Chapter 5
The Implementation Challenges and Dynamics of EURAs

This Chapter examines the challenges affecting the implementation of EURAs once entered into force. Particular attention is paid to the challenges emerging from the identity determination dilemma explained and substantiated in Chap. 3 above. These include: first, lack of accountability and transparency (Sect. 5.1); second, the value added of EU intervention; (Sect. 5.2) third, inter-state and sovereign relations challenges (Sect. 5.3); and fourth, the blurring of rights and the agency of the individual (Sect. 5.4).

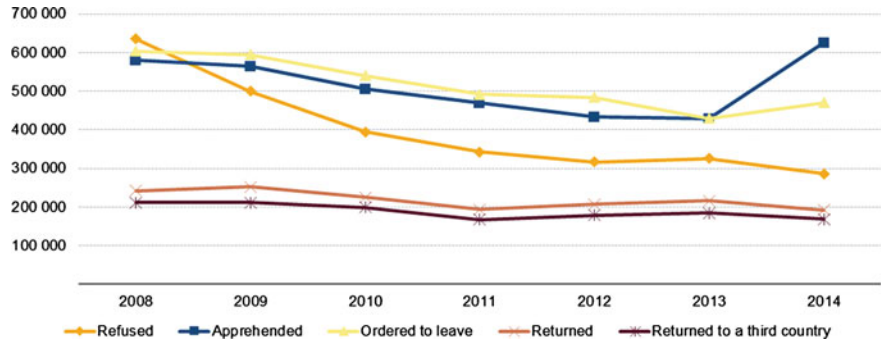
5.1 Lack of Accountability and Transparency

The criteria identified by the Council of the EU for justifying the need to conclude EURAs with third countries include cases where such an agreement would 'add value' to EU Member States bilateral negotiations and expulsion practices, including cases where there are "relevant obstacles to return, in particular in what concerns obtaining travel documents for the repatriation of people who do not fulfil or no longer fulfil entry or residence conditions.[1] How to measure this 'value' precisely when it comes to expulsion outcomes? A first challenge in examining the 'effectiveness' in the implementation of EURAs relates to the lack of transparency and accountability of the exact ways in which these legal instruments operate in practice, as well as regarding the implementing procedures that put them into effect.

As Chap. 2 above has illustrated, the way in which the European Commission and EU Member States currently measure 'effectiveness' is a predominantly numerical exercise comparing removal orders and enforced return rates. What do the official statistics tell us about the state of expulsions of irregular immigrants in the EU? According to EUROSTAT, and as outlined in Graph 5.1 and Table 5.1,

[1]Council of the EU (2002).

S. Carrera, *Implementation of EU Readmission Agreements*,
SpringerBriefs in Law, DOI 10.1007/978-3-319-42505-4_5



Graph 5.1 TCNs subject to the enforcement of immigration legislation in EU. *Source* Eurostat (http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_enforcement_of_immigration_legislation Accessed 8 June 2016)

Table 5.1 Total number of TCNs ordered to leave and returns EU-28 2008–2014

	2008	2009	2010	2011	2012	2013	2014
TCNs returned to a third country	211,350	211,785	198,910	167,150	178,500	184,765	168,925
TCNs ordered to leave	603,360	594,600	540,080	491,310	483,650	430,450	470,080

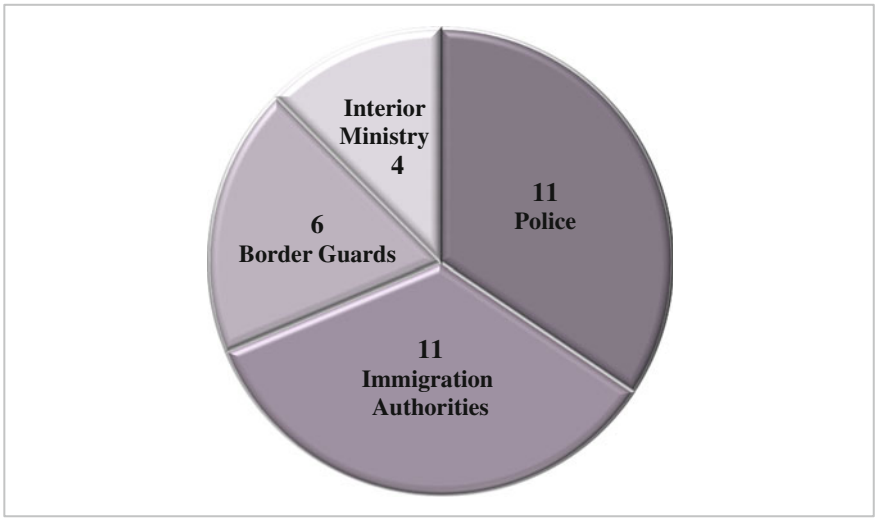
Source Eurostat (http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_enforcement_of_immigration_legislation Accessed 8 June 2016)

over 470,000 third-country nationals were issued with an 'order to leave' or removal order in an EU Member State in 2014. Only 36 % of these were returned to a non-EU country (168,925).

EUROSTAT data also tell us that the total number of removal orders and returns of TCNs, outlined in Graph 5.2, have remained by and large stable and in a decreasing trend since 2008.

A similar tendency can be identified in some countries with which the EU has concluded an EURA, in particular among the six under assessment in this book (see Table 5.2). As a way of illustration, the statistics on Pakistan, Georgia and Armenia (which are the only countries whose EURA has entered into force respectively in 2010 and 2011) do not show an increase of returns since the entry into force of the agreements with the EU.[2] The fact that countries with which the EU has a readmission agreement are the main sources of irregular immigration into the EU tell us

[2]As illustrated in Chap. 2 above, the other four EURAs with Armenia, Cape Verde, Azerbaijan and Turkey only entered into force in 2014 and therefore it is too early to assess any impact of the Agreement on the number of removal orders and returns.



Graph 5.2 EU member states authorities responsible for implementing EURAs. *Source* Author's own elaboration based on EMN (2014)

little about the effectiveness of its use in comparison to other third countries where such EURAs do not exist. This picture does not substantiate the above-mentioned Commission's argument that the conclusion of an EURA has resulted in an increased number of expulsions. It is therefore not at all clear what actual 'impact' the operation of an EURA has had in practice.

The quantitative picture provided by EUROSTAT tells us little about the nature, applied legal framework, scope and effects of expulsion practices of irregular and undocumented immigrants by EU Member States. EUROSTAT explains that the substantive variations identified across EU Member States when it comes to removal orders and expulsions can be understood due to "disparities in migration policies, as well as administrative, statistical and legal (legal acts, judicial procedure, etc.) among EU Member States."[3] It is difficult to drawn conclusive findings or results from this statistical coverage and aggregated figures.

[3]Refer to http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_enforcement_of_immigration_legislation Accessed 31 May 2016. Eurostat explains that the concept of "Third country nationals ordered to leave" incudes "Third country nationals found to be illegally present who are subject to an administrative or judicial decision or act stating that their stay is illegal and imposing an obligation to leave the territory of the Member State (see Article 7.1 (a) of the Regulation). These statistics do not include persons who are transferred from one Member State to another under the mechanism established by the Dublin Regulation. Each person is counted only once within the reference period, irrespective of the number of notices issued to the same person. Moreover, the following notion of "Third country nationals returned following an order to leave" is given: "Third country nationals who have in fact left the territory of the Member State, following an administrative or judicial decision or act stating that their stay is illegal and imposing an

Table 5.2 Total returns and removal orders EU 28 2008–2014 to selected third countries

Pakistan	2008	2009	2010	2011	2012	2013	2014
TCNs returned	4.420	4.840	5.270	7.970	13.565	11.230	6.705
TCNs ordered to leave	16.860	16.660	20.160	32.255	35.460	25.360	21.210
Georgia							
TCNs returned	1.715	2.225	3.080	2.240	2.815	3.250	3.503
TCNs ordered to leave	6.445	8.170	6.855	4.325	5.645	6.030	6.235
Armenia							
TCNs returned	1.350	1.035	1.100	1.235	1.340	1.230	1.205
TCNs ordered to leave	3.490	3.510	4.005	5.390	5.230	6.015	5.195
Cape Verde							
TCNs returned	285	230	250	270	285	240	230
TCNs ordered to leave	1.270	1.505	1.455	1.645	1.695	1.745	1.250
Azerbaijan							
TCNs returned	535	505	455	490	540	535	520
TCNs ordered to leave	1.185	1.130	1.260	1.295	1.330	1.485	1.235
Turkey							
TCNs returned	8.430	6.735	5.380	4.890	3.980	3.440	2.940
TCNs ordered to leave	15.705	15.180	11.885	10.940	10.635	10.320	9.910

*Entry into force of EURA

Source Author's own compilation based on data provided by Eurostat

There are a number of methodological caveats inherent to the available data as reported by EU Member States. These include for instance no clear indications as regards which expulsions have taken place inside or outside the scope of EURAs or other bilateral (formal and/or informal) frameworks and tools of cooperation. The statistics do not specify either the total number of EURA readmission requests which have been approved or refused by EU Member State concerned, the reasons of refusal or the number of travel documents issued for which countries of origin. Neither do they outline the total number of requests for travel documents in the

(Footnote 3 continued)

obligation to leave the territory. On a voluntary basis Member States provide Eurostat with a subcategory which relates to third country nationals returned to a third country only. Persons who left the territory within the year may have been subject to an obligation to leave in a previous year. As such, the number of persons who actually left the territory may be greater than those who were subject to an obligation to leave in the same year."

context of EURAs and those which have been granted by the third countries concerned or requested.

The Commission has concluded that EURA are rarely used for 'voluntary returns'.[4] The removal orders and return rates reported by Eurostat do not however differentiate between those that have been 'voluntary' or 'forced'; neither do they clarify whether the individuals are persons having received a negative decision on asylum applications or irregular immigrants or undocumented.[5] Not every TCN who is returned is always served with an order to leave or removal order in all EU Member States, especially in those cases of 'voluntary returns'.[6] There is neither statistical coverage concerning detention of TCNs in the EU, or on what happens to people during and after the expulsion procedure.[7]

The resulting scene is one preventing a proper assessment and understanding of the implementation of EURAs. The difficulty in assessing the value added of EURA in expulsion procedures from a purely numerical perspective is exacerbated by a high degree of secrecy when it comes to the ways in which EURAs foresee their application and implementation procedures which have been described in Chap. 4 above. The role attributed to JRC and Implementing Protocols are of central importance in all the EURAs. That notwithstanding, all the decisions and internal deliberations in the scope of JRC specific to each EURA are not publicly available or disclosed.[8] This is the case despite the fundamental importance of the decisions and discussions taking place in these Committees when it relates to: first, decisions amending the wording and procedural specifications of a particular EURA, including practical arrangements for conducting interviews for determining nationality in cases where the person involved is undocumented or in cases of accelerated procedures; and second, ways to address specific practical challenges affecting the correct application of the agreement in question, such as the EURA with Pakistan.

[4]European Commission (2011).

[5]According to Eurostat "Starting with first reference year 2014 new statistics on third country returned were as well collected by Eurostat on voluntary basis." See http://ec.europa.eu/eurostat/cache/metadata/en/migr_eil_esms.htm.

[6]Cassarino (2010) p. 47.

[7]Singleton (2016).

[8]The author of this book made an official request for access to documents to the Commission (DG Migration and Home Affairs) to have access to the Operational Conclusions adopted in the Joint Readmission Committee meeting of 2 February 2016, relating to EU Readmission Agreement with Pakistan. Access was rejected by the Commission in a letter of 6 June 2016. The application was not granted on the basis that "it has been agreed with the Pakistani side that records and other documents of the Joint Readmission Committee shall be treated confidentially. Therefore, we consider that disclosing such information would jeopardise our current and future relations with Pakistan within the Joint Readmission Committee and would be detrimental to keeping a good and fruitful negotiating position with Pakistan in a highly sensitive file. Thus, disclosure would undermine the protection of public interest as regards international relations, as laid down in the provision of the Regulation 1049/2001 referred to above."

Chapter 4 above has showed how important the adoption of Implementing Protocols to EURAs can be. These Protocols are bilateral in nature, and, depending on the specific EURA in question, may be applicable to other EU Member States. Their importance resides in their role of designing and fleshing out the modalities for readmission under accelerated procedures and procedures applicable to interviews in cases where there are no documents proving nationality. The only requirement foreseen by EURAs as regards the Implementing Protocols is their notification to the relevant JRC. Similarly to JRC decisions, the number of EU Member States having concluded Implementing Protocols in the scope of EURAs and the texts of these Protocols are not publicly accessible. Table 5.3 shows a full list of Implementing Protocols which have been concluded between EU Member States and third countries in the scope of all existing EU Readmission Agreements. The exact content of these protocols remains confidential. It is noticeable that in the EURA with Pakistan only the UK counts with an Implementing Protocol. The only publicly available information about them has been provided by a couple of studies by the EMN in 2014 on the basis of responses by Member States' national contact points. The EMN study on "Good Practices in the Return and Reintegration of Irregular Migrants: Member States" Entry Bans Policies and use of readmission agreements between Member States and Third Countries' stated:

> By 2012 most Member States (Austria, Belgium, Bulgaria, Czech Republic, Estonia, Germany, Greece, Finland, France, Hungary, Lithuania, Luxembourg, Latvia, Netherlands, Poland, Portugal, Romania, Slovenia, Spain) and Norway had applied implementing protocols concluded under EU Readmission Agreements with third countries and in 2013, protocols to support the implementation of EU readmission agreements entered into force in three Member States (Hungary, Slovakia and the UK).[9]

5.2 The Value Added of Formal and Informal EU Readmission Instruments

This lack of transparency undermines any attempt to gain an understanding of the contribution and value added of EURAs in sending people back when compared to already existing formal and informal bilateral readmission instruments, clauses and agreements by EU Member States. The academic literature has documented and analyzed the turf wars between the European Commission and some EU Member States as regards the reach and scope of legal competence at times of concluding readmission instruments with countries with which the EU has a EURA.[10]

[9]EMN (2014) p. 21.

[10]Peers et al. (2012).

Table 5.3 List of implementing protocols in EURAs

	Bosnia and Herzegovina	Montenegro	Former Yugoslav Republic of Macedonia	Serbia	Albania	Moldova	Russia	Ukraine	Srí Lanka	Hong Kong	Macao	Pakistan	Georgia	Armenia	Azerbaijan	Turkey
BE		X			X		X									
BG		X	X	X	X	X	X						X			
CZ	X	X		X		X	X	X								
EE	X	X	X	X		X	X						X			
FI							X									
FR				X	X		X									
IE																
IT		X		X	X	X	X									
CY				X			X									
LT						X	X						X			
LV						X	X									
LX		X			X		X									
HU				X	X	X	X						X			
MT	X	X		X	X	X	X									
DE	X	X	X	X		X	X			X						
NL		X			X		X									
PL						X	X									
PT				X	X		X									
AT	X	X	X	X	X	X	X	X					X			
RO				X		X	X									
EL																
SK	X	X	X	X	X	X	X						X			
SI		X		X			X									

(continued)

Table 5.3 (continued)

	Bosnia and Herzegovina	Montenegro	Former Yugoslav Republic of Macedonia	Serbia	Albania	Moldova	Russia	Ukraine	Srí Lanka	Hong Kong	Macao	Pakistan	Georgia	Armenia	Azerbaijan	Turkey
ES						X	X									
SE				X			X									
UK				X								X				
HR																

Source European Commission (This table was provided by DG Migration and Home Affairs of the Commission in answer to a request for access to documents made by the author of this book on 6 June 2016)

Article 79.3 of the Treaty on the Functioning of the European Union (TFEU) provides express legal mandate for the Union to conclude EURAs, and Article 218 TFEU stipulates the procedures for their conclusion. The European Commission is required to ask the Council for a mandate to negotiate with the third country concerned. DG Home Affairs is in the driver's seat of the negotiations of the initial text of the agreement which will need to be adopted by the Council and receive the consent by the European Parliament. The issuing of the negotiating mandate/directives by the Council is irrespective of the actual interest or willingness by the third country concerned to even enter into any sort of negotiations with the Commission in the matter (European Commission 2011).[11] This has caused severe friction and repeated pressures from EU Member States on the Commission to ease and hasten negotiations for the agreements.

Of particular concern in this discussion has been the expansive use of informal paths of cooperation and policy instruments between some EU Member States and third countries, which too often escape the decision-making procedures envisaged by the EU Treaties, as well as proper democratic accountability and judicial oversight. In its 2011 evaluation of EURAs the Commission stated that "The Member States need to apply EURAs for all their returns. The Commission will closely monitor the correct implementation of EURAs by Member States and, if necessary, consider legal steps in case of incorrect or lack of implementation".[12] In response to the 2015–2016 'European refugee crisis', it seems that a similar working logic of informality on readmission deals and instruments is now being promoted and developed by the EU. As noted in Chap. 2 above, some European institutions are favouring the use of informal (including bilateral) arrangements or patterns of cooperation on readmission with third countries for the sake of increasing expulsion rates.

Informal and non-legally binding instruments covering readmission in the scope of High-Level Migration Dialogues of the EU may be deemed to facilitate negotiations with third countries, especially those unwilling or lacking interest in concluding a formal and publicly visible EURA. Interviews carried out as background to this book have clarified that one of the main purposes behind these informal methods of cooperation primarily aim at finding "the soft spot" in these third countries, i.e. the authority or actor which may be willing to cooperate in identity determination and/or issuing travel documents. EU officials have alluded to the lack of interest by third countries authorities to openly and publicly cooperate with the

[11]The Communication stated that "the negotiation of EURAs takes a very long time. A case in point is Morocco, where the negotiating directives were received in 2000, the first negotiating round took place in 2003 and negotiations are currently in their 15th round with little prospect of a swift conclusion. In addition, in two cases (China and Algeria) the EU has not even managed to formally open negotiations", Ibid.

[12]Ibid. p. 4.

Union on readmission and identification issues of their own nationals (chiefly through the conclusion of a EURA) due to its lack of popularity in domestic populations as well as Diasporas in EU Member States. This stands in sharp contradiction with the EU's growing appetite to widely disseminate and openly publicize the 'success' of readmission when it comes to increasing expulsion rates of irregular immigrants. The soft spot working logic constitutes in this way an excellent example of 'venue shopping' in the development of EU external migration law and policy.[13] EU actors 'go abroad' through the use of new (formal and informal/bilateral and multilateral) readmission instruments, or attributing new functionalities to previously existing ones, in an attempt to avoid legal (rule of law) constraints and find new co-operating parties or new allies.

The dilemmas inherent in EU actions to cooperate with third countries to tackle irregular immigration were acknowledged by the Commission Communication on the work of the so-called "Task Force Mediterranean", which stated: "Relations with partner countries will also have to take into account the specific sensitivities and expectations of partner countries on the migration dossier, and their perception that the EU wishes to focus primarily on security-related aspects, readmission/return and the fight against irregular migration" (European Commission 2013). As Carrera and Guild have previously argued "for these third countries, [EU-driven] security-related aspects may be interpreted as an allegation that their citizens are potential criminals; Readmission and return may be understood as meaning that their own citizens are framed as 'illegal immigrants'; and the EU's fight against irregular migration could mean that they should take measures for their citizens not to go on holiday to the EU".[14]

Political (non-legally binding) and often secretive documents are also preferred by some authorities in these third countries in an attempt not to subject the issue to public light and domestic debates. That notwithstanding, these informalities do not properly address, and arguably may even exacerbate, the practical implementation challenges of states' commitments related to identification and issuing of travel documents to own nationals examined in this book. A noticeable example may be the *Pham* case studied in Sect. 3.2 above, which has occurred despite the existence

[13]Guiraudon (2000) has argued that 'venue shopping' constituted one of the main motives behind policy making in European Union levels (the internationalization or vertical policy making) on 'migration control' and the development of the common EU immigration policy. By doing, she argued, it shifted policy elaboration away from national judiciaries. In her view "Yet migration control experts took advantage of new organizational setting not previously available to them. The 'wining and dining culture' of the 1970s Trevi Group alerted law and order ministries to the potential of European-wide scope of policy making. Once a model had been set for security 'clubs' that discussed drugs or terrorism, it was easy to add new types of working groups responsible for other cross-border issues or to widen the subject matter of a pre-existing one….migration control officials meeting their counterparts in the early 1980s established links between migration, asylum and crime-related issues, and emphasized technical issues that required their expertise", p. 260.

[14]Carrera and Guild (2014) pp. 10 and 11.

of a non-legally binding Memorandum of Understanding (MoU) on readmission between the UK and Vietnam since 2004.[15]

Informal patterns of cooperation and non-legally binding instruments including a readmission angle enhance the legal uncertainty and the lack of sufficient procedural guarantees designing inter-state challenges. What do they add in comparison to EURAs? It is not clear the extent to which non-binding informal arrangements and MoU complement or compete with formal EURAs. As the European Commission rightly pointed out in its 2011 evaluation of EURAs, the use of informal patterns of cooperation may make "More seriously, human rights and international protection guarantees in EURAs ineffective if MS do not return irregular migrants under EURAs."[16] Non-binding arrangements are equally contingent, compared to EURAs, on the state of diplomatic relations. This in turn will make ever more challenging the practical operability and sustainability of 'the rules of the game' in inter-state relations when it comes to readmission practices.

The above-mentioned 2016 Council Conclusions on the expulsions of illegally staying TCNs state: "Such legally non-binding arrangements should be fully compatible with existing bilateral readmission agreements of the Member States, and may in cases contribute to creating the conditions for the negotiation and conclusion of future readmission agreements as cooperation develops." It is not entirely clear how this compatibility will be ensured. The development of informal arrangements can be only expected to increase the inconsistencies and, arguably, further undermine the credibility of the EU's readmission policy. The non-legally binding nature will furthermore make them highly vulnerable and unstable to the state of diplomatic or inter-state relations. Some EU Member States' representatives have declared that one of the main contributions of EURAs has been not so much the increased number of removals, but rather the "benefits in terms of strengthening our bilateral relationships with other countries, including on practical cooperation efforts combating illegal immigration".[17] As the next section shows, however, EURAs are still fraught with profound inter-state and inter-actor controversies.

5.3 Inter-state and Inter-actor Challenges: Re-modelling the Boundaries of Authority

Scholars have documented and assessed the origins of inter-state relations and cooperation in the readmission of their own nationals, as well as the different types of readmission-related instruments and agreements that have progressively

[15]According to the EMN (2014) the UK and Vietnam signed a MoU on 28 October 2004. See Annex 2, Table A2.8, p. 47.

[16]Ibid.

[17]UK House of Commons (2013), paragraph 4.4.

developed in European cooperation, especially since the mid-1990s.[18] A central issue underlying this development has been the need to develop these formal and/or informal instruments and EU frameworks of cooperation on readmission in light of the general duty by states of origin to 'readmit' their own nationals. If states are under an obligation to readmit their nationals, why are readmission agreements necessary?

The duty of states to take back their nationals has been widely accepted as a key component in customary international law. The Court of Justice of the European Union (CJEU) held in the *Van Duyn v Home Office* (Case 41/74): "For a national, however undesirable and potentially harmful his entry may be, cannot be refused admission into his own state. A state has a duty under international law to receive back its own nationals".[19] In paragraph 22, the Court concluded: "it is a principle of international law, which the EEC Treaty cannot be assumed to disregard in the relations between Member States, that a State is precluded from refusing its own nationals the right of entry or residence."

What is lacking is a common understanding of the actual nature and fundamentals of that obligation in states practices.[20] There is no agreement on the ways in which that duty is to become operational in practical terms. Hailbronner has argued that "the obligation to readmit one's own nationals is the correlate to the right to expel aliens".[21] There is however not such a wide consensus as regards the actual scope of that obligation, and the extent to which it relates to the right to leave and return by individuals of these same states as enshrined in international human rights instruments.[22]

Irrespective of the discussion on 'the duty to readmit' by the country of origin, a key dilemma that leaves the implementation of EURAs unsettled is *who* is sovereign to determine who is a national of which country. EU Member States can try to substantiate the nationality of a person to be readmitted in various ways and forms. Yet, the procedure and resulting decision are by no means enforceable or have non international legal value, not least for the alleged or presumed country of origin or nationality. Irrespective of the success by states and later the EU in concluding legal and non-legal arrangements developing the particulars of the duty to readmit nationals, the question of 'whose citizen' is still the cause of ceaseless inter-state frictions.[23] In such a context, EURAs foresee a set of 'technical' procedures, rules and lists of documents intended to ease or facilitate the determination of who is to be considered a national of the country concerned, and which means of proof are

[18]Hailbronner (1997), Coleman (2009), Bouteillet-Paquet (2003).

[19]Case *Van Duyn v. Home Office* 41/74, 4 December 1974, p. 1345.

[20]Kruse (2006).

[21]Hailbronner (1997) p. 57.

[22]Goodwin-Gill (1975).

[23]Gregou (2014) has argued that "The incomplete expulsion procedure in these cases (Afghan, Iraqi and Pakistani nationals) could be attributable to the problematic cooperation with the countries of origin. The nationality and identity verification in cooperation in the diplomatic agencies of the country of origin, usually involve time-consuming procedures", p. 524.

considered to provide various degrees of proof of the persons' citizenship and consequent legal status. As Peers et al. have argued

> [Readmission agreements] are attractive to most Member States because no decision to expel a person can be effective unless another State agrees to take that person onto its territory, and most Member States believe that a formal treaty obligation will assist in accomplishing this objective…The agreements can be used to set out rules on means of "proof" and "evidence" to increase the prospect that the requested States will accept people back, and to include rules on transit through the requested State (not strictly speaking a readmission issue at all).[24]

Chapter 4 has shown that some of these agreements equate cases where the nationality of the person to be readmitted is 'proved', with other situations where the latter is simply substantiated or presumed *prima facie* for the purposes of the application of the agreement at hand. There are at times important variations between the accepted means of documentation for determining *prima facie* nationality—*functional identity*-of the person to be readmitted. An exception is Annex of the EURA with Pakistan which in contrast to the other five EURAs only foresees that the list of documents "shall initiate the process of establishing nationality". The comparative account of procedures and lists of documents in determining nationality reveals a largely heterogeneous and diversified picture which brings about complexity and a very high degree of heterogeneity from one agreement to another.

Differing rules on identification (and related travel documents) may add further practical obstacles to responsible authorities on the ground, which depending on who they are in each EU Member State and the third country at hand will encounter divergent set of administrative and accepted lists of documents as to who is a national of which country.[25] As shown by a study published by the EMN in 2014, the national actors responsible for implementing EURAs and issuing the readmission application vary widely across the EU Member States. Graph 5.2 shows the heterogeneity of actors and authorities involved in some EU Member States. In a majority of EU Member States the responsible authorities in the field of readmission are the police (12 Member States)[26] or the immigration authorities (11 Member States),[27] border guards (6 Member States)[28] and Ministries of Interior (5 Member States).[29] In some EU Member States more than one of these authorities share the various competences related to readmission. A more diversified picture can be expected to emerge when looking at the authorities and actors with competence or

[24]Peers et al. (2012).

[25]EMN (2014) Annex 2 Table A2.1.

[26]Bulgaria, Czech Republic, Estonia, Finland, Greece, Hungary, Malta, Slovakia, Slovenia, Spain and Sweden.

[27]Belgium, Cyprus, Estonia, Finland, Germany, Hungary, Ireland, Lithuania, Luxembourg, Netherlands and Sweden.

[28]Estonia, Finland, Latvia, Lithuania, Poland and Slovakia.

[29]Austria, Cyprus, Croatia, France and Germany.

powers over the identification and issuing of travel documents for purposes of readmission in third (non-EU) countries.

The comparative analysis of the six EURAs in Chap. 4 above has revealed that a key contribution of these EU legal instruments has been formalising the transmission of readmission applications through competent diplomatic and/or consular channels of the states concerned. The EURA with Pakistan constitutes an exception here. As Annex of this book illustrates, Article 2 of the agreement dealing with readmission of own-nationals does not expressly mention the role of diplomatic and consular authorities. The involvement of diplomatic/consular authorities of the third country concerned does in principle ensure that the application is no longer handled directly or solely between border, police or immigration (or Ministries of Interior) authorities of the states concerned. Rather EU authorities need to go through the diplomatic channels and Ministries of Foreign Affairs of these third countries, which often entail heavier procedures. The consequence has been that the responsible third country authorities cross-examine and verify the evidence or list of documents provided in a detailed manner. This may not only increase the time spent, but most importantly allows requested states to take into account issues which transcend EU-centric security and policing (expulsion-driven) priorities.

The de-linking of the process of determining a person's legal identity from the nationality of her/his state of origin opens up a rocky path which brings us to the ultimate shores of states' sovereignty in international relations at times of deciding who their national actually are. EURA lay down a set of rules and practices that cross dangerously the boundaries of sovereignty of the requested state for readmission at times of deciding who is a national and who is not in its national law and practice. While substantiation or *prima facie* means of proof are generally considered acceptable in the scope of EURAs examined in this book, this does prevent that the processes of identification in inter-state relations continue representing one of the most important obstacles in the operability of EURAs.

Arguably EU Member States, and by extension the EU, are behaving as if they would be entitled to re-determine the identity of people for purposes of expulsion. EURAs function as tools intended to foster third countries changes as regards how they confer their nationality and who is considered by law and practice as a national of those countries. The *Pham* case studied in Chap. 3 constitutes a case in point. The decision stands in a difficult position in light of current international standards and the interpretation of these provided by the UN High Commissioner for Refugees (UNHCR).[30] Article 1.1 of the 1954 Convention relating to the Status of Stateless Persons states that the term 'stateless person' means "a person who is not considered as a national by any State under the operation of its law". This provision has been interpreted as including both *de jure* and *de facto* statelessness. When considering the question as to whether a person is stateless, the UNHCR

[30]Carrera and de Groot (2015).

Guidelines[31] make a clear and specific recommendation when determining the non-possession of any foreign nationality. They underline in paragraph 19 that

> A Contracting State must accept that a person is not a national of a particular State if the authorities of that State refuse to recognize that person as a national. A Contracting State cannot avoid its obligations based on its own interpretation of another State's nationality laws which conflicts with the interpretation applied by the other State concerned.

The 2014 UNHCR Handbook on the Protection of Stateless Persons provides further clarification that in the phrase "under the operation of its law" enshrined in Article 1.1 of the 1954 Convention, the law means "not just legislation, but also ministerial decrees, regulations, orders, judicial case law (in countries with a tradition of precedent) and, where appropriate, customary practice."[32] The UK Supreme Court considered UNHCR Guidelines and Handbook to present a too broad interpretation of what "its law" actually means and concluded that there was no evidence "of a decision made or practice adopted by the Vietnamese government which treated the appellant as a non-national by operation of its law". Irrespective of these international and regional standards, the Court considered the UK Secretary of State for the Home Department entitled to carry out its own interpretation of Vietnamese nationality law and overtake the decision by Vietnamese authorities as regards who is a national in light of national legal system.

The UK Supreme Court ruling stands in a difficult relationship with the set of legal standards stemming from the jurisprudence of the CJEU in cases where EU Member States deprive an EU citizen of their nationality and therefore the status of citizenship of the Union. This is particularly so in respect of the 2010 CJEU ruling in *Rottmann v. Freistaat Bayern*,[33] where the Court held that in cases of withdrawal decisions national courts must pay due regard to the principle of proportionality.[34] The Court clarified that the national court would need to determine whether having regard to the relevant circumstances of the case at stake, the principle of

[31]UNHCR (2012) p. 5. See also UNHCR (2013).

[32]Ibid, p. 12. The Handbook continues by saying that "Establishing whether an individual is not considered as a national under the operation of its law requires a careful analysis of how a State applies its nationality laws in an individual's case in practice and any review/appeal decisions that may have had an impact on the individual's status.16 This is a mixed question of fact and law", Ibid.

[33]Case *Rottmann* C-135/08, ERC I-1449.

[34]In paragraph 56 of the ruling the Luxembourg Court held that "Having regard to the importance which primary law attaches to the status of citizen of the Union, when examining a decision withdrawing naturalisation it is necessary, therefore, to take into account the consequences that the decision entails for the person concerned and, if relevant, for the members of his family with regard to the loss of the rights enjoyed by every citizen of the Union. In this respect it is necessary to establish, in particular, whether that loss is justified in relation to the gravity of the offence committed by that person, to the lapse of time between the naturalisation decision and the withdrawal decision and to whether it is possible for that person to recover his original nationality."

proportionality would grant the person a "reasonable period of time in order to try to recover the nationality of his Member State of origin".[35]

As the Luxembourg Court stated in *Rottmann*, the essential criterion for the EU general principle of proportionality to be applicable in reviewing the legality of EU Member States' decisions in cases of withdrawal is not prior possession of another EU Member State nationality, or the need of a cross-border element. Instead, paragraph 42 of the *Rottmann* judgment emphasizes that the determining factor in the legality test is the extent to which the decision leaves the individual "in a position capable of causing him to lose the status conferred by Article 17 EC and the rights attaching thereto".[36] All these considerations were not properly taken into account by the UK Supreme Court, which effectively led Mr. Pham to loose not only British nationality but also European citizenship, while also leaving open the inter-state dispute as regards whose national?.

5.4 The Blurring of Rights

EURAs represent the flagship legal instrument shaping the intersection between expulsion policies and international relations in the EU. Any assessment of their implementation would remain blind without properly acknowledging and examining their impact for the agency and status of the individual[37] subject to these readmission processes. Controversially, as tools of international relations EURAs are predominantly driven and focused on the 'rights and duties' of the states' parties involved. They have been therefore designed, and studied by international relations scholars, in the context of inter-state interests and struggles. This study has illustrated how one of the key policy priorities shared by both EU Member States and the European Commission is the increase of expulsion rates of irregular immigrants present in the Union's territories. The matching of the number of removal orders and actual expulsions has been discursively framed as the turning point in ensuring the 'effectiveness' of EU's returns and readmission policy.

The EU's current obsession with returns rates not only prevents a proper discussion of the asymmetries and tensions that the practice of readmission poses to inter-state relations regarding who is a national. It also nuances and blurs one of the main reasons why people cannot be returned, i.e. their rights and entitlements as citizens and holders of fundamental human rights. The reach and margin of states' national sovereignty in the treatment of citizens and foreigners in migration regulations must remain delimited within the boundaries set by international human rights and European law standards. Several instruments composing the international human rights Treaty framework state clearly that *everyone* has the right to leave any

[35]Ibid. Paragraph 58.

[36]Carrera and de Groot (2015).

[37]Guild (2009).

country (including their own) and to return to their country. This is the case for example in Article 13.2 of the Universal Declaration of Human Rights (UNHR),[38] which was given specific form in Article 12 of the International Covenant on Civil and Political Rights (ICCPR).[39] They enshrine the individual's claim or right towards her/his country of origin or nationality.

A majority of EURAs state that after giving a positive reply to the readmission application, the competent diplomatic mission or consular office shall issue the necessary travel document "irrespective of the will of the person to be readmitted". The overlapping between readmission sovereign duties and individuals' rights and is however far from uncontested. The exact weight between the right and willingness of the individual to return and the obligation/right of the state of origin to readmit its nationals remains controversial. This dilemma was acknowledged by the Council Legal Service (CLS) back in 1999 when asked to assess the impact of the Amsterdam Treaty over Member States' competences on readmission.[40] The CLS Opinion stated that

> … it is doubtful that in the absence of a specific agreement to this effect between the states concerned, a general principle of international law exist which would oblige those State to readmit their own nationals if they do not wish to return to their country of origin.[41]

Plender has highlighted how an increasing number of national constitutional regimes across the world are characterizing the right to enter in one's country of origin as a fundamental human right.[42] Noll raised central questions at times of assessing the relation between 'the right' of the state of destination to return irregular immigrants with the right of individuals to leave[43]: Does the individual's unwillingness to expulsion translate into a 'right not to return'? Is the protective content of human rights law beyond state interests? What remains less contested in the academic discussion is the inherent relationship between the right of individuals to leave and to return to their country with other key human rights obligations

[38]Article 13 UDHR reads as follows: "(1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country."

[39]Article 12 ICCPR states that "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 2. Everyone shall be free to leave any country, including his own. 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. 4. No one shall be arbitrarily deprived of the right to enter his own country."

[40]Council of the EU (1999) paragraph 6.

[41]The CLS stated that "However, there exists a well-established obligation under international law for each state to readmit its own nationals if the latter wish to return. For example, Article 12.4 of the International Covenant of Civil and Political Rights provides that "No one may be arbitrarily deprived of the right to enter his own country". Footnote 3 of the Opinion.

[42]Plender (1988).

[43]Noll (1999), pp. 23–24, Noll (2003).

enshrined in international and European legal instruments.[44] They chiefly include the principle of *non-refoulement* according to which no one will be expelled, returned or extradited to a state where s/he may face a risk amounting to torture.[45] These obligations are now embedded in the EU legal system through the Treaties and Article 19 of the EU Charter of Fundamentals Rights.[46] The six EURAs under assessment include (to a variety of degrees) express references to these international human rights obligations. Usually these take the form of so-called 'Non-Affection Clauses'.

The content and scope of these provisions in EURAs have taken different forms and shapes depending on the country concerned. Some EURAs like the one with Pakistan do not provide any specific or expressly stipulated list of legal instruments that are of relevance for the application of the agreement. However, the EURA with Pakistan needs to be read in conjunction with the 2004 EC-Pakistan Cooperation Agreement (PAC) which states in Article 1 that the "respect for human rights and democratic principles as laid down in the Universal Declaration on Human Rights underpins the domestic and international policies of the Community and the Islamic Republic of Pakistan and constitutes an essential element of this Agreement." The situation concerning human rights protection in Pakistan was in fact an issue of serious concern for the European Parliament during the negotiations of the EURA.[47] The EURAs with Armenia, Azerbaijan, Cape Verde, Georgia and Turkey all include express references to and list relevant international obligations in instruments such as the Universal Declaration of Human Rights of 1966, the 1951 UN Convention on the Status of Refugees (as amended by the Protocol of January 1967) on the Status of Refugee, international conventions determining the state responsible for examining applications for asylum lodged, the UN Convention of December 1984 against Torture, or other specific instruments such as the Convention on International Civil Aviation of December 1944.

As Peers et al. have argued a large number of those persons expelled by means of a readmission agreement are likely to be asylum seekers or applicants for other forms of international protection.[48] Beyond formalistic references to human rights instruments in EURAs, the literature has highlighted and documented the international protection challenges in their operability. A particularly problematic aspect inherent to *the practice* in the readmission logic is its linkage to "the safe third country principle". According to UNHCR the safe third country concept is based on the

[44]Guild (2013).

[45]Refer to Article 3.1 of the UN Convention against Torture.

[46]Article 19.2 reads as follows: "No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment." Article 18 of the Charter also stipulates that "The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community."

[47]European Parliament (2004).

[48]Peers et al. (2012).

principle that "asylum-seekers/refugees may be returned to countries where they have, or could have, sought asylum and where their safety would not be jeopardized, whether in that country or through return there from to the country of origin".[49]

Coleman has argued that "A particular problem in the implementation of safe third country policies is that the Member State objective of minimizing the amount of persons in the asylum procedure has reduced the guarantee of safety in individual cases".[50] He has acknowledged that the wording of EURAs raises direct challenges to the rights of asylum seekers and refugees. However, the lack of specific provisions in some EURAs regarding the relationship between EURAs and safe third country principle makes it indeed difficult to pass the human rights test. The Achilles heel of EURAs from a human rights perspective is that there is not meaningful way to ensure that people with protection claims will be properly guaranteed in their implementation in the requested state.[51] This protection gap is particularly problematic in the phase of 'post-readmission' in the third country concerned. As the European Commission highlighted in 2011, a key weakness in the operability of EURA is the absence of any mechanism to monitor what happens to persons (notably TCNs) after their readmission.[52] Inter-state trust is simply not sufficient to ensure compliance. This has been confirmed by the Parliamentary Assembly of the Council of Europe (PACE) which called the EU to "instruct an appropriate body to monitor the implementation by member states of European Union-brokered readmission agreements" and to

> ensure that readmission agreements provide for a system under which the implementation of the agreement may be properly monitored and evaluated, and that they provide for a public annual report to be drawn up by the authorities of the readmitting country including, as a minimum, statistical data on the fate of readmitted persons (on issues such as detention, release, expulsion, access to asylum system, etc.).[53]

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[49]UNHCR (1991).

[50]Coleman (2009) p. 227.

[51]Carrera and Guild (2015).

[52]European Commission (2011). The Commission stated that "It would be important to know if the third country has respected the human rights of persons after their readmission." It recommended that "The Commission should consider to launch, with the support of the External Action Service, a pilot project with one of the principal international organisations active in the migration area in a particular third country with which an EURA is in force (e.g. Pakistan or Ukraine), tasking that organisation to monitor the situation of persons readmitted under the EURA and to report back to the respective JRC. On the basis of an evaluation of this pilot project, and with due regard to human and financial resources available, the Commission could decide to extend such a project to all third countries with which EURAs have been concluded. It could also be further analysed to what extent the monitoring system of forced return as required by the Return Directive may contribute to the "post-return" monitoring in question", pp. 13 and 14.

[53]Council of Europe Parliamentary Assembly (2010). The PACE also recommended the EU to "7.3 include in its readmission agreements as a condition for their application, that an asylum seeker to whom the agreement is applied shall first have had access in the European Union member state to an effective remedy in the sense of Article 13 of the European Convention on Human Rights, and that the agreements shall not be applied until the competent authority has ruled on the asylum seeker's appeal".

In addition to issues related to international protection and asylum, EURAs fall within the scope of existing EU immigration legislative instruments providing a harmonized set of Union rules in the field of expulsion of irregular immigrants, in particular the so-called Returns Directive.[54] This Directive, as well as all the case-law developed by the CJEU since its entry into force, are of direct application to EU readmission practices and instruments. EU Member States practices in the scope of EURAs must be in accordance to, and compatible with, the set of rules and standards enshrined in this piece of EU secondary legislation, and the subsequent jurisprudence by the Luxembourg Court. Among all the EURAs examined, only the EURA with Turkey makes express reference in the scope of Article 18 (Non-Affection Clause) to the need for the Agreement to comply with the rights and procedural guarantees in this Directive as well as other relevant legal instruments composing the current state of EU migration and asylum law.

The Returns Directive has received ample criticism in the academic literature due to its predominant focus on ensuring swift 'return'.[55] Recital 4 of the Directive establishes as one of its objectives "Clear, transparent and fair rules need to be fixed to provide for an effective return policy as a necessary element of a well-managed migration policy". Still, this Directive now sets a supranational framework of standards, procedural guarantees and rights subject to judicial scrutiny by the CJEU. This 'supranationalisation' has been understood to have displayed rather positive effects over the rights of irregular immigrants in the EU, in particular concerning the procedural remedies and time-limits concerning detention.[56] The Returns Directive envisages a set of procedural guarantees for TCNs which in practice may legitimately delay the actual expulsion procedure, chiefly the right to an effective remedy.[57] These circumstances are not deemed as 'obstacles' towards the effectiveness of the Directive. Rather, they are understood as a key way to ensure its legitimate, fair and effective functioning.

Article 13 of the Returns Directive foresees that irregular migrants must have an effective remedy to appeal against or seek review of decisions related to return before an independent competent judicial or administrative authority, "or a competent body composed of members who are impartial and who enjoy safeguards of independence." The appeals body must have the power to suspend the enforcement

[54]Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98.

[55]Baldaccini (2009), Acosta Arcarazo (2012), Mitsilegas (2015) pp. 93–107.

[56]Peers et al. (2012).

[57]Peers et al. (2014). Article 47 of the EU Charter of Fundamental Rights states that "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice".

of return decisions. The Directive also foresees that the third country national needs to have access to legal advice, representation and when necessary linguistic assistance. As long as the suspensory effect of the review by an independent authority is taking place the 'postponement of removal' is justified. Article 9 adds that EU Member States may postpone removal when it would violate the principle of *non-refoulement* or "for an appropriate period taking into account the specific circumstances of the individual case" and taking into account: "the third-country national's physical state or mental capacity and, technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification."[58]

Pending removal, third country nationals are holders of a set of 'safeguards pending return' stipulated in Article 14 of the Directive. This provision emphasizes that EU Member States shall ensure that the following principles are taken into account: maintenance of family unit with family members present in their territory, provision of emergency health care and essential treatment of illness, access to basic education by minors and take into account special needs of vulnerable persons. According to the EU Returns Handbook drafted by the Commission in 2015, "The returnee is, however, not considered to be legally staying in a Member State, unless a Member State decides—in accordance with Article 6.4—to grant a permit or a right to legal stay to the returnee". Article 6.4 of the Returns Directive provides EU Member States with the option to granting a residence permit "compassionate, humanitarian, or other reasons". Recital 12 of the Directive further proclaims that EU Member States should provide non-removable persons with a written confirmation of their situation.[59]

Peers (2015) has studied how the CJEU rulings interpreting the various provisions embodying the Returns Directive have attempted to 'balance' the often contradictory goals of ensuring the humane treatment of irregular migrants, with the objective of expelling irregular migrants as soon as possible. The Court has clarified the scope of detention in light of the Directive's obligation to grant voluntary departure,[60] or the implementation of the right to be heard (as part of the right of

[58]According to the EU Returns Handbook published by the European Commission in 2015 "The catalogue of possible reasons is open and allows Member States to react flexibly to any newly arising or newly discovered circumstances justifying postponement of removal. The concrete examples listed in the Return Directive (physical or mental state of the person concerned; technical reasons, such as lack of availability of appropriate transport facilities) are indicative examples. Member States may provide also for further cases in their national implementing legislation and/or administrative practice", p. 50. European Commission (2015).

[59]Recital 12 of the Directive reads as follows "The situation of third-country nationals who are staying illegally but who cannot yet be removed should be addressed. Their basic conditions of subsistence should be defined according to national legislation. In order to be able to demonstrate their specific situation in the event of administrative controls or checks, such persons should be provided with written confirmation of their situation. Member States should enjoy wide discretion concerning the form and format of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive."

[60]See for instance CJEU Cases C-61/11 (PPU) *El Dridi* 28 April 2011; C-554/13 *Zh. & O*. 11 June 2015; C-146/14 (PPU) *Mahdi* 5 June 2014.

good administration enshrined in Article 41 the EU Charter of Fundamental Rights) in the context of return and detention decisions. EU Member States are obliged to issue a removal order and enforce it, or regularize the individual involved.[61] The CJEU concluded in case *Mahdi* C-146/14,[62] that despite Article 6.4 and Recital 12, EU Member States are not obliged to issue an autonomous residence permit or other authorization conferring the right to stay

> …to a third-country national who has no identity documents and has not obtained such documentation from his country of origin, after a national court has released the person concerned on the ground that there is no longer a reasonable prospect of removal within the meaning of Article 15(4) of that directive. However, that Member State must, in such a case, provide the third-country national with written confirmation of his situation.[63]

The current policy priority paid by EU institutional instances on increasing returns rates irrespective of the proper implementation of these administrative and legal (including human rights) safeguards for individuals in the process of expulsion is thus problematic. As the Recital of the Returns Directive expressly mentions, testing effectiveness in return procedures must go hand-to-hand clear, transparent and fair rules, in full compliance with the fundamental human rights of irregular immigrants which may *de jure* prevent people to be returned irrespective of the existence of a removal order. Legal certainty, proportionality and fundamental rights are not just 'technical barriers' and cannot go at the expense of inter-state interests on migration control. The European Union Agency for Fundamental Rights (FRA) (2011) has provided a detailed account of the reasons preventing removal based on human rights considerations. These include considerations related to the protection of family and private life, medical and health conditions, humanitarian situations in the country of origin and best interests' considerations. It is therefore regrettable that the 2016 Council Conclusions.

Measuring effectiveness in implementation when comparing removal orders and returns is of a limited value for understanding the effects of EURAs. The goal of increasing return rates in comparison to the total number of removal orders does not address effectiveness from the perspective of the extent to which there are in fact too many removal orders being issued for people whom the competent national authorities know for a fact are not expellable. Expulsion orders may be taken

[61]The CJEU ruled in the case *Zaizoune* ruling that "…where a return decision has been issued against a third-country national, but that third-country national has not complied with the obligation to return, whether within the period for voluntary departure, or if no period is granted to that effect, [the Directive] requires Member States, in order to ensure the effectiveness of return procedures, to take all measures necessary to carry out the removal of the person concerned, namely, … the physical transportation of the person concerned out of that Member State", paragraph 33. C-38/14 *Zaizoune* 23 Apr. 2015. Furthermore, in the case *Kadzoev* (Case C-357/09 PPU), the Court concluded in paragraph 63 that "detention ceases to be justified and the person concerned must be released immediately when it appears that, for legal or other considerations, a reasonable prospect of removal no longer exists."

[62]C-146/14 (PPU) *Mahdi* 5 June 2014.

[63]Ibid. Paragraph 89.

perhaps too lightly by relevant authorities at domestic levels without carefully looking at the information available in individual cases and passing it to migration enforcement authorities while there are procedures or appeal processes still pending. Moreover, return decisions are often not final in nature; especially in those cases where those concerned are contesting the legality of their removal order. Finally, the equation of removal orders and enforced return decisions is over-simplistic. It does not take into account that the administrative status of individuals is not something fixed in stone or static in nature. There is nothing existential about irregularity. The legal status or circumstances of those subject to a removal order may change over time, and the person may cross the bridge toward regularity of stay or residence. The EURA procedures constitute an attempt to artificially fixate or 'freeze' the individual into a migratory status of irregularity.

References

Acosta Arcarazo D (2012) The good, the bad and the ugly in EU migration law: Is the European Parliament becoming bad and ugly? (The adoption of the directive 2008/115: the returns directive). In: Guild E, Minderhoud P (eds) The first decade of EU migration and asylum law. Martinus Nijhoff Publishers, Leiden, pp 179–205

Baldaccini A (2009) The return and removal of irregular migrants under EU law: an analysis of the returns directive. Eur J Migr Law 11(1):1–71

Bouteillet-Paquet D (2003) Passing the buck: A critical analysis of the readmission policy implemented by the European Union and its Member States. Eur J Migr Law 5:359–377

Carrera S, de Groot GR (eds) (2015) European citizenship at the crossroads: the role of the European Union on loss and acquisition of nationality. Wolf Legal Publishers, Oisterwijk

Carrera S, Guild E (2014) The European Council's guidelines for the Area of Freedom, Security and Justice 2020: subverting the 'Lisbonisation' of justice and home affairs?. CEPS Essay, Brussels

Carrera S, Guild E (2015) Can the new refugee relocation system work? Perils in the Dublin logic and flawed reception conditions in the EU. CEPS Policy Brief, Brussels

Cassarino JP (2010) Readmission policy in the European Union. Study for the European Parliament, Brussels

Coleman N (2009) European readmission policy. Third country interests and refugee rights, Martinus Nijhoff, Leiden

Council of Europe Parliamentary Assembly (2010) Readmission agreements: a mechanism for returning irregular migrants. Do. 12168, Strasbourg, Rapporteur: Tineke Strik
Council of the EU (2002) Criteria for the identification of third countries with which new readmission agreements need to be negotiated. 7990/02, Brussels, 16 Apr 2002
Council of the EU (1999), Standard readmission agreement between the member states of the EU, of the one part, and a third country, of the other part—Impact of the entry into force of the Treaty of Amsterdam, 6658/99, 10 Mar 1999
European Commission (2011) Evaluation of EU readmission agreements. COM (2011) 76, 23 Feb 2011
European Commission (2013) Communication on the work of the task force Mediterranean. COM (2013)869, 4 Dec 2013
European Commission (2015) Recommendation establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks. C (2015) 6250, 1 Oct 2015
European Migration Network (EMN) (2014) Good practices in the return and reintegration of irregular migrants: member states' entry bans policies and use of readmission agreements between member states and third countries. European Commission, Brussels
European Parliament (2004) Report on the proposal for a council decision on the cooperation agreement between the European Community and the Islamic Republic of Pakistan on partnership and development. C5-0659/2001, 20 Apr 2004
European Union Agency for Fundamental Rights (FRA) (2011) Fundamental rights of migrants in an irregular situation in the European Union. Publications Office of the European Union, Luxembourg
Goodwin-Gill GS (1975) The limits of the power of expulsion in public international law. Brit Yearb Int Law 47(1):55–156
Gregou M (2014) Drawing the geographical boundaries of expulsion and readmission in Greece: the dynamics of an elusive process. Eur J Migr Law 16(4):505–533
Guild E (2013) The right to leave a country. Issue Paper by the Council of Europe Human Rights Commissioner, Strasbourg
Guild E (2009) Security and Migration in the 21st Century. Polity Press, Cambridge
Guiraudon V (2000) European integration and migration policy: vertical policy-making as venue shopping. J Common Mark Stud 38(2):251–271
Hailbronner K (1997) Readmission agreements and the obligation on states under public international law to readmit their own and foreign nationals. Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 57:1–49
Kruse I (2006) EU readmission policy and its effects in transit countries: The case of Albania. Eur J Migr Law 8(2):115–142
Mitsilegas V (2015) The criminalisation of migration in Europe: challenges to human rights and the rule of law. Springer, London
Noll G (1999) Rejected asylum seekers: the problem of return. New Issues in Refugee Research, Working Paper 4, UNHCR, Geneva
Noll G (2003) Return of persons to state of origin and third states. In: Aleinikoff TA, Chetail V (eds) Migration and international legal norms. T.M.C Asser Press, The Hague, pp 61–74
Peers S et al (2012) EU immigration and asylum law (text and commentary) 2nd edn. Volume 2: EU immigration law. Martinus Nijhoff Publishers, Leiden
Peers S et al (2014) The EU charter of fundamental rights: a commentary. Hart Publishing, Oxford
Peers S (2015) Irregular migrants: Can humane treatment be balanced against efficient removal? Eur J Migr Law 17(4):289–304
Plender R (1988) International migration law. Martinus Nijhoff Publishers, Leiden
Singleton A (2016) Migration and asylum data for policy-making in the European Union. CEPS Liberty and Security Series in Europe, Brussels

UK House of Commons (2013) EU readmission agreement with Armenia. European Scrutiny Committee, London, 9 Jan 2013
UNHCR (1991) Background Note on the safe country concept and refugee status. EC/SCP/68, 26 July 1991
UNHCR (2012) Guidelines on statelessness No. 4—Ensuring every child's right to acquire a nationality through Articles 1-4 of the 1961 Convention on the reduction of statelessness. HCR/GS/12/04, Geneva, 21 Dec 2012
UNHCR (2013) Expert Meeting interpreting the 1961 statelessness convention and avoiding statelessness resulting from loss and deprivation of nationality. Summary Conclusions, Geneva
UNHCR (2014) Handbook on protection of stateless persons. Geneva. http://www.unhcr.org/53b698ab9.pdf Accessed 21 May 2016