GDP per capita of € 25,000.⁴⁶ Trade with Morocco is rather insignificant for the EU. In 2018, Morocco represented the European Union’s 24th largest trading partner with a share of 1.0 % of its overall trade.⁴⁷ This means that the EU could afford to withhold a free trade agreement in order to gain leverage in the EURA negotiations. Morocco, on the other hand, is heavily dependent on trade with the EU. In 2018, the European Union represented 57.5 % of Morocco’s total trade in goods and 63.9 % of its exports.⁴⁸ In addition, the EU accounted for around 70 % of foreign direct investments in Morocco.⁴⁹ Given these figures, Morocco should have a strong interest in improving its access to the EU’s single market.

The EU and Morocco started negotiations for a Deep and Comprehensive Free Trade Area (DCFTA) in March 2013. The DCFTA is supposed to enhance trade and investment flows and to further the integration of the Moroccan economy into the EU’s single market by aligning domestic legislation with the EU’s *acquis communautaire*.⁵⁰ While the related reforms would undoubtedly benefit Morocco in the long term by

⁴⁵ European Commission, *EU Action Plan on Return*, COM(2015) 453 final, Brussels, 9 September 2015.

⁴⁶ European Commission, *EU position in world trade*, 18 February 2019, retrieved 15 April 2019, <https://ec.europa.eu/trade/policy/eu-position-in-world-trade>.

⁴⁷ European Commission, *European Union, Trade with Morocco*, Directorate-General for Trade, 19 March 2019, pp. 8-9.

⁴⁸ European Commission, *Morocco*, Directorate-General for Trade, 19 March 2019, p. 1.

⁴⁹ C. Teevan, *EU-Morocco: A win-win partnership?*, 30 June 2019, retrieved 15 August 2019, <https://mipa.institute/6866>.

⁵⁰ European Commission, *Morocco*, Directorate-General for Trade, May 2019.

modernising its economy and making it more competitive, they would also imply significant costs in the short and medium term.⁵¹ To comply with EU food safety standards, for example, Morocco would have to establish specialised laboratories and inspection regimes and conduct extensive trainings.⁵² The costs of legal approximation would have to be borne not only by state authorities, but also by Moroccan businesses, who often lack the financial and technical means to comply with EU standards.⁵³ Even if they managed to adapt, Moroccan companies would still face difficulties to access the EU market, as they would probably not be able to compete with European firms. While access to the EU market would be out of reach – at least for a while – Moroccan companies would face increasing competitive pressure in the domestic market due to further liberalisation.⁵⁴ Given the costs of legal approximation and the anticipated competitive pressure from foreign companies, it becomes clear why Morocco has been hesitant to conclude a DCFTA with the European Union. In July 2014, the Moroccan government suspended the negotiations in order to allow for an assessment of the DCFTA's potential impact on the Moroccan economy.⁵⁵ The resulting impact study acknowledged the potential benefits of a DCFTA for the Moroccan economy and the country's institutions but warned about the social challenges that such an agreement could bring.⁵⁶ Another reason for Morocco's reluctance to negotiate a DCFTA might be that the country already has a free trade area with the EU, covering industrial goods, and sectoral agreements for two of its most important industries, agriculture and fisheries.⁵⁷ The prospect of concluding a DCFTA with the EU is therefore a less attractive incentive for Morocco than one might think at first glance.

Apart from that, a DCFTA with Morocco might also cause legal problems. Both the agricultural and the fisheries agreements were challenged before the Court of Justice of the European Union (CJEU) by the Polisario Front, the National Liberation Movement of Western Sahara. The Polisario Front argued that the agreements violate EU and international law by including the territory of Western Sahara in their scope of

⁵¹ A. Adarov & P. Havlik, *Benefits and Costs of DCFTA: Evaluation of the Impact on Georgia, Moldova and Ukraine*, Joint Working paper by the Vienna Institute for International Economic Studies and Bertelsmann Stiftung, December 2016, p. 70.

⁵² L. Delcour & K. Wolczuk, "Beyond the Vilnius Summit: Challenges for Deeper EU Integration with Eastern Europe", *Policy Brief*, European Policy Centre, Brussels, 2013.

⁵³ *Ibid.*

⁵⁴ Adarov & Havlik, *op. cit.*, p. 45.

⁵⁵ Teevan, *op. cit.*

⁵⁶ A. Naim, "Négociations sur l'ALECA : Le Maroc toujours en « stand-by »", *LesEco.ma*, 13 January 2017.

⁵⁷ European Commission, *Morocco*, Directorate-General for Trade, May 2019.

application. In December 2015, the General Court ruled that the EU-Morocco agreement shall be “annulled in so far as it approves the application of that agreement to Western Sahara”.⁵⁸ In reaction, the Moroccan government suspended “all contact and cooperation with EU institutions”.⁵⁹ On 16 January 2019, the European Parliament adopted an amended version of the agricultural agreement.⁶⁰ On 12 February 2019, the new Sustainable Fisheries Partnership Agreement also received the Parliament’s approval.⁶¹ These resolutions and the subsequent Council decisions paved the way for the relaunch of DCFTA negotiations in June 2019.⁶² However, the issue is not yet resolved, as the Polisario Front already initiated new legal proceedings against the Council decisions.⁶³ It remains to be seen whether the CJEU will partially annul them again. If the EU considered using a DCFTA as an incentive in the EURA negotiations, it would have to find a practical solution for the Western Sahara issue.

Advanced status

Membership is often considered as the most powerful incentive at the EU’s disposal. Most of the countries that have concluded an EURA are either candidate countries or potential candidate countries. For them, the costs of implementing an EURA are compensated by the prospect of accession to the European Union. Eastern neighbourhood countries like Ukraine, Georgia or Moldova are not candidate countries but can realistically hope to obtain that status in the future. In the case of Morocco, however, membership has been ruled out. The Kingdom’s application to join the European Communities in 1987 was rejected on the grounds that Morocco is not a European country.⁶⁴ Instead of membership, the country has aspired to become a very close and special partner of the Union. In March 2000, King Mohammed VI set the official target of ‘more than association, less than accession’.⁶⁵

⁵⁸ Case T-512/12, *Front Polisario v Council*, 2015.

⁵⁹ B. Hoekman, “Deep and Comprehensive Free Trade Agreements”, *EUI Working Papers*, European University Institute, Florence, 2016, p. 2.

⁶⁰ N. Nielsen, “EU parliament backs Morocco deal despite row”, *euobserver*, 16 January 2019.

⁶¹ European Commission, *European Parliament votes in favour of EU-Morocco fisheries partnership*, 12 February 2019.

⁶² Council of the European Union, *Joint Declaration by the European Union and Morocco for the fourteenth meeting of the Association Council*, Press Release, Brussels, 27 June 2019.

⁶³ Western Sahara Research Watch, *Polisario tries EU Council over new EU-Morocco agricultural deal*, 30 April 2019.

⁶⁴ A. Jones, *Britain and the European Union*, Edinburgh, Edinburgh University Press, 2016, 2nd edn., p. 133.

⁶⁵ I. Fernandez-Molina, *Moroccan Foreign Policy under Mohammed VI, 1999-2014*, London, Routledge, 2016, p. 132.

Morocco's wish to become a privileged partner of the EU has been mainly driven by its quest for international legitimacy. Being recognised as the EU's closest partner or as a 'model student' would not only boost Morocco's international visibility and reputation but also its attractiveness to international investors.⁶⁶ Moreover, Morocco has hoped that such an 'advanced status' would result in a more favourable EU perception of Morocco's strategic interests (e.g. concerning the Western Sahara conflict) and increased financial assistance.⁶⁷ To retain its status as a 'model student', Morocco must (at least formally) engage in EURA negotiations.⁶⁸

In 2008, the EU-Moroccan Association Council agreed on a 'Joint Document on the Strengthening of Bilateral Relations/Advanced Status'.⁶⁹ This advanced status agreement mainly deals with the strengthening of economic relations, suggesting among other things the conclusion of a Deep and Comprehensive Free Trade Area.⁷⁰ Martín has questioned the added value of the advanced status, as it "does not grant any substantial concessions whatsoever in fields of strategic interest for Morocco, such as agricultural trade liberalization, mobility of Moroccan citizens or the level of financial cooperation".⁷¹ However, the advanced status has a high symbolic value for Morocco because it demonstrates the special nature of the EU-Morocco partnership. Despite its significance for Morocco, the advanced status agreement was not used as leverage for the conclusion of an EURA. The document contains no reference to a readmission clause, which according to the 2002 Seville Council Conclusions should have been integrated into each new agreement.⁷²

This section has shown that the EU is either not ready to give a substantial incentive (migration and mobility) or that it provides it despite Morocco's refusal to sign an EURA (money, advanced status). The following two sections analyse why this is the case. There are two explanations: the first is related to incoherence within the EU's multilevel system of governance and the second to the EU's bargaining power *vis-à-vis* Morocco. Market access has not been linked to the EURA negotiations so far. The potential impact of such a linkage should, however, not be overestimated as long-

⁶⁶ *Ibid.*, p. 133.

⁶⁷ *Ibid.*

⁶⁸ Interview with an EU official, *op. cit.*

⁶⁹ EU-Morocco Association Council, *Document conjoint UE-Maroc sur le renforcement des relations bilatérales/Statut Avancé*, July 2007.

⁷⁰ *Ibid.*, p. 4.

⁷¹ I. Martín, "EU-Morocco Relations: How Advanced Is the 'Advanced Status'?", *Mediterranean Politics*, vol. 14, no. 2, 2009, p. 240.

⁷² Wunderlich, *op. cit.*, p. 267.

term benefits of a DCFTA are offset by short-term costs. In addition, legal problems regarding the inclusion of Western Sahara would have to be clarified, if the EU introduced such a link.

Coherence

Gebhard distinguishes four dimensions of coherence: “vertical coherence (between the member states and the Union level), horizontal coherence (between the supra-national and the intergovernmental spheres at Union level), internal/intra-institutional coherence (within each domain of external action) and external coherence (between the EU and external actors)”.⁷³ These different dimensions of coherence are interlinked and reinforce each other.⁷⁴

Vertical incoherence

Migration is a shared competence between the EU and its member states, with the latter retaining the competence over admission policy.⁷⁵ Article 79(5) TFEU states that “this Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work”.⁷⁶ Despite several attempts of the European Commission, member states have refused to transfer competences over legal migration to the European level. The admission of labour migrants affects social welfare and employment policies and is thus considered important for national sovereignty.⁷⁷

Visa facilitation is also seen with scepticism by member states. They are concerned that this could lead to irregular migration of visa overstayers. That is why they have only granted visa facilitation to potential candidate countries or countries who are insignificant in terms of numbers of irregular migrants.⁷⁸ As mobility is one of Morocco’s key concerns, the reluctance of member states to grant legal pathways for migration severely limits the effectiveness of the EU’s conditionality in the EURA negotiations. The Commission has recognised the potential of visa facilitation as a source of leverage

⁷³ C. Gebhard, “The Problem of Coherence in the European Union’s International Relations”, in Christopher Hill, Michael Smith & Sophie Vanhoonacker (eds.), *International Relations and the European Union*, Oxford, Oxford University Press, 2017, 3rd edn., p. 129.

⁷⁴ *Ibid.*, p. 131.

⁷⁵ L. Teodorescu, “Ambition versus Reality: Partnering with our Neighbours on Migration”, *European View*, vol. 16, no. 1, 2017, p. 124.

⁷⁶ European Union, *op. cit.*, Art. 79(5) TFEU.

⁷⁷ Reslow, *op. cit.*, p. 225.

⁷⁸ Roig & Huddleston, *op. cit.*, p. 377.

and called on member states to “support the Commission’s readmission negotiating efforts more whole-heartedly and not lose sight of the overall interest that a concluded EURA represents for the entire EU.”⁷⁹

Horizontal incoherence

The Council and the Commission have different approaches when it comes to migration. Dominated by the interests of member states’ interior ministries, the Council promotes a restrictive, control-oriented approach to migration. Its main goals are to combat irregular migration and to increase return rates.⁸⁰ The Commission, on the other hand, prefers a more holistic approach that also tackles the root causes of migration.⁸¹ However, it has to be noted that the Commission is not a uniform actor and that DG HOME has other priorities than, for example, the DG for International Cooperation and Development (DG DEVCO).

While the Commission negotiates readmission agreements on behalf of the EU, the Council has to approve the mandate and also the final outcome of the negotiations.⁸² Hence, the Commission has to take into account the Council’s interests throughout the negotiations and can only offer concessions that are likely to be accepted by the Council.⁸³ A particular problem in the EURA negotiations has been the Council’s insistence on the inclusion of a TCN clause. Since Morocco has been reluctant to accept such a clause, the Commission has advocated dropping it from the agreement.⁸⁴ However, the member states see the TCN clause as the added value of an EURA compared to their bilateral agreements. Consequently, the negotiation mandate does not allow any concessions in this regard and severely limits the Commission’s room for manoeuvre.⁸⁵

⁷⁹ European Commission, *Evaluation of EU Readmission Agreements*, COM(2011) 76 final, Brussels, 23 February 2011, pp. 7-8.

⁸⁰ J. Hampshire, “Speaking with One Voice? The European Union’s Global Approach to Migration and Mobility and the Limits of International Migration Cooperation”, *Journal of Ethnic and Migration Studies*, vol. 42, no. 4, 2016, p. 576.

⁸¹ *Ibid.*, pp. 576, 578.

⁸² European Union, *op. cit.*, Art. 218 TFEU.

⁸³ Hampshire, *op. cit.*, p. 576.

⁸⁴ N. Reslow, “An Incompetent Actor? Assessing EU External Migration Policy”, *European Foreign Affairs Review*, vol. 20, no. 4, 2015, p. 488.

⁸⁵ C. Billet, “EC Readmission Agreements: A Prime Instrument of the External Dimension of the EU’s Fight against Irregular Immigration. An Assessment after Ten Years of Practice”, *European Journal of Migration and Law*, vol. 12, no. 1, 2010, p. 65.

Internal/intra-institutional incoherence

Given member states' reluctance to offer legal migration opportunities, the Commission has to resort to other incentives that fall within the EU's competence. This requires cooperation between DG HOME, whose officials lead the EURA negotiations, and other Directorates-General of the Commission and the European External Action Service (EEAS). However, there are also different priorities and approaches within the Commission that undermine the consistent application of conditionality.⁸⁶ The other DGs are generally reluctant to subordinate their own policy priorities to migration control objectives.⁸⁷ DG DEVCO, for example, is concerned that DG HOME's narrow focus on irregular migration could undermine development goals and thus resists attempts to redirect aid to countries that produce a lot of migrants instead of those that are most in need of development assistance.⁸⁸ The Directorate-General for External Relations (DG RELEX), and since 2010 the EEAS, have been more concerned with broader political objectives.⁸⁹ They fear that EURA negotiations could jeopardise political relationships with third countries and advocate a more balanced approach.⁹⁰ The negotiations for the advanced status agreement between the EU and Morocco illustrate these intra-institutional conflicts. According to the 2002 Seville Council Conclusions, any new agreement between the EU and a third state should have included a clause on readmission. However, the clause was eventually dropped from the advanced status agreement because DG RELEX did not want to endanger progress in bilateral relations.⁹¹

External incoherence

The EU has not presented a united front to Morocco during the EURA negotiations. Several member states have own informal arrangements with the Maghreb country which undermine the Commission's efforts to negotiate a Union-wide agreement.⁹²

⁸⁶ Hampshire, *op. cit.*, p. 582.

⁸⁷ *Ibid.*, p. 577.

⁸⁸ C. Boswell, "Evasion, Reinterpretation and Decoupling: European Commission Responses to the 'External Dimension' of Immigration and Asylum", *West European Politics*, vol. 31, no. 3, 2008, p. 505.

⁸⁹ P. Garcia-Andrade & I. Martín, *EU Cooperation with Third Countries in the Field of Migration*, Study for the LIBE committee, PE 536.469, Brussels, European Parliament, October 2015, p. 91.

⁹⁰ S. Carrera, J. Parkin & L. den Hertog, "EU Migration Policy After the Arab Spring: The Pitfalls of Home Affairs Diplomacy", *CEPS Policy Paper*, no. 74, Brussels, Centre for European Policy Studies, February 2013, p. 4.

⁹¹ Wunderlich, *op. cit.*, p. 267.

⁹² S. Wolff, "The Politics of Negotiating EU Readmission Agreements: Insights from Morocco and Turkey", *European Journal of Migration and Law*, vol. 16, no. 1, 2014, p. 72.

Informal bilateral agreements have several advantages for Morocco in comparison with EURAs. First, informal agreements are more flexible. They do not require parliamentary ratification and can thus be easily renegotiated in order to adapt them to changing circumstances.⁹³ Informal agreements are also less visible to the public as they are usually not published as official documents and often embedded within a broader framework of cooperation.⁹⁴ This factor is particularly important for Morocco. Since readmission is highly unpopular among the population, the government prefers to keep cooperation in this field under the radar of public attention.⁹⁵ In this way Morocco can cooperate on readmission while at the same time publicly expressing its opposition to the conclusion of a formal readmission agreement.⁹⁶

Second, parallel negotiations with the EU and with member states offer Morocco additional opportunities to obtain material and non-material benefits. In January 2016, for example, Sweden and Morocco agreed to establish a working party to deal with the identification and return of unaccompanied minors. In exchange, Sweden committed to support programmes for their re-integration and education in Morocco.⁹⁷ In addition, the Swedish government announced that it would not recognise the independence of Western Sahara.⁹⁸ In February 2016, Germany and Morocco agreed to speed up the procedure for identifying Moroccan citizens. In return, Germany promised to support the Council's appeal against the CJEU's decision to partly annul the agricultural and fisheries agreements with Morocco.⁹⁹ These recent examples demonstrate how Morocco has been "shopping for its needs" between different member states and the EU.¹⁰⁰ Morocco prefers bilateral negotiations because it can exert more leverage *vis-à-vis* individual member states than *vis-à-vis*

⁹³ J.-P. Cassarino, "Informalizing EU Readmission Policy", in Ariadna Ripoll Servent & Florian Trauner (eds.), *Routledge Handbook of Justice and Home Affairs Research*, London, Routledge, 2018, p. 189.

⁹⁴ J.-P. Cassarino, "Dealing with Unbalanced Reciprocities: Cooperation on Readmission and Implications", in Jean-Pierre Cassarino (ed.), *Unbalanced Reciprocities: Cooperation on Readmission in the Euro-Mediterranean Area*, Washington D.C., Middle East Institute Special Edition Viewpoints, 2010, p. 10.

⁹⁵ Cassarino, "Informalising Readmission Agreements in the EU Neighbourhood", *op. cit.*, p. 189.

⁹⁶ Cassarino, "Dealing with Unbalanced Reciprocities", *op. cit.*, p. 10.

⁹⁷ "Schweden und Marokko vereinbaren Rückführung", *Zeit online*, 19 January 2016.

⁹⁸ A. Eriksson, "How Moroccan Street Boys Changed Swedish Foreign Policy", *euobserver*, 7 March 2016.

⁹⁹ "Deutschland und Marokko vereinbaren schnelle Abschiebungen", *Zeit Online*, 29 February 2016.

¹⁰⁰ N. El Qadim, "Postcolonial Challenges to Migration Control: French-Moroccan Cooperation Practices on Forced Returns", *Security Dialogue*, vol. 45, no. 3, 2014, p. 249.

the EU as a whole.¹⁰¹ The Moroccan government is afraid that it would lose this bilateral leverage through the conclusion of an EURA.¹⁰²

Third, Morocco can use its leverage *vis-à-vis* individual member states to influence EU decision-making.¹⁰³ Spain has long acted as a mediator for Moroccan interests in the Council of the EU. In 2005, Spain pushed for the Global Approach to Migration in order to accommodate Morocco's interests and ensure its continued cooperation on irregular migration.¹⁰⁴ More recently, the Spanish government has put pressure on the EU institutions to approve additional funding for Morocco.¹⁰⁵ During a meeting with the Moroccan King Mohamed VI, the Spanish Prime Minister Pedro Sanchez stated that "[t]he EU has to, in a structural way, offer economic resources for Morocco".¹⁰⁶

Finally, external incoherence gives Morocco the opportunity to 'resist' or 'avoid' the conclusion of an EURA. Some member states are more concerned by irregular migration from Morocco than others. Morocco can engage in negotiations with the most concerned member states and offer them concessions at the bilateral level. This makes the conclusion of an EU-wide readmission agreement less important for them and consequently reduces the pressure on Morocco.¹⁰⁷

For these reasons, Morocco has an interest to keep bilateral channels open. The conclusion of an EURA would render Morocco's 'divide and rule' strategy more difficult and is thus not in Morocco's interest.¹⁰⁸ At the same time, however, Morocco tries to keep the prospect of an EURA alive to continue receiving benefits from the EU.¹⁰⁹

This section has shown that the Commission's ability to offer attractive incentives to Morocco has been hampered by incoherence between the EU and the member states, who have been reluctant to offer legal migration opportunities. The Council's

¹⁰¹ *Ibid.*

¹⁰² Interview with an EU official, *op. cit.*

¹⁰³ Wolff, *op. cit.*, p. 14.

¹⁰⁴ Wunderlich, *op. cit.*, p. 260.

¹⁰⁵ A. Valdivia, "The Externalization Of European Borders: Morocco Becomes A Key EU Partner In Migration Control", *Forbes*, 26 December 2018.

¹⁰⁶ H. Saleh, "Migrant surge to Spain prompts Moroccan crackdown", *Financial Times*, 4 January 2019.

¹⁰⁷ N. El Qadim, "De-Europeanising European Borders: EU-Morocco Negotiations on Migrations and the Decentring Agenda in EU Studies", in Marc Woons & Sebastian Weier (eds.), *Critical Epistemologies of Global Politics*, Bristol, E-International Relations Publishing, 2017, p. 142.

¹⁰⁸ Interview with an EU official, *op. cit.*

¹⁰⁹ N. El Qadim, "La politique migratoire vue de Maroc : contraintes et opportunités", *Politique Européenne*, no. 31, 2010, p. 114.

insistence on including a TCN clause has further limited the Commission's room for manoeuvre in the EURA negotiations. Given member states' reluctance, the Commission has only been able to offer benefits that fall within the EU's exclusive competence. However, there have also been different priorities and interests within the Commission's DGs. This is why the readmission clause in the advanced status agreement was eventually dropped to the detriment of the credibility of the EU's conditionality. Finally, the Commission's efforts to negotiate an EURA have been undermined by the parallel conclusion of bilateral agreements with member states. These have given Morocco an opportunity to obtain additional benefits, to influence EU decision-making and ultimately to avoid the conclusion of an EURA.

Bargaining power

The effective use of conditionality requires superior bargaining power on the part of the European Union, otherwise threats would not be credible.¹¹⁰ While the EU is usually the stronger partner in negotiations, this is not necessarily the case when it comes to migration. Since the end of the 1990s, the EU has sought to "off-shore" and "out-source" migration policy to third countries.¹¹¹ This 'externalisation' has involved both the "exportation of classical migration control instruments" (e.g. "border control, measures to combat illegal migration, smuggling and trafficking, and capacity-building of asylum systems and migration management in transit countries") and the return of irregular migrants.¹¹² The externalisation of migration control to third countries has led to the EU's dependence on the latter. This dependence is particularly strong in the case of Morocco, which is one of the most important countries of origin and transit of irregular migrants. As a consequence, Morocco is now able to set its own conditions, which the EU must adhere to if it wishes to prevent mass migration to Europe. Cassarino has dubbed this phenomenon "reversed conditionality".¹¹³

Morocco has repeatedly used the threat of relaxing border controls as a bargaining tool to obtain economic and political concessions from the EU. In 2003, the Minister Delegate for Moroccans living abroad, Nezha Chekrouni, stated unambiguously that

¹¹⁰ Schimmelfennig & Sedelmeier, "Governance by Conditionality", *op. cit.*, p. 665.

¹¹¹ L. Bialasiewicz, "Off-shoring and Out-sourcing the Borders of Europe: Libya and EU Border Work in the Mediterranean", *Geopolitics*, vol. 17, no. 4, 2012, p. 848.

¹¹² C. Boswell, "The 'External Dimension' of EU Immigration and Asylum Policy", *International Affairs*, vol. 79, no. 3, 2003, p. 622.

¹¹³ Cassarino, "Informalising Readmission Agreements in the EU Neighbourhood", *op. cit.*, p. 192.

her country's cooperation in combatting irregular migration depends on the "great responsibility of the EU to support [Morocco's] development efforts".¹¹⁴ After the CJEU's partial annulment of the agriculture and fisheries agreements in 2015, the Moroccan government issued a statement that could be interpreted as an implicit threat to relax border controls:

"Any obstacle in the application of this agreement is a direct attack on thousands of jobs [...] on both sides, and risks the resumption of migratory flows, which Morocco has succeeded in containing through a deliberate, sustained effort".¹¹⁵

Aziz Akhannouch, the Moroccan Minister for Agriculture and Fisheries, reaffirmed Morocco's position in an interview, saying:

"How do you [Europe] expect us to do the work of blocking African and even Moroccan emigration if Europe doesn't want to work with us? Why should we continue acting as police and giving them [Africans in Morocco] work?"¹¹⁶

The threatening rhetoric was accompanied by an upsurge in the number of irregular migrants crossing into Spain. Within 72 hours after the statement had been issued, 853 irregular migrants reached Ceuta. This equated to almost half of the number of irregular migrants that had managed to enter the Spanish exclave in 2016.¹¹⁷ Teevan suspects that the comparatively high number of border crossings was meant "as a warning to the EU and member states not to threaten Moroccan interests in the Western Sahara".¹¹⁸

When the number of irregular arrivals rose again in 2018, there had been speculations that Morocco deliberately eased its border controls to put pressure on the EU to receive more financial assistance.¹¹⁹ The provision of € 55 million in additional funds to

¹¹⁴ Quoted in J.-P. Cassarino, "Migration and Border Management in the Euro-Mediterranean Area: Heading towards New Forms of Interconnectedness", *Med.2005 Mediterranean Yearbook*, 2005, Florence, European University Institute, p. 229.

¹¹⁵ "Morocco uses migrant crisis as leverage in EU free trade dispute", *France24*, 22 February 2017.

¹¹⁶ Quoted in F. Peregil & J. Cañas, "Incursions at Spain's North African exclaves triple after Moroccan threats", *El Pais*, 27 February 2017.

¹¹⁷ *Ibid.*

¹¹⁸ C. Teevan, *More for Less? Europe's New Wave of Migration Deals*, European Council on Foreign Relations, London, 8 October 2018.

¹¹⁹ Y. Brenner, R. Forin & B. Frouws, *The 'Shift' to the Western Mediterranean Migration Route: Myth or Reality?*, Mixed Migration Centre, 22 August 2018.

Morocco and Tunisia suggests that this strategy was seemingly successful.¹²⁰ After the EU had met its conditions, Morocco accepted the return of 116 migrants that had irregularly crossed the border with Spain and deported hundreds of Sub-Saharan African migrants to the south of Morocco.¹²¹

Morocco also used reversed conditionality to gain support for its National Strategy for Immigration and Asylum. The Kingdom argued that it cannot implement the strategy on its own and requested assistance to finance implementation measures. The EU had a strong interest in implementing this strategy and therefore little choice but to accept Morocco's conditions.¹²² That is why, in December 2018, Morocco received another € 148 million in migration-related assistance.¹²³

The EU's dependence in the field of migration adversely affects the use of conditionality in the EURA negotiations because the EU is not able to withhold the benefits in case Morocco does not sign a readmission agreement. The EU's interest in obtaining Morocco's cooperation in the fight against irregular migration is greater than its wish to conclude a readmission agreement. Therefore, it has been ready to meet Morocco's demands for financial assistance even in the absence of the latter's commitment to sign an EURA. Hence, Tittel-Mosser rightfully argues that "Morocco's reversed conditionality might be even stronger than the EU's conditionality".¹²⁴

Conclusion

This study set out to explain why the EU has been unable to conclude a readmission agreement with Morocco. It argued that EURA negotiations are mainly in the interest of the EU and that their successful conclusion therefore depends on the effective use of conditionality. Subsequently, the paper identified four variables that are decisive for the effectiveness of conditionality: Morocco's implementation costs, the incentives offered by the EU, the coherence of the EU's actions and its relative bargaining power *vis-à-vis* Morocco.

¹²⁰ European Commission, *EU Trust Fund for Africa: additional € 90.5 million to strengthen border management and protection of migrants in North Africa*, Press Release, Brussels, 6 July 2018.

¹²¹ Teevan, *More for Less?*, *op. cit.*

¹²² F. Tittel-Mosser, "Reversed conditionality in EU external migration policy: The case of Morocco", *Journal of Contemporary European Research*, vol. 14, no. 4, 2018, p. 357.

¹²³ European Commission, *EU reinforces support to Morocco*, *op. cit.*

¹²⁴ Tittel-Mosser, *op. cit.*, p. 358.

The findings suggest that Morocco would have to bear significant costs to implement an EURA. A more consistent deportation of Moroccan citizens would result in a loss of remittances and potentially cause problems with the re-integration of migrants. In addition, a TCN clause would have negative repercussions for Morocco's relations with countries of origin.

The paper then looked at the incentives that the EU has offered to compensate for Morocco's implementation costs. The EU has provided considerable amounts of money to Morocco and responded to the Kingdom's desire to become a special and privileged partner by granting it an advanced status. These benefits could have acted as powerful incentives for the conclusion of an EU readmission agreement. However, they have been granted despite Morocco's consistent refusal to sign an EURA. The study has argued that the EU is unable to withhold benefits in case of non-compliance because the power asymmetry is reversed in the field of migration. Due to the gradual externalisation of migration policies, the EU has become more dependent on Morocco than *vice versa*. This has reached a point, where Morocco can set its own conditions, with which the EU has to comply.

The credibility and effectiveness of the EU's conditionality have been further undermined by incoherence. The Commission has been unable to offer attractive incentives in the field of migration and mobility because member states have been reluctant to offer legal migration opportunities. The Council's insistence on a TCN clause and different priorities within the European Commission have further limited DG HOME's room for manoeuvre in the negotiations. Even more problematic, however, has been the conclusion of bilateral agreements between individual EU member states and Morocco. These bilateral channels have provided Morocco with an opportunity to obtain additional benefits and to influence EU decision-making. Consequently, the Moroccan government will have little incentive to conclude an EURA as long as these bilateral alternatives exist.

Finally, based on the above analysis, the following policy suggestions can be made: (1) the EU should try to conclude more readmission agreements with countries of origin of irregular migrants to take some pressure off Morocco. The latter should be granted a multi-year transition period until it has to readmit third-country nationals; (2) the allocation of funding and the conclusion of new agreements with Morocco should be linked to progress in the EURA negotiations, as was already foreseen by the Seville Council conclusions; (3) to lower its dependence on Morocco, the EU should

strengthen its external border management, notably through the reinforcement of its border-control agency Frontex; (4) negotiations for a visa facilitation agreement should be relaunched and its scope should be expanded to a wider range of beneficiaries; and (5) member states should support the EURA negotiations more wholeheartedly and stop negotiating their own bilateral agreements.

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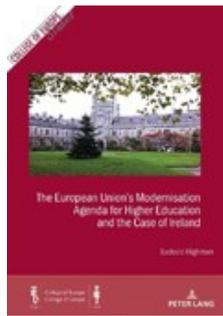
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