



## Analysis

### The EU goes to war with African “elite”

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(July 2017)

**EU to target African governments, officials and others with the threat to refuse or delay visas to enforce its returns and readmission policies**

**EU starts setting out the “consequences” of non-cooperation by agreeing “Measures targeting the “elite” of third countries”**

#### Replacing the “carrot and stick” approach with the “stick”

Way back in December 2005 EU Justice and Home and Home Affairs Minister discussed the creation of a “Global approach to migration: Priority actions focussing on Africa and the Mediterranean” [1]. This called for:

*“the eradication of poverty in countries and regions of origin”*

This lofty ambition was dropped in the final version but the initiative, which later became known as the “Global Approach to Migration and Mobility” (GAMM) was the basis of the “carrot and stick approach” to Africa which was to last for 11 years. Development aid and trade would be provided in exchange for controlling the migration of refugees heading for the Med and the EU. Over the years GAMM’s role continued in Africa but expanded to include other regions.[2]

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<sup>1</sup> <http://www.statewatch.org/news/2017/jul/eu-council-gamm-set-up-15451-05.pdf>

<sup>2</sup> Secretive High Level Working Group hides EU’s push for the return of refugees and quasi-readmission agreements: <http://www.statewatch.org/news/2016/dec/eu-hlwg-gamm.htm>

The latest GAMM report: <http://www.statewatch.org/news/2017/jul/eu-council-HLWG-Gamm-Update-May-9839-17.pdf>

In the midst of a refugee crisis perceived as being out of control the EU reached a dodgy deal with Turkey on 18 March 2016 and a few months signed a similar deal with Afghanistan on the return and readmission of refugees. These deals tossed out of the windows EU and international laws and rights.

Then on 7 June 2017 the EU extended its new hard line policies with the introduction of “Partnership Framework”. [3] At the moment it is directed at African states and explicitly seek to exploit Member States’ historical neo-colonial links to try to contain the movement of migrants and refugees. As the Commission said:

***“The special relationships that Member States may have with third countries, reflecting political, historic and cultural ties fostered through decades of contacts, should also be exploited to the full for the benefit of the EU. At present, the opposite is often the case. Trust needs to be built up.”***

This might be better phrased as asking EU Member States to use their histories of imperialism and exploitation to ask African states to sort out the EU’s problem.

The Partnership Framework policy provoked an angry response:

*“African civil society condemns the hunt for migrant on the continent*

*African civil society condemns these hunting policies for migrants that grow everywhere on the African continent with the support of the European institutions under the guise of the fight against "irregular" migration...*

*The lure of European financial aid to fight against migration transforms the African political authorities in real persecutors of their brothers and sisters who are looking for work to live and feed their families. This could recall the time of slavery abolished there only two centuries. The European Union, at the expense of its humanist values, and shamelessly, in African countries outsources its security migration policy.”* [4].

The EU’s new development policy for Africa throws the “carrot” out of the window and relies on the overt use the “stick”:

*“Increasing coherence between migration and development policy is important to ensure that development assistance helps partner countries manage migration more effectively, and also incentivises them to effectively cooperate on readmission of irregular migrants. **Positive and negative incentives should be integrated in the EU’s development policy.**”, **rewarding those countries that fulfil their international obligation to readmit their own nationals, and those that cooperate in managing the flows of irregular migrants from third countries, as well as those taking action to adequately host persons fleeing conflict and persecution. **Equally, there must be consequences for those who do not cooperate on readmission and return....**”*** [emphasis added, [5]

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<sup>3</sup> [Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration](#) (COM(2016) 385 final)

<sup>4</sup> <http://www.statewatch.org/news/2016/may/eu-africa-ngos-statement.pdf>

<sup>5</sup> Op.cit

No policy areas were to be exempt from this approach:

*“All EU policies including education, research, climate change, energy, environment, agriculture, should in principle be part of a package, bringing maximum leverage to the discussion.”* [6]

Just over a year later we can see that in the face of continued refugee arrivals and growing right-wing populism and racism which threaten the power base of the EU’s power elites the Commission, Council and Member States have enthusiastically pursued this new, direct, approach. [7]

But how the EU would start enforcing its Partnership Framework policy was unclear until now.

### **The “consequences” for Africa**

On Tuesday 4 July 2017 seven seemingly inconsequential words in the [Press release](#) (pdf) concerning solidarity with Italy over the arrival of refugees across the Mediterranean and the accompanying Commission proposed [Action Plan](#) (SEC 339, pdf) signalled a major policy change. The words were:

*“including the use of visa leverage as appropriate”*

The intention two days later was repeated in the [Press Release for the Informal JHA Council](#) in Tallinn, Estonia (pdf):

*“It is urgent to accelerate the work to put in place well-functioning EU readmission agreements and practical arrangements with third countries, using all possible levers and incentives, **including visa policy.**”*

### **What does this reference to using the leverage of visa policy mean?**

Two documents were circulated to EU national delegations in May 2017. The first from the Council Presidency dated 12 May (EU doc no: **9097-17**) [8] and the second, following a discussion at a JHA Counsellors meeting on 17 May, dated 19 May (EU doc no: **9097-REV-1-17: “Link between return/readmission and visa policies”**) [9]

Apart from the measures (see below) to be taken to bring reluctant governments into line there is a major legal change between the two documents. The first (9097-17) is based on normal Council procedures with measures being agreed in COREPER on behalf of the

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<sup>6</sup> Op,cit

<sup>7</sup> Partnership frameworks in Africa: Commission publishes progress reports:  
<http://www.statewatch.org/news/2017/jun/eu-partnership-frameworks.htm>

<sup>8</sup> <http://www.statewatch.org/news/2017/jul/eu-council-diplomstic-visas-redmin-9097-17.pdf>

<sup>9</sup> <http://www.statewatch.org/news/2017/jul/eu-council-diplomstic-visas-redmin-9097-rev-1-17.pdf>

Justice and Home Affairs Council. COREPER would give guidance to the Council for actions to be taken.

However, the second version (9097-REV-1-17), changes the legal basis throughout:

**“The Representatives of the Governments of the Member States and the Representatives of the Governments of the associated States meeting within the Coreper would be invited to give guidance...”** [emphasis and underline in original five times]

The change in the legal status of action taken under this proposal is described by Steve Peers, Professor of Law, as follows:

*“This redraft draws a distinction between Member States’ competence over diplomatic issues and EU competence over visas in order to find ways to target non-EU countries which do not accept readmission of their own citizens.*

*Legally this distinction could be somewhat awkward and it means that there is limited, if any, accountability for Member States’ collective actions within the EU framework.*

*In particular it will be harder to check whether Member States are using this pressure to expel people who ought to have a right to stay as a refugee or on human rights or humanitarian grounds.”*

### **Proposed measures against the “elite” of third countries**

There follows a clause by clause presentation of the proposed steps in the order they are put. However, it is crucial to note that the actions are:

***“Measures targeting the “elite” of the third country concerned, holders of diplomatic, service/ official and special passports.”*** [emphasis added] [10]

### **Rationale**

***“On 27 March 2017, the JHA Council held a discussion on **enhancing the effectiveness of the EU return policy**. During this discussion, a number of Ministers **expressed the view that leverage – in particular the visa policy - should be used in relation to those third countries, which do not cooperate on the readmission of their own nationals who are irregularly present in the Member States.**”***

Measures that could be used in:

*“the toolbox to be used as leverage in urging third countries to cooperate on returns. This document... will **specifically** focus on a process based on visa policy.”*

### **Establishing a legal basis via the new Visa Code**

The Council/Member States are looking to establish a “legal link” between readmission and visa policy in the Visa Code recast which would “constitute an explicit legal measure”. [11]

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<sup>10</sup> There are no exceptions – this has been deleted.

The Council position calls on the Commission, under Article 13, to draw up lists of:

*“visas and are nationals of countries included in the common list of third countries **that cooperate on readmission** with regard to the criteria set out in paragraph 2a.*

*2a. A list of countries that cooperate on readmission whose nationals shall benefit of the procedural facilitations...”*

When establishing the list, the Commission shall take into consideration:

(a) Existence of EU Readmission Agreements and practical experiences of Member States in the implementation of these agreements,

(b) Existence of bilateral readmission agreements and practical experiences of Member States in the implementation of these agreements,

(c) Practical experiences of Member States in their cooperation with third country authorities in view of:

(i) timely identification of persons subject of a return decision;

(ii) recognition of the European travel document for the return of illegally staying third-country nationals (EU Laissez Passer);

(iii) timely delivery of the necessary travel documents;

(iv) timely fulfilment of other administrative requirements;

(v) organising and agreeing swiftly on practical modalities for effective readmission;

(vi) the acceptance of charter flights and joint return flights.

**2b. A Member State may suspend the application of the procedural facilitations referred to in Articles 13(2), 14(3)(d), 18(2) and 21(3) and (4) to nationals of a country included in the list referred to in paragraph 2a, if such Member State experiences practical problems with that country with regard to at least one of the criteria referred to in paragraph 2a(c). The suspension shall not exceed 12 months.** [emphasis in original, underline added]

### The “Way Forward”

The Council have obviously had this linkage in mind for some time and the document says the aim is to:

*“deal in a coordinated fashion with third countries which **do not cooperate with Member States on the return/readmission** of their own nationals irregularly present in the Member States..”*

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<sup>11</sup> Visa Code: <http://www.statewatch.org/news/2017/jul/eu-council-position-visa-code-8435-16.pdf>

This measure has been held up due to an argument over humanitarian visas – the European Parliament wants it, Council rejects. No sign of compromise.

The second document (9097-REV-1-17) [12] then sets out seven specific proposals to be acted on by Member States:

First, COREPER is to give “guidance” to Member States on the need to take action against a country taking into account:

*“regarding a third country not cooperating with the EU in the area of return and readmission”* [emphasis in original]

Second, the “guidance” shall be based on information from the Commission, the EEAS, and other relevant EU Agencies.

Third, the plan seems to move outside normal Council procedures and then back in again:

*“Coreper would invite the **relevant Working Parties** to examine the situation in that specific third country.”*

And then they are to “suggest the appropriate measures” to Member States within COREPER.

Fourth, the guidance shall include consideration of:

*“• the **number of return decisions issued** to persons illegally staying on the territory of the EU;*

*• the **number of effective returns** of persons issued with return decisions as a percentage of the number of return decisions issued to citizens of the third country in question;*

***the number of readmission applications accepted by the third country as a percentage of the number of such applications submitted to it;***

*• the level of practical cooperation in the area of return (including the **existence or prospect of conclusion of formal/informal agreements/arrangements on practical modalities for effective readmission**);*

*• cooperation in the different stages of the return procedure, such as:*

*– **identification** (by interviews or through other means, time required to respond to the request);*

*– timely delivery of necessary travel documents; **acceptance of the European travel document** for the return of illegally staying third-country nationals;*

*– timely issuing of visa to escorts where necessary;*

*– acceptance of charter flights and joint return flights;*

*– cooperation in the implementation of the return operation (timely acceptance of the flight plan, granting of the landing permission, non-refusal of returnees upon arrival).”*

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<sup>12</sup> <http://www.statewatch.org/news/2017/jul/eu-council-diplomstic-visas-redmin-9097-rev-1-17.pdf>

The reference to: “**of formal/informal agreements/arrangements on practical modalities for effective readmission**” yet again enters murky legal grounds.

Fifth, defines the targets of the new restricted visa policy:

**“Measures targeting the "elite" of the third country concerned”**

Include:

- *“Member States may refrain from waiving visa fees from holders of diplomatic and service passports.”*

- Member States may not “waive” one or more requirements needed for visa application.

- “bilateral visa waivers: *“Member States may take the decision not to waive the visa requirement for holders of diplomatic, service/ official and special passports.”*”

“General measures” include:

- reducing opening hours of consulate visa sections including external service providers.

- increase the number of supporting document needed plus their translation

- varying the validity time for “multiple entry visas” (MEVs). Six months to 5 years depending on “the effectiveness of the cooperation”

Sixth, If Member States meeting in COREPER recommend the application of the above measures to a country it shall be within “local Schengen cooperation” and be monitored.

Finally, if Member States decided not to target a particular country they may look at again at a later date.

**First steps in taking African states head on**

The core of the new hard-line EU policy is the 2016 “Partnership Framework” and this move to target the African “elites” is just the beginning.

The EU’s 2016 “Partnership Framework” sets out the broad policy. [13] Under this the overall objective is to stop free movement northwards and to impose a returns and readmission regime across Africa.

The mechanisms to enforce this policy require the construction of holding/reception centres up the continent and “border management”. The key to the latter is to require states to develop biometric “civil registers” of the host populations:

*“The facilitation of **the identification** of irregular migrants in view of their readmission by strengthening third countries' capacity to **ensure functioning civil registries and fingerprint or biometrics digitalisation...**” [emphasis added] [14]*

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<sup>13</sup> See Footnote 2.

In the latest issue of *Race & Class* Frances Webber's article *Europe's unknown war*, comments:

*"the long-term investment plans for Africa treats as a priority the development of biometric documents for nationals, to facilitate readmission. Such documents enable repressive regimes to operate much closer surveillance and control over their citizen, as well as facilitating collective expulsions from Europe."* [15]

Webber concludes:

*"What all the deals have in common is an utter ruthlessness in pursuit of the aim of stopping migration to Europe, combined with wilful blindness to the realities of repression and refusal to contemplate the human rights violations to which the agreements will inevitably and necessarily give rise.*

*Deaths in the Mediterranean will again be blamed on the smugglers, and not on the EU's complete failure to provide legal, safe passages to refugees by lifting visa controls or carrier sanctions for those fleeing destitution, famine, repression or war."* [16]

### Key sources

Link between return/readmission and visa policies: Version 1

<http://www.statewatch.org/news/2017/jul/eu-council-diplomstic-visas-redmin-9097-17.pdf>

Link between return/readmission and visa policies: Version 2

<http://www.statewatch.org/news/2017/jul/eu-council-diplomstic-visas-redmin-9097-rev-1-17.pdf>

### Background

[New proposals on migration: "partnerships" with third countries, Blue Card reform, integration](#) (Statewatch News)

[Over 100 NGOs to European Council: don't try to curb migration at the expense "of fundamental values and human rights"](#) (Statewatch News)

[European Commission belatedly make available: Africa: "Partnership Frameworks" report](#) (Statewatch News)

[Partnership frameworks in Africa: Commission publishes progress reports on first year](#) (Statewatch News)

[Viewpoint: Migration, EU cooperation and authoritarianism](#) (Statewatch News)

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<sup>14</sup> Currently being discussed with Senegal: See: <http://www.statewatch.org/news/2017/jun/eu-com-partnership-framework-4th-report.pdf>

<sup>15</sup> *Europe's unknown war* by Frances Webber: *Race & Class*, Volume 59 no 1: <http://www.irr.org.uk/publications/issues/race-and-class-july-2017/>

<sup>16</sup> Op cit



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