



TIT FOR TAT: THE DEVELOPMENT OF VISA POLICY AS A POLITICAL TOOL

The trade-off of more lenient EU visa issuance in return for cooperation on
readmission by Third Countries



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Abstract

At the beginning of the millennium, the EU sought a new method to encourage Third Countries to become more cooperative on the readmission of irregular migrants. It became a proved formula to offer countries a Visa Facilitation Agreement (VFA) if in return they would commit to better cooperation on readmission as agreed in a Readmission Agreement (RA). With some countries, the EU managed to quickly conclude negotiations on both, while with others negotiations seem endless. This thesis has focused on what the difference is between those negotiations, if the concluded RA has led to better cooperation on readmission as well as look into alternatives to the VFA within the field of visa to entice Third Countries cooperation on readmission. For some countries, the VFA is very attractive and the costs of the RA limited while at the same time they are under pressure to conclude these negotiations. With other countries this balance is different, there is less pressure and they are more able to make use of their negotiation position. The EU has already begun experimenting on other uses of the visa policy to encourage cooperation on readmission, such as (the threat of) sanctions against Third Countries. These threats seem to be effective, although a cautious approach is necessary as it could have unexpected side-effects which lead to a bigger problem on irregular migration than before.

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Foreword

Dear reader,

This thesis marks the end of my time as a student after almost 7 years. The last two years I had the pleasure of studying with a wonderful group of international students, many of whom I now call close friends. From the beautiful Moravian hills in the Czech Republic, the Croatian coasts of Dubrovnik to the canals of Utrecht and the bustling of Brussels and The Hague this master programme has taught me much in just two years.

As many a student has experienced before me, writing a thesis could be compared to a Sisyphus labour. Process is slow, like rolling a boulder up the mountain and more often than not that boulder tends to roll back down. Fortunately, there are some mountain guides to guide you towards the tracks as best as possible. Without the valuable feedback and support of my supervisors, Salvatore Nicolosi from Utrecht University and Zdenek Sychra from Masaryk University, my boulder would certainly lay broken down a canyon somewhere. And although pushing a boulder up the mountain is an immense task I was not alone as my fellow students were also pushing theirs. Sometimes we would wait at the bottom of the mountain and encourage each other to start the trek upwards again. Aside from the people involved in my study, I would like to thank the people of the Dutch Ministry of Foreign Affairs where I did my internship while writing this thesis. Their support, feedback and contacts were invaluable to conclude my thesis this academic year. Last but certainly not least are the people who made time in their overcrowded agendas to speak to me. Without my respondents, there would have been little to write about and this thesis would not have been half as interesting.

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The result of all this effort and support is what you see now below. I hope you will great it with great interest.

Thijs Taconis, July 31st 2019



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Introduction

In 2015, European news was dominated for months by what was called the migration crisis (BBC News, 2016). But although there were indeed huge numbers of people crossing EU borders, the real problem was that a greater number than usual did so illegally. Every year millions and millions of people cross the EU external borders, let alone the internal ones. The non-EU citizens crossing the EU borders are often welcomed and facilitated as the EU profits from the tourists, businessmen and cultural exchanges that come here for a shorter or longer periods of time. Problems only start to arise when people cross the borders illegally and, once inside, governments are no longer capable to return those who came here illegally outside of their borders again. In essence, the 2015 'migration crisis' was actually a border crisis, as the EU Member States had the feeling there was a loss of control over the EU external borders.

But although in 2015 the topic suddenly rose to the top of the agenda for European leaders, border management has been an important topic for a very long time. The illegal or unwanted crossing of borders has been of all eras, for instance the mass migration of Germanic tribes into the Roman Empire during the 5th century A.D. (Goffart, 2006). Nevertheless, the increased influx of migrants now caused a renewal of the concerns regarding migration and the protection of the EU external borders. It would be wrong however, to think that the topic was not on the agenda of the European states before the 2015 'migration crisis' as it has long been a policy issue on the European agenda. *"The refugee problem which has recently grown to such vast proportions is a many sided one: it raises political, economic, social, and ethical, as well as legal questions"*. This line is not from the said crisis of the past few years, but actually the first line of a British academic article in 1939 (Yewdall Jennings, 1939, p. 98). As can be understood from the above, migration and border management is of all ages. So why is it now considered to be a problem?

An important aspect of migration is that people move from anywhere to everywhere, but there is no (political) entity which has jurisdiction over the entire world when it comes to people. Or, as Fargues puts it: *"Migration has become global but there is no global regime to govern the international movement of persons"* (Fargues, 2010, p. 18). Therefore, migration policies are a complex interconnected network of different layers of policies.



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The International Organization for Migration and the International Labour Organisation focus on international migration, but their role is almost exclusively limited on supporting governments with advice and services as they cannot take real binding decisions which can be enforced in practice (Trauner & Wolff, 2014). Migration policy itself is also a very broad range of different policies (Czaika & de Haas, 2013) in which it is not always clear where migration policies begin and end. It can range from development aid in regions from which there are many (economic) refugees to the return of irregular migrants from the EU.

To have some control over who moves where, states have long ago introduced borders and border checks. By managing their borders, states try to control who and what enters their territory. The EU is no exception in this and has made great effort towards an Integrated Border Management (IBM) policy (Hobbing, 2005). This included not only better cooperation between the numerous EU and Member State agencies dealing with Third Countries, but also better cooperation with Third Countries themselves. It is therefore not surprising that the European Border Authority FRONTEX also has in its mandate that it should help EU Member States on cooperating with Third Countries (Hobbing, 2005).

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“Another cornerstone of the early IBM system is found in the visa chapter” (Hobbing, 2005, p. 10) Visa Policy allows a state to have a controlled way of distinguishing wanted from unwanted visitors. It is therefore often referred to as ‘policing from a distance’ (Bigo & Guild, 2017) or ‘bordering from abroad’ (Moreno-Lax, 2017). Another important factor of controlling migration is being able to send back those who stay on your territory illegally. It is all well and good if someone of whom it has been asserted that they have no legal grounds for residence in the EU is taken into custody, but only then the challenge begins of sending that person back to the country of origin. First is the question whether someone will cooperate with their return to the country of origin. Depending on if someone is cooperative will lead to different procedures and problems that need to be tackled (Baldaccini, 2009). This on its own is a major question on which much research already has been conducted. The focus of this paper however, is on a less explored area: what to do if someone is willing to return but the country of origin does not take that



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person back? The problem is that *“in practice, the extradition of illegal immigrants and refused asylum seekers requires the existence of a country willing to receive these people”* (Gammeltoft-Hansen, 2006, p. 5). As might be clear, the country of origin is quite often far from willing to readmit its nationals for a broad area of reasons (Noll, 1999). One of the most important reasons for this could be the fact that these Third Country Nationals often create a money flow to the country of origin. Someone from a country in which the economy is very weak and unemployment high is unlikely to create economic value in their own country. However, if this person moves to the EU where he or she works and earns money which is then send back to the country of origin, often to support the family left behind, this will thus create economic added value in the Third Country. Those Third Countries know this, meaning that for them it is much more profitable not to take back their nationals.

EU tit-for-tat

In order to keep out unwanted migration as described above, visa has long been a policy tool to check who is allowed in and who is not. *“At the international level, action should concern activities in and arrangements with countries of origin and transit (...), whereby the focus would first be on the issuing of visa and other consular issues as well as readmission/return matters”* (Hobbing, 2005, p. 17). In 2001 the European Commission discovered visa as a political tool for making Third Countries sign Readmission Agreements (Trauner & Kruse, 2008). By becoming more lenient on who would be allowed in, the EU expected Third Countries to be more cooperative on taking back their nationals whom were staying in the EU illegally (Geiger, 2018). By making the border management in this aspect more integrated, facilitating legal migration in exchange for cooperation from Third Countries in fighting illegal migration, the EU has made use of the ancient tit-for-tat negotiation system. But whether this link between visa and readmission actually makes sense and works is something that has not been researched yet.

There has been past research on the linkage of Visa Facilitation and Liberalization Agreements with Readmission Agreements (Trauner & Kruse, 2008) (Manigrassia & Trauner, 2014) (Papagianni, 2013), although none of these researchers asked themselves the question how successful the integration of visa policy and readmission has been.



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Therefore, I would like to pose this question: *How successful has visa policy been as a political tool for negotiating effective readmission agreements with Third Countries and what does this mean for future negotiations?*

Why is it important to answer this question? First of all, “*the general trend can be observed that more countries are significantly affected by migration flows*” (Eisele & Wiesbrock, 2013, p. 1), meaning that an effective border management is of the essence. The EU, its Member States and the European citizens count on the EU and the Member State governments to deliver effective and efficient policies which ensure their safety and protect their interests. Without scrutiny whether a certain policy is an effective one, resources might be wasted on ineffective policies. Secondly, as stated before this topic had so far been little touched by scholars. This thesis will thus contribute to the academic literature on this topic and will include suggestions for further research.

Research question and subquestions

But in order to answer the question *How successful is visa policy as a political tool for negotiating effective readmission agreements with Third Countries and what does this mean for future negotiations?* it is important to first clarify the different elements of the question. Firstly, it is important to determine what *is* a successful negotiation tool, what does it constitute? Only then can we research whether it has been successful tool. Secondly, we need to know the benefits of the readmission agreements: have they led to more effective readmission. Finally, to understand what the future hold for the Visa Facilitation Agreements (VFA) and Readmission Agreements (RA) it is important to find out on what trends that will depend. The following sub-questions will help answer the main research question:

- ❖ Visa Policy as a political tool
 - Why is visa policy attractive to use in negotiations?
 - What are the costs for offering a VFA?
 - What options are there to use Visa Policy?



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❖ Effective Readmission Agreements?

- Why do we need a Readmission Agreement?
- When is a Readmission Agreement effective?
- Are the Readmission Agreements effective?

❖ Future of this instrument

- What are the major trends in using visa as a political tool for readmission?
- What effects will those trends have on the future of this mechanism?

In order to do so several steps will be taken. First, Chapter I will give a more in-depth description of what Visa policy and Readmission policy is. After that, Chapter II will give a historical overview of how the EU evolved on border management over the past decades to understand where we are now. The third Chapter will outline the theories used in answering the research question and the fourth chapter will outline the methodology used. In Chapter V the results of the data collection will be given, which together with the theory will lead to the conclusions as well as some recommendations. The final chapter will have a critical look at this research as well as giving leads to further research.

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Chapter I Visa Policy and Readmission

What is Visa Policy?

Before continuing on the topic, it is important to make a distinction between what is called a visa, as sometimes the term can be misused. Visa in EU policy are what is sometimes called a short stay visa. This is the travel authorisation for tourists, businessmen or other visitors who come to the EU for a short stay of no more than 90 (consecutive) days out of every 180 days. Sometimes the term 'long stay visa' is used for travellers who come here for a longer stay such as students, highly skilled migrants or Third Country Nationals who move here after a marriage with an EU national. The long stay visa policy area is a different one than the short stay visa and not linked as such to readmission. It will therefore not be included in this thesis. Any further use of the word visa in this thesis therefore refers to the short stay visa, also known as the Schengen visa.

Visa Policy can be used as a political instrument. As the EU has competence over the short stay visa, it can decide for instance to increase or decrease visa fees or exempt holders of diplomatic or service passports from having to apply for a visa. It can even be decided that the nationals of a certain country become visa free, a process better known as visa liberalization.

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What is Readmission Policy?

As mentioned in the introduction, readmission focusses on sending back non-EU citizens who are illegally residing on EU territory. There are many policy challenges, from knowing who is on your territory, finding out if they say who they are and all practical aspects of sending them back. One specific issue in readmission policies is the cooperation with the country of origin to identify their nationals and making sure that the country of origin (or transit in some cases) cooperates on the readmission of their own nationals.

The EU has made past attempts to get Third Countries to cooperate more. Officially, under international common law a country has to take back its own nationals illegally residing in another country. However, there is a difference in saying you are following international law and actually putting it in practice. The Readmission Agreements include a reaffirmation of these obligations, as well as practical implementation procedures on



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actual readmission such as time a country has to reply to requests of the other country. But aside from this, the EU also includes a clause that the Third Country has an obligation to take back anyone with whom the EU can prove they have ties or who travelled to the EU through their country. This means it would be possible that for instance an irregular migrant from sub-Saharan Africa, who arrived in Europe after having worked legally in Tunis, under this clause in a Readmission Agreement Tunis would have to agree to accept this person from the EU.

In 2002, the Commission introduced the *Green Paper on a Community Return Policy on Illegal* (Kruse, 2003). This Green Paper would be the base on which the EU would conclude Visa Facilitation Agreements (VFA) and Readmission Agreements (RA). Since 2008, the EU has finalized negotiations of several of these readmission agreements. Member States, which retain competence to conclude visa facilitation agreements or waivers for holders of diplomatic and service/official passports, have done the same since.

But why is it so important to have a good readmission policy? First of all, it is important to note that the so called 'bogus asylum seekers' occupy housing and resources meant for 'real' asylum seekers. Secondly, although the public support for housing refugees is generally quite high, the number of irregular migrants who are not considered refugees arriving in Europe could damage this support, thus it is important that they are returned to their country of origin (Dempster & Hargrave, 2017). And thus, the EU and its Member States make an effort to send back those that have not official approval to stay in the EU.

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As can be read above, the EU and its Member States have an interest in sending back irregular migrants and the countries of origin have at best no incentive to cooperate and at worst an incentive to frustrate the process. Thus, in the beginning of the century the EU introduced a carrot for Third Countries if they were to cooperate more on readmission. If Third Countries would cooperate better on readmission, they would be granted a Visa Facilitation Agreement which would make it faster, cheaper and/or easier for their citizens to get an EU visa, as well as sometimes including complete visa waivers for holders of diplomatic passports. Or, put in more simple words, the EU proposed a tit-for-tat: we will make it easier for your people to get in if you make it easier for us to get rid of the unwanted ones.



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This trade-off is not necessarily a natural one. If the EU Member States have many irregular migrants from a certain Third Country, any measure that facilitates entry from nationals of that country might not seem like a logical step. But if the Readmission Agreement works, it is believed this could more than make up for it.



Chapter II EU Framework on Border Control

As a country it is important to know who is on your territory. Keeping your own population in check is one thing, it is another challenge altogether to hold in check those who are not considered your own nationals. In order for global travel to take place without a complete loss of control, governments created an international regime of visa policies. The international visa regime “*is crucial to both the operation of the global mobility regime and the operation of sovereign power*” (Salter, 2006, p. 168). Borders are not just the territorial borders we know, but also conceptual borders of community and identity (Geddes, 2005).

To understand visa, we need to take a step back to the concept of borders. Borders allow a country to determine where its community begins and ends. Those who live within the borders are ‘in’ the community and those who live outside it are ‘out’ of the community. A country holds sovereign sway over the territories within its borders (Fernández, 2008). This sovereignty gives the state the sole right of making decisions to which its community has to abide (Salter, 2006). This way, it can ensure the protection of its citizens and public order. Those who live within get passports to show that they are indeed ‘in’ the community, providing permanent membership. However, this does take the question into account what were to happen if one wants to travel from one community to the other. Not to become a permanent member, but rather a temporary member of the community. When one is in, one is subject to the laws and customs of the community one is ‘in’. As passports were introduced to show permanent membership of a community, visas were introduced to show temporary membership of a community.

The French word *visé* means *having been seen*, referring that one has been seen and there has been no reason to stop someone. Originally the word visa solely referred to the permission granted by a consul to enter a country, nowadays the word visa reflects the entire process of pre-screening and represents a prima-facie permission for admission (Salter, 2006). The notion of it being a prima-facie is an important one, as a visa does not constitute a right of entry. It merely states that on a first check there has not been found a reason to refuse someone at the border. The European Court of Justice has stated in the *Koushkaki* case however, that the grounds to refuse a visa are exhaustively mentioned in



the Visa Code. If someone meets the criteria for a visa mentioned in the Visa Code, a Member State cannot refuse to issue a visa (Moreno-Lax, 2017). However, even with a visa someone can still be refused at the border if the border control agents deem it necessary.

Checking each and every traveller at the border would be a very time-consuming process, leading to huge lines and hold-ups at the borders. Visa allow for a first check *before* one arrives at the border. Visa policy is therefore often referred to as policing in the distance (Manigrassia & Trauner, 2014) (Bigo & Guild, 2017).

The development of the Schengen area

The history of the Schengen Agreement actually starts with earlier integrated border communities in Europe: namely between the United Kingdom and the Republic of Ireland as well as between Belgium, the Netherlands and Luxembourg, together better known as the Benelux countries (Whitaker, 1992). In 1985 the Benelux, France and West-Germany (German reunification did not take place until 1989 and in 1985 the Iron Curtain was still very much in place) came up with the idea to further the European Integration which had been slow to develop. In 1987 Italy made note of its interest to join this common border agreement. Italy at that time had a high number of North African migrants which provided Italy with cheap labour. The other countries therefore required Italy to enhance its border patrols and to establish records of the number of migrants within its borders. The founding five countries also requested from Italy that it would create policies that encouraged the migrants to remain in Italy instead of fanning out over the other member states as well as installing visa requirements for North Africans (Whitaker, 1992). Here we can already see the development of a common approach on visa policy and migration on an European scale as early as 1987. The policies demanded by the Schengen founding states certainly had effects when Italy introduced them in 1990. Italy imposed visas on North Africans and others from outside the European Community during the summer of 1990. In addition, during the first nine months of 1990, more than 52,000 people were denied admission to Italy, compared to 3,000 the previous year, and expulsions had increased by nearly 6,000 (Whitaker, 1992).

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In June 1985 the Schengen agreement abolishing the internal borders was signed by the Benelux, France and western Germany in the small town of Schengen, a most appropriate



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place for this agreement as this Luxembourgish town borders both France and Germany. By November 27th of that same year, Italy also joined this so-called 'Schengen' Agreement. On June 19th, 1990 this was followed by a convention to streamline the implementation of the Schengen agreement. Already in 1992 it was predicted that this would lead to a common Schengen visa and a joined migration policy. There were even proposals to create a common asylum policy (Whitaker, 1992), although that has not been realised.

However, the number of countries participating in the Schengen agreement would rise steadily and surely after its introduction. In 1992 both Spain and Portugal also joined the Schengen Agreement, although not before Spain had installed visa requirements for several North African countries. And in 1992, Greece joined the Schengen agreement, meaning that the only European Community members which did not partake were Denmark, the United Kingdom and Ireland. Starting from 1991, the European Community would provide a list with countries from which visitors would need to obtain a visa (Whitaker, 1992).

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For a long time, it were states that exercised power when it came to borders, since the states were sovereign. However, in Europe several fundamental changes would lead to a new reality. After the Cold war, serious changes occurred when it came to migration policies by European countries due to the end of the Soviet empire, drastically changing the relation of the existing European Community with its neighbours.



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Post-cold war trends in migration flows

<i>Geo-political widening</i>	<ul style="list-style-type: none"> • New migration countries • All EU Member States are to some extent sending, receiving and/or transit countries
<i>Conceptual widening</i>	<ul style="list-style-type: none"> • New migration flows such as trafficking and smuggling • New forms of non-state, state and supranational response such as increased role for EU
<i>Post-cold war trends in migration policies</i>	
<i>Spatial reconstruction</i>	<ul style="list-style-type: none"> • Increased EU role • Intensification of bilateral, multilateral and international co-operation
<i>Temporal reconstruction</i>	<ul style="list-style-type: none"> • More ‘positive’ approaches to certain forms of migration, particularly highly skilled economic migrants

Table source (Geddes, 2005, p. 791)

At the time, expansion eastward was seen as a risky if not undesirable endeavour as fears of mass immigration from Central and Eastern Europe existed in Western Europe. After the fall of the Iron Curtain, fears in Western Europe for tanks and missiles coming from the East were replaced by fears of massive immigration coming in from the East (Grabbe, 2000).

Nevertheless, the CEE region would soon become a part of Schengen as the former Soviet states were keen on joining both the European Union as well as Schengen. But not before the countries in Central Europe, such as Poland, Czech Republic, Hungary and Slovakia, had brought their national border policies in line with the Schengen acquis, the collection of European Schengen legislation, in order to have a common approach on visa and border policies to countries in the European periphery such as Ukraine (Grabbe, 2000).



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In 1992, the Member States of the European Union adopted the Treaty of Maastricht, conveying on the citizens of the Member States also an European citizenship granting certain rights. One of those rights was the right of free movement within the Union between Member States (Fernández, 2008). With the introduction of the right of free movement, member states gave up the ability to control the border between them, leading to a new reality in migration policies (Geddes, 2005).

This meant a major change in existing policy. With the creation of the Schengen area in 1995, the member states would oblige themselves to abolish the borders between member states, which are now always referred to as the internal borders. Simultaneously, the Member States committed themselves to protect the external borders. All of a sudden, the border between Spain and Morocco was also the only border between the Netherlands and Morocco.

The EU started to work on a more integral approach towards migration in 1999. In the Treaty of Amsterdam, signed in 1997 and entered into force in 1999, the Schengen rules and regulations were adopted into the EU's legislative framework and it transferred immigration and asylum, along with visa, external border controls and civil law matters, from the intergovernmental 'Justice and Home Affairs' Pillar to the 'European Community' Pillar (European Council, 1997).

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Abolishing the internal borders had huge implications. Economically, it meant more and easier trade between the member states. All of a sudden EU citizen no longer had to undergo border checks at the internal borders. However, it also meant that once someone had passed the external borders at any point, he or she would face little checks when moving around the EU. In case of irregular migration, this could pose a problem.

Acknowledging that the EU would not be able to tackle the problems which were related to migration towards the EU, the European Council quickly held a special summit in Tampere, Finland in 1999. There the EU heads of state and government discussed the approach to deal with the issue of migration and possible 'solutions' to counter what was experienced as unwanted migration towards the European Union. As a part of those solutions, the EU started to look to the countries of origin of those unwanted migrants to



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deal with the issue. The EU would have to start integrating migration policies as an integral part of its foreign relations with Third Countries. Only by including it within the whole foreign policy of the EU would it be able to deal with this issue which had root causes outside the EU (European Council, 1999). However, it would still take almost a decade before the Member States would relinquish enough power to the Union to take things further. Only under the Treaty of Lisbon, signed in 2007 and entered into force in 2009, this policy field was released from the hampering unanimity vote (European Council, 2007). As we can see, the attempts of the EU to build a comprehensive migration policy has been quite a struggle (Ferreira, 2019). Even after the migration crisis of 2015, a coherent and integrated migration policy in the EU remains a challenging concept (Scipioni, 2018).

Competence of the EU in the field of migration policy developed for several reasons. From the 1980s national governments sought to develop migration policies away from actors that were hard to control, such as higher courts (Guiraudon, 2000). By cooperation at a European level, the national Ministries of Home Affairs and Justice were able to implement more restrictive measures to combat irregular migration and, as Trauner and Wolff call them, *bogus asylum seekers* (Trauner & Wolff, 2014, p. 5). This situation has changed with the *communitarisation* of EU Justice and Home Affairs. On a EU level, the national ministries now have to take in to account the Commission and a bold European Parliament which is a proponent of the more Human Rights approach (Delcour & Fernandes, 2016).

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With the introduction of the Treaty of Lisbon the competences of the EU in the fields of border policy, migration and visa policy would formally be increased. In these fields, only topics regarding immigration would remain subject to unanimous decision making, the rest would from now on be decided under the ordinary legislative procedure and thus decided by qualified majority voting (QMV) in the Council. It also formalized and streamlined the EU competence regarding short stay visa (visa for an uninterrupted stay of up till 90 days) for the Schengen zone (Peers, 2008). However, much of this was more a codification of already common practice or simplification of existing rules which already provided these competences (Papagianni, 2013). A key article is Article 79 (3) TFEU



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which gives the EU the explicit competence to sign Readmission Agreements with Third Countries (Papagianni, 2013). However, considering that the EU had already signed several Readmission and Visa Facilitation Agreements before the Lisbon Treaty under the implied powers principle confirms that in this regards Lisbon was more a codification of common practice.

In the EU cooperation in the field of Visa Policy would continue to increase. In order to better protect its external borders, Member States would have to cooperate more. This thought lead to the creation of the Visa Information System, better known as VIS to come into existence next to the Schengen Information System (SIS) (Samers, 2004). Although the SIS allowed for information sharing between Member States when it comes to wanted criminals, suspected terrorists and smuggling, the VIS would allow a sharing of information between the Member States on visa applications (Samers, 2004). This would prevent 'visa shopping' as one Member State would know that an individual would have had an earlier visa application in another state as well and whether it had been approved or rejected. The VIS also allowed Member States to send automated notifications that they would like to be informed if certain people were to make visa applications.

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The EU has often tried to link readmission with for instance development aid. The largest receivers of EU funds for development aid are, however, not the main countries from which the migrants come or the countries which function as a transit area (Gammeltoft-Hansen, 2006). And although the EU is the largest trade bloc in the world, the link between trade policy and migration is hard to make clear. More often, there is a link with political cooperation and migration. More specifically, if a third country cooperates on illegal migration, the EU is willing to be more lenient in facilitating legal migration as well as extending the scope of legal migration (Gammeltoft-Hansen, 2006).

Following the 1999 Tampere conference, the Commission published the *Green Paper on a Community Return Policy on Illegal Residents'* which would be base of the Readmission Agreements (European Commission, 2002). Countries on which the EU would focus first for Readmission Agreements were categorized according to the following criteria: migration pressure, geographical balance of countries and the perceived chance of successful implementation (Kruse, 2003). That the EU saw this as an important topic



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became clear as in 2002 at the Council summit in Seville it was further emphasized that *“any future cooperation, association or equivalent agreement which the EU or the EC reaches with any country should include a clause on joint management of migration and on compulsory readmission in the event of illegal immigration”* (European Council, 2002, p. 10). In its Green Paper, the European Commission recognized that enforcing this kind of cooperation would not come voluntarily as *“Returning people on a large scale could have a considerable impact on [...] the willingness of the authorities to co-operate in controlling migration”* (European Commission, 2002, p. 11) since *“third countries see these [Readmission] agreements as being in the interest of the EU only”* (Gammeltoft-Hansen, 2006, p. 6). As these Readmission Agreements themselves offered no benefits to the third countries, something had to be offered in return. The Commission itself also recognized this problem (European Commission, 2002a). In the field of Justice and Home Affairs, there was little the EU could offer those countries (Lavenex, 2006).

Thus the Commission had to introduce carrots and sticks to ‘encourage’ these Third Countries to sign readmission agreements, such as the AENEAS programme to assist them financially (Gammeltoft-Hansen, 2006). But the Commission had several ‘carrot’ options to encourage Third Countries to cooperate, such as quotas for labour migrants, leaner visa policies, trade expansions, market access and increased development assistance (Kruse, 2003). As part of the ‘sticks’ several options were discussed at European level, such as cutting back on development aid. These measures showed the EU meant business when discussing Readmission Agreements. Third Countries remained reluctant however (Gammeltoft-Hansen, 2006), meaning the EU had to look for other options. This other option became the usage of Visa Policy.

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Type	Instrument	Objective	Origin/forerunners
<i>Agreement based and incentive-based</i>	EU readmission agreement	Regulation of return procedures of migrants in irregular situations	National; first European agreements signed in early 19th century
	EU visa facilitation agreement	Facilitated application procedures for Schengen visas	National; e.g., United States Visa Waiver Program was created in 1986
	Visa Free Dialogues	Achieving full visa liberalization for the Schengen area	
	Embedded migration clauses	Migration-related clauses in EU Association, Development and Trade Agreements	National and international; e.g., General Agreement on Tariffs and Trade (GATS) of World Trade Organization (WTO)
	Circular migration	Temporary work and resident permits for migrant worker	National; e.g., German Gastarbeiter Programme
	Mobility Partnership	Framework for regulating legal migration	National
	Aid Programmes	Capacity building and tackle 'root causes' of migration	National
<i>Information based and operational support</i>	Practical cooperation	e.g., cooperation on 'country of origin' information, FRONTEX operational support for border management and migration control	National and regional (e.g., Regional Consultative Processes)
<i>International Law</i>	International norms and conventions	EU coordination in Int. Organizations to develop international norms and conventions	

Table source (Trauner & Wolff, 2014, p. 14)



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Contemporary migration policies: visa policy and readmission agreements

According to Samers (2004) *“There can be no illegal immigration without immigration policy.”* Although this might sound weird in first instance, in further examination it makes perfect sense. This is because immigration policy *determines* what is legal immigration and what is irregular migration (Samers, 2004). Irregular migrants include a great variety, such as those who ‘overstay’, those who have ‘lost’ their documents, those who falsify their documents, those who enter a national territory clandestinely, rejected asylum-seekers, and more generally, the socio-legal ‘grey area’ between illegally residing and asylum-seeking status.

Nowadays, EU migration policies can be roughly divided to target one of five groups of Third Countries (Lavenex & Uçarer, 2004). First of all, there are the Western European non-EU countries with which the EU cooperates. As they are less relevant when it comes to visa and readmission, I will not go further into detail on them. The second group is that of the newer member states in the Central and Eastern European region. With them, research focusses more on the (mis)fit of EU internal migration policies with their system, which again is not the focus of this thesis. The third group is that of EU-candidate countries. These countries which border the EU and are looking to join it have to qualify for a long list of accession conditions before they can accede, including in the area of migration policy. However, the accessions procedure is a comprehensive procedure, so analysing visa and readmission apart from the other policy fields is much more complicated. The fourth group are the countries which were included in the European Neighbourhood Policy. The ENP seeks to have good relations with its neighbours and cooperate with them in several ways, such as migration. The final group is broadly speaking the rest of the world. Depending on the group of countries the EU is dealing with, it has other means of getting those countries to cooperate in support of EU interests (Lavenex & Uçarer, 2004).

Visa policy itself focuses on the area of legal migration (Samers, 2004) as it aims at those who enter the Union in a ‘regular’ or legal way. So how can visa then be linked to migration. First of all because visa policies allow for a check beforehand whether you want the person to enter at all. Included in that check is if someone has enough means to sustain



himself during the visit, if someone could be a danger to security or public order and a risk assessment of that person overstaying his stay, thus becoming an irregular migrant (Ferreira, 2019). With the process of European integration, the EU's internal borders between member states were abolished, meaning that the field of migration policy in the EU drastically changed (Geddes, 2005). Entering one member state now means that it is possible to enter the other, and member states cannot control the borders they have with other member states anymore.

Visas are used to check beforehand whether people will be allowed to enter the territory of the state they are visiting. The EU and its member states are undertaking great effort in keeping those they do not want in out. They check beforehand with visa policy and enlist private parties such as carriers and border patrol to make sure people do not come in unwanted (Guiraudon, 2006). But even for the greatest of efforts, there will always be people that will be able to enter. The problem then becomes how to get them to leave.

As mentioned earlier, when negotiating readmission agreements, the EU uses the policies on visa to get a third country to agree to negotiate a readmission agreement. Already research has been conducted on visa policy as a political tool. In earlier research, visa policy is often called 'policing' from a distance (Guild & Bigo, 2003) (Peers, 2008) (Papagianni, 2013). Visa policy allows a check in a distance place whether someone is likely to be allowed in or not.

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Member states have delegated the bulk of legislative competences on visa to the EU level, although they keep the executive part in firm control. The basis for the EU policy on visa is the Visa Code Regulation (EUR-Lex, 2009). The legal basis for the Visa Code is Article 77 paragraph 2 (a), which states that "*the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning the common policy on visas and other short-stay residence permits.*" Member states can still decide on their own how to deal with Visa Policy on diplomatic passports and the like, provided that there is no European agreement on the topic with a country or a mandate for the Commission to negotiate such an agreement.



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The Visa Code includes, among others, articles determining the amount of time Member States have when processing applications, which EU systems need to be consulted, the process on consulting other member states and many other things. Although the Visa Code includes most policy on EU Visa, the list of countries whose subjects must apply for a visa is regulated in a different EU Regulation (EUR-Lex, 2018). As mentioned in the introduction, there is a clear distinction between what is called short stay visa and long stay visa. Long stay visa, such as student permits, remain a national competence and fall outside the scope of the Visa Code.

In June 2019, the EU adopted a revision of the Visa Code (EUR-Lex, 2019). In their introduction on the proposal to amend the existing Visa Code, the European Commission wrote down the main trends on EU Visa Policy (European Commission, 2018). This includes an interesting statement that currently the cooperation on readmission is insufficient (European Commission, 2018) and that they therefore included a clause which allows sanctions if a Third Country does not cooperate on readmission. At first, the EU introduced the carrot (VFA), now it seems to be readying the stick.

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Interestingly, the new Visa Code adopted in 2019 also includes a passage on Readmission Agreements (Radjenovic, 2019). This new article, Article 25a, creates an obligation for the Commission to report to the Member States on the cooperation on readmission by Third Countries. It also states that if countries do not cooperate, its nationals could face among others higher visa fees or have to file more supporting documents with their application. However, the same article states that if a Third Country is cooperative the EU could lower the visa fee, shorten the maximum time of assessing the application or be more lenient in issuing Multiple Entry Visa (MEV) which allows a traveller to make several short trips to the EU over a longer period of time with one visa.

When it comes to migration, the legal basis for EU policy is found in the TFEU (EUR-Lex, 2007) as well. Article 79 paragraph 1 states that *“The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.”* Specifically, the third paragraph of that same article gives the EU the



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competence to conclude readmission agreements: *“The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.”*

The EU is also active on trying to get cooperation of Third Countries in other ways, for instance by approaching other countries as ‘partners’ and enticing them to sign partnership agreements (Reslow & Vink, 2015). One problem with defining a coherent migration policy is the divergent interests of the EU member states (Weinar, 2011), a topic which will be discussed more in-depth later.



Chapter III Theoretical Framework

In order to answer the question “*How successful has visa policy been as a political tool for negotiating effective readmission agreements with Third Countries and what does this mean for future negotiations?*” it is important to build on existing literature and the theories it offers to answer the different subquestions that derive from it. In order to answer the research question, the different parts have to be separated and understood. First of all, we have to know what a ‘successful’ policy tool is made out of. Secondly, we need to know when something is a good negotiation tool and when negotiations have been successful.

Policy instruments

Originally, public policy was analysed and thought of in quite a static way. If there was a problem of public concern, a new law needed to be adopted or an existing one changed. With changing the law and a top-down implementation, the problem would have to be dealt with. Governance was the art of governing and was being done by the government using policy instruments such as laws, constitutions and regulation (Trauner & Wolff, 2014). Over time, different schools of thought developed on the use of policy instruments (Howlett, 2004). This new approach towards governance has been called, most surprisingly: new governance (Trauner & Wolff, 2014). This new view on governance does not limit itself to mere laws, but includes all “*institutionalized forms of co-ordinated action that aim at the production of collectively binding agreements*” (Lavenex & Schimmelfennig, 2009, p. 795). This can include a variety of actors (intergovernmental, public –private, private, international) in which the policies produced reflect a degree of legalization (including soft law) and socialization (referring to shared understandings). In other words, in the past the approach to societal questions would be law-making by the government and enforcing those laws. Nowadays, governments have not only a broader set of possible policies at hand, such as nudging, campaigns, and setting the standard by providing a good example, but the entire approach has changed. Government officials and enforcement agencies discuss policies with those whom it will affect, rely on self-regulation or agreement by social partners instead of simply making legislation. Different approaches will lead to different outcomes, so it is important to determine what effects certain policies have so one can learn from it for the future.



Policy is installed to deal with a certain problem, so first a problem will have to be identified. How this problem is identified and framed is very important, as it will determine which are exactly the goals which need to be reached and which policy instruments are suitable to get there. Although new governance has developed over the years under a common name, there are different approaches and schools of thought on how to apply it in practice. These theories will help determine whether a policy is suitable to tackle a certain societal issue. In the earlier parts of this thesis, it became clear that there currently is considered to be a problem when it comes to the cooperation of Third Countries on readmission, or rather the lack of cooperation. The EU has chosen to combat this lack of cooperation with using visa as a carrot or a stick. Thus, the using of visa is a policy instrument. The policy instrument theories listed here below will help clarify if this is a 'good' policy instrument.

Rational-choice theory

One such approach is the rational-choice theory. The rational-choice theory "*focuses on researching how instruments are able to efficiently reach their objectives, often relying on a cost-benefit analysis*" (Trauner & Wolff, 2014, p. 8). In rational-choice theory, a policy is seen as an instrument which is used to attain certain goals while having certain costs. The rational-choice theory comes from the economic school of thought and thus includes a cost-benefit analysis on policies to determine which one is the best approach to tackle the problem. This also means that policies are substitutes of one another, as one policy can replace another. The policy which gives the best result for the lowest costs is therefore the one which is seen as the best instrument (Flanagan, Uyarra, & Laranje, 2011). Rationalists believe in the logic of consequentiality: the policy with the desired consequences will be chosen by policymakers (Aus, 2007).

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When designing a policy, it is important to make a distinction between *output* and *outcome*. When designing a policy, certain policy goals are included (Czaika & de Haas, 2013), which means that a policy would be effective if the policy goals are met. The meeting of policy goals is described as output. However, a policy can have more results than just those described as the policy goals. The *outcome* is all the consequences of a policy, whether intentional or not. If there is a difference between the actual effect of a



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policy and the desired effect, Czaika and de Haas (2013) speak of the existence of a gap. The difficulty with asserting this gap is, according to Czaika and de Haas, not necessarily the comparison of numbers. A methodological comparison of the situation before and after the introduction of the policy can be challenging but should be possible one way or another. The real difficulty, according to them, lies in the fact that there is often a difference between the official goals of a policy and its real goals. Policymakers often do not state (all) the real policy objectives or goals. Additionally, a policy is often an outcome of negotiations of different actors. However, the rational choice theory does not take into account the politics of decision-making. Therefore, it is important to include other theoretical approaches.

Political-choice theory

A second theory deals precisely with this problem. In the political science school of thought, instruments which come out of public policy are the result of a complicated process (Schneider & Ingram, 1990). Policies are decided upon through long negotiations by different actors (Czaika & de Haas, 2013). As Fulvio Attinà recognizes, the EU has not been able to come up with a migration policy which has been able to satisfy all member states (Attinà, 2016). Actors will operate between the boundaries that are appropriate (Aus, 2007).

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“A focus on the politics of instrumentation hence implies to look at the drivers behind the choices of instruments as well as the structure of a public policy” (Trauner & Wolff, 2014, p. 9).

Policy instruments are thus ‘living’ instruments, they change and adapt over time. Because different actors and interests were and will stay involved in the development of the policy process, the instrument will reflect this involvement. It can be that although on paper a certain policy instrument is perfect, but that there are major problems in the implementation.



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Acceptance of a policy instrument in a third country

According to March and Olsen, the reaction of a foreign power to a policy instrument which has been adopted by the EU can be explained through what they call the logic of appropriateness or according to a logic of consequentiality. The logic of appropriateness takes the point of view that a policy instrument that has been developed in another country will only be accepted or implemented insofar as it fits within the own institutional framework (March & Olsen, 1998), which is sometimes also referred to as 'EU compatibility' (Lavenex & Schimmelfennig, 2009). The logic of consequentiality on the other hand assumes that a new policy instrument provides actors with new or enhanced opportunities to pursue their interests and to shift the balance of power in favour of their preference (March & Olsen, 1998). Similarly, Reslow & Vink argue that "*the cost-benefit calculation made by third countries depends on three factors: first, the resonance of EU policy with national policy objectives; second, the administrative capacity of the target state; and third, the domestic costs of adopting EU policy*" (Reslow & Vink, 2015, p. 860).

Path dependency

Every policy is affected by what happened in the past (Wolff, 2012). Decisions made in the past regarding visa and migration policy will have an effect on the policies and policy instruments coming later. Path dependency limits policy options to those which are in line with choices made in the past, just as well as excluding those which have proved very harmful in the past. What becomes clear within path dependency theory is that the choice of policy instruments for policymakers is severely affected by the choices made by their predecessors.

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Negotiation theories

Negotiations between countries on concluding a treaty is a much-researched topic. Negotiation theories can be used to determine the strengths and weaknesses of negotiating a Visa Facilitation Agreement or Readmission Agreement with a Third Country. It can also be used to determine whether the EU as an actor is the right one to do the negotiations. In order to determine whether the EU is the right actor Lynne Dryburgh (2008) set several conditions on 'actorness':

- articulations of actorness;
- consistent and concrete policies;
- a diplomatic/administrative apparatus;
- resources and policy instruments;
- third party perceptions of EU 'actorness'.

The first condition is that an actor needs to make clear what position it sees for itself. If an actor does not make itself known on the stage, negotiations with other actors cannot commence. Secondly, without consistent and concrete policies, it is still hard for third parties to understand what they are dealing with. This does not mean rigidity in policy, as an actor will have to change its policy depending on new insights and changing environments. And of course, without a diplomatic or administrative apparatus to give shape to and execute its policies, there is little that will be executed. Depending on the specific resources and policy instruments at its disposal in a certain field, the role as an actor will change. Last but not least is of course how other parties view the EU. If they see it as illegitimate or believe they are better off negotiating directly with its members this will seriously hurt the role of the EU as an actor in that policy field (Dryburgh, 2008).

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An important part of international negotiations is the momentum (Bjola, 2015). If there is a strong momentum, there is a high likelihood that parties will reach agreement, while if there is a low momentum it is unlikely. This is important when deciding how negotiations are going. If they are important for you, but the other side simply does not show up or sends a low-level civil servant, you are clearly in a weak bargaining position.



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Relational power

Faure described negotiations as “*a social process by which two or more parties interact in search of acceptable positions for their differences on particular issues*” in (Pfetsch, 1998). When in negotiations, it is important to know the balance of power between the two parties negotiation: the ‘*rapport de forces*’ (Gréhaigne, Godbout, & Zerai, 2011). Gammeltoft-Hansen distinguishes between two types of power relations: behavioural and resource power. Resource power is described as the inert ability to achieve self-favorable outcomes. In other words, to what extent does an entity has the power to create outcomes that favor it? One important factor that often comes back is the potential costs of delaying an agreement (Parks & Komorita, 1998). As one is more in need of the agreement, the other party is likely to expect to be able to get more out of the agreement.

The second, behavioural power, is the ability to obtain outcomes you want from others. In other words, how able are you to make somebody else do something you want them to do which they otherwise would not do? Behavioural power can then be subdivided in hard and soft power (Gammeltoft-Hansen, 2006).

Hard power

In the strict use of the term, the EU has relatively little hard power as “*the EU can deploy hard power only if all states agree (or agree to not block this)*” (Goldthau & Sitter, 2015, p. 944). There is no EU military force and it cannot threaten to invade a country that is unwilling to cooperate. However, if one looks at the EU more broadly, there is a range of other concepts of hard power that the EU in general has at its disposal. First and foremost is the economic power the EU has as the world’s largest economy and trading entity, with access to the Schengen area as a mouth-watering carrot for any state (Felbermayr, Gröschl, & Steinwachs, 2018). At the same time, the EU and its Member States are responsible for over 60% of the worlds funds for development aid and the EU itself is the world’s fifth largest donor in this field (Gammeltoft-Hansen, 2006). Similar, Barnett and Duvall argue that the EU can use its trade power to force other states through sheer economic might (Barnett & Duvall, 2005).



Soft power

'If a state can make its power legitimate in the eyes of others and establish international institutions that encourage others to define their interests in compatible ways, it may not need to expend as many of its costly traditional economic or military resources' (Keohane & Nye, 2001, p. 220). Soft power is less tangible than hard power. It constitutes the ability to 'attract' others. This 'appeal', be it through culture or otherwise, gives the other party an incentive to agree to certain terms in negotiations it otherwise would not have. That the EU holds a certain attraction is evident considering the fact that the EU member states feel the amount of people they 'attract' is creating a problem called migration. The existence of this attraction also becomes clear by the desire of neighbouring states to join the EU (Gammeltoft-Hansen, 2006). This can also be seen by the fact that countries neighbouring the EU are willing to adopt legislation which in the short run has negative consequences for them (Samers, 2004).

"Soft power is the velvet glove, but behind it there is always the iron fist" (Cooper, 2004, p. 179)

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One of the main factors of EU soft power that are often mentioned is its economic power, being the biggest single market in the world (Goldthau & Sitter, 2015). This is more than simple hard power, which includes the EU ability to influence third countries by threatening with economic sanctions or promising beneficial trade agreement. Simultaneously, it is also a soft power with its natural attraction to foreign investors and markets.

The EU is a global actor when it comes to migration as well, as other countries take over standards set by the EU for their own practices. Examples of this are several African countries which copied the European policies of keeping lists of 'safe' countries as well as the first country of asylum principle (Gammeltoft-Hansen, 2006), which in the EU was negotiated under the Dublin accords (Wichmann, 2009).

It is important to note that the above-mentioned powers are not just necessary for having a third country agree to a readmission agreement. Agreeing on paper is one thing, actually



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complying and cooperating is another (Gammeltoft-Hansen, 2006). Thus, the EU would need enforcement mechanisms to make to third countries compliant.

Domestic influences

International negotiations do not merely depend on the two negotiating agents. When negotiating in an international arena, the negotiating agents will have to find a solution which not only they can agree on, but which they will also be able to sell at home (Putnam, 1988). Thus, besides the relational power between the two actors negotiating, it is important to consider domestic factors influencing the negotiations, domestic being either the EU as an actor or the Third Country. Similarly, Mansfield, Milner, & Pevehouse argue that one major factor influencing international negotiations is the veto points of the domestic institutions (Mansfield, Milner, & Pevehouse, 2004). In short, the higher the number of domestic actors, the less likely it will be that the actor will reach an international agreement with another player. This makes sense, as when there are many actors within a system that can block an agreement it is less likely to pass. Therefore, when resistance against a Readmission Agreement is high among the many actors who have veto points, it is less likely to pass. But moreover, if Visa Policy is used as a negotiation tool, it is only likely to be a succesful tool if it is broadly supported to be used as such by the different veto players who will have to give their consent. Having these veto points can be a usefull negotiation tool which in international negotiation theories is called the benefit of 'tying one's hands'. This way, the negotiating party can state during negotiations that it cannot give in to the third parties request because it will the be vetoed at home (Brücker, Schröder, & Weise, 2004).

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Secondly, it is important to notice that when dealing with a multi-level actor like the EU, that it is important to know whether the negotiating actor, in this case the EU, has a veto point. When it comes to the EU, it acts as an agent of the member states. When an agent is negotiation on behalf of an actor, in this case the Commission for the EU and its member states, it depends on the situation whether it is helpful in the negotiations to give the agent a veto (Mo, 1995). Delegating a veto on negotiations is only suitable when the preferences of the agent, in this case the Commission, are the same as the delegating actor, in this case the Member States. A second important factor is whether the foreign country is aware of



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the preferences of the delegating actor. The reason for this is that if the foreign country has full knowledge of the actor's preferences, an agent negotiating on behalf of the actor does not have a lot of leverage if it has no veto. In this scenario, the agent would be little more than an errand boy walking back and forth between the actor and the foreign country. In trade negotiations, the EU has been known to make use of its institutional framework to gain a leverage in negotiations (Meunier, 2007), so it could be using this strategy in other areas as well.

Enforcement of international agreements

Agreements are not static, but they are an ongoing process even after the negotiations have been 'concluded' and an agreement signed. After the signing of the agreement, there can be new negotiations for a large number of reasons, for instance because of issues which have come up during implementation (Zartman & Spector, 2013).

Enforcing international agreements can thus be complicated. Within a state, enforcement usually takes place through the law and enforcement agencies. As mentioned earlier, there are no international enforcement agencies. States will thus have to think of other solutions. Before an agreement will be signed, there has to be a certain level of trust. One way of enforcing that another party lives up to the agreement is by keeping a good relationship, as the other party will be likely not to jeopardize the good relationship. And otherwise there always is the option of reciprocity: if they do not live up to their part of the agreement, you do not have to live up to yours (Larson, 1998). One of the well-known options of enforcement the EU has, is through the external incentives (or conditionality) model where the EU's depends on reinforcement by reward (Reslow, 2012).

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Chapter IV Methodology

In the previous chapter, an overview was given of theories which will help us analyse the different parts of the research question “*How successful is visa policy as a political tool for negotiating effective readmission agreements with Third Countries and what does this mean for future negotiations?*” This chapter will use the theories of the previous chapter to formulate questions specifically on visa policy and readmission agreements that can be researched. After that, an overview will be given on how the data to answer these questions will be collected and evaluated. Last but not least, some important remarks will be included on the scientific accountability of this thesis.

Operationalization of theoretical framework

First of all, now that we have a theoretical background, it is important to translate it into researchable questions and hypotheses which together will answer the research questions “*How successful is visa policy as a political tool for negotiating effective readmission agreements with Third Countries and what does this mean for future negotiations?*”

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As mentioned in the introduction, this research question exists out of several aspects. First of all, we have to determine whether the integration of Visa Facilitation Agreement and Readmission Agreement makes it useful as a negotiation tool. Secondly, we have to determine the effectiveness by evaluating the concluded agreements. This can be done by using the political-choice theory to determine whether Third Countries actually implement the agreements, as well as the rational-choice theory to determine the actual gains and losses for the EU and its member states.

Negotiation theories

When it comes to negotiation theories, it is important to find out how much negotiation power the EU actually has when it comes to negotiation readmission agreements. Therefore, both the hard and soft powers the EU can use from the visa policy to conclude an enforce the readmission agreements need to be collected. One important factor is the potential economic gains for the Third Countries, as well as their political desire to conclude a visa facilitation agreement to score political points at home.



It is also necessary to evaluate the effect of EU decision making on the negotiation process. Do the veto points in the different levels help conclude the agreements, or do they hinder the flexibility of the EU. Similarly, as we read in the theoretical framework, if the party at the other end of the table knows fully the mandate and interests of the EU and the MS, this seriously cripples the position of the EU negotiator. The question is also how much leeway the EU negotiator is. If there is no leeway, the EU negotiator simply becomes an errand boy thus weakening EU negotiation power.

When it comes to the enforcement of the agreements once concluded, it is important firstly to see what the EU does to monitor the compliance with the agreement by the Third Country. Simultaneously, it is necessary to evaluate the ongoing relationship between the EU and the Third Country. Finally, enforcement is only effective if the EU has the ability to include sanctions in case of non-compliance.

Policy instruments subquestions

The rational choice theory states that a cost-benefit analysis is needed to determine whether a policy is effective. To do this, the negative effects of giving away visa facilitation or liberalization need to be brought forward, as well as any potential gains. Simultaneously, the positive effects of the readmission agreements need to be made clear, as well as any potential costs.

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When it comes to the political choice theory, it is important to look at how this policy choice came to be. More concretely, why was chosen for linking visa policy to readmission, as there are numerous other options on the table.

Taking into account the logic of appropriateness and according to a logic of consequentiality, we should check the first by looking into how compatible both the readmission agreements and the visa agreements are with the systems of third countries. For the latter, it can be checked whether these agreements posed opportunities for groups in the Third country to consolidate their power or pursue their interests in other ways.

When it comes to path dependency, it should be examined what the effects of previous negotiations on future negotiations are.



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It is also important to consider the possibility of the Third Country taking over the agreements as they are European policy. As the theoretical framework made clear, this works best when there is internal legitimacy, meaning that the policies are seen as legitimate and effectively implemented internally in the EU, as well as external legitimacy meaning that the policy is in line with international norms and international law.

Type of Research

Research can be conducted in different ways with different goals. This thesis will focus on several different aspects of research. First of all, it will be to a certain extent *descriptive*, as it will describe the current state of affairs when it comes to visa policy and readmission agreements. Its main body, however, will be *analytical*, as it will analyse the success, or failure, of the readmission agreements and its negotiations using existing theories. As the goal of the research question is to find out whether existing policy is effective, this thesis will be *applied or deductive* research. The subquestions focusing on the negotiations will be answered using *qualitative* research methods, as will be explained here below under the section Data Collection.

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Data Collection

Although it would have been best to examine all the effects of all EU visa and readmission agreements, timewise this is impossible. In this research, I have used a triangulate data collection approach (Doorewaard, Kil, & Van de Ven, 2016), meaning that the data was collected from several sources, such as policy documents, existing research, statistics made public by relevant agencies and interviews with stakeholders. By using several sources, they will balance one another out.

The interviews conducted were semi-structured interviews. Semi-structured interviews allow for preparing topics and set questions, while leaving the flexibility for any other relevant topics which come up (Boeije, 2014). The respondents were selected based on relevant stakeholders, as well as by snowball sampling (Bryman, 2012 p 202-203). In order for the respondents to be able to speak freely, full anonymity was promised.



Case selection

Case studies allow for the study of a certain case which will represent the whole group which is to be studied (Kumar, 2019). The simple reason for this is that it would be impossible to research all the visa facilitation and readmission agreements the EU has signed with Third Countries. For this thesis, three cases were selected to give a good overview, each having a different relationship with the EU when it comes to VFA and RA negotiations.

Based on the differences made on EU relations by Uçarer & Lavenex (2004) in the five groups of countries, two have been selected. The Western European non-EU member states as well as the newer member states in the CEE region are not relevant for this research, as they both are overwhelmingly part of Schengen themselves and thus find themselves on the EU side of these negotiations. With EU candidate countries the visa facilitation/liberalization and readmission topics are part of a much broader integration process, so it would be hard to distinguish the actual negotiations on visa and readmission from the rest.

Therefore, two countries from the EU European Neighbourhood Policy (ENP) have been selected, one in which the negotiations on visa and readmission resulted in the conclusion of these agreements, and another in which the negotiations are (so far) unsuccessful. For the first category, Azerbaijan has been used as a case. In the case of Azerbaijan, the agreements were concluded in 2013 and the agreement entered into force in September 2014. This makes the case of Azerbaijan useful to analyse, as Eurostat has collected statistics on how many Azerbaijan nationals received an order to leave EU territory and how many actually left since 2008 onwards. This way, the example of Azerbaijan allows for a comparison on the situation regarding readmission of both before and after the agreement. Making a comparison between those two and see if the ratio between the two changed before and after the agreement could tell something about the effectiveness of the Readmission Agreement. The comparisons above will provide valuable information whether the agreements had any numerical effects. However, it is possible that there were factors influencing these numbers which statistics cannot take into account. Therefore, it is important to add a qualitative component to understand what these numbers actually

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say. Mixing quantitative and qualitative research methods has the advantage that the quantitative part can explain what the situation is and the qualitative part can help understand why certain things are (Ritchie & Ormstron, 2013).

For the second one, Morocco is a well-documented example of negotiations which have long dragged onwards without conclusions (Carrera, Cassarino, El Qadim, Lahlou, & den Hertog, 2016). Therefore, Morocco is an interesting case to see why negotiating a VFA and RA did not work out and what the difference then is with Azerbaijan.

As became clear in the introduction of the new Visa Code, the EU also believes that besides negotiating Visa Facilitation Agreements in order to get Third Countries to sign Readmission Agreements, which is called the more-for-more approach, the EU should now also apply the less-for-less approach. If a country does not cooperate on readmission, visa policy can be used to sanction the Third Country, through for instance introducing higher visa fees (Guild, 2019). The EU has already made use of this approach towards Bangladesh. There is no Readmission Agreement with Bangladesh, however the EU believed that the Bangladeshi cooperation on readmission was poor enough to threaten Bangladesh with visa sanctions to move Bangladesh to become more cooperative (Peel, 2018). Therefore, the effects of the less-for-less visa policy towards Bangladesh in order to get it to cooperate on readmission will also be examined.

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Data evaluation

The evaluation of the data was done using the process of grounded theory (Bryman, 2012, pp. 564-588). Grounded theory means that through analysing the gathered data theory an answer can be formed on the research question. During the data collection analysis will already take place which affects the gathering of more data. An important part of the analysis was the coding of data, which was done axial, meaning that a set of codes already exists up front, but it altered during the data collection and evaluation. The initial codes were derived from the theoretical framework and the final coding tree is included as Annex II.



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Interviews

As this will be a deductive research, transcribing the entire interviews will not be necessary (Doorewaard, Kil, & Van de Ven, 2016). However, it will be necessary to have an orderly and useful overview of the contents of the interviews which can then be used. Doorewaard, Kil & Van de Ven (2016, p. 83) give a useful method using a table:

TIME INDICATION	TOPIC	SUMMARIZED CONTENT	RELATION THEORY	WITH	REMARKS, AND OTHERS	QUOTES POTENTIAL
TIME INTERVIEW:	DURING					
TIME INTERVIEW:	DURING					

Trustworthiness

A thesis, like any research rapport, will have to be able to answer to the criteria of a good research. Bryman (2012) describes four criteria for a qualitative research: transferability, dependability, credibility and confirmability.

Transferability means that the conclusions of a research can be used in contexts other than those exactly the same as those of the research. In other words: can conclusions be generalized? By using a sample of several negotiations and negotiated readmission treaties, the conclusions from this research can claim to answer the research question in general and not simply for these specific negotiations, although to be completely sure, all negotiations and the effects of the negotiated treaties have to be analysed.

To be a dependable research, all steps of the researcher must be traceable. The gathered data, the analysis and references must be clear. That way anyone can check what the researcher did and if it indeed leads to the conclusions drawn. By ensuring a complete list of references is present, an overview of what was discussed in the interviews and the documents used are clear the researcher can be called to answer for this. A point of conflict is that respondents are treated anonymously, which decreases the amount of auditing that can be done on the interviews. Their identity will be known to the supervisors, who can perform checks and investigate if there is any reason of doubt.



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A credible research means having a clear theoretical framework and methodological approach with which the researcher has worked towards his conclusions. By describing the used theories and methods the credibility of this research will be enhanced. Pure objective conclusions are practically impossible, but in the scientific field a different researcher which has used the same theories and methods should arrive at the same conclusions. By peer-reviewing (or in this case the review of the supervisor and second reader) they can confirm that the conclusions of this research correspond with the used theory and gathered data.



Chapter V Results

In this Chapter the results from the interviews as well as supporting documents will be discussed. This will be done case by case. After that, the trends influencing the future use of visa policy to negotiate cooperation on readmission will be discussed. The majority of the results come from the interviews with officials involved in the negotiations or implementation of the Visa Facilitation Agreements. As mentioned in the methodology chapter, the interviews were conducted on the basis of anonymity.

Azerbaijan

Negotiations

Azerbaijan is part of a region that falls under the EU Eastern Partnership (EP) program, which in turn is part of the European Neighbourhood Policy (ENP) (EEAS, 2016a). Many respondents mentioned this to help understand the relationship the EU has with Azerbaijan, which in turn influenced the negotiations on the Visa Facilitation Agreement (VFA) and Readmission Agreement (RA) (R1, R2 R3, R6). The Eastern Partnership is a broad program with the main aim to establish peace and prosperity along the EU borders in order to create a safer EU. Discussions about mobility, migration and security are thus also an important topic in the ENP for the EU (EEAS, 2016a).

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The EU has managed to negotiate a VFA and RA with most of the Eastern Partnership countries and these are generally considered very successful (R1,R10), although an important remark to be made is that the EP countries are much less transit countries than the countries in the Union for the Mediterranean, which is the counterpart of the Eastern Partnership at the EU's southern borders (EEAS, 2016a), but this will be discussed more in-depth in the section on Morocco.

What makes the VFA attractive?

A Visa Facilitation Agreement contains several factors which make it attractive for a Third Country (R1). First of all, the lowered fees and standardization (usually meaning limitation) of documents which have to be handed in for the application. As the EU is an attractive destination for tourists and businessmen alike, signing an VFA is often seen as a political (and thus potential electoral) victory for the government of a Third Country



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(R1). Aside from any political consequences, easier access to the EU is thought to be good for the economy, although on the exact economic effects of the VFA more research would need to be conducted. VFAs do make it easier for applicants to receive and Multiple Entry Visa for a longer period of time (R3, EUR-Lex, 2014), meaning that someone does not have to apply for each separate travel if he or she travels often to the EU in a short time period (up to five years). Next to these to benefits for the general populace, the VFA includes a complete visa waiver for the holders of diplomatic and service passports. For the holders of these passports (government officials and to a certain extent their families) this makes travel to the EU territory much easier and if thus a very attractive clause for the government to conclude such an agreement (R1).

“The possibility of a simplified visa application procedure is positively perceived both by public officials and by ordinary citizens of the country, despite the fact that this agreement is likely to directly touch upon a relatively small number of Azeri citizens.” (Rumyansev, 2013).

With Azerbaijan the negotiations on the VFA and RA started with a meeting in Prague in which the Eastern Neighbourhood Policy was born. For Azerbaijan this meant that first a VFA and RA would be negotiated. After that, a roadmap would be drafted with conditions Azerbaijan needs to meet in order to get visa liberalization (Moreno-Lax, 2017). For Azerbaijan and other Eastern Partnership countries the lure of visa liberalization was included, although this is not the case with the ENP countries of the Union of the Mediterranean. One of the reasons for this is that the Eastern Partnership countries are, both geographically and politically, in between the EU and Russia and also base their choices on this. They have both opportunities in EU and Russia. If they choose the EU, there needs to be something substantial in it for them. At the same time, the EU also has an interest in closer relations with these countries as it creates peace and tranquillity on the EUs external borders. Although Azerbaijan also keeps close relations with Russia and has not made great progress towards visa liberalization yet, this is considered to have played an important role (R6).

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Why were the negotiations a success?

As can be read above, the VFA contained some serious boons for the Azerbaijani population and the elite. Simultaneously, both the EU and Azerbaijan had an interest in general deeper relations. This set the stage for a good start of the negotiations in which both parties had a desire to get them concluded (R4, R6, R10).

However, another important factor for the success of these negotiations was that the stakes on the RA for Azerbaijan were not very high. The EU countries issued about 1.300 return order to Azerbaijani nationals a year from 2009-2014 EU wide (Eurostat, 2019a), which can be considered a small number. Simultaneously it is important to notice that Azerbaijan is not considered a transit country for other nationals or stateless persons, so the costs for the Azerbaijani to include the TCN clause in the RA was relatively small (R7, R8).

Enforcement of the agreement

As with all international agreements, the question of enforcement remains a challenging one. There are few mechanisms to force a sovereign other state to live up to the agreement. All kind of factors can play a role and often do, such as claiming administrative capacity and that actual implementation is time consuming (R6). At other times, conflicting national legislation is used as an excuse against effective implementation of the agreement. This argument is sometimes also used during the negotiations, although all parties involved know that international agreements trump domestic legislation (R1).

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To ensure that Third Countries actually carry out what was concluded in the RA, the EU created a legal link to the VFA (R1, EUR-Lex, 2014). The one only enters into force simultaneously with the other and if the RA is not carried out effectively, the VFA can be suspended. In the case of Azerbaijan (EUR-Lex, 2014), Article 14 sub 2 of the Visa Facilitation Agreement states that *“(...) this Agreement shall only enter into force on the date of the entry into force of the Agreement between the European Union and the Republic of Azerbaijan on readmission.”* The EU also made it very clear in her announcement on the agreements that they were linked: *“The two agreements will enter into force once both Parties complete their internal ratification procedures. This involves, on the EU side, the European Parliament which will have to give its consent. Most likely both agreements will*



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enter into force in the second half of 2014, which means that Azerbaijanis will be able to travel more easily to the EU in a safe and secure environment, while the efforts to clamp down on irregular migration will be maintained” (Delegation of the European Union to Azerbaijan, 2014).

Another way to enforce the implementation of the agreement on readmission is through a joint committee which supervises the processes and meets at least once a year to discuss outstanding matters (R1, R6 & EUR-Lex, 2014a). Article 19 sub 2 of the Readmission Agreement with Azerbaijan (EUR-Lex, 2014a) also states that the decisions of this committee is binding on the EU and Azerbaijan, although carrying out such a decision remains dependant on the will of the EU and Azerbaijan. Also, the committee is made up of officials of both the EU and Azerbaijan, so if there is a stalemate, the EU will not be able to force a choice.

That being said, in most of the cases where such a committee operates most outstanding issues are resolved and the experiences with it are positive (R1). This is also the case for Azerbaijan, where the committee meets at least once a year to discuss everything from data and statistics to specific cases which have yet to be resolved (R2).

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The Tit-for-Tat VFA and RA with Azerbaijan works well according to the Commission and EU Member States (R2). With Azerbaijan this also has to do with its general EU relationship, as Azerbaijan benefits a lot from the Eastern Partnership. This means there is a good relationship with the EU with continuous leverage. Continuous leverage is necessary for a successful readmission cooperation, otherwise a country will just sign the RA and then not cooperate in practice (this is more or less the case with Pakistan with which the EU signed a MoU on readmission which the Pakistani then do not actually really implement) (R2).

When asked whether the EU makes full use of the possibilities to enforce cooperation on readmission by Third Countries, it is by some respondents mentioned that the EU could do more. First of all, by linking cooperation on readmission on other policy areas such as trade and development aid (R4), which would allow the EU to make use of its considerable economic force changing the balance of power in the negotiations. Another option is using



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the bad cop approach: if a VFA is not enough to ensure proper cooperation on readmission (or the EU is not willing to offer one), then perhaps sanctions on visa might work (R4). The sanctioning on visa will be discussed more in-depth in the section on Bangladesh.

Readmission

As mentioned in the previous section, both the EU and the Member States report good cooperation on readmission by Azerbaijan. However, it is important to see if the agreement has actual added value. First of all, this is because there already is an international obligation to take back one's own nationals under international common law (R2). However, in practice many states will claim to live up to it, but not actually execute this policy. This can be done numerous ways, from claiming administrative problems to bluntly not responding to requests by other states.

Whether a country which signed a RA actually applies it differs per country. Russia, the first to conclude the VFA and RA agreements under this scheme, took it quite literally and used the RA as their way of operating. With some countries there did not change anything after the RA was signed. Whether a country actually applied the RA depends mostly on if they got something in return. Also, it is important to keep in mind that with different countries there is a different playground. With some countries there was no cooperation whatsoever and the RA was a starting point. With other countries there already was a certain level of cooperation and the RA was the next step. And with others there was already decent cooperation and the RA was more a formalization (R4).

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Bilateral ties are also very important when it comes to readmission. This can make things very complicated on an EU level as a Third Country might cooperate with one MS and not with another. Sometimes these relations are historical, such as with former colonial relations, but some MS invest in those relations. For instance, the Southern MS are more lenient when allowing seasonal workers in which can give them better relations with the Third Country, while the economic setup of the economies in the northern Member States does not allow for such a scheme. This can create the situation that a Third Country is more cooperative with one MS while being uncooperative with another MS (R4). But



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when talking about Azerbaijan, the respondents could not mention whether this is the case.

From 2009 onwards, Eurostat reported that the amount of Azerbaijani which received an order to leave hovers around 1.300 with the exception of 2017. The numbers of Azerbaijani receiving a return order is overall quite small (R10).

Third country nationals ordered to leave - annual data (rounded)

Last update: 04.06.19

Source of data: Eurostat

UNIT: Person **CITIZEN:** Azerbaijan **AGE:** Total **SEX:** Total

	TIME	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
GEO											
European Union - 28 countries		1,130	1,260	1,295	1,330	1,485	1,235	1,090	1,235	2,140	1,580

1 (Eurostat, 2019a)

Similarly, Eurostat also recorded the number of Azerbaijani who left under the readmission mechanism. There seems to have been a serious increase since 2016, two years after the agreement entered into force.

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Third country nationals returned following an order to leave - annual data (rounded)

[migr_eirtn]

Last update: 04.06.19

Source of data: Eurostat

UNIT: Person **CITIZEN:** Azerbaijan **INDIC_MG:** Total number of persons returned **AGE:** Total **SEX:** Total

	TIME	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
GEO											
European Union - 28 countries		505	455	490	540	535	520	485	630	1,145	1,470

2 (Eurostat, 2019b)



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The numbers in the above-mentioned statistics give the return ratio as shown in the graph below. The return ratio would argue an increased return rate to Azerbaijan after the introduction of the Readmission Agreement.

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
<i>Azerbaijani who received a return order</i>	1130	1260	1295	1330	1485	1235	1090	1235	2140	1580
<i>Azerbaijani who were returned</i>	505	455	490	540	535	520	485	630	1145	1470
<i>Percentage of successful returns</i>	44,69%	36,11%	37,84%	40,60%	36,03%	42,11%	44,50%	51,01%	53,50%	93,04%

Although these numbers support the idea that the Readmission Agreement had serious effects, the reliability of these numbers is a matter of discussion. It requires the Member States to deliver these numbers on a consequent basis, but all Member States have their own registration systems. According to a Commission official (R2), the numbers of 2018 are incorrect due to the fact that a certain Member State started recording the wrong data.

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On the other hand, not all the benefits from the RA will be included in the numbers. Sometimes, one of the great benefits from the RA is that the implementing agencies establish better contacts, as well as the EU and the Third Country in general. This can lead to increased readmission which takes place outside of the official scope of the agreement. Respondents report examples such as where an EU Member State reaches out to the Azerbaijani Embassy with the request for returning a specific person and the Ambassador issues travel papers without actually making use of the readmission scheme and thus registering it as such (R2, R4). Another remark to be made is that Eurostat records the number of Azerbaijani nationals returned to Azerbaijan. The Third Country Nationals, who have neither EU nor Azerbaijani nationality, as well as the Stateless persons who were returned under the Readmission Agreement are not recorded in these numbers. On the effectiveness of the Readmission Agreement on these groups we will thus have to rely fully on the statements made by the respondents. Although the successful recording of the return of those illegally residing in the EU should be recorded better, the numbers from Eurostat at least provide a rough image (R4). Aside from some practical complications



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with Azerbaijan, such as what to do with nationals coming from disputed territory both claimed by Azerbaijan and Armenia (R10), the Readmission Agreement is claimed to be a success by all the respondents.

Other notes

Although the RA seems to be a success, it is important to check what the costs (monetary or otherwise) are for the EU. For instance, easier access to EU visa could lead to more people managing to acquire a visa who you otherwise would have refused with a more thorough investigation. However, none of the respondents mentioned signs of this when asked. This is a different story for countries which received visa liberalization (R1), but that is outside the scope of this thesis.

Additionally, the Visa Facilitation Agreement causes a loss of income for the EU MS, as the fees are generally considerably lower under a VFA than the regular fees. For example, under the current Visa Code the fee for a Schengen visa is €60 and under the recently adopted revision this will increase to €80, but the VFA with Azerbaijan limits the visa fee to €35.



Bangladesh

As mentioned in the methodology chapter, Bangladesh does not have a VFA or RA, nor is it negotiating either with the EU. Bangladesh was under pressure from the EU to cooperate better on readmission than it did, so negotiations took place on an agreement between Bangladesh and the EU on readmission. The Readmission Agreements which were discussed up till now were official treaties, binding on both parties under international law. The agreement with Bangladesh was an unofficial agreement called a Standard Operation Procedures (SOP) agreement, which is much smaller and not legally binding (R1, R2). Negotiations on the SOP had been ongoing for some time, but at some point, they got stuck which caused frustration with the EU (R1, R2).

Negotiations

A major difference in negotiating on readmission with Bangladesh as opposed to Azerbaijan was that for the Bangladeshi there was not a simultaneous negotiation on visa facilitation ongoing. In other words, although the EU expected better cooperation on readmission, there was no “carrot” on the table for Bangladesh. When at some point the negotiations got stuck, something had to be invented to restart them. The Bangladeshi had no urge to restart the negotiation. Since the EU was not willing to offer a VFA, so it came up with another option to get negotiations restarted.

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One of the disadvantages of doing negotiations as the EU, in which the Commission reports to the MS during the negotiation, is that always everything leaks (R5). This can be extremely detrimental during negotiations as the Third Country will know exactly what the EUs negotiation position is. However, one of the few advantages is that in the case with Bangladesh, the fact that the possible sanctions were talked about was known to Bangladesh even without any formal agreement within the EU on those sanctions. Thus, without making any formal threats, it already had the effect to get Bangladesh back to the negotiation table (R5). Between the MS there had been long discussions whether this ‘less-for-less’ approach would be effective. The benefit of the abovementioned happening was that there had been a first time and that is worked. This makes it easier for using this mechanism in the future (R5).



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After the threats reached Bangladesh, they knew quite clear what would await them if they did not sign the SOP agreement. The threats on the visa sanctions are believed to have brought Bangladesh back to the table and sign the agreement (R1, R2).

Bangladesh was not the first country on the list of countries on which the EU MS were considering experimenting with the visa sanctions, also known as the less-for-less approach. Bangladesh was not chosen because it was the most pressing country with whom the EU had the biggest problem of irregular migrants, but because it was the country with whom the EU Member States had the least direct bilateral interest. This allowed for reaching consensus on applying the sanctions, consensus that could not be reached for countries with whom there is a bigger issue regarding irregular migrants but have special ties to one or more Member States (R4, R5, R8). Before the EU reached the conclusion to use less-for-less on Bangladesh, there were lengthy discussions between the Member States on whether this would be an effective mechanism. Those discussions also included the question whether the sanctions should be limited to visa or expanded to other areas as well. Aside from that, the MS discussed when sanctions would be applied, so when was a country not cooperating enough. This is a tedious question as a Third Country like Bangladesh might be very cooperative with one EU MS and not very cooperative with another.

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Implementation

Although it seems the threats on visa made by the EU brought Bangladesh back to the negotiation table and sign the SOP agreement, the actual implementation is a more disputed story. Some respondents report an improve in cooperation (R10), while according to others, the agreement signed with Bangladesh did not change very much (R1, R2). This can be contributed to several possible factors. First of all, whether a country actually implements an agreement depends on what it got in return. If it does not get anything in return for signing the agreement and cooperating more, there is little incentive to actually invest in implementing the agreement. For implementation, it is necessary to have continuous leverage on a Third Country (R2). Although the EU could keep on threatening with visa sanctions, this does not create a healthy relationship to keep discussion ongoing between the EU and Bangladesh.



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The question of implementation is also not necessarily one of Bangladesh being unwilling to implement the SOP agreement. Bangladesh is still a developing country whose administrative capacity cannot be compared to for instance European countries. So even if there is political will to implement the agreement, the question is whether they have the administrative capacity (R2). The diplomats and high-ranking government officials negotiating these agreements are not the same as the executing agents. Quite often, these executive agencies miss the skills and capacity to implement these agreements (R4). In the past, agreements on readmission, both treaties and SOP agreements, included a capacity building project to help the Third Country in how to deal with EU MS which were filing readmission requests. This is longer the case however (R4).

Effects of less-for-less

The less-for-less approach might help in cases like Bangladesh where the EU only needs to threaten a country and it will adapt its behaviour (R4). This is because the idea behind less-for-less is that either the Third Country starts cooperating or the EU introduces visa sanctions. But in general, the countries with which the EU has serious problems on irregular migration are not the countries from which the EU receives visa applying tourists, but mostly the elite and the businessmen (R3). This line of reasoning has been laid down with in the preamble of the new Visa Code which was adopted last June: *“the flexible approach first targeting the government officials of the country concerned or the general population is the most appropriate and proportionate approach and will entail the least negative consequences for travelling, economic sectors and the EU’s standing and reputation.”* Only if the sanctions targeting the government officials, who usually have diplomatic or service passports, remain without effect the EU will move to sanction the holders of ordinary passports.

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The idea is that the sanctions targets the people that have influence as an incentive to move them to pressure their government to amend its behaviour. But the EU and the MS also gain from these travellers, so using these sanctions can actually hurt the EU itself (R3). Simultaneously, the countries from which irregular migrants originate often have weak economies and prospects for its citizens. By using sanctions, the EU might hurt the economy of those countries even more, risking an increase in irregular migration (R6).



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Morocco

Negotiations

Like Azerbaijan, Morocco is part of the ENP. Morocco is not part of the Eastern Partnership, but part of the EU's southern border region: The Union of the Mediterranean (UfM) (EEAS, 2016b). One important difference in negotiations with the UfM contrary to the Eastern Partnership is that the EU is not willing to offer the UfM countries a prospect to visa liberalization in the long run. This makes the Northern African countries wonder why they cannot have the same deal as the countries on the EU's eastern border (R1).

The European Commission has had a mandate for negotiations with Morocco on readmission since around 2000 (European Commission, 2002b). As no agreement seems close, it could be argued that negotiations have been tough. Much tougher than the negotiations with Azerbaijan which only took a few years to conclude and enter into force. Since around 2012 the EU tried the new approach towards Morocco with including a VFA to bring the negotiations back to life (R1). But so far, there have been no reports on serious progress. In the past few years, Morocco often mentioned other disputes with the EU on topics of trade, agriculture and fisheries as a reason why negotiations on the VFA and RA were frozen, although those were often regarded as excuses (R1).

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The *“rappel de force”* with Morocco is very different from the one the EU has with Azerbaijan. With Azerbaijan, there were two parties interested in concluding the agreements as they both saw the benefits in finalizing them and the costs for both parties were foreseeable and limited. With Morocco, the situation is quite different. This has to do with several factors. First of all, this has to do with the possible gains Morocco can get with the VFA. Moroccans, like Azerbaijani, can profit from the reduced tariffs in the VFA as well as the easier processes for application. But an EU visa waiver for the holders of diplomatic and service passports, something which is attractive especially for the elite of the country, is something which the Moroccan government has little to gain from. EU member states retain the competence to negotiate this visa waiver as long as the EU has not concluded negotiations. For a large number of EU countries, Morocco already has this visa waiver, thus the EU agreement would offer little extra in this regard (R2, R7).



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Secondly, also the stakes when it comes to readmission are quite different for two reasons. First of all, the numbers are quite different. Where there are about 1.300 Azerbaijani a year who received an order to leave the EU, the following figure from Eurostat gives a quite different image for Morocco:

Third country nationals ordered to leave - annual data (rounded)

[migr_eiord]

Last update: 04.06.19

Source of data: Eurostat

UNIT: Person **CITIZEN:** Morocco **AGE:** Total **SEX:** Total

TIME	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
GEO										
European Union - 28 countries	41,945	37,185	37,555	35,510	29,225	32,825	31,810	34,170	34,330	33,460

3 (Eurostat, 2019a)

As can be seen, the numbers for Morocco are over 25 times that of Azerbaijan. But when looking at the numbers of Moroccans who actually returned to Morocco then these are also significantly higher.

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Third country nationals returned following an order to leave - annual data (rounded)

[migr_eirtn]

Last update: 04.06.19

Source of data: Eurostat

UNIT: Person **CITIZEN:** Morocco **INDIC_MG:** Total number of persons returned **AGE:** Total **SEX:** Total

TIME	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
GEO										
European Union - 28 countries	15,370	14,495	14,085	14,385	12,825	11,080	10,225	11,110	11,410	11,980

4 (Eurostat, 2019b)

However, it could very well be that those Moroccans that the Moroccan government readmitted were from a few select MS with whom Morocco has good relations while there are hardly any from other MS.



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Considering the numbers above, the average return rate of Moroccans is roughly speaking about 10% lower than the Azerbaijani before the readmission agreement with Azerbaijan was signed.

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Moroccans who received a return order	41945	37185	37555	35510	29225	32825	31810	34170	34330	33460
Moroccans who were returned	15370	14495	14085	14385	12825	11080	10225	11110	11410	11980
Percentage of successful returns	36,64%	38,98%	37,50%	40,51%	43,88%	33,75%	32,14%	32,51%	33,24%	35,80%

Both in absolute and relative numbers, the stakes with Morocco are much higher than during the negotiations with Azerbaijan. For quite some Member States, the cooperation on return policy is currently considered very poor (R10). For Morocco, cooperating on readmitting these people can have high financial costs. The Moroccans residing in Europe (whether legal or illegal) are a source of income for Morocco, so it benefits financially if these people stay in Europe. Simultaneously, the people who the EU wants to return to Morocco may concern those requiring financial support after their readmission. Moreover, among those to be removed are Moroccan citizens that have resided in EU member states for long periods. As a result, their reintegration into Moroccan socio-economic life is not always straightforward (Carrera, Cassarino, El Qadim, Lahlou, & den Hertog, 2016).

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As with Azerbaijan, these numbers do not include any possible Third Country Nationals which were send to Morocco. For Morocco, the clause in the Readmission Agreement which states that any Third Country National who travelled through Morocco to the EU, or who is otherwise linked to Morocco (for instance someone who received a work permit in Morocco in the past) is to be readmitted by the Moroccan government. For Morocco, the costs of agreeing to this and actually implementing it would be high, as Morocco is a major transit country for irregular migrants from sub-Saharan Africa. If the EU can prove that these people came to the EU through Morocco, the EU would be able to send them to Morocco if the country of origin does not cooperate on readmission (R1, R2, R3, R4, R7,



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R8). Aside from the practical and monetary costs, Morocco has over the past decade made efforts to rekindle its relationship with the sub-Saharan countries, most notably those in West-Africa. If they would be accepting the irregular sub-Saharan migrants from the EU, the relationship between Morocco and these countries would come under pressure as Morocco seeks to return those people to their country of origin (Carrera, Cassarino, El Qadim, Lahlou, & den Hertog, 2016). Readmission of their nationals is a highly sensitive issue for African countries. Migration in African cultures is often rooted in society: the journey abroad is seen as a way to mature and is often the only way to leave the parental home. In addition, families and local communities at home are dependent on the remittances. Often, this is combined with a small or weak local economy that is not able to create jobs in parallel with the rapid demographic growth (Tiekstra & Zweers, 2018).

Aside from the decreased benefits Morocco gains from a VFA and its increased costs from the RA, there is another important factor which has influenced the relationship between Morocco and the EU and will continue to influence it. More so than countries like Azerbaijan or Bangladesh, Morocco has close bilateral ties with EU Member States and knows how to use these ties in the negotiations. More specifically, Morocco closely cooperates and has agreements with Spain on the control of the Spanish Moroccan borders and to fight irregular migration. For the Moroccans, these agreements with Spain, and to a certain extent a similar agreement with France, work well enough so they do not see the need to negotiate an EU wide readmission agreement (R1, R2, R4, R5, R8). Morocco cooperates well on the return of irregular migrants with Spain, but hardly any other EU country (R10). Also, for Morocco there is no pressure to make a conclusion on whether or not to finalize these agreements as there was with Azerbaijan (R4, R6).

Finally, Morocco already is an important partner for the EU when it comes to combatting irregular migration, for instance in border control by Morocco. Not only on controlling its own borders with other countries to prevent irregular migrants from entering Morocco, but also the borders between the EU and Morocco (R2).

How to move negotiations forward?

With the new Visa Code, the EU can apply sanctions on countries if they do not cooperate on readmission, as well as general higher fees for applicants. This increases the pressure



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on Morocco to conclude a VFA, as the costs and complications for obtaining a visa increase (R2, R3). In negotiations it is important that MS are aligned and are consistent. If the MS are not aligned or have double agenda, then the Third Country can play them out against one another. This is something Morocco is very good at, giving it a strong position in negotiations (R2, R4, R5). Morocco also wants a deeper cooperation with the EU than just a VFA and RA. It has done several attempts to become a candidate for EU membership, although those were all refused (R2, R4). To move negotiations forward, these things have to be taken into consideration.

Sanctions on Morocco?

Although the relationship with Bangladesh is important for the EUMS, less-for-less is a viable threat towards Bangladesh. This is not the case for Morocco, as Morocco has a very different 'rapport de force' as a strong country with significant economic importance as well as an important partner for the EU in migration and security (R2, R6). Sanctioning Morocco is therefore a threat the EU is unlikely to make. First of all because the EU knows that Spain and France, which have close bilateral ties with Morocco, will object in applying those sanctions (R7). Spain already had great difficulties with threatening sanctions against Bangladesh, because it was afraid that it maybe could than later be used against Morocco (R5). And although in theory those countries could be outvoted in this procedure, as it happens under QMV, this is unlikely due to the culture of decision-making in the Council (R6). Even if the EU introduces visa sanctions on Morocco, Morocco might stop with the cooperation on border control it currently has with the EU. By doing this, the costs for sanctioning Morocco would supersede the costs for Morocco not cooperating more on readmission (R2).

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Other options

Aside from sanctions, another option is to increase the offer for Morocco. Many respondents reported that in general, the limited gains from the VFA are when considering the large costs for the RA simply not enough. Another often heard argument is that Morocco would like a deeper relation with the EU. One option would be to include an agreement on legal migration with Morocco (R6). This would create a legal flow of money from the EU to Morocco which could compensate the loss of income for Morocco



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when it takes back those illegally working in the EU. Another option would be to remove the TCN clause, however by removing it for Morocco other countries are also less likely to agree with this clause in the future (R4).

Other notes

Another important difference between the negotiations with Azerbaijan and Morocco is that for Azerbaijan and other countries in the Eastern Partnership the VFA is the steppingstone to roadmap to visa liberalisation. In order to make sure visa liberalisation would not have too many unwanted side effects, for instance that the Third Country all of a sudden stopped cooperating, or to have a tool to intervene if serious unwanted effects would happen because of the visa liberalization, the MS developed a 'suspension mechanism'. This would allow the MS to suspend the visa liberalization for a time without having to go through the entire legislative procedure. Morocco is a country where there are still many people with the desire to move to Europe. If Morocco would become visa free, quite soon MS would have to make use of the suspension mechanism because of the negative side effects which are likely to occur. So even if Morocco would be offered the prospect of visa liberalization, it would be unlikely to actually be implemented. Morocco is aware of this situation, making the visa liberalization prospect not a serious lure (R6).

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Member States also do not have the operational capacity to return all irregular migrants under a potential Readmission Agreement. Even if Morocco would be willing to receive them, the Member States do not have the capacity to send them all back. Publicly, Morocco is blamed for the lack of successful returns of Moroccans. However, even if Morocco would be fully cooperative, the EU MS would not be able to make the readmission towards Morocco a complete success. Morocco is afraid that this will happen and that it will still be blamed for the lack of successful readmission. In other words, even if they were to cooperate Morocco fears it will never be enough (R8).



Future of VFA & RA

“Article 25a – Cooperation on readmission”. This is not an article in a migration regulation or even a Visa Facilitation Agreement, but the new Article 25a in the recently adopted Visa Code. In Article 25a, the Commission receives a permanent mandate from the Member States to assess whether Third Countries cooperate on readmission. If Member States report that a Third Country does not cooperate, the Commission has to investigate and report to the Member States. And if the conclusion is that the Third Country does not cooperate (enough) on readmission, the EU can issue sanctions.

This link with readmission in the new Visa Code (EUR-Lex, 2019) and how it will play out will have an important influence in the future use of VFA and RA. Some argue it will strengthen these negotiations, as there now is a permanent stick while the carrot of the VFA is also still there (R2). Others argue that since the new Visa Code includes a permanent mandate to give positive visa incentives to countries cooperating well on readmission, the VFA and RA negotiations as they are done now will be superfluous (R1, R4). But this is assuming that the Commission will keep offering the same style VFA agreements in the future (R6).

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The success of the current Readmission Agreements in combination with the Visa Facilitation Agreements will also have a big impact on potential future negotiations (R1). The difficult thing with this is that the statistics needed to make a good analysis do not exist yet, although Eurostat is improving the collection of data on this topic (R4).

Another question to be asked is whether readmission and visa will stay an exclusive link. Both visa and readmission are considered to be migration policies. Some respondents argue that the EU should integrate readmission also in other policy areas, such as trade and development aid. Otherwise, Third Countries will never cooperate enough on readmission is the feeling (R3, R8, R9). But there are others who argue against this (R1). By for instance sanctioning on trade or development aid, the economies of those countries would suffer and the EU would thus create more reason for people from those countries to migrate to Europe. If a country develops there is less reason for those people to migrate to Europe (R6).



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Another important factor on the continuous use of VFA and RA agreements is the dwindling number of countries for whom VFA is a logical choice as a policy tool. Sub-Saharan countries, from whom there is a large flow of irregular migration, are believed to be unsuitable to offer a VFA as the refusal rates in those countries are as high as up to over 50% (R1, R2). It would still be possible to offer those countries more limited VFAs with for instance just lowered fees (R6), but this would also limit the attractiveness of the VFA for those countries. With the countries on the Eastern borders of Europe, the VFA and RA agreements have been concluded already with almost all. For countries in Central Asia, there is little to no irregular migration, taking away the motive for the EU to negotiate a Readmission Agreement (R1, R3). Countries with whom these negotiations would be very interesting for the EU would be China and India, but the sheer size of these countries (each over twice the size in population compared to the EU) gives these negotiations their own dynamic (R1).

Then there is the question of the use of the less-for-less approach. As the case with Bangladesh shows, it can be an effective tool. Although the case with Bangladesh also shows that using it is extremely difficult, as often bilateral ties with Member States will have major influences on the use of visa sanctions. And when you look at the countries with high number of illegal migrants, there is often a MS which has important bilateral ties (R6).

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Summary of the Results

Looking at the results from the cases and at the theory, there are several interesting conclusions to be drawn. First of all, when looking at whether a VFA is a suitable policy tool to negotiate a successful readmission agreement, this depends on several different factors. First of all, with each negotiation there is a different cost benefit analysis. When we look at the negotiations with Azerbaijan, the VFA was quite enticing while the costs for the RA were limited. For Azerbaijan the cost-benefit analysis led to a positive view towards the trade-off. For Morocco, this balance in costs and benefits tilted the other way, causing Morocco to look negatively towards the agreements. In Bangladesh, the absence of any potential gain also limited their level of willingness during negotiation. As mentioned in the theory, momentum is important in negotiations. Azerbaijan was under pressure to negotiate the Agreements with the EU and saw great benefits. Thus, in a short period of time many negotiation round took place which led to a swift conclusion. Morocco feels no pressure and the costs for delaying the negotiations are almost none. Thus, momentum is low and hardly any negotiations are taking place. With Bangladesh, the momentum quickly returned after the threats on visa were made, bringing Bangladesh back to the negotiation table.

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From EU side, the trade-off appears a beneficial one, as there are hardly negative effects from the VFA. The EU therefore has little costs using this construction, although this could be different if the EU would also offer it to countries which have a higher migratory risk. Simultaneously, the decision-making process in the EU also has serious consequences on the potential of negotiations. The layered decision-making structure in which the Member States have a large influence on the outcome will seriously cripple the negotiation position of the Commission if certain MS have their own agenda. These EU domestic influences are one of the most detrimental ones on the EU negotiation position.

The VFA in Third Countries often seen as a political win, raising support for the governing faction. Following the logic of consequentiality this raises the lure of the VFA. The RA however opposes both the logic of consequentiality as well as the logic of appropriateness, as it often does not fit in the system of the Third Country, as well as claiming funds and administrative capacity that is sometimes already stretched too thin.



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However, this is the core reason why the EU offers the VFA along with demanding the RA. Path dependency is an important influence to keep in consideration. Giving the Eastern Partnership countries the prospect of visa liberalization raised expectations from the EU's Southern ENP countries. The inclusion of the TCN clause, forcing the country with whom the EU is negotiating to take back people who are not their nationals is, unlike the obligation to take back their own nationals, not part of international law and causes a large amount of resentment against the RA for the countries with whom the EU is negotiating. But having included it in previous RA, if the EU now backs down and takes it out of the agreement with Morocco, others which have previously accepted the clause might redraw their support for this clause, let alone negotiate the clause with other countries after it was already taken out for Morocco when negotiations were still ongoing. This way, the path that the EU chose in negotiations in the past limits its options in the present.

As became clear with the Morocco case, a disunited EU is a weakened negotiator. Bilateral ties between a Third Country and one Member State can undermine the position of the Commission as a negotiator. Nevertheless, all things considered the EU is the most suitable actor to negotiate these agreements. When it comes to having consistent policies, a diplomatic apparatus and the resources and policy instruments to negotiate, the same could be said for all the Member States. But the EU, negotiating on behalf of total of MS has a great deal more 'hard power' than any of the Member States through sheer economic power. This counts especially for the middle sized or smaller Member States, as a country like Morocco will feel less enticed to give in to the demands to for instance Sweden than to the demands of the Commission simply because the EU has more to offer. But the use of EU hard power, especially its economic power, is currently quite limited. Using economic sanctions is a policy minefield as it might invoke a negative reaction from the Third Country who becomes even less likely to cooperate while at the same time it could undermine their economy increasing the incentive for people to seek their fortune in Europe thus increasing flow of irregular migration. The decision-making process in the EU does weaken its negotiation position. The negotiation position of the EU often leaks, and Member States often put their own interests over the general interests. If Member States do not like a certain point they can easily veto it. Even if they technically could be

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outvoted, other MS are unlikely to do this because next time it could be them being outvoted.

As mentioned often by respondents, the special bilateral ties between a Third Country and a Member State can undermine the EU in negotiation. One could argue that it is than perhaps better to let the MS use their soft power to negotiate and make use of this special relation. This might play out well for a few Member States in set cases, but overall the EU MS would come out of those negotiations with less. If like with Morocco there would then be one or two EU MS which would benefit greatly from such an agreement and the rest not at all because they lack those special ties, it would turn out to be worse than a zero-sum-game.



Chapter VI Conclusions & Recommendations

Using visa in order to get Third Countries to be more cooperative on readmission has many success stories. In the Eastern Partnership region of the EU, the EU has managed to conclude Visa Facilitation Agreements and Readmission Agreements with almost all countries. There are no reports of negative side effects for the EU from the VFA and Member States experience better cooperation on readmission of irregular migrants by Third Countries which have signed such a Readmission Agreement. Also using Visa Policy in a different way, by threatening Bangladesh with visa sanctions, was a success.

However, the countries with which the EU Member States have the most problems with irregular migrants are more reluctant to sign these Readmission Agreements in exchange for a Visa Facilitation Agreement. For them, the stakes are much higher and they feel little pressure to bow to EU demands. At the same time, these countries often have special bilateral relations with the EU Member States and these countries know how to use them to frustrate the EU negotiation position. Thus, sanctions like with Bangladesh are much more unlikely.

With the adoption of the new Visa Code, the European Commission now has the mandate to permanently keep an eye on Third Countries when it comes to readmission. The new Visa Code also included guidelines to make use of visa as a sanctioning mechanism. With this introduction, the question is whether Visa Facilitation Agreements will keep on being used. The agreements which have been concluded are considered a success, but the use of Visa Policy to enforce cooperation on readmission is likely to change the coming years.

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Recommendations

There are several options the EU can use to make Third Countries more cooperative in readmitting irregular migrants. First of all, the visa sanctions can, if used properly, move countries back to the negotiation table. The EU will then have to consider any potential retributions from the country it targets with the sanctions. Aside from that, any threats must be viable, as a country which knows that the EU is just bluffing will not be impressed by any sanctions. Even if the EU is limited to visa policy when sanctioning, the Third Country is not and might include other retributions. When the EU uses the visa sanction stick, it is also important to also offer a carrot, thus making it all the more enticing to return to the negotiating table.

Another important recommendation is making the readmission policy more integrally intertwined with other policy fields. Trade and development aid can be good examples, but others include agriculture or capacity building by the EU and its Member States. While threats on cutting development aid or trade sanctions can get a governments attention, these are likely to incur a negative response of the Third Country on a whole range of other fields, as well as increasing the motive for irregular migrants to leave their home country.

The potential of positive use of these instruments should not be underestimated. By promising development aid or capacity building in return for better cooperation on readmission, the EU can make use of its economic overweight in a positive way. If the development aid is used properly and in a consistent way, it can create economic opportunities for countries which are now often the origin countries of irregular migrants thus decreasing the incentive for irregular migration. The development aid or state-to-state on the ground support (not necessarily monetary support) can also be used for capacity building in the countries of origin. Not always is a lack of cooperation on readmission the lack of effort by the country of origin, partially it is a lack of administrative capacity. By supporting those countries, the EU and the MS in the end also help themselves.

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Chapter VII Discussion

This research has given a clearer image of the EUs policy on negotiating Visa Facilitation Agreements and Readmission Agreements, as well as delving into the success of Readmission Agreements. That being said, there still is room for further research to improve knowledge on this topic. First of all, this thesis was conducted as a case study and while Azerbaijan is a good example for the Easter Partnership countries and Morocco for the Norther African region, the generalization to negotiations with countries like China, India and for instance any potential South-East Asian countries is limited, although this thesis could be used as a starting point for those countries. Another limitation which has to be recognized is that although statistics have been used to support the qualitative angle of this thesis, the use of hard numbers is still limited. Eurostat is increasing its quality of data slowly but surely, so a quantative analysis on the success of readmission agreements would be a valuable follow-up research in a few years.



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Annexes

Annex I List of Abbreviations

CEE	Central and Eastern Europe
Council	The Council of the European Union
EC	European Commission
ECJ	European Court of Justice
ENP	European Neighbourhood Policy
EP	European Parliament
EU	European Union
MS	Member State
OLP	Ordinary Legislative Procedure
RA	Readmission Agreement
SOP	Standard Operating Procedures
TC	Third Country
TCN	Third Country National
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
QMV	Qualified Majority Voting
UfM	Union for the Mediterranean
VFA	Visa Facilitation Agreement



Annex II Coding Tree

Research Question

Negotiations

Readmission

Scenario Study

General attractiveness of VFA

Azerbaijan

Morocco

Bangladesh

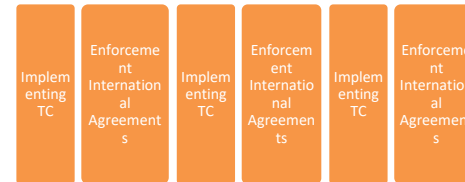
General unattractiveness of RA

Azerbaijan

Morocco

Bangladesh

Trends



Annex III List of Respondents (Anonymised)

Respondent 1 (R1): Commission Official on Visa

Respondent 2 (R2): Commission Official on Migration

Respondent 3 (R3): Council Secretariat Official; former Commission Official

Respondent 4 (R4): Member State Senior Official on Migration; formerly worked for the Commission

Respondent 5 (R5): Member State Senior Diplomat on Migration

Respondent 6 (R6): Member State Senior Policy Official in Foreign Affairs

Respondent 7 (R7): Member State Senior Policy Official in Foreign Affairs

Respondent 8 (R8): Member State Strategic Advisor on Migration

Respondent 9 (R9): Member State Senior Policy Official on Migration

Respondent 10 (R10): 2 Member State Senior Advisors on Repatriation