

Chapter 4

EURAs Compared

How do the EURAs deal with the identity determination dilemmas? This chapter provides a comparative assessment of the procedures and administrative rules envisaged by six EURAs as regards the identity determination of nationals to be readmitted. How do the EURAs envisage the ways in which the nationality of the person involved is to be determined and what are the main means of evidence? The EURA with Pakistan is taken as the basis of comparison with the five EURAs that have been concluded since 2011, i.e. Armenia, Azerbaijan, Cape Verde, Georgia and Turkey. EURAs aim at establishing effective and swift procedures for the identification and return of persons who do not or who no longer, fulfill the conditions for entry to, presence in, or residence on the territories of EU Member States and the third country concerned, as well as to facilitate the transit of such persons. These include own nationals of the requested state, TCNs and/or stateless persons.¹ Are there any commonalities and/or differences between the EURAs under analysis when it comes to nationality determination procedures?

The official criteria that have been used by the Council of the EU when choosing third countries with which to negotiate EURAs have mainly included the following²: (i) the scale of the phenomenon of irregular immigration from that country, the number of persons awaiting return and obstacles to the enforcement of repatriation decisions in particular in obtaining travel documents; (ii) the fact that the third country is geographically adjacent to a Member State; (iii) can potentially add value

¹Article 1.a of the EURA with Azerbaijan (and differently from all the previous EURAs) includes a definition of ‘readmission’ which states that “Readmission shall mean the transfer by the Requesting State and admission by the Requested State of persons (own nationals of the Requested State, third country nationals or stateless persons) who have been found illegally entering into, present in or residing in the Requesting State, in accordance with the provision of this Agreement”. A similar provision has been included in the EURA with Turkey. Refer to Article 1.n.

²Council of the EU (2002). The Council stated “In view of the difficulty of negotiating agreements of this kind with third countries, the countries in question need to be identified one by one, drawing upon the results of ongoing negotiations and constantly evaluating both their practical implementation and the real needs of the moment”, paragraph 3.

to Member States' bilateral negotiations; (iv) countries with which the Community concluded Association and Cooperation agreements, etc. At the time of writing, the EU has concluded a total of 17 EURAs (see Table 4.1 for a detailed overview): Hong Kong (2004),³ Macao (2004),⁴ Sri Lanka (2005),⁵ Albania (2006),⁶ Russia (2007),⁷ Macedonia (2008),⁸ Ukraine (2008),⁹ Moldova (2008),¹⁰ Bosnia and Herzegovina (2008),¹¹ Montenegro (2008),¹² Serbia (2008),¹³ Pakistan (2010),¹⁴ Georgia (2011),¹⁵ Armenia (2014),¹⁶ Cape Verde (2014),¹⁷ Azerbaijan (2014)¹⁸ and Turkey (2014).¹⁹

The six EURAs under assessment start with a general article laying down key definitions. These include who is to be considered their 'nationals' for the purposes of the Agreements. The general rule is that a 'national' of the non-EU country means any person holding the nationality of that country in accordance with its legislation. This needs to be read in conjunction with the notion of 'third country national' in the scope of EURAs. In contrast to the concept normally used in EU immigration law,²⁰ a TCN is any person not holding the nationality of the contracting parties for the purposes of EURAs. As it will be shown in this chapter and further analyzed in Chap. 5 of this book, irrespective of these two legal notions and the relevant legislation of the contracting country concerned, EURAs provide wider ways to determine an individual's identity far beyond the boundaries of nationality laws of the presumed country of origin. The EURAs laid down common procedural rules regarding the readmission obligation of own nationals (Sect. 4.1), and the general principles and means (list of documents) for establishing or presuming the nationality of the person to be readmitted (Sect. 4.2).

³OJ L 17/25 24 January 2004.

⁴OJ L 143/99 30 April 2004.

⁵OJ L 124/43 17 May 2005.

⁶OJ L 124/22 17 May 2005.

⁷OJ L 129/40 17 May 2007.

⁸OJ L 334/7 19 December 2007.

⁹OJ L 332/48 18 December 2007.

¹⁰OJ L 334/149 19 December 2007.

¹¹OJ L 334/66 19 December 2007.

¹²OJ L 334/26 19 December 2007.

¹³OJ L 334/46 19 December 2007.

¹⁴OJ L 287/52 4 November 2010.

¹⁵OJ L 52/47 25 February 2011.

¹⁶OJ L 289/13 31 October 2013.

¹⁷OJ L 282/15 24 October 2013.

¹⁸OJ L 128/17 30 April 2014.

¹⁹OJ L 134/3 7 May 2014.

²⁰In EU migration law a 'third country national' is any person not holding the nationality of an EU Member State.

Table 4.1 EURAs

| Country | Mandate for negotiation | Entry into force |
|------------------------|-------------------------|-----------------------------|
| Morocco | September 2000 | – |
| Sri Lanka | September 2000 | 1 May 2005 |
| Pakistan | September 2000 | 1 December 2010 |
| Russia | September 2000 | 1 June 2007 |
| Hong Kong | April 2001 | 1 March 2004 |
| Macao | April 2001 | 1 June 2004 |
| Ukraine | June 2002 | 1 January 2008 |
| Turkey | November 2002 | 1 October 2014 ^a |
| Albania | November 2002 | 1 May 2006 |
| China | November 2002 | – |
| Algeria | November 2002 | – |
| Macedonia | November 2006 | 1 January 2008 |
| Bosnia and Herzegovina | November 2006 | 1 January 2008 |
| Montenegro | November 2006 | 1 January 2008 |
| Serbia | November 2006 | 1 January 2008 |
| Moldova | December 2006 | 1 January 2008 |
| Georgia | November 2008 | 1 March 2011 |
| Cape Verde | June 2009 | 1 December 2014 |
| Belarus | February 2011 | – |
| Armenia | December 2011 | 1 January 2014 |
| Azerbaijan | December 2011 | 1 September 2014 |
| Tunisia | December 2014 | – |

^aThe EURA with Turkey entered into force on that date with the exception of Articles 4 and 6 covering third country nationals and stateless. Refer to Article 24.3 of the Agreement
Source Author's own elaboration

4.1 Readmission Obligation of Own Nationals

Section 1 of the EURAs contains the so-called readmission obligations, which include the rules applicable to the readmission of nationals, TCNs and stateless persons. It is important to first clarify that the identity determination of nationals is of crucial importance for those countries that are not geographically adjacent to EU Member States. This relates to the EURAs provisions on TCNs which increase the burden of proof by the requesting state in comparison to the readmission of own nationals. The obligation to readmit TCNs and stateless persons is conditional upon proof by the requesting state of direct and irregular entry by the person concerned into its territory after having stayed or transited through the territory of the

requested state.²¹ This makes the readmission of TCNs and stateless persons to countries like Pakistan almost impossible in practice.

When it comes to own nationals, Article 2 of the EURA with Pakistan states that the Requested State shall readmit “after the nationality having been proved” any of its nationals who do not or no longer fulfil the conditions for entry, presence or residence in the territory of the requesting State. A similar provision exists in the EURAs with Armenia, Azerbaijan, Cape Verde, Georgia and Turkey (see Annex of this book for a detailed overview). Yet, this same provision has been further developed and complemented in the five subsequent EURAs. The EURA with Georgia lays down in Article 2 that the obligation to readmit ‘nationals’ shall take place upon application by the requesting State and “without further formalities other than those provided for in this Agreement” and “provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that they are nationals of Georgia”.

Furthermore, in contrast to the agreement with Pakistan, the EURA with Georgia also includes specific provisions within the scope of Article 2 about the obligation by Georgia to readmit the minor unmarried children as well as spouses holding another nationality of the national involved (see Article 2.2 EURA with Georgia). Similar provisions are foreseen in the subsequent EURAs with Armenia, Azerbaijan, Cape Verde, Georgia and Turkey. Sometimes these include minor modifications to the provision included in the EURA with Georgia. For instance, the EURA with Armenia includes the obligation to readmit the spouses of Armenian nationals who hold another nationality “or who are stateless”. The subsequent EURAs with Cape Verde²² and Azerbaijan also cover spouses who are stateless. This is not the case in the EURA with Turkey.

Unlike the EURA with Pakistan, the other five EURAs include a provision laying down the obligation for the requested state to readmit persons who have renounced

²¹For instance Article 3 (Readmission of Third Country Nationals and Stateless) of the EURA with Pakistan states that “1. The Requested State shall readmit, upon application by the Requesting State and without further formalities other than those provided for in this Agreement, any third country national or Stateless person who does not, or who no longer, fulfils the conditions in force for entry into, presence in, or residence on, the territory of the requesting State, provided that such persons: (a) hold, at the time of submission of the readmission application, a valid visa or residence authorisation issued by the Requested State; or (b) entered the territory of the Requesting State unlawfully coming directly from the territory of the Requested State. A person comes directly from the territory of the Requested State within the meaning of this subparagraph if he or she arrived on the territory of the Requesting State, or, where the Requested State is Pakistan, on the territory of the Member States, by air or ship without having entered another country in-between.” See also Article 7 of the agreement which provides the means of evidence regarding third country nationals and stateless, and Annex III which stipulates the common list of documents which shall be considered as means of evidence of the conditions for the readmission of third country nationals and stateless persons (Article 3.1 in conjunction with Article 7.1).

²²The inclusion of spouses who are stateless The EURA with Cape Verde refers in Article 2 to Article 13.5.c.i of the Cotonou Agreement. See Article 2 of EURA with Cape Verde.

or been deprived of the nationality of the non-EU country since entering the territory of an EU Member State. The Agreements state that this obligation exists “unless such persons have at least been promised naturalization by that Member State.”²³ Few variations still exist. The EURA with Georgia makes reference to the need to readmit not only persons who have renounced or been deprived of Georgian nationality, but also those who have forfeited the nationality of Georgia. The EURAs with Armenia, Cape Verde and Azerbaijan only make reference to cases of renunciation of nationality, not cases of deprivation or forfeit. The EURA with Turkey includes situations of renunciation and deprivation of nationality.

The EURAs of Pakistan, Armenia and Azerbaijan outline in their Annexes ‘Joint Declarations’ of relevance for these situations. The EURA with Pakistan presents a Joint Declaration stating that the Parties take note that “according to the current Pakistan Citizenship Act, 1951,..., a citizen of Pakistan cannot renounce his citizenship without having acquired or having been given a valid document assuring the grant of citizenship or nationality of another State”. The Declaration specifies that the parties agree to consult each other when the need arises. The EURA with Armenia presents a Joint Declaration related to cases of deprivation of nationality. It outlines that in accordance with the nationality law of Armenia and the EU Member States “it is not possible for a citizen of the Republic of Armenia or the European Union to be deprived of his or her nationality”.²⁴ A similar Declaration has been introduced in the EURA with Azerbaijan which however no longer refers to the impossibility for EU Member States and EU citizens to be deprived of their citizenship.²⁵

The EURAs foresee specific procedures for the issuing of a travel document in the scope of the article dedicated in the agreements on “Readmission of Nationals or Own Nationals”. The EURA with Pakistan states in rather general terms that “The Requested state shall, as necessary and without delay, issue the person whose readmission has been accepted with the travel document required for his or her readmission, which shall be valid for at least six months”.²⁶ That same article emphasizes that in cases where legal or factual obstacles are encountered so that the person involved cannot be transferred within the period of validity of the travel document, Pakistan shall issue a new travel document with the same period of validity within 14 days. This article has been fine-tuned in the EURAs that have subsequently been negotiated, as described below. Indeed, as Annex of this book

²³Refer to Articles 2.2 in the EURA with Georgia and Cape Verde, and Article 3.2 of the EURA with Armenia, Azerbaijan and Turkey.

²⁴Joint Declaration concerning Articles 3.3 and 5.3 EURA with Armenia. The Declaration adds that “The Parties agree to consult each other in due time should this legal situation change”.

²⁵Joint Declaration concerning Article 3.3 “The Contracting Parties take note that, according to the nationality laws of the Republic of Azerbaijan, it is not possible for a citizen of the Republic of Azerbaijan to be deprived of his or her nationality. The Parties agree to consult each other in due time, should this legal situation change”.

²⁶Article 2.2 of the Agreement.

illustrates, EURAs envisage specific time-limits for readmission procedures. It is therefore striking the information provided by the EMN (2014) highlighted above that “in the exceptional case of the EURA with Pakistan, it can take over a year to obtain a response from the authorities”. This would mean that Article 8 of the EURA with Pakistan is being violated.²⁷

The EURA with Georgia introduced the obligation for the competent authority to be the diplomatic mission or consular office, and for it to issue a travel document required for the return for a period of validity of 90 days “after Georgia has given a positive reply to the readmission application”.²⁸ This provision continues by saying that this will take place “irrespective of the will of the person to be readmitted” immediately and no later than within 3 working days, otherwise the Agreement foresees that Georgia will be deemed to accept the EU standard travel document for expulsion purposes.

A similar article has been introduced in all the subsequent EURAs with few variations. The EURAs with Armenia and Azerbaijan add to that rule that the travel document will be free of charge. The EURAs with Cape Verde and Azerbaijan foresee different deadlines for the issuing of the travel document by the third country after given a positive reply to the readmission application, four and five working days respectively. There are also some differences concerning the period of validity of the travel documents, which ranges from 120 days in the EURA with Cape Verde, 150 days in the EURA with Azerbaijan and three months in the case of the EURA with Turkey. The EURA with Turkey has introduced an important new component in the operability of this procedure. According to Article 3.4 of this agreement, if Turkey does not comply with the three working days deadline, “the reply to the readmission application shall be considered as the necessary travel document for the readmission of the person concerned”.

In those cases where there are legal or factual reasons preventing the transfer of the person, the subsequent EURAs under analysis include similar clauses to the one previously mentioned in the EURA with Pakistan. The main differences relate to decreasing the time within which a new travel document will need to be issued; which range from three working days in the EURAs with Georgia, Armenia and Turkey, to four working days in Cape Verde and five in the agreement with Azerbaijan.²⁹

²⁷Article 8.2 of the Agreement stipulates that “A readmission application must be replied to without undue delay, and in any event within a maximum of 30 calendar days; reasons shall be given for refusal of a readmission application. This time limit begins to run from the date of receipt of the readmission application. Where there are legal or factual obstacles to the application being replied to in time, the time limit may, upon request and giving reasons, be extended up to 60 calendar days, except if the maximum detention period in the national legislation of the Requesting State is less than, or equal to, 60 days. Where there is no reply within this time limit, the transfer shall be deemed to have been agreed to.”

²⁸Article 2.4 of the agreement.

²⁹Article 2.5 in the EURAs with Georgia and Cape Verde, and Article 3.5 in EURAs with Armenia, Azerbaijan and Turkey.

4.2 Readmission Procedures: Principles and Means of Evidence

4.2.1 Principles

All EURAs include one Section dedicated to ‘Readmission Procedures’ which includes articles covering the principles to guide the readmission procedure, specific rules of the readmission application, a provision on the means of evidence regarding the nationality of the person to be readmitted, TCNs and stateless persons as well as time limits and transfer modalities. For the purposes of this book, it is of particular relevance to compare the general principles and the means of evidence of nationality in the Agreements under assessment.

Concerning the principles guiding readmission procedures, the EURAs lay down the obligation for the Requesting state to issue a readmission application to the competent authority of the requested state. Exemptions applicable to that obligation include cases when the person holds a valid travel document, visa and/residence authorisation of the requested state. Small variations have been included in the subsequent EURAs regarding the documents. For example the EURAs with Georgia and Cape Verde include “or identity card”. Importantly, the EURA with Pakistan states: “No person shall be readmitted only on the basis of prima facie evidence of nationality.” The EURA with Turkey provides a new feature in comparison to the previous five EURAs analysed in this study. Article 7.1 (Principles) states: “The Member States and Turkey shall make every effort to return a person directly to the country of origin.”³⁰ This accompanies a Joint Declaration on Article 7.1 stating:

The Parties agree that in order to demonstrate ‘every effort to return a person referred to in Articles 4 and 6 directly to the country of origin’, the Requesting State, while submitting a readmission application to the Requested State, should at the same time submit a readmission application also to the country of origin. The Requested State shall reply within the time limits mentioned in Article 11(2). The Requesting State informs the Requested State if a positive reply to the readmission application has been received from the country of origin in the meantime. In case where the country of origin of the person in question could not be determined and therefore a readmission application could not be submitted to the country of origin, the reasons of this situation should be stated in the readmission application which will be submitted to the Requested State.

³⁰The EURA with Cape Verde and Azerbaijan include Joint Declarations covering precisely this same point. Refer to Joint Declaration concerning Articles 3 and 5 in the EURA Cape Verde which states that “The Contracting Parties will endeavour to return any third country national who does not, or who no longer, fulfils the legal conditions in force for entry to, presence in or residence on their respective territories, to his or her country of origin.” See also Joint Declaration in the EURA with Azerbaijan which reads as follows “The Parties will endeavour to return any third country national who does not, or who no longer, fulfils the legal conditions for entry to, presence or residence to his/her country of origin”.

Table 4.2 EURA with Pakistan: documents furnishing nationality or initiating the process of establishing nationality

| | |
|--|--|
| Evidence of nationality | Documents initiating the process of establishing nationality |
| Genuine Passports of any kind (national passports, diplomatic passports, service passports, collective passports and surrogate passports including children's passports) | Digital fingerprints or other biometric data |
| Computerised national identity cards | Temporary and provisional national identity cards, military identity cards and birth certificates issued by the Government of the requested party |
| Genuine citizenship certificates | Photocopies (officially authenticated by the authorities of Pakistan) of other official documents that mention or indicate citizenship (e.g. birth certificates) |
| | Service cards, seaman's registration cards, skipper's service cards or photocopies thereof |
| | Statements made by the person concerned |

Source Author's own elaboration

4.2.2 Means of Evidence of Nationality

A particularly important common provision in the six EURAs relates to the means of evidence for determining the person's nationality. The provision needs to be read in conjunction with Annexes attached to the EURAs dealing with common lists of document the presentation of which is to be considered as evidence or *prima facie* evidence of nationality/citizenship for the purposes of the Agreements. The EURA with Pakistan provides that proof of nationality may be furnished through the list of documents comprised in Annex I of the Agreement, "even if their period of validity has expired". If those documents are presented both parties "shall mutually recognize the nationality without further investigation required".³¹ The Agreement further stipulates that proof of nationality can be also furnished through additional documents "the presentation of which shall initiate the process for establishing nationality" as laid down in Annex II. It is provided that when these documents are presented "the Requested State shall initiate the process of establishing the nationality of the person concerned". Table 4.2 outlines the list of documents which are presumed to proof nationality or *prima facie* nationality in the EURA with Pakistan.

Annex of this book provides a detailed overview of the ways in which the annexes in the six EURAs under assessment deal with documents that are deemed to constitute evidence or *prima facie* evidence of nationality. As stated above, the EURA with Pakistan is clear in stating that no person will be readmitted on the

³¹Refer to Article 6.2 of the EURA with Pakistan.

basis of ‘prima facie’ evidence of nationality.³² This constitutes a fundamental difference in comparison to all the subsequent EURAs, which have expanded the ways in which nationality or *prima facie* nationality are presumed for the purposes of readmission. As Table 4.3 clearly illustrates, the EURA with Pakistan is comparably the agreement presenting a stringent list of documents that are deemed to be acceptable for verifying nationality of the person to be readmitted, or the presentation of which initiates the process of establishing nationality.

The EURA with Georgia provides an Annex II titled ‘Common List of Documents the presentation of which is considered as *prima facie* evidence of nationality’ and expressly states in Article 8 that “if such documents are presented, the Member States and Georgia shall consider the nationality to be established” for the purpose of readmission unless it can be proved otherwise”. Furthermore, when it comes to the specific list of documents which are deemed *prima facie* proof of nationality, the EURA with Georgia contains a more developed list than the one foreseen with Pakistan, including the possibility of accepting the documents listed in Annex I whose validity has expired by more than 6 months, but also “any other documents such as driving licenses, company cards, laissez-passer issued by the Requested state, “any other document which may help to establish the nationality of the person concerned.” It also includes the presumption of nationality resulting from a search in the Visa Information System (VIS) or national visa information systems for those EU Member States not part of Schengen system.

The EURAs with Armenia, Cape Verde, Azerbaijan and Turkey follow a similar model as the one negotiated with Georgia. They present some variations and new features however that are worth underlining when comparing the list documents provided in the same Annexes I and II of the Agreements. The EURAs with Cape Verde and Turkey are the two Agreements accepting a larger list of documents as proof of nationality. They include documents which in the other EURAs under examination are only foreseen as *prima facie* evidence. For instance, in addition to those established in the EURA with Pakistan, the EURA with Cape Verde accepts as proof of nationality documents such as *laissez-passer* issued by the Requested state, service books and military identity cards, seamen’s registration books and skippers service cards.³³ The EURA with Turkey similarly accepts those extra documents as proof of nationality. It can be seen as the agreement providing a wider list of documents aimed at proving the nationality of the person to be expelled among the ones covered in this Report. The agreements with Georgia, Armenia and Azerbaijan only accept these same documents as *prima facie* evidence.

When it comes to the common list of documents considered as *prima facie* evidence of nationality, as illustrated in Table 4.3, some variations can be noticed when comparing the six EURAs. The EURA with Pakistan is the only one expressly stating that “digital fingerprints or other biometric data” are accepted. The

³²Article 4 of the EURA with Pakistan.

³³The EURA with Azerbaijan in Annex I accepts as a proof of nationality identity cards of any kind “with the exception of seaman’s identity cards”.

Table 4.3 Documenting legal and functional identity—EURAs compared

| | Pakistan | Georgia | Armenia | Cape Verde | Azerbaijan | Turkey |
|---|----------|---------|---------|------------|------------|--------|
| Passport | X | X | X | X | X | X |
| National identity card | X | X | X | X | X | X |
| Birth certificate | N.A. | ≈ | N.A. | ≈ | ≈ | ≈ |
| Temporary identity card and birth certificate | ≈ | N.A. | X | X | X | X |
| Citizenship certificates | X | X | X | X | X | X |
| Other document clearly indicating citizenship | ≈ | X | X | X | N.A. | X |
| Photocopies | ≈ | ≈ | N.A. | N.A. | N.A. | ≈ |
| Expired documents | N.A. | ≈ | ≈ | N.A. | ≈ | ≈ |
| Digital Fingerprints | ≈ | N.A. | ≈ | ≈ | ≈ | N.A. |
| Biometrics | ≈ | N.A. | N.A. | N.A. | N.A. | N.A. |
| Entry/exist registration system | N.A. | N.A. | N.A. | N.A. | ≈ | N.A. |
| Seaman identity card/registration books | ≈ | ≈ | ≈ | X | ≈ | X |
| Skipper service card | N.A. | N.A. | N.A. | X | ≈ | X |
| Laissez-passer | N.A. | ≈ | ≈ | X | X | X |
| Service books/military identity cards | ≈ | ≈ | ≈ | X | ≈ | X |
| EU visa information system/national visa database | N.A. | ≈ | ≈ | X | ≈ | X |
| Statement by person concerned | ≈ | ≈ | ≈ | ≈ | ≈ | ≈ |
| Statement by witnesses | N.A. | N.A. | ≈ | ≈ | ≈ | ≈ |
| Spoken language/language test | N.A. | ≈ | ≈ | ≈ | ≈ | ≈ |
| Driving licence | N.A. | ≈ | N.A. | ≈ | ≈ | ≈ |
| Company identity card | N.A. | ≈ | ≈ | ≈ | ≈ | ≈ |
| Documents with pictures replacing passport | N.A. | N.A. | N.A. | N.A. | N.A. | ≈ |
| Any other document | N.A. | ≈ | ≈ | ≈ | ≈ | ≈ |

Legend X Evidence of Nationality, ≈ Prima Facie Evidence, N.A. Not Applicable

Source Author's own elaboration

EURAs with Armenia, Cape Verde and Azerbaijan only refer to fingerprints. In respect of information systems, the EURAs with Georgia and Armenia expressly mention the VIS, and national visa information systems in those EU Member States not participating in VIS. In the case of Azerbaijan, this also includes “confirmation of identity as a result of a search carried out in IAMAS (Entry-Exist and Registration Automated Information System of the Republic of Azerbaijan)”. Other means of *prima facie* proof of nationality include statements by witnesses in the EURA with Armenia, Cape Verde, Azerbaijan and Turkey; or statements and/or written account of statements made by the person concerned and language spoken, including by means of an official language test.

The EURA also foresee procedures for those cases where none of these documents exist. The EURA with Pakistan states in rather general terms that the competent authorities will make the necessary arrangements to interview the person concerned “without undue delay”. Similarly, the other five EURAs set specific deadlines for this interview to take place; specifically ranging between three to five working days in the EURAs with Armenia, Azerbaijan, Cape Verde and Georgia, to seven in the EURA with Turkey.³⁴ All EURAs, with the exception of the one with Pakistan, highlight that the procedures applicable to the interviews will be laid down in ‘Implementing Protocols’, which we analyse in the following subsection.

4.2.3 *Application and Implementation*

All EURAs under examination foresee a Section dedicated to ‘Implementation and Application’. A key provision comprising these Sections relates to ‘Implementing Protocols’, which are bilateral in nature and fundamentals.³⁵ Article 20 of the EURA with Pakistan emphasizes that Pakistan and a Member State may draw up an implementing Protocol covering the designation of the competent authorities, border crossing points and exchange of contact points, conditions for escorted returns and means and documents other than those listed in Annexes I and II. The other five EURAs present a number of commonalities and specificities when compared to the one with Pakistan.

³⁴Article 9 of the EURA with Turkey stipulates that “In case there are no diplomatic or consular representations of the Requested State in the Requesting State, the former shall make the necessary arrangements in order to interview the person to be readmitted without undue delay, at the latest within seven working days from the requesting day. The procedure for such interviews may be established in the implementing Protocols provided for in Article 20 of this Agreement.”

³⁵According to the European Commission (2011), “The Commission (with strong support from the MS) has always insisted that the EURAs are self-standing, directly operational instruments which do not necessarily require the conclusion of bilateral implementing protocols with the third country. In the longer term protocols are mere facilitators, even if they are sometimes mandatory, as in the EURA with Russia”, p. 4.

Since the EURA with Georgia, all subsequent EURAs provide that the Implementing Protocols may also include the modalities for readmission under accelerated procedures and the above-mentioned procedures for interviews in cases where there are no documents proving nationality. The only obligation foreseen for the validity of the Implementing Protocols is that they will enter into force” only after the Committee has been notified. Furthermore, the EURA with Georgia states that “Georgia agrees to apply any provision of an implementing Protocol drawn up with one Member States also in its relation with any other Member State upon request of the latter”. A similar provision is included in Article 19 of the EURA with Cape Verde. In a different fashion, the EURA with Armenia provides: “The Member States agree to apply any provision of an implementing Protocol concluded by one of them also in their relations with Armenia upon request of the latter, subject to practical feasibility of its application to other Member States”. A similar provision is foreseen in Article 20 of the EURA with Azerbaijan. Implementing Protocols remain confidential in nature and are not disclosed to the public.

In addition to Implementing Protocols, the EURAs Section on ‘Implementation and Application’ also foresees a key instrument that has been devised to ensure ‘effectiveness’ in the implementation of each specific EURA. The EURA model foresees the establishment of a so-called Joint Readmission Committee (JRC) with the competence of monitoring the uniform application of the agreement in question, address questions related to its interpretation or practical application, proposing changes or amendments to its provisions and exchange relevant information. JRC decisions are binding on the parties to the Agreement, with the exception of the EURA with Pakistan.³⁶ They are composed by representatives of the EU (represented by the European Commission and Member States’ experts) and the third country concerned. It follows its own Rules of Procedure. Decisions and operational arrangements agreed by JRC are also confidential. In contrast to the previous EURAs under study, the EURA with Turkey includes a new feature or requirements regarding the validity of the decisions by the JRC.

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³⁶A key difference has been introduced in the EURA with Turkey which says in Article 19.2 that it is binding “following any necessary internal procedures required by the law of the Contracting Parties”.

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