EC Visa Facilitation and Readmission Agreements:
A new Standard EU Foreign Policy Tool?

Florian Trauner
Institute for European Integration Research
of the Austrian Academy of Sciences, Vienna.
Florian.Trauner@oeaw.ac.at

Imke Kruse
Max Planck Institute for Human Development, Berlin.
kruse@mpid-berlin.mpg.de

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Abstract
This article offers an analysis of the objective, substance and political implications of EC visa facilitation and readmission agreements. These agreements have gained increasing importance in EU foreign policy making because the EU has started to view visa facilitation regimes not only as a necessary incentive for the signing of a readmission agreement, but also as a means for mitigating the negative side-effects of the Eastern Enlargement. In offering more relaxed travel conditions in exchange for endorsement of an EC readmission agreement and reforms in domestic justice and home affairs, the EU found a new way to pressure for reforms in neighbouring countries while meeting a major source of discontent in these countries. The analysis considers the broader implications of these agreements and argues that even if the facilitated travel opportunities are beneficial for the citizens of the target countries, the positive achievements are undermined by the Schengen enlargement which requires that the new member states tighten up their borders to their neighbours.
1. Introduction

In recent years the instrument of EC readmission agreements has attracted a great deal of scholarly attention (cf. Roig and Huddelston 2007, Schiefer 2003, Rogers and Peers 2005, Schieffer 2003, Kruse 2006, Bouteillet-Pacquet 2003). The signing of a readmission agreement was considered to be dependent on certain incentives, most notably on visa facilitation. However, the use of visa facilitation as an incentive to sign readmission agreements was seen as rather limited in scope, since “some Member States hesitate to close a door on irregular immigration to open a window on new potential irregular flows of visa overstayers, already the largest group of irregular migrants in the EU. […] In other words, coupling is a limited policy tool that Member States will allow the Commission to employ in ‘exceptional cases’” (Roig and Huddelston 2007: 377).

This paper argues that this assumption may not necessarily prove true for one major reason. The EU has started to view visa facilitation regimes not only as a necessary incentive for the signing of a readmission agreement but also as a means for mitigating the negative side effects of the Eastern Enlargement. In the context of their accession process to the EU, the Central and Eastern European countries were expected to introduce new visa requirements for their Eastern neighbours located on the EU’s negative visa list, including all Western Balkan states (with the exception of Croatia), Russia, Ukraine and other CIS countries. This conditionality requirement was particularly difficult, as it led to the end of the liberalised movement of persons in the region. The imposition of the visa requirements between the new member states and their Eastern neighbours has therefore created a new dividing line in Europe and reinforced the picture in neighbouring states that the EU is establishing a ‘fortress Europe’.

Against this background, the instrument of EC visa facilitation and readmission agreements gained importance in EU foreign policy making. These agreements were considered to be beneficial to both sides. They provide the EU with a strong lever to make third countries sign a readmission agreement and increase the reform efforts in their domestic justice and home affairs sector, while they also meet major grievances of the neighbouring countries by easing the tight visa regime and fostering facilitated travel opportunities for bona fide travellers. EC visa facilitation and readmission
agreements gradually moved to the centre of the EU’s efforts to balance internal security concerns and external stabilisation needs in the neighbourhood.

By elaborating on the EU’s strategy regarding visa facilitation and readmission, this paper aims to offer the systematic analysis of the substance, the objective and the political implications of these agreements. The analysis establishes when the connection between readmission and visa facilitation was made and presents the importance of EC visa facilitation and readmission agreements for the EU’s relations with the Western Balkan countries as well as the European Neighbourhood Policy. EC visa facilitation and readmission agreements have already been concluded with the Western Balkan countries, Ukraine, Moldova and the Russian Federation, and they may eventually become a standard foreign policy instrument of the European Neighbourhood Policy. The second part of the article assesses these agreements in terms of similarities and differences. The analysis concludes by clarifying the broader implications of the EC visa facilitation and readmission agreements and arguing that even if the facilitated travel opportunities are beneficial for the citizens of the target countries, the positive achievements are undermined by the Schengen enlargement, which makes the new member states tighten up their border to those of their neighbours.

2. EC visa facilitation and readmission agreements: balancing internal security and external stabilisation

This section introduces the gradual coupling of the negotiations on EC readmission agreements with the incentive of visa facilitation and presents the growing importance of EC visa facilitation and readmission agreements for the EU’s relations with neighbouring countries.

2.1 Linking readmission to visa facilitation

Negotiations on EC readmission agreements started in 2001, after the Amsterdam treaty had transferred the competence to conclude readmission agreements with third countries to the European Union.¹ Shortly thereafter it became clear that successful negotiations

¹ In 2001, negotiations started with Hong Kong, Macao, Russia, Sri Lanka, Morocco, and Pakistan; in 2002, with Ukraine; in 2003 with Albania and Turkey; in 2004, with China; in 2005 with Algeria; in 2006
would take longer than the member states had originally hoped, because the agreements mainly bring about negative consequences and difficult challenges of varying dimensions for countries of origin or transit. In 2002, member states started calling for the speeding-up of ongoing readmission negotiations – a claim which has been reiterated at every opportunity ever since.\textsuperscript{2} Gradually it became clear that concessions needed to be made, and more-attractive packages would have to be linked to migration policy. In the months that followed, visa facilitation became the major compensation matter introduced by third countries in negotiations with the EU. Besides the very special cases of Hong Kong and Macao, the most successful link between readmission and visas has been made by the Russian Federation. In July 2004, the Council authorised the Commission to negotiate not only on readmission but also on visa facilitation (cf. Commission of the European Communities 2004: 12). Shortly afterwards, the link between readmission and visa facilitation became official for Ukraine, too. Even China officially asked the Community, in May 2004, to negotiate visa facilitation in parallel with negotiations on readmission.\textsuperscript{3} In the multi-annual programme on strengthening freedom, security and justice (the so-called Hague Programme), member states finally referred to the Commission’s call and agreed to further examine a possible link between readmission and visa facilitation:

The European Council (...) invites the Council and the Commission to examine, with a view to developing a common approach, whether in the context of the EC readmission policy it would be opportune to facilitate, on a case by case basis, the issuance of short-stay visas to third-country nationals, where possible and on a basis of reciprocity, as part of a real partnership in external relations, including migration-related issues (Council of the European Union 2004: 18).

Apart from the difficulties in concluding EC readmission agreements with neighbouring countries, EU member states started to view the link between readmission and visa facilitation as an opportunity to compensate for the negative side effects of the EU

\textsuperscript{2} Commission of the European Communities, 2002b.
\textsuperscript{3} With regard to China, an important agreement, the Destination Status Agreement, had already taken a first step towards visa facilitation in February 2004. It incorporated a readmission clause as a ‘quid pro quo’ which essentially means visa facilitation for group visits of Chinese tourists to the EU.
Eastern Enlargement: Before joining the EU in May 2004, the candidate countries were obliged to adopt the EU’s visa regime in full and thus to impose visa requirements on citizens of their neighbouring countries. Of all countries subsumed under the current enlargement process and the European Neighbourhood Policy, only Israel and Croatia are visa-free.⁴ This accession conditionality caused severe trouble, particularly because several of the applicant countries had minorities on the other side of the border and/or had established close socioeconomic and political relationships with their neighbours. After the fall of the Berlin Wall, the governments of the Central European states pursued an open border policy to maintain good relationships with neighbouring countries. Sustained by Western European states as part of regional and bilateral integration, these countries have built up intense cross-border relations and allowed citizens of countries such as Russia, Ukraine or Belarus to travel easily to Central and Eastern Europe (Apap et al. 2001: 2-3). The introduction of new visa requirements limited possibilities for short-term travel and thus created a new dividing line between the new EU member states and their Eastern neighbours. Even the European Commission noticed that “our existing visa policies and practices often impose real difficulties and obstacles to legitimate travel. Long queues in front of EU consulates are a highly visible sign of the barriers to entry into the Union” (Commission of the European Communities 2006a: 5). In the combination with readmission agreements, visa facilitation agreements were increasingly regarded as a means to weaken these problems by easing the tight visa regime and fostering facilitated travel opportunities.

By the time the negotiations with the Western Balkan countries started in 2006, the link between readmission and visa facilitation had become acceptable to EU member states; therefore, negotiations were combined from the very beginning.

2.2 The test case: visa facilitation and readmission agreements with the Western Balkans

The Western Balkans qualified perfectly for testing the package of visa facilitation and readmission. These countries aspiring to join the EU have relatively close institutional ties with the EU. After the Kosovo war in 1999, the EU launched the Stabilisation and

Association Process and granted the non-member states of South Eastern Europe the status of “potential candidates for EU membership” (European Council 2000). Moreover, due to their geographical position, the negative implications of the visa regime were particularly visible in the Western Balkan. Surrounded by EU member and Schengen participating states, the EU’s visa regime has seriously constrained Western Balkan citizens’ ability to move freely. Therefore, the EU’s visa policies have resulted in strong perceptions of isolation and exclusion and even caused a European alienation effect (ICG 2005).

In the Western Balkans, the EU linked the relaxation of the visa regime not only to the signing of an EC readmission agreements but also, more broadly, to “implementing major reforms in areas such as the strengthening of the rule of law, combating organised crime, corruption and illegal migration, and strengthening their administrative capacity in border control and security in documents” (Council of the European Union 2003). Due to the political salience of the issue in the Western Balkans, the promise of visa liberalisation has provided the EU with an effective means of persuasion. The EU emphasised that improved travel opportunities can only be achieved through “substantial efforts by the countries in question” (Commission of the European Communities 2006b: 9). With the exception of Albania, the Commission initiated the negotiations on visa facilitation and readmission with the countries in November 2006. Albania’s readmission agreement with the EC entered into force on 1 May 2006, and the negotiations on a visa facilitation agreement started on 13 December 2006. All agreements were officially signed in September 2007 and entered into force on 1 January 2008.

EC visa facilitation and readmission agreements now constitute a major means of pushing for further reforms. The European Commission submitted a “roadmap” to each of the Western Balkan countries defining the exact conditions to be met. The roadmaps are tailor-made and correspond to the situation of the country concerned. These documents deal with the effective implementation of the readmission agreement, and cover other key areas such as border management, document security and measures against organised crime. Their implementation is supervised in “visa liberalisation dialogues”, the first of which started with Serbia in January 2008 (Commission of the European Communities 2008a: 9). Following Macedonia, Albania and Montenegro,
Bosnia and Herzegovina was the final country to open a dialogue on the abolition of the visa requirements in May 2008. The dialogues are based on the premise that if the Western Balkans meet their relevant conditions and benchmarks, they will gradually advance towards visa liberalisation. Once the relevant conditions are in place, the Commission will propose to the Council that the respective visa obligations be lifted.

The experiences gained in the Western Balkans region provided the EU with a model that can be used in several neighbouring states. According to the former European Commissioner Franco Frattini, the EU has sought to enhance the EU’s internal security “through global visa facilitation and readmission agreements aimed in the longer term at the Union’s neighbourhood countries, on the model currently being developed in the Balkans” (Agence Europe 2006).

2.3 Is there a clear EU strategy on visa facilitation and readmission in the European Neighbourhood Policy?

As mentioned earlier, the link between visa facilitation and readmission was made for the first time with the Russian Federation and the Ukraine. When their negotiations on an EC readmission agreement did not advance, the EU linked the negotiations to the incentive of visa facilitation. With Moldova being the next neighbouring state, visa facilitation and readmission were commonly negotiated right from the start. The EC-Moldovan negotiations on visa facilitation and readmission started in February 2007 and lasted until November 2007, with both agreements entering into force on 1 January 2008. Of course, after the end of negotiations with these countries the question remains: are they exceptional cases or pioneers that other neighbouring states may follow? Does the European Neighbourhood Policy contain a clear strategy on visa facilitation and readmission?

The basic set-up of the European Neighbourhood Policy was outlined in the European Commission’s Communication on a ‘Wider Europe’, published in March 2003, followed by the more developed strategy for the ‘European Neighbourhood Policy’, published in May 2004. In the documents, the Commission did not delineate a clear strategy on visa facilitation and readmission. The ‘Wider Europe’ document only vaguely mentioned that the “EU could also consider the possibilities for facilitating the movement of citizens of neighbouring countries participating in EU programmes and
activities” (Commission of the European Communities 2003: 11). Holders of diplomatic and service passports may also possibly benefit from visa facilitation. Regarding readmission, the documents were more precise. “Concluding readmission agreement with all the neighbours, starting with Morocco, Russia, Algeria, Ukraine, Belarus and Moldova, will be an essential element in joint efforts to curb illegal migration” (Ibid).

Over time, the EU shaped a more precise strategy in the field and considered more neighbouring countries eligible for visa facilitation and readmission agreements. The reasons for this strategic shift are twofold. On the one hand, the negotiations with Ukraine, the Russian Federation and Moldova clarified how useful the incentive of visa facilitation is for achieving the objective of signing readmission agreements. On the other hand, the ever-increasing amount of reports emphasising the negative perceptions of the ongoing visa practices made EU member states rethink their visa policy. The EU had to admit that “the length and cost of procedures for short-term visas (e.g. for business, researchers, students, tourists or even official travel) is a highly ‘visible’ disincentive to partner countries, and an obstacle to many of the ENP’s underlying objectives” (Commission of the European Communities 2006a: 3-4). When in 2006 the German Presidency intended to strengthen the European Neighbourhood Policy, visa facilitation became a major means of dispelling the doubts of the ENP countries that the EU was not willing to make serious concessions. In its communication on how to strengthen the ENP, the Commission proposed that the “Union should be willing to enter negotiations on readmission and visa facilitation with each neighbouring country with an Action Plan in force, once the proper preconditions have been met” (Commission of the European Communities 2006a: 6, emphasis added).

Hence, a major precondition is that an ENP Action Plan be in force. Most participating states now fulfil this requirement. Action Plans were agreed upon with Israel, Jordan, Moldova, Morocco, the Palestinian Authority, Tunisia and Ukraine in 2005, with Armenia, Azerbaijan and Georgia in 2006, and with Egypt and Lebanon in 2007. The other countries neighbouring the EU do not yet have such an agreement: Belarus, Libya and Syria are still excluded from the ENP structures; Algeria has decided not to negotiate an ENP Action Plan yet; and Russia refrained from participating in the ENP but agreed with the EU on a Strategic Partnership covering four “common spaces”.

- 8 -
<table>
<thead>
<tr>
<th>ENP Action Plan</th>
<th>Specific action on visa facilitation in ENP Action Plan</th>
<th>Specific action on readmission in ENP Action Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Armenia</td>
<td>Yes <strong>“exchange views on visa issues”</strong></td>
<td><strong>“initiate dialogue on readmission which could possibly lead to an EC – Armenia readmission agreement”</strong></td>
</tr>
<tr>
<td>Azerbaijan</td>
<td><strong>“exchange views on visa issues”</strong></td>
<td><strong>“initiate dialogue on readmission which could possibly lead in the future to an EC-Azerbaijan agreement in this area”</strong></td>
</tr>
<tr>
<td>Belarus</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Egypt</td>
<td>Yes <strong>“Cooperate in the field of improving the movement of persons, including to facilitate the uniform visa issuing procedures for certain agreed categories of persons”</strong></td>
<td><strong>“Develop the cooperation between Egypt and EU on readmission, including negotiating readmission agreements between the parties, building on Article 69 of the Association Agreement”</strong></td>
</tr>
<tr>
<td>Georgia</td>
<td>Yes <strong>“exchange information on visa issues”</strong></td>
<td><strong>“Strengthen the dialogue and cooperation in preventing and fighting against illegal migration, which could possibly lead in the future to an EC-Georgia agreement on readmission”</strong></td>
</tr>
<tr>
<td>Israel</td>
<td>Yes <strong>“In order to facilitate the circulation of persons, examine … possibilities of facilitation visa issuing (simplified and accelerated procedures in conformity with the acquis)”</strong></td>
<td>No specific action</td>
</tr>
<tr>
<td>Jordan</td>
<td>Yes <strong>“Cooperate on facilitating the movement of persons … in particular examining the scope for facilitating visa procedures for short stay for some categories of persons”</strong></td>
<td>No specific action</td>
</tr>
<tr>
<td>Lebanon</td>
<td>Yes <strong>“Initiate a dialogue on possibilities of visa facilitation”</strong></td>
<td><strong>“Improve cooperation … on all forms of readmission including the possibility of negotiating a readmission agreement”</strong></td>
</tr>
<tr>
<td>Libya</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Moldova</td>
<td>Yes <strong>“initiate a dialogue on the possibilities of visa facilitation”</strong></td>
<td><strong>“Initiate a dialogue on readmission in the perspective of concluding a readmission agreement between Moldova and EU”</strong></td>
</tr>
<tr>
<td>Morocco</td>
<td>Yes <strong>“constructive dialogue …including examination of visa facilitation”</strong></td>
<td><strong>“conclusion and implementation of balanced readmission agreement with the EC”</strong></td>
</tr>
<tr>
<td>Palestinian Authority</td>
<td>Yes No specific action</td>
<td>No specific action</td>
</tr>
<tr>
<td>Syria</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Tunisia</td>
<td>Yes <strong>“facilitating the movement of persons … by looking in particular at possibilities of relaxing short-stay visa formalities for certain categories of persons”</strong></td>
<td><strong>“initiate a dialogue on return and readmission with a view to concluding a readmission agreement with the EU”</strong></td>
</tr>
<tr>
<td>Ukraine</td>
<td><strong>“establish constructive dialogue on visa facilitation”</strong></td>
<td><strong>“need for progress on the ongoing negotiations for an EC-Ukraine readmission agreement”</strong></td>
</tr>
</tbody>
</table>
The figure above shows that even though, theoretically, each neighbouring state may conclude an EC visa facilitation and readmission agreement, their concrete actions in this field differ. In the visa domain, the clauses are most often rather vague, referring to commonplaces such as “establishing constructive dialogues” or “exchange views”. In its “common approach on visa liberalisation”, the EU specified the concrete factors that impact on the decision to open negotiations:

whether an readmission agreement is in place or under negotiations; external relations objectives; implementation record of existing bilateral agreements and progress on related issues in the area of justice, freedom and security (e.g. border management, document security, migration and asylum, fight against terrorism […], organised crime and corruption); and security concerns, migratory movement and the impact of the visa facilitation agreement (quoted in Commission of the European Communities 2008b: 2)

The Commission suggested that three countries in particular meet these pre-conditions: Georgia, Armenia and Azerbaijan (Ibid: 9).

3. **The content and implications of EC visa facilitation and readmission agreements**

This section analysis the EC visa facilitation and readmission agreements in terms of substance and implications. They are considered in relation to each other and systematically assessed in terms of their similarities and differences.

3.1 **The content of EC visa facilitation agreements**

This section evaluates the visa facilitation agreements concluded with Serbia (2007f), Montenegro (2007e), Macedonia (2007b), Albania (2007c), Bosnia and Herzegovina (2007a), Moldova (2007d), Ukraine (2007h) and Russia (2007g) in terms of substance and content.

The main purpose of the visa facilitation agreements is to facilitate, on the basis of reciprocity, the issuance of short-stay visas (90 days per period of 180 days). Long-stay visas remain within the authority of the member states. A visa-free travel regime is recognised in all agreements as the long-term objective. The wording of this objective
differs slightly, however. In the visa facilitation agreement with Ukraine and Moldova the EU recognises the “introduction of a visa free travel regime […] as a long-term objective”. A similar clause is included in the agreement with Russia, where the parties reaffirmed “the intention to establish the visa-free travel”. The clearest statement for visa liberalisation was made in the agreements with the Western Balkans. In all agreements with the Western Balkan states, it was seen as the “first concrete step towards the visa free travel regime”.

The main section of the EC visa facilitation agreements concerns which categories of citizens will benefit from facilitated visa procedures. Attached to each category is the documentary evidence regarding the purpose of the journey. All EC visa facilitation agreements include the following categories of citizens:

a) members of official delegations participating in meetings, consultations, negotiations, exchange programmes and events (in possession of official invitation)

b) business people and representatives of business organisations (with written request from a host legal person or company)

c) drivers of international cargo and passenger transportation services (with written request from the national association of carriers)

d) members of train, refrigerator and locomotive crews in international trains (with approval of competent company)

e) journalists (with certificate)

f) scientists and persons active in cultural and artistic activities, including university and other exchange programmes (with written request from host organisation)

g) pupils, students, post-graduate students and accompanying teachers (with written request or a certificate of enrolment from the host university)

h) participants in international sports events and persons accompanying them (with written request from the host organisation)

i) participants in official exchange with twin towns (with approval of host mayor)

j) close relatives (spouse, children, parents, grandparents, grandchildren) visiting their family legally residing in the EU (with written request)
k) relatives visiting for military or civil burial grounds (with official document confirming the fact of death).

The agreement with Russia stops at this point. The one with Ukraine (and all others) include also the category of

l) persons visiting for medical reasons (with official document from host medical institution).

The EC visa facilitation agreements with Moldova and the Western Balkans contain:

m) civil society organisations when undertaking trips for the purposes of educational training, seminars, conferences (with request from host institution)

n) professionals who participate in international exhibitions, conferences, symposia, seminars or similar events (with written request from host organisation)

The agreements with the Western Balkan states are the farthest-reaching. They also include

o) tourists (with certificate or voucher from a travel agency or a tour operator)

p) religious communities (with approval from registered religious community)

Only the agreement with Albania contains

q) persons politically persecuted during the communist regime (with a certificate issued by the Institute for the Integration of the Persecuted Persons)

In term of categories of persons eligible for multiple-entry visas, the visa facilitation agreements with the Western Balkan states are again the most comprehensive. All categories mentioned beforehand may apply for a multiple entry-visa with the exception of tourists. However, only members of official delegations, national or regional governments and parliaments, close family members visiting their relatives in the EU, business people and journalists may apply for a multiple-entry visa with a term of validity up to five years. The multiple-entry visa for all other categories is valid for one year only.

The agreements fix the fee for processing visa applications of all citizens of the target country at €35. In the EC visa facilitation agreements with Russia and Ukraine, a clause adds that the fees increase to €70, if the request is urgent (3 days before
departure). However, there are some exceptions to this stipulation e.g. close relatives, pupils and students will continue to pay the reduced fee of €35 even if the request is urgent.\(^5\)

The EC visa facilitation agreements waive the visa fee for certain categories of citizens. The least comprehensive agreement in this respect is the EC-Russian visa facilitation agreement, followed by the ones with Ukraine and Moldova.

*Table 3. Categories of Persons Benefiting from a Waiving of the Visa Fee*

<table>
<thead>
<tr>
<th></th>
<th>Russia</th>
<th>Ukraine</th>
<th>Moldova</th>
<th>Western Balkan states</th>
</tr>
</thead>
<tbody>
<tr>
<td>close relatives (spouses, children, parents, grandparents, grandchildren)</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>members of official delegations</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>regional or national governments and parliaments, Constitutional Courts or Supreme Courts</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>pupils, students and post-graduate students and accompanying teachers</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>disabled persons and those accompanying them</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>persons travelling on humanitarian grounds, including medical purposes</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>participants in international sports events and persons accompanying them</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>participants in youth international sports events</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>participants in scientific, cultural and artistic activities</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>participant in official exchange programmes organised by twin cities</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>journalists</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>pensioners</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>drivers of international cargo and passenger transportation</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>members of train, refrigerator and locomotive crews</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>children under the age of 18 and dependent children under the age of 21</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>members of professions participating in international exhibitions, conferences, symposia, seminars or similar events</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>participants representatives of civil society organisations</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>representatives of religious communities</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>children under the age of 6</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>mayors and members of municipal councils</td>
<td></td>
<td></td>
<td></td>
<td>Only Macedonia</td>
</tr>
</tbody>
</table>

\(^5\) The category of people which may not be target by the later clause is considerably longer in the EC-Ukraine agreement than in the EC-Russia one.
The agreements with Macedonia and Serbia contain the additional clause that Bulgaria and Romania, both of which are not yet bound by the Schengen acquis, may also waive the fees for processing national short stay visas for citizens of those two countries.

The decision regarding a visa application shall be made within ten calendar days. This period may be extended up to 30 calendar days if an application requires further investigation. The agreements are jointly managed and monitored by a committee composed of Commission officials who are assisted by experts from the member states and the partner countries’ officials. The committee may suggest amendments or additions to the present agreement and settle disputes arising from it. The committee meets at least once a year but may do so more often, if necessary.

A Protocol annexed to the agreement clarifies the implications of the agreement for states that do not fully apply the Schengen acquis. The UK and Ireland, not included in the territorial validity of the agreement, were invited to conclude bilateral agreements. The EC visa facilitation agreements do not apply to Denmark, Iceland and Norway either, which were asked to conclude bilateral agreements, on similar terms, with target third-countries.

In some agreements, special reference was made to EC Regulation No 1931/2006 concerning the establishment of a system of local border traffic. Hungary, Poland, Slovakia and Romania declared their willingness to negotiate a local border traffic regime with Ukraine. In the Western Balkans, Macedonia will negotiate a local border traffic regime with Bulgaria, and Serbia will negotiate with Bulgaria, Hungary and Romania. Moldova and Romania also declared their willingness to establish a local border traffic regime.

The agreements intend to make the procedures for issuing short stay visas more transparent. More detailed information regarding the procedures and conditions for applying for visas and on their validity shall be given. The visa facilitation agreement with Moldova is the only one that declares the intention to improve the EU presence in
the country and set up a common application centre in Chisinau. The visa facilitation agreements with the Western Balkans end by acknowledging their intention to “give a wider definition to the notion of family members that should benefit from visa facilitation”. The wish particularly concerns siblings and their children.

3.2 The implications on the visa facilitation side

In terms of substance, the EC visa facilitation agreements with the Western Balkans are the most comprehensive. They contain the clearest statement regarding visa-free travel and more categories of citizens that benefit from facilitated travel, including tourists in particular. The EC-Russian visa facilitation agreement is at the other end of the scale. According to the assessment of the European Parliament, “the present – not very ambitious – agreement on the facilitation of visas is an example of the essentially pragmatic way in which [the EU-Russian] relations are unfolding” (European Parliament 2006: 6). The European Parliament believes that the agreement lacks a “human rights and democracy clause” and asserts that “conditionality must also be a cornerstone of EU external policy on visas”, particularly with regard to the “rules of democracy and the rule of law” (European Parliament 2006: 9).

The benefit of all EC visa facilitation agreements is that they fix the processing fee all visa applications at €35, and to waive the fees for certain categories of persons. Therefore the target countries are not affected by the Council Decision of 1 June 2006 which “readjusted” the visa application processing costs to €60 “to cover the additional costs […] corresponding to the introduction of biometrics and the VIS” (Council of the European Union 2006). However, viewed from the perspective of the target countries, fixing of the prize at €35 does not imply a positive change but rather the prolongation or, in some cases, a deterioration of the status quo. In terms of applying for a short-stay visa to the long-term participating Schengen states, the situation remains unchanged. Third-country citizens travelling to, say, Spain or Germany continue to pay the same amount, as opposed to the increased fee of €60. In terms of applying for a short-stay visa to the new member states in Central and Eastern Europe, the situation has deteriorated, despite the EC visa facilitation agreement entering into force. On

6 This call was realised when on 25 April 2007 the ‘Common Visa Application Centre’ was officially opened in Chisinau.
December 21st, 2007, the new member states of Central and Eastern Europe (with the exception of Cyprus, Bulgaria and Romania) joined the Schengen area and lifted their border controls to the West. The transitional period, i.e. the period after these states obtained membership but before they fully implemented the Schengen Treaty, came to an end. Within this transitional period, the new member states were allowed to issue visas for neighbouring states free of charge or for a low fee and on relatively uncomplicated terms. Poland, for instance, issued 560,000 visas annually for Ukraine citizens, which is nearly twice as many as all Schengen states combined (290,000) (Boratynski et al. 2006b: 2-3). The new member states’ former visa procedures were not only cheaper (or free of charge), but also simpler, with shorter waiting times and significantly lower rejection rates (for example, Poland rejected 1.2% of Ukraine applicants whereas Schengen states rejected 11.5% (Ibid). In accordance with the Schengen acquis, the new member states are now in charge of controlling the external Schengen border, which implies full adherence to the strict Schengen entry rules. Instead of issuing visas free of charge, countries such as Poland now have to charge €35 for issuing a short-stay visa. The EC visa facilitation agreements do not allow for special arrangements between the new member states and their neighbours. Hence, “though in principle the [visa facilitation] agreement is to ease the situation, after the New Member States accession to the Schengen area, it will worsen” (Boratynski et al. 2006b: 3).7

There is one measure, however, that should explicitly prevent the negative side effects of the Schengen Eastern Enlargement: the establishment of local border traffic regimes. The issuing of ‘local border traffic permits’ for border residents is an important measure for fostering neighbourly relations between border regions at the EU’s external borders. The local border traffic concerns residents living within a border zone of 50 km and authorises them to move freely in the border zones of both countries. Due to this set-up, however, the local border traffic regime could potentially end up affecting only a comparatively small number of citizens in a closely circumscribed area. On the Ukrainian border with Poland, the local border traffic may only include one larger town, Uzhhorod, with more than 100,000 inhabitants (Boratynski et al. 2006b: 3). It is also worth mentioning that residents of border regions often search for other, more

7 The scholars draw this conclusion by assessing the EC-Ukraine visa facilitation agreement.
A comparatively unproblematic way for citizens of countries such as Moldova or Macedonia has been to benefit from the neighbouring country’s status as EU member state. Many Macedonians have therefore applied for a Bulgarian passport, many Moldovans for a Romanian or Bulgarian one. Angel Marin, Bulgaria’s vice president, announced in January 2008 that “between 2002 and 2007, some 39,000 Macedonians and as many Moldovans applied for Bulgarian passports. […] Of those, some 13,925 Macedonians and 10,613 Moldovans were granted passports” (quoted in EU business 2008). In Moldova, there is a Bulgarian minority of 60,000 to 80,000 and in Macedonia, Bulgaria considers the country’s Slavic population as being of Bulgarian origin and therefore easily grants passports (Ibid). In light of this development, it is questionable if the local border traffic is a sufficient answer although it clearly is an asset to many border residents living at the EU’s external border.

The waiving of visa fees for certain parts of the population, the speedier processing of the visa application (normally 10 calendar days), the possibility of multiple-entry visas for certain categories of people and a shorter list of documents required are the other plus points of the EC visa facilitation agreements. The visa procedures, including the length of the visa application procedure and the long list of documents required, were often perceived as troublesome and lacking in transparency. According to an EU visa policy survey of eight EU member states in four Eastern European countries (Boratynski et al. 2006a), the length of procedures differed considerably among the EU member states. The average processing time ranged from two days in the case of Poland, over eight days in Germany and up to 14 days in the Czech Republic. Moreover, the consular practices on how to issue a short stay visa equally differed among EU member states. Applicants were frequently required to wait in queues for hours and did not receive reliable information on which documents were needed. If a document was missing, applicants were expected to return with the missing document in person. Usually consulates do not accept documents sent by post or e-mail, implying that the applicant has to come again. As the relevant consulate is usually a long distance from the applicant’s place of residence (according to the EU visa policy monitoring survey (2006a: 18), the average distance to the closest consulate was 300 km) the numerous visits may prove to be costly and burdensome. Even Enlargement
Commissioner Olli Rehn (2006) admitted that getting a Schengen visa could therefore be a “bureaucratic and costly nightmare”. The EC visa facilitation agreements explicitly aim at making these bureaucratic routines less cumbersome and more transparent, notably through the newly installed joint committee. The joint committee is in charge of suggesting amendments or additions to the agreement and providing for its smooth implementation. Therefore the committee may assume an important role in ensuring fair and transparent visa application procedures. The smooth implementation of the agreement is of particular relevance in view of visa liberalisation as a long-term objective.

The EC visa facilitation agreements have one major disadvantage, however. They divide the society of the target country into two groups:

the privileged few who can get a multiple-entry visa, benefit from the simplified procedure […], or profit from the waiving of the application fee for the visa, and as to the remainder: the vast majority of ordinary citizens who cannot enjoy such advantages. This can create a feeling of discrimination and lead to the conclusion that the European Union is interested only in the […] elite (Boratynski et al. 2006b: 2).

A self-evident implication of this separation is that the non-privileged citizens may try to obtain the same advantages as the privileged ones, possibly leading to an increased level of corruption. Some may attempt using bribery to get the privileged status of, say, a journalist or a driver of international cargo.

Furthermore, the visa facilitation agreements draw not only a distinction within the society of the target country but also within the ENP region. The EU’s strategy of offering facilitated travel opportunities to neighbours on a case-by-case basis might undermine the ENP as a global strategy towards all neighbours (Boniface et al. 2008: 23). What is more, it risks unintended consequences with regard to those neighbouring countries not yet provided with visa facilitation. The EU-Russia visa facilitation agreement, for instance, has a negative effect on the territorial reintegration of the breakaway provinces of Georgia, as it provides Georgian citizens living in South-Ossetia and Abkhazia with an extra-incentive to apply for a Russian passport (Commission of the European Communities 2008b: 3).

It is still too early to assess the quality of the implementation of the EC visa facilitation agreements. The EC visa facilitation agreements with Russia entered into
force in June 2007, and those with Ukraine, Moldova and the Western Balkans entered into force on 1 January 2008. In interviews, however, some experts pointed to initial problems in implementing the stipulations of the agreements. Certain EU member states would circumvent the reduced fee of €35 by charging additional fees for processing the visa application. Such practices were reported by the French consulate in Russia and by several EU member states in Ukraine. In Ukraine, another problem was that EU member states had not received updated instructions on how to issue visas under the EC visa facilitation agreement by the time the agreement entered into force. Therefore, despite the new stipulations in force, the bureaucratic practices have not yet changed significantly.8

3.3 The content of EC readmission agreements

Readmission agreements generally cover procedural provisions regarding return procedure, transit return arrangements, responsibility criteria, standard of proof, time limits and cost distribution, although the exact nature of these procedures can vary significantly. The most difficult issue to agree upon is the readmission of third country nationals and stateless persons. Contestable points arise in approving the travel route of these migrants, and in providing evidence that they transited the country before entering the EU’s territory. Proof of nationality is highly critical, too. Other controversial technical issues include applicable time limits, the use of the EU standard travel document for expulsion, the means of evidence including prima facie evidence, and the use of charter flights (cf. Schieffer 2003: 354). In addition, the relation between a new Community agreement and possibly existing bilateral agreements with individual member states will have to be assessed.

The European Commission pursues a standard approach in negotiating readmission agreements with third countries and seeks to achieve final texts that have as many common features as possible. The first drafts of the texts that the Commission transmits to its negotiation partners typically do not vary much. However, during negotiations, single adjustments are required according to the respective country’s objections and demands, so ultimately, the agreements will differ.

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

- Purpose of the agreement: rapid and effective procedures for identification and repatriation of persons who do not, or no longer, fulfil the conditions for entry, residence or presence;
- Definitions;
- Readmission obligations: covering own nationals, third country nationals and stateless persons;
- Readmission procedure: time limits, common application forms, means of evidence, transfer modalities, modes of transport;
- Transit operations: extent of support to be given by the requested state; circumstances to refuse or revoke transit permission;
- Costs, data protection and non-affection of international rights and obligations;
- Implementation and practical application;
- Final provisions: entry into force, duration, termination, and legal status of annexes.

All agreements include several annexes regarding documents considered to be proof or prima facie evidence of nationality, and of proof or prima facie evidence of the conditions for readmission of third country nationals and stateless persons. Some of them also contain common statements regarding the meaning of the agreement for Denmark, Norway, and Iceland.

Besides this overall similar structure, substantial differences in the agreements exist:

- **Readmission obligations of the signatories:** Ukraine is the only country for which the agreement does not differentiate between the obligations of the Community and the obligations of the contracting state.

- **Persons to be readmitted:** The agreements with Bosnia, Macedonia, Moldova, Montenegro and Serbia explicitly state that signatories shall also readmit any minor unmarried children of the person to be readmitted as well as spouses of another
nationality, unless they have an independent right of residence. The agreements with Russia and Ukraine require readmission “irrespective of the will of the person to be readmitted”.

- **Readmission procedure:** Several states (Macedonia, Moldova, Russia, Serbia, Ukraine) have introduced an accelerated procedure in case a person is apprehended in the border region after irregularly crossing the border directly from the territory of the requested state. In this case, the requesting state may submit a readmission application within two working days of this person’s apprehension.

- **Time limits:** The time limit for submitting a readmission application varies between six (Moldova) and twelve (Albania) months. The time limit for replying to the application varies between 10 working days (Serbia) and 25 calendar days (Russia). Possible extensions are between 2 working days (Moldova) and 60 calendar days (Russia). The requested validity of readmission travel documents lies between 30 days (Russia) and six months (Albania). The requesting state has to decide on a transit procedure within a certain time period, which varies between 4 (Moldova) and 10 (Ukraine) working days. For Russia, no time limit has been specified.

- **Transit procedure:** Ukraine is the only country that specifies conditions for escorts in case of transit of third-country nationals or stateless persons.

- **Entry into force:** The obligations concerning the readmission of third-country nationals and stateless persons defined in the agreements between the EC and Albania, Russia and Ukraine shall only apply after a certain transition period. For Albania and Ukraine, the transition period was agreed to last for two years after the agreement entered into force; in the case of Russia, the delegates agreed to a three-year transition period. In contrast to the Albanian agreement, which was signed in 2005, the agreements for Russia and Ukraine signed in 2007 foresee that during the transition period, these obligations shall only be applicable to stateless persons and nationals from third-countries with which bilateral arrangements on readmission exist.

- **Precedence over bilateral readmission agreements:** For the first time, the readmission agreement with Russia clarifies explicitly that provisions of the EC readmission agreement shall take precedence over provisions of any bilateral
On the one hand, these various differences relate to the different geographic conditions, political situations and histories of the signatory countries. On the other hand, however, changes evolved over time as the EC became increasingly experienced in negotiating readmission agreements. The non-affection clause illustrates this evolution very effectively. Here, repeated pressure from the European Parliament and NGOs resulted in modifications of the wording over time. In the case of Hong Kong and Macao, the clause had the following wording:

This Agreement shall be without prejudice to rights, obligations and responsibilities arising from International Law applicable to the Community, the Member States and the Hong Kong SAR (Council of the European Union 2002: 23).

After the European Parliament and several human rights organisations had strongly criticised this non-affection clause for not explicitly referring to human rights or refugee law, the text became ever more specific over the course of agreements. The most recent ones with Bosnia, Macedonia, Moldova, Montenegro, Russia and Serbia now specify “the rights, obligations and responsibilities arising from International Law” in great detail by explicitly referring to

(a) the Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees;

(b) the European Convention of 4 November 1950 for the Protection of Human Rights,

(c) the Convention of 10 December 1984 against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;

(d) international treaties on extradition and transit;

(e) multilateral international treaties containing rules on the readmission of foreign nationals, such as the Convention on International Civil Aviation of 7 December 1944 (Council of the European Union 2007i: Article 18).
The agreements with Bosnia, Macedonia, Moldova, Montenegro and Serbia additionally refer to the international conventions that determine the state responsible for examining applications for asylum. The agreement with Ukraine instead refers additionally to the Universal Declaration of Human Rights of 10 December 1948 and the International Covenant on Civil and Political Rights of 19 December 1966.

After coming in force, each EC readmission agreement will establish a readmission joint committee, which shall consist of representatives of the third country and of the Commission who act on behalf of the European Community. The latter shall be assisted by experts from member states. The joint committee will be responsible for the implementation of the agreement. Furthermore, The European Commission’s Directorate General ‘Justice, Freedom, and Security’ is supported by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), which coordinates, along with others, the operational aspects of the removal of irregular third country nationals and thus plays a decisive role in the implementation of readmission agreements (for more details, see Carrera 2007, Jorry 2007).

3.4 The implications on the readmission side

Recently, the European Commission published a working document on “Preparing the next steps in border management in the European Union” containing national statistical data on refused entry, apprehension of irregular migrants, and removal. However, since no common definitions exist and member states are not equally reliable in how they report data, we have to assume, that actual numbers are higher than indicated here. Unfortunately, the data has not been subdivided into rejected asylum seekers and irregular migrants or into voluntary and forced return. Furthermore, we lack information on the country of destination upon removal and thus cannot rule out the possibility that substantial numbers were simply removed to another EU member state.

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9 Commission of the European Communities, 2008c. For older data on the EU15, see also Commission of the European Communities, 2002b; Commission of the European Communities, 2002a.
The total numbers of removed aliens were distributed among member states as follows:

Table 5. Total Number of Removed Aliens (2003-2006)

<table>
<thead>
<tr>
<th>Member State</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>11,070</td>
<td>9,408</td>
<td>5,239</td>
<td>4,904</td>
</tr>
<tr>
<td>Belgium</td>
<td>9,996</td>
<td>9,647</td>
<td>10,302</td>
<td>9,764</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>814</td>
<td>1,271</td>
<td>1,608</td>
<td>1,501</td>
</tr>
<tr>
<td>Cyprus</td>
<td>3,307</td>
<td>2,982</td>
<td>3,015</td>
<td>3,222</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>2,602</td>
<td>2,649</td>
<td>2,730</td>
<td>1,228</td>
</tr>
<tr>
<td>Denmark</td>
<td>3,100</td>
<td>3,093</td>
<td>2,225</td>
<td>1,986</td>
</tr>
<tr>
<td>Germany</td>
<td>30,176</td>
<td>26,807</td>
<td>19,988</td>
<td>15,407</td>
</tr>
<tr>
<td>Estonia</td>
<td>171</td>
<td>101</td>
<td>60</td>
<td>91</td>
</tr>
<tr>
<td>Finland</td>
<td>2,773</td>
<td>2,775</td>
<td>1,900</td>
<td>1,410</td>
</tr>
<tr>
<td>France</td>
<td>11,692</td>
<td>15,672</td>
<td>18,120</td>
<td>21,271</td>
</tr>
<tr>
<td>Greece</td>
<td>40,930</td>
<td>35,942</td>
<td>51,079</td>
<td>54,756</td>
</tr>
<tr>
<td>Hungary</td>
<td>4,804</td>
<td>3,980</td>
<td>4,348</td>
<td>3,057</td>
</tr>
<tr>
<td>Ireland</td>
<td>n.a.</td>
<td>n.a.</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>Italy</td>
<td>31,013</td>
<td>27,402</td>
<td>24,001</td>
<td>16,597</td>
</tr>
<tr>
<td>Latvia</td>
<td>375</td>
<td>234</td>
<td>162</td>
<td>141</td>
</tr>
<tr>
<td>Lithuania</td>
<td>846</td>
<td>306</td>
<td>182</td>
<td>168</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>n.a.</td>
<td>n.a.</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>Malta</td>
<td>847</td>
<td>680</td>
<td>962</td>
<td>781</td>
</tr>
<tr>
<td>Netherlands</td>
<td>23,206</td>
<td>17,775</td>
<td>12,386</td>
<td>12,669</td>
</tr>
<tr>
<td>Poland</td>
<td>5,879</td>
<td>6,042</td>
<td>5,141</td>
<td>9,272</td>
</tr>
<tr>
<td>Portugal</td>
<td>2,798</td>
<td>3,507</td>
<td>6,162</td>
<td>1,079</td>
</tr>
<tr>
<td>Romania</td>
<td>500</td>
<td>650</td>
<td>616</td>
<td>680</td>
</tr>
<tr>
<td>Slovenia</td>
<td>3,209</td>
<td>2,649</td>
<td>3,133</td>
<td>3,173</td>
</tr>
<tr>
<td>Slovakia</td>
<td>1,293</td>
<td>2,528</td>
<td>2,569</td>
<td>2,185</td>
</tr>
<tr>
<td>Spain</td>
<td>26,757</td>
<td>27,364</td>
<td>25,559</td>
<td>33,235</td>
</tr>
<tr>
<td>Sweden</td>
<td>7,355</td>
<td>11,714</td>
<td>8,122</td>
<td>3,793</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>21,380</td>
<td>n.a.</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
</tbody>
</table>

Total           | 246,893  | 215,161  | 209,409  | 201,870  |

Source: Commission of the European Communities (2008).
Because of the above mentioned data limitations, it is very difficult for transit countries to estimate how many people will return after an EC readmission agreement takes effect. This leaves authorities in the dark with regard to necessary measures for the implementation of EC readmission agreements.

Generally, the problems transit countries face in view of EC readmission agreements relate to three different groups of people: a. their own state nationals; b. third country nationals; c. asylum seekers.

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

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

**Asylum Seekers**

Readmission agreements not only provide for the return of irregular migrants but also for that of rejected asylum-seekers. Sending an asylum-seeker to another state where no persecution is feared is not explicitly forbidden by international law. According to the Geneva Refugee Convention and its principle of *non-refoulement*, receiving states are obliged to examine the claim before returning the applicant to a third country, to verify that the individual applicant will actually be safe. However, cases of expulsion without prior examination of the claim are common, and in many cases return procedures are rather informal; the returning state merely informs the receiving country of the planned return (cf. Landgren 1999: 26). The majority of bilateral readmission agreements between EU member states and third countries do not contain any explicit reference to the principle of non-refoulement.\(^{10}\) Even though the notion of ‘safe third countries’ requires that these countries have signed international agreements, most importantly the Geneva Refugee Convention and the European Convention for the Protection of Human Rights and Fundamental Freedoms, their proper implementation is not considered. Readmission agreements do not explicitly oblige the ‘safe third country’ to assure asylum seekers access to a fair refugee determination procedure in line with international standards. In addition, returning states might not even clarify that the individual is an asylum seeker who has been refused on formal grounds of the ‘safe

\(^{10}\) UNHCR, 2001; Rogers and Peers, 2005.
third country’ rule. Chain deportation might be the consequence. Moreover, not only rejected asylum seekers but also irregular migrants can apply for asylum upon return, and it can be assumed that substantial numbers of irregular migrants have a severe claim for protection (for more details, see Kruse 2006).

If one assumes that most of the transit countries are not ‘safe third countries’ of asylum according to UNHCR criteria, we can conclude that the return of rejected asylum seekers might imply a lowering of asylum standards below internationally accepted standards. The rights of asylum seekers – to have a minimum quality of living conditions during the procedure, to obtain necessary information, to have a transparent and fair procedure and to have access to an independent appeal process – might be violated on the part of EU member states.

In sum, readmission agreements mainly bring about negative consequences and difficult challenges of varying dimensions for countries of origin or transit (Commission of the European Communities 2002b: 26). The negative effects for transit countries thoroughly outweigh the negative effects for sending countries because transit countries have to deal with the onward repatriation of third country nationals.

The question remains whether readmission agreements are at all an effective tool for managing migration flows at all. The previously mentioned limitations of transit countries might result in economic, social, and political instability of neighbouring regions in case of extensive readmission. Furthermore, to unambiguously identifying an individual’s nationality and providing sufficient proof of migration routes is likely to prove very difficult. Also, even in cases where a sufficient method of testing irregular migrants’ nationality is found, the effectiveness of readmission is questionable: If readmitted migrants do not receive support when reintegrating themselves in their home countries or, even worse, if they should run ashore in a foreign transit country, there is nothing to prevent them from trying to enter a European Union member state again. Similarly, it seems to be unlikely at best that readmission agreements will function as a deterrent, or that they will substantially decrease the flow of irregular migrants into the EU so long as the problems that cause people to leave their countries and migrate towards the EU continue to persist.
4. Conclusion

The aim of this paper has been to assess EC visa facilitation and readmission agreements in terms of objectives, substance and implications.

The analysis has considered that since the Eastern Enlargement, the EU has been searching for a proper balance between internal security and external stabilisation that is acceptable to all sides. In offering more relaxed travel conditions in exchange for signing an EC readmission agreement and reforming domestic justice and home affairs, the EU found a way to press for reforms in neighbouring countries while meeting a major source of discontent in these countries. For the first time a connection between visa facilitation and readmission was established with the Russian Federation and Ukraine. When their negotiations on an EC readmission agreement did not advance, the EU finally linked negotiations on readmission with the incentive of visa facilitation. In the Western Balkans, visa facilitation and readmission were commonly negotiated right from the start (with the exception of Albania). This regional setting in South-Eastern Europe provided the EU with a model that can now be used in several neighbouring states. EC visa liberalisation and readmission agreements may become a standard foreign policy instrument in the European Neighbourhood Policy.

In terms of substance, the EC visa facilitation agreements with the Western Balkans are the most comprehensive. They contain the clearest statement for visa-free travel and more categories of citizens that will benefit from facilitated travel, including tourists in particular. The agreements with Ukraine and Moldova are in the middle, and the EC-Russian visa facilitation agreement at the other end of the scale. The major benefits of the visa facilitation agreements are to arrange more relaxed travel opportunities for certain categories of the population, to fix the price for all citizens at €35, to ensure more transparent and quicker visa application procedures, to govern the establishment of local border traffic regimes and to give the perspective of free visa travel in case of a smooth implementation of the agreement. The main disadvantage is that it separates the population of the target country into two groups – those entitled to privileges and those who are not. Moreover, the Schengen Eastern Enlargement undermines the positive achievements by requiring the Central and Eastern European Countries to strengthen their entry conditions and discontinue their practice of issuing visas either free of charge or for a low fee and on relatively uncomplicated terms. The
EC visa facilitation agreements fall short of sufficiently compensating for these changed circumstances. In the context of readmission agreements, the most difficult issue to agree upon is the return of third country nationals and stateless persons. In this regard, three countries have reached concessions in terms of time. While Albania and Ukraine negotiated for a two-year transitional period before the obligations concerning the readmission of third-country nationals and stateless persons shall become applicable, Russia attained a three-year delay. Another important difference between agreements is whether they introduce an accelerated procedure for persons that have been apprehended in the border regions. The main advantage of readmission agreements from the EC’s point of view is that the Community gets hold of a legal instrument that enables them to force transit countries to readmit not only their own, but also third country nationals. However, from the point of view of non-EC countries, EC readmission agreements only bring about negative consequences that, in the end, might put their economic, social and political stability at risk. Even more, the effectiveness of readmission agreements as a policy tool can only be considered on a very general basis because it is difficult to verify an individual’s nationality, to prove migration routes, to further readmit third country nationals to their countries of origin and to reintegrate return migrants in their home country.

References


