



# Returns diplomacy: levers and tools

by Julia Lisiecka and Roderick Parkes

Over the past two years, 2.5 million first-time asylum seekers applied for protection in the EU. With the EU-wide asylum-recognition rate currently standing at 60%, hundreds of thousands of people will be required to return home again. The chances of them actually going back are slim: in 2016, 42% of asylum-seekers who received an instruction to leave stayed in Europe, amounting to at least 130,000 people. And even this paints too rosy a picture: the EU-wide success rate is dragged up by member states which receive large numbers of asylum claims from the Western Balkans – for the EU’s largest member state, Germany, this group constitutes around 90% of all successful returns. The simple truth is that most EU member states, for a number of historical reasons, have no returns relationships with major African, Middle-Eastern and Asian source countries.

Given the maths, the EU’s quest to repatriate migrants, especially those of working age who might contribute to the economy, may seem quixotic. But a good European returns system is worth the investment: it serves as an essential argument for solidarity among member states. Returns policy is the *sine qua non* of any good border control system, deterring irregular migrants from even setting out for Europe.

And EU officials argue there is a tangible link between public confidence in the EU’s border controls and governments’ readiness to relocate migrants from Greece and Italy.

The desire to boost public confidence explains why, already back in 2008, EU governments wrote a Returns Directive, creating robust new common procedures. But it also explains why they immediately faced criticism from abroad, from Latin America in particular: a returns system must be seen to work if it is to have its proper effect, and this visibility can sour relations with source countries. ‘Returns diplomacy’ is the new buzzword in Brussels, as the EU tries to smooth relations to source countries.

The EU in fact has a formal web of returns agreements, but this appears to have outlived its usefulness. These agreements, previously viewed as the precondition for any effective returns policy, were embedded into the Cotonou trade framework agreement with African, Caribbean and Pacific states, as well as the visa and mobility dialogues with the EU’s near abroad. But some partner states have ceased to live up to their obligations, making the agreements costly but sometimes worthless bits of paper. The EU’s Migration Partnerships with five African

economies offer a more recent stab at the problem. These are results-oriented frameworks, whose effectiveness is judged in the numbers of migrants removed, rather than the formal signature on a piece of paper. But the formats lack bite, and the EU's situation remains acute.

The EU has three main sources of leverage which it can put behind returns bargains: access to the single market (visa and trade concessions), its overseas spending (EU development aid and investment support) and diplomatic engagement. They can be mixed and matched in different ways.

### Option 1. Leveraging market access

The EU is one of the world's largest and most integrated markets for goods, services and labour, meaning it should, in theory, find it easy to midwife returns deals on behalf of its member states. But turning market power into political leverage is never simple. Member states retain the right to decide who comes and works in Europe, for instance, thus the EU has no power to decide which nationalities need visas to enter the labour market, and can generate no leverage from lifting the requirements. At most, Brussels could encourage the EU28 to take coordinated action against any country which refuses to cooperate on returns, perhaps by reducing the hours of their visa offices there. Even this would be an extremely difficult operation.

As for access to the EU's goods market, it certainly seems more promising as a source of leverage (here at least, the EU has an 'exclusive competence': it alone decides over trade and customs duties, without requiring ratification by member states). The EU even has a readymade vehicle for leveraging its trade power – the Generalised Scheme of Preferences (GSP), which grants less-developed countries duty-free access to the EU. European negotiators are permitted to attach political conditions to the specific 'GSP+' format, a strand designed to boost governance standards abroad. And yet, the European Union tends not to attach migrant-returns demands to its trade concessions, at most signalling to current dialogue partners such as Tunisia and Bangladesh that it

would smile upon returns cooperation. Why such an indirect approach?

For one thing, the World Trade Organisation (WTO) already frowns upon the very existence of GSP because it is discriminatory, and turns a blind eye only because the EU deploys the format in the name of a good cause; the WTO's patience might run out if the EU uses it as a lever to expel migrants. A second drawback is that the EU cannot freely choose which countries benefit from GSP+. These must, for instance, have a low level of imports into the EU – something which is not always the case for the biggest migrant-producing countries. And, moreover, these countries may object to being put in the GSP category, for reasons of prestige. Lastly, of course, there is the fact that the EU, by attaching conditions to a trade deal, will slow down negotiations and perhaps take the final deal into political territory – which would, after all, require member state ratification.

This all means that it is the EU's services market which offers most untapped leverage, especially when it comes to handling tricky middle-income states. The EU already has a positive example to show for this: migration cooperation with India, a success which occurred almost by accident. In 2014, India lobbied EU states as they negotiated their directive on 'Intra-Corporate Transferees' (that is, on employees who are transferred between branches of a multinational firm). The EU was sceptical, fearing India would try to drive down European employment standards to give its low-wage multinationals an advantage in Europe's services market – an echo of the fears which arose over the 2006 'Bolkestein directive' and the 'Polish plumber' saga. In fact, India did the opposite: its goal was to ensure that high-skilled Indian workers would be well treated in the EU. Having confirmed that the EU shared this concern, India began to cooperate on trickier migration questions.

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The EU, buoyed by the Indian precedent, is exploring ways to formalise this kind of leverage. It has proposed including a returns clause in a services deal now under negotiation with 22 WTO members – the Trade in Services Agreement (TiSA). Any state wishing to join

this intercontinental services market would commit to take back nationals who are working in it illegally. True, TiSA will for the time being consist only of relatively wealthy states. But the EU could perhaps create deals for less-developed economies under the WTO's Mode 4 rules ('trade in services'). The EU already has directives covering the rights of foreigners working in various strata of its services economy – ranging from high-skilled to hospitality workers. It could use this framework in returns negotiations, leveraging the preferential treatment of some nationalities in the high-skilled segment of the economy. This model could be extended to the low-skilled and self-employed segments.

## Option 2. Development conditionality

EU governments have repeatedly considered using their development spending as leverage in migration talks, as a means to incentivise returns deals. But development ministries have always fought back, arguing in favour of less coercive approaches. They prefer the idea of 'circular migration', which says the EU should actually open itself to migrants if it wants them to leave again: labour mobility brings certain development benefits for the source states, including massive wage remittances, job creation and 'brain gain', meaning source countries have an interest in bringing their nationals back home.

This cooperative concept of 'circular migration' has indeed inspired the EU's approach to its near abroad, whereas the more coercive approach of sanctions and rewards has been tested sporadically on African states like Ghana. The result, however, is a bit of a muddle. The EU, because of internal disagreements, has been unable to experiment with radical forms of leverage – such as a clean, coordinated and exemplary cut in development aid to an uncooperative state. African states have used these divisions to their advantage.

So what does actually work? It is certain that the coercive approach can work, be it in the form of development sanctions or rewards.

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The EU timed its recent talks on returns with Afghanistan, for instance, to coincide with a major donor conference. The message was clear: play ball, or lose international support (Kabul played ball). African governments, too, have become more cooperative thanks to the incentive of direct budgetary support (that is, financial contributions direct to their budget, which they can spend as they like). But these are exceptions – in the Afghan case, because unusually large sums of money were involved; in the African case, because this kind of targeted budgetary support is an option only for trusted governments. The usual reality is that EU de-

velopment spending is just not big enough to have a coercive effect: most developing economies, precisely because they receive so much in wage remittances from their overseas workers, would be foolish to help expel their nationals in return for a slight increase in development aid.

As for the more enlightened concept of 'circular migration', it has proven extremely difficult to legislate for. The EU paid lip-service to the idea in its relations with states like Georgia, Cape Verde and Moldova. But, in the end, these 'mobility partnerships' were not in fact so very different from classic *quid pro quos*: EU member states offered extra development support and perhaps a few work visas in return for readmissions. Not much labour mobility was involved. Only Switzerland has managed to stay true to the concept, its great insight being to involve private business in the implementation: Bern permits multinationals like Nestlé to rotate foreign workers in and out of Switzerland as a form of Corporate Social Responsibility. It is a model which the European Commission could, in theory, replicate between its DGs GROW, TRADE, DEVCO and HOME. Yet, the main lesson for the EU-28 would be that it can only ensure compliance by appealing to a genuinely shared economic interest.

It appears, then, that development policy is a bit of a red herring here, and can best be deployed in a highly targeted manner of benefit to both sides. One option for the EU might therefore be to create targeted development zones for returnees. A deal between the EU and Jordan

sets a useful precedent. The pair will soon make use of special economic zones (SEZs) in Jordan to employ Syrian refugees and local workers. The EU is reducing import tariffs on 52 product groups that are manufactured in the SEZs, and has helped develop industrial infrastructure there. If successful, there is a small possibility that the EU might also use this model to provide employment opportunities in hubs across Tunisia or Morocco, where it would send asylum-seekers to have their claims heard – or indeed repatriate failed asylum-seekers during their transit home. Irregular migrants in the EU have, after all, often borrowed money from home communities to fund their journeys. Helping them earn money on their way home could make returns more sustainable.

### Option 3. Pragmatic diplomacy

The EU's international weight can sometimes be a bit of a burden – it prevents even-handed cooperation on returns. Recently, its dealings with Pakistan showed what can go wrong. Pakistan's authorities temporarily suspended their readmission cooperation with the EU on the grounds that European countries were allegedly mistreating returnees *en route* and were repatriating criminal suspects who were not in fact Pakistani citizens. EU member states suspected that this was spurious, and the situation escalated as they threatened trade sanctions. Only later did it emerge that Pakistan had good reason to block returns – albeit one which was too embarrassing to admit: its own consulates in the Gulf had (reportedly) been issuing travel documents to people without the correct paperwork, and Islamabad was now frightened that the latest wave of returnees, although in possession of the correct paperwork, would not be citizens. The way in which the crisis was overcome, however, is instructive: it took some face-saving diplomacy from both sides.

A Joint Readmission Committee took Pakistan at face value, and agreed to share more information ahead of return, especially in the case of returnees facing criminal charges. And it is this low-key diplomatic approach which seems to herald the future. The EU is deploying Migration Liaison Officers who will identify key migration officials in source countries, and will concentrate diplomatic resources on them and their priorities. Today, the EU scores a number of own goals because of its lack of sympathy for local conditions (for example by banning forced returnees from re-entering Europe, it decreases their chances to find work back home). Thanks

to diplomacy, the EU will be able to help with really thorny problems, such as building prisons for criminal returnees, as it has in Georgia. If EU diplomats do brandish a stick, moreover, it would be small and subtle. Maybe they will use intelligence information to show that they know what is going on in the country, rather as the EU used satellite surveillance to ensure the proper implementation of the EU-Turkey deal.

This low-key approach is not unproblematic. It invites expedience and corner-cutting – a dangerous thing as EU members are drawn into ever-more sensitive fields of returns, such as repatriating criminals and terrorists. After all, every returns deal will at some stage have to be made visible, warts and all, to the European public and the citizens of the sending country. The best means of ensuring high standards lies in putting in place a proper set of metrics from the very outset to judge the deal, its feasibility and benefits. Most obviously, the success of a returns partnership should not be judged by the signature of a formal agreement, but in the numbers of people who are returned and, perhaps, what happens to them. It would also be helpful to monitor which member states benefit from the returns agreements – especially relative to their own potential sources of leverage. And, of course, the EU must judge the effect on the source country, its social cohesion and employment rate.

But that means that the metrics themselves must be easily communicable. And a useful place to start could be returns rates. In some member states, the rate of successful returns looks high since the authorities only issue a decision when it is most likely to be enforced; but in others, returns rates seem far lower since one migrant can receive several return decisions at different stages of the procedure. Some member states also issue only one return decision, at the beginning of the process. The result, for the public, is potential confusion about the scale of the problem. The EU is already making reforms to minimise these inconsistencies introducing the Integrated Return Management Application (IRMA). But this remains a restricted information exchange system, rather than one which could underpin an accountable system of returns diplomacy.

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