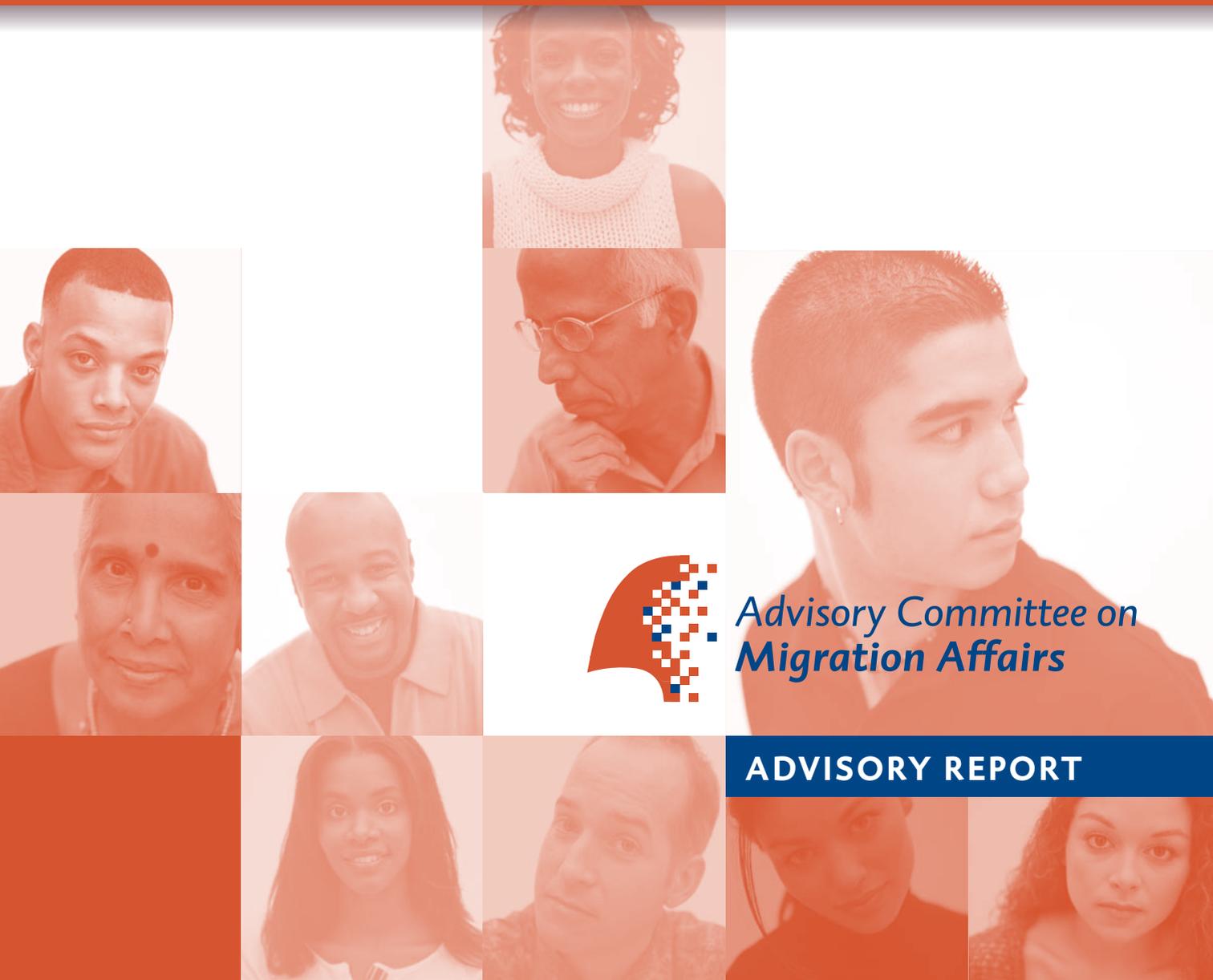




# *The strategic country approach to migration*

BETWEEN AMBITION AND REALITY



*Advisory Committee on  
Migration Affairs*

**ADVISORY REPORT**

# *The strategic country approach to migration*

BETWEEN AMBITION AND REALITY

THE HAGUE, JULY 2015

# The ACVZ

The Advisory Committee on Migration Affairs (ACVZ) in the Netherlands is an independent body that advises Government and Parliament on immigration law and policy.

## Colophon

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and the State Secretary of Security and Justice

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# Summary

## Background and request for advisory report

Since 1996 the problem of countries that do not cooperate or cooperate insufficiently in the return of their nationals has repeatedly been the subject of political debate in the Netherlands. In the intervening decades, the Netherlands has developed various policy strategies aimed at inducing countries of origin to improve their cooperation in forced return. Since 2011, when the first government led by Prime Minister Rutte took office, these strategies have been subsumed under the heading ‘strategic country approach to migration’.

The Advisory Committee on Migration Affairs (ACVZ) describes this approach as follows.

### **Description of the strategic country approach to migration**

A strategic country approach to migration exists if a link is made between forced return policy and one or more other policy areas. These policy areas may lie within or outside migration policy and be the responsibility of ministries other than the Ministry of Security and Justice. A customised approach is the key. Both positive and negative measures may be employed to achieve the aim. These incentives may be offered to countries of origin provided they cooperate in readmission. This is known as ‘conditionality’. In addition the message to cooperate in forced return is repeatedly transmitted in all contacts and at every level in relations with the country concerned.

The State Secretary of Security and Justice and the Minister for Foreign Trade and Development Cooperation asked the ACVZ to carry out an evaluation and issue an advisory report on the strategic country approach to migration. This report complies with that request.

The research questions are:

- How has the strategic country approach to migration been shaped in the Netherlands in recent years and what are the results?
- To what extent can the strategic country approach to migration be more effectively deployed as an instrument in migration policy?

The preference under Dutch migration policy is for independent return by foreign nationals who are not allowed to remain. Forced return is seen as a necessary element of a consistent return policy. This advisory report confines itself to measures to obtain the cooperation of countries of origin in the forced return of their nationals. They consist of undocumented or insufficiently documented failed asylum-seekers and other persons residing illegally in the Netherlands who have the nationality of the country of origin and who do not leave independently, with or without assistance.

The ACVZ’s research was focused on the 32 countries of origin on the Focus Country

List of January 2015 drawn up by the Repatriation and Departure Service (DT&V).<sup>1</sup> The government has awarded priority to nine countries on this list (known as the ‘Cabinet countries’): Afghanistan, Algeria, China, Egypt, Ghana, India, Iraq, Morocco and Somalia/Somaliland.

## Research findings

### *Reasons for not cooperating or not cooperating fully in return*

The broad consensus is that there is a rule of customary law that countries should readmit their own nationals even when their return is not voluntary. Nevertheless, there are still a number of countries that fail to cooperate or do not cooperate fully in forced return. The most commonly cited reasons are as follows.

- The country of origin itself adopts a strategic approach in which national political considerations and regional issues play a role.
- It is difficult to establish identity/nationality.
- The third-country national clause, which obliges countries of origin to readmit such persons if they have demonstrably travelled through the country in question, is an obstacle to the conclusion of readmission agreements and has a negative effect on return.
- Readmission costs money and the countries of origin are faced with capacity problems.
- Forced return entails loss of face, not only for the foreign national in question, but also for members of the diaspora and governments of countries of origin. This makes it difficult to discuss the issue and has an impact on the degree of cooperation provided.
- Remittances transferred by the diaspora to their country of origin: the World Bank estimates that around \$1.6 billion was transferred in 2014 from the Netherlands to the countries on the DT&V Focus List.

### **Interaction between EU return policy and the Dutch strategic country approach**

The deployment by the Netherlands of the strategic country approach and the effect it produces are partly dependent on the agreements reached by the EU with the countries of origin. On the one hand, these agreements may strengthen the effect of the approach because of the scale of the EU, but on the other, the EU’s actions may weaken Dutch efforts in this field. Consequently, the interaction between EU return policy and the Dutch strategic country approach to migration, and the results achieved at European level were also investigated.

### **Evaluation of the strategic country approach to migration**

The ACVZ endorses the view that though the independent return of foreign nationals who are not allowed to remain in the Netherlands is always preferable, an effective return policy is supported by the possibility of forced return. The research shows that the cooperation of the country of origin is a necessary condition for forced return: there are hardly any forced returns to countries which refuse to cooperate. The ACVZ therefore also endorses the principle that it is useful to develop a strategic approach aiming to induce countries of origin to cooperate better in forced return.

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1 The focus countries are: Afghanistan, Algeria, Armenia, Azerbaijan, Burundi, China, Côte d’Ivoire, the DR Congo, Egypt, Ethiopia, Georgia, Ghana, Guinea, India, Iraq, Iran, Lebanon, Libya, Morocco, Mongolia, Nigeria, Pakistan, Russia, Rwanda, Serbia, Sierra Leone, Somalia/Somaliland, Sri Lanka, Sudan, Suriname, Turkey, Ukraine. The list is updated every six months.

The strategic country approach assumes that the cooperation of countries of origin in forced return can be improved through the use of positive or negative incentives, good relations management and a customised approach. Earlier research has however demonstrated that these strategies do not automatically lead to the desired results. On the basis of letters to the House of Representatives and its research, the ACVZ has formulated an interim objective and an ultimate goal concerning process-oriented aspects of policy, as well as an ultimate goal concerning the effectiveness of policy. The ACVZ has evaluated the strategic country approach to migration in light of these three goals. The question of whether the interim objective and the first ultimate goal have been achieved involves a process evaluation. The question of whether the second ultimate goal has been achieved involves an outcome evaluation.

**Interim objective: parties that can positively influence the effectiveness of return policy are made aware of the problems associated with return.**

The willingness of parties other than the Ministry of Security and Justice to work towards a successful return policy plays an important role in the strategic country approach to migration. For this reason, creating awareness in these parties is seen as the first step in the strategy. The Ministries of Security and Justice, Foreign Affairs and Finance are aware of the significance that deployment of bilateral relations as a whole can have for the success of return policy, but this is not true of other ministries. Security and Justice and Foreign Affairs have to draw these ministries' attention to the strategic approach over and over again. The same applies to Europe: due to the fragmented way the EU institutions work, beyond the Justice and Home Affairs Council (JHA Council) and the Directorate-General for Migration and Home Affairs of the European Commission (DG HOME), an integrated return policy is rarely awarded priority.

The ACVZ concludes that the interim objective has not been achieved beyond the ministries of Security and Justice, Foreign Affairs and Finance. Within these ministries it has been achieved. At European level the interim objective has only been achieved within the field of Justice and Home Affairs and DG HOME.

**Ultimate goal 1: a political evaluation of return as against other Dutch interests takes place which also addresses the effectiveness of the instrument that may potentially be deployed (process evaluation).**

*Political evaluation at national level*

Since ministries other than Security and Justice, Foreign Affairs and Finance are not aware of the significance of bilateral relations for the success of return policy, they do not carry out a political evaluation of return in relation to other Dutch interests, unless they are specifically requested by Security and Justice or Foreign Affairs to do so. Such an evaluation does sometimes take place within Security and Justice, Foreign Affairs and Finance (in the case of the latter ministry, in consultation with Security and Justice). The outcome is seldom in favour of return policy. Either interests in other policy areas carry greater weight or Dutch economic interests prevail over what is seen as the limited interest in return. The same applies to policy areas within the migration remit of Security and Justice, Foreign Affairs, Social Affairs and Employment (SZW) and Education, Culture and Science (OCW). In addition, a consistent choice is made within these ministries for a general policy, which makes it impossible in specific cases to use facilities in the fields of labour, student or highly skilled migration, for example, as leverage for return policy.

Whenever an evaluation takes place between return policy and other Dutch interests, the outcome is often unfavourable for return. Though good reasons may underlie these choices, the ACVZ notes that there is a discrepancy here between the lip service paid to return in the political debate and the importance it is given in practice.

#### *Political evaluation at European level*

Within the EU the Netherlands is working towards a political evaluation of return policy and other interests at European level. Such an evaluation is already being conducted within the justice and home affairs (JHA) domain, as witnessed by the instruments that have been developed: readmission agreements, mobility partnerships (MPs), common agendas and migration dialogues. The Netherlands makes an active contribution to all these instruments. The reality is that in the EU, just as in the Netherlands, the interests served by other policy areas often prevail. The ACVZ notes that at European level no linkage has as yet been made between return and areas such as police and judicial cooperation, development cooperation, trade and foreign policy, to the extent that these areas have a connection with migration and return.

Though there is resistance within the EU to negative conditionality, there is support for the use of positive incentives. Efforts to involve DGs other than DG HOME in return policy have so far been unsuccessful. A pilot project with three countries of origin has been launched on the initiative of the Netherlands. This is a first step towards improving an integrated approach to return policy at European level.

The ACVZ concludes that the first ultimate goal has been achieved to a limited extent at national level, within Security and Justice, Foreign Affairs and Finance. Outside these three ministries it has been achieved to a very limited extent. At European level, this goal has only been achieved to a limited extent within the area of Justice and Home Affairs (JHA/DG HOME).

### **Ultimate goal 2: the effectiveness of return policy is enhanced by improving the cooperation of countries of origin in the forced return of their nationals**

In practice, a government-wide approach to return policy has proved difficult to establish in the Netherlands. Nowadays, members of government and officials of ministries other than Security and Justice and Foreign Affairs regularly raise the issue of return in their bilateral contacts, yet there is no evidence that this has ever had any effect. The ACVZ's research also shows that two attempts have been made to establish linkage outside the remits of these two ministries but to no effect. Since February 2004 the basic premise of the policy memorandum on the inclusion of readmission clauses in bilateral agreements – to the effect that such a clause should in principle be included in certain bilateral agreements – has been applicable, but such a clause has never effectively been included in any bilateral agreement. The fact that the political evaluation of return in relation to other Dutch interests is often unfavourable for return has of course an impact on the effectiveness of return policy: the result is that instruments that might have been effective are not deployed, which limits the results of the strategic approach.

The attempts to involve ministries other than Security and Justice and Foreign Affairs in return policy have not as yet led to concrete results. This part of the policy cannot therefore be qualified as effective.

The effectiveness of the policy is also limited within Security and Justice and Foreign Affairs because, here too, the outcome of the evaluation is often unfavourable for return or because greater value is attached to pursuing a general policy than to increasing the effectiveness of return policy. Instruments falling under the migration policy of Foreign Affairs or Security and Justice which have been deployed have sometimes produced results. Instruments that are not directly related to migration policy have also sometimes produced results.

In the case of some countries improvements in cooperation have been achieved through investment in the mutual relationship at several levels, and through a customised approach such as capacity-building projects, in which reliability and mutual respect also play a role. This has produced tangible results.

A few countries have explicitly stated that they will not cooperate in forced return. In the case of others, this is abundantly clear from practice. With regard to some of these countries the government has decided that there are other interests involved which the Netherlands does not wish to jeopardise and that therefore no serious pressure can or will be exerted. In such cases, the only solution is either to scale up the effort via the EU, or wait for a moment when genuine changes in bilateral relations are taking place.

The international deployment of the strategic country approach to migration and the interaction with EU return policy have in some cases been productive. The Netherlands needs the scale of the EU in relation to certain countries in order to achieve the desired results for the strategic country approach. One such result is the readmission agreements that have been concluded with nine of the focus countries. An obstacle to negotiations is the inclusion of a third-country national clause, which some member states insist on. In practice, the Netherlands hardly ever makes use of this clause. Generally speaking, migration dialogues and mobility partnerships make a positive contribution to the Netherlands' aims with regard to the strategic country approach. The ACVZ takes the view that results have been achieved in the field of justice and home affairs (primarily through the instruments of visa facilitation, and projects for capacity building and border control). Outside the field of justice and home affairs no tangible results have been achieved for the Netherlands.

The ACVZ concludes that the deployment of the Dutch strategic country approach to migration within the remits of Security and Justice and Foreign Affairs can be regarded as effective to a certain extent, but it is limited by the fact that the evaluation of competing interests is often unfavourable to return. Dutch efforts in Europe within the policy areas of JHA/DG HOME have largely been effective.

### **Lessons from Belgium, France, Spain and the United Kingdom**

Belgium, France, Spain and the United Kingdom all pursue an approach that shows similarities with the Dutch strategic country approach to migration. The ACVZ investigated 'best practices' in these four countries. Its most important findings are as follows.

- A broad cooperative relationship with countries of origin, which includes a coherent approach to migration and possibly development cooperation, can produce good

results provided the cooperation has attractive aspects for the country concerned, such as opportunities for labour or student migration. A direct exchange of random, unrelated interests would not be an appropriate instrument in this context.

- Cooperation between several ministries is necessary for such a broad approach, but it must be clear which ministry has the power to ultimately take decisions to resolve any impasse.
- A good, respectful relationship can be the key to success. In this context it may be necessary to deploy high-ranking diplomats and Ministers to get things moving. A physical presence in the country of origin helps maintain the relationship. If cooperation at operational level has no chance of success, there is no point in continuing to focus efforts in this area.
- Negative incentives may work if they are connected to migration and/or directly affect those immediately involved. They must however be used with caution since they can damage the relationship.
- All four countries approached for the study of ‘best practices’ are largely positive about the role the EU and EU instruments can play.

## Recommendations

On the basis of its conclusions the Committee makes the following recommendations.

- 1. Invest in developing a coherent and integrated migration policy which, in addition to return and efforts to combat irregular migration, addresses highly skilled, labour and student migration and the internationalisation of migrants’ social insurance rights. In this context reconsider the choice for a general policy and/or consider introducing extra facilities for countries that cooperate in forced return.**
- 2. If forced return cannot be achieved in the case of a particular country at a particular time, reduce operational cooperation with the country in question to a minimum level. At the same time, continue to invest in diplomatic contacts through members of government and high-ranking officials, keep the dialogue going at this level and try if possible to step it up.**

It is of course recommended that once a change takes place in diplomatic relations with a particular country, the LP procedures for that country should be resumed.

- 3. Invest in the long-term relationship with countries of origin.**

To this end, the ACVZ offers the following guidelines.

- Bear in mind the strategies pursued by the countries of origin themselves in bilateral relations and the reasons why these countries do not cooperate or do not cooperate fully in return.
- In relations with countries of origin, remain alert to regional issues and regional coherence.
- Build realistic and credible incentives into cooperation, adopting a customised approach.
- Try to avoid as far as possible the feeling of loss of face associated with forced return of a country’s nationals and always take account of it in presentations of foreign nationals at consulates, and in expulsions.
- Discuss the issue of return regularly with high ranking officials and Ministers.

- Be prepared to compromise.
- Avoid explicit negative incentives as much as possible since they undermine equality in a relationship.
- If nevertheless the decision is made to use a negative incentive, ensure first of all that this is communicated clearly and in a timely manner to the country concerned and that it is also perceived as such by the country concerned; ensure too that the negative incentive is proportionate and affects the persons or bodies directly involved in readmission policy.
- Consider investing in staff of Dutch embassies abroad, thus enabling them to manage relations with third countries. Practical cooperation and a physical presence are major factors in managing relations with a number of countries.

**4. Continue to work towards the promotion of forced or independent return in the EU framework.**

The ACVZ has formulated the following guidelines for this recommendation:

- In the European context keep in mind the fact that other member states and parts of the European Commission may have different opinions and take this into account when choosing suitable instruments. Policy that the Netherlands sees as desirable is not always feasible at European level, examples being the deployment of development cooperation or negative incentives. It is thus more effective to look to the European policy areas that do offer opportunities, such as visa facilitation and ‘mode 4’ GATS trade agreements.
- Reconsider the Dutch position regarding the inclusion of a third-country national clause in readmission agreements with countries to which the European Neighbourhood Policy does not apply.
- Put more effort into a regional approach to migration flows and return, and try to conclude wherever possible simultaneous readmission agreements and mobility partnerships with migrants’ countries of origin.



## Introduction

### 1.1 Background and request for advisory report

The coalition agreement of the second Rutte government contained the following passage concerning return policy:

*A restrictive and just immigration policy calls for an active, consistent policy on return. Those who are not permitted to reside here must leave, or they will be expelled. We will put pressure on countries to readmit their own citizens who have been denied entry to the Netherlands. This may affect trade and development relations with such countries.*

The basic principle underlying Dutch return policy is independent departure, in some cases with financial and/or material support. If foreign nationals refuse to return to their countries of origin, they may be expelled. Nevertheless, in the case of foreign nationals with insufficient documentation neither independent nor forced return can take place without the cooperation of countries of origin. If a foreign national who may no longer remain in the Netherlands does not have or no longer has any travel documents and is unable or unwilling to obtain these, the Repatriation and Departure Service (DT&V) submits an application for a replacement travel document, known as a laissez-passer (LP), to the diplomatic mission of the presumed country of origin. A number of countries of origin are willing to provide LPs where the person in question is returning independently, but not in the case of forced return. Some are prepared, in the latter case, to confirm nationality or identity.

The government believes that cooperation by some of these countries in the forced return of their nationals can be improved through a ‘strategic country approach to migration’ (Dutch acronym SLM).<sup>2</sup> The State Secretary of Security and Justice (SvV&J) has asked the Advisory Committee on Migration Affairs (ACVZ) to issue an advisory report on this approach.<sup>3</sup>

In the meeting with members of government to discuss migration and development on 5 March 2014, members of the House of Representatives expressed their reservations concerning the usefulness of the SLM, and requested an evaluation. The State Secretary of Security and Justice and the Minister for Foreign Trade and Development Cooperation requested the ACVZ to supplement the already planned advisory report on the SLM with an evaluative component which resulted in this report.

### 1.2 Research questions, problem definition, description of terms and scope

#### 1.2.1 Research questions

The State Secretary of Security and Justice and the Minister for Foreign Trade and Development Cooperation asked the Committee to focus on the following questions in

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<sup>2</sup> The ‘strategic country approach to migration’ is described in paragraph 1.2.2.

<sup>3</sup> See ACVZ work programme 2014, p. 3 (available in Dutch only), [www.acvz.org](http://www.acvz.org)

its report.

#### **Research questions**

- How has the strategic country approach to migration been shaped in the Netherlands in recent years and what are the results?
- To what extent can the strategic country approach to migration be more effectively deployed as an instrument in migration policy?

The Committee further refined the research questions into four sub-questions.

1. How has the strategic country approach been shaped in the Netherlands?
2. What is the interaction between EU return policy and the Dutch strategic country approach?
3. What are the results of the strategic country approach, viewed partly in the light of EU return policy? To what extent can this approach be described as effective?
4. Are there other countries that have a strategic country approach comparable to that of the Netherlands and if so, how do they go about it? What lessons can be learned from the strategic country approach as pursued by other countries?

#### **1.2.2 Problem definition, description of terms and available instruments**

Since 1996 the problem of countries that fail to cooperate fully or do not cooperate at all in the return of their nationals has repeatedly been raised by Dutch politicians. The problem is most common in the case of the forced return of undocumented or insufficiently documented foreign nationals. Since 1996, therefore, the Netherlands has developed policy strategies designed to encourage countries of origin to improve their cooperation in the forced return of their nationals. Since 2011, when the first Rutte government took office, these strategies have been subsumed under the general heading 'strategic country approach to migration'. The SLM is thus no recent phenomenon, as is often assumed.

In this report the ACVZ employs the following description of the SLM.

#### **Description of the strategic country approach to migration**

A strategic country approach to migration exists if a link is made between forced return policy and one or more other policy areas. These policy areas may lie within or outside migration policy and be the responsibility of ministries other than the Ministry of Security and Justice. A customised approach is the key. Both positive and negative measures may be employed to achieve the aim. These incentives may be offered to countries of origin provided they cooperate on readmission. This is known as 'conditionality'. In addition the message 'to cooperate in forced return is repeatedly transmitted in all contacts and at every level in relations with the country in question.

This description is based on letters on the subject of the SLM from the State Secretary of Security and Justice to the House of Representatives. Chapter 3 discusses the results of the SLM in the light of the description given above.

#### *SLM instruments*

At national level the following instruments have been deployed to implement the SLM:

- Memoranda of Understanding (MoUs);
- readmission clauses in bilateral agreements;
- relations management;
- deployment of positive incentives, ranging from capacity-building projects and post arrival assistance programmes to tax agreements;
- use of negative incentives, such as reductions in development aid.

At international level the following instruments are available:

- EU readmission agreements;
- Benelux readmission agreements;
- readmission clauses in international agreements between the EU and third countries;
- the Global Approach to Migration and Mobility (GAMM)
  - Mobility Partnerships
  - Common Agendas on Migration and Mobility (CAMM)
  - Migration dialogues;
- operational cooperation between member states;
- cooperation with other like-minded countries.

### 1.2.3 Goal of the strategy

On the basis of the State Secretary's letters to the House of Representatives the ACVZ has concluded that the ministry deploys the SLM with the ultimate goal of enhancing the effectiveness of return policy by improving cooperation by countries of origin in the forced return of their nationals.<sup>4</sup>

Some of the responsible policymakers have formulated another ultimate goal: they believe that the goal has already been achieved if a political evaluation of the interests involved (return as against other Dutch interests) takes place, during which the question of whether the instrument can be effective is constantly at the forefront. This goal takes account of the fact that the choices made in connection with return policy are ultimately of a political nature and may not always be compatible with the government's other objectives or may even be counter-productive. In this view, the SLM enables a well-considered evaluation of the government's political goals in which the conclusion may be that a different political objective weighs more heavily and/or that the likelihood of a particular instrument achieving its goals is highly questionable. The results of this evaluation may therefore be that the proposed instrument will not be strategically deployed in order to promote forced return.

The research also showed that staff at Foreign Affairs, and above all at Security and Justice have formulated a so-called interim objective, namely that the SLM should ensure that the parties that can positively influence the effectiveness of return policy are made aware

<sup>4</sup> Parliamentary Papers, House of Representatives 2013/14, 30 573, no. 124, p. 4, Letter from the SvV&J, 25 February 2014, <https://zoek.officielebekendmakingen.nl/kst-30573-124.html>.

of the problems involved.<sup>5</sup> This interim objective is a logical first step of a strategy in which the cooperation of other national parties is often a requirement.

The identification of a supplementary interim objective and ultimate goal on process-oriented aspects of policy by staff at the Ministries of Security & Justice and Foreign Affairs, is an example of what Lipsky calls ‘goal displacement’. This means that staff reformulates the ultimate goal into a goal concerning aspects of the process instead of focusing on the results of the process.<sup>6</sup> The State Secretary’s goal refers to the results of the strategic approach, whereas staff will concentrate on completing all stages of the process in an effective way, in order to achieve the interim objective and the ultimate goal regarding process-oriented aspects of policy. In this view, completing the process means that the goal has been achieved. According to the ACVZ the ultimate goal of a political assessment of the interests involved as formulated by staff at Security and Justice/Foreign Affairs can be regarded as a legitimate goal: in certain circumstances it may ultimately be the right decision to end the process given the circumstances, since it is not appropriate to pursue an effective return policy at all costs. Other (national) interests may be of more importance. However, if the interests of an effective return policy are always overruled in the process of any assessment of interests involved, it will be pointless to go through the process over and over again. Policy instruments could never effectively be deployed in practice, and the ultimate goal of enhancing the effectiveness of return policy would never be achieved. Consequently, efforts to achieve an ultimate goal on process-oriented aspects of policy can never stand alone, and the achievement of such a goal cannot lead to the conclusion that a policy is effective. In the end, only the effects produced by deploying policy instruments in practice can justify such a conclusion.

The ACVZ has formulated the following goals for the SLM on the basis of letters to the House of Representatives and on the basis of its research:

#### **Interim objective and ultimate goals of the strategic country approach to migration**

Interim objective: parties that can positively influence the effectiveness of return policy are made aware of the problems associated with return.

Ultimate goal 1: a political evaluation of return as against other Dutch interests takes place which also addresses the effectiveness of the instrument that may potentially be deployed (process goal).

Ultimate goal 2: the effectiveness of return policy is enhanced through improving cooperation by countries of origin in the forced return of their nationals.

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- 5 Also: Research and Documentation Centre (WODC): *Evaluatie van de herziene asielprocedure. Eindrapport* (The revised asylum procedure: An evaluation. Final Report), 2014 p. 176: ‘The DT&V therefore measures the results of the strategic country approach not only (or primarily) on the basis of return figures, but also on the basis of the attention that the subject attracts in relations with the countries of origin. As one of the staff interviewed remarked, “What I see as an important criterion is that return has become a normal part of the Netherlands’ foreign relations.” Measured in the light of this criterion, the approach has certainly been productive. For example, Ministers and State Secretaries from other government departments may nowadays be asked to raise the issue of return in visits abroad or when receiving foreign delegations at home; how and whether this has been done is subsequently handled in the Integrated Country Approach to Return Task Force (TILT) consultations.’ Summary in English: [http://english.wodc.nl/onderzoeksdatabase/2347-evaluatie-vw2000.aspx?nav=ra&l=migratie\\_en\\_integratie&l=asielbeleid](http://english.wodc.nl/onderzoeksdatabase/2347-evaluatie-vw2000.aspx?nav=ra&l=migratie_en_integratie&l=asielbeleid).
- 6 M. Lipsky, *Street-Level Bureaucracy. Dilemmas of the Individual in Public Services*, New York: Russell Sage Foundation, 1980, p.44.

The ACVZ will evaluate the strategic country approach to migration in light of these three goals. The question of whether the interim objective and the first ultimate goal have been achieved involves a process evaluation. The question of whether ultimate goal 2 has been achieved involves an outcome evaluation.

#### *Measuring the effectiveness of return policy*

Achieving the second ultimate goal of the SLM should enhance the effectiveness of return policy. Quantitatively speaking, however, the effects are difficult to measure. The second ultimate goal of the strategic approach has been described only in broad terms and no baseline measurement has been established. The DT&V provided figures which are useful only to a limited extent in establishing the effectiveness of return policy (see also section 1.4). Furthermore external factors such as internal threats to stability, a changing of the guard with regard to high-ranking officials, diplomats or contacts, and the outbreak of diseases like Ebola in countries of origin are effecting the efforts of the authorities to cooperate with the Netherlands on forced return. Since a causal relationship with forced return policy can not be established, the ACVZ will consider a number of effect indicators in this report.

The Committee assessed as concretely as possible the increase in effectiveness of return policy as a result of improving the cooperation of countries of origin in the forced return of their nationals (the second ultimate goal) on the basis of a number of effect indicators.

At national level:

- an MoU has been concluded;
- the undertakings in the MoU have been observed (according to respondents at Security and Justice/Foreign Affairs and on the basis of figures on forced return);
- a bilateral treaty with a readmission clause has been concluded;
- forced returns have taken place (using an LP or an EU travel document);
- forced returns have taken place of persons with a criminal background and/or those covered by the 1F exclusion clause of the Convention Relating to the Status of Refugees (priority group);
- authorities in the countries of origin have undertaken to cooperate in the forced return of their nationals;
- good relations have been established with the embassies and authorities of the countries of origin, according to respondents at Security and Justice/Foreign Affairs;
- taskforces have been set up to help in the process of establishing the identity of foreign nationals;
- a decrease has occurred in the number of cases where the competent authorities did not respond to an application concerning confirmation of nationality or the issue of LPs.

At international level:

- a Benelux or EU readmission agreement (with a Benelux Implementation Protocol) has been concluded;
- the readmission agreement has been implemented (according to respondents at Security and Justice/Foreign Affairs/European Commission and on the basis of figures on forced return);
- a readmission clause has been included in an EU agreement which reflects the intention to cooperate in forced return (for example Cotonou Agreement or Association Agreement);

- agreements have been made in the context of a Mobility Partnership (MP) or a Common Agenda (CAMM);
- cooperation at operational level (EURINT or ERIN) has been established.

Chapter 3 discusses the results of the SLM.

#### 1.2.4 Scope

*Cooperation of countries of origin in the forced return of their nationals where those nationals are undocumented or insufficiently documented*

The report will confine itself to measures to obtain the cooperation of countries of origin in the forced return of their nationals. These consist of undocumented or insufficiently documented failed asylum-seekers and other persons residing illegally in the Netherlands who have the nationality of the country of origin and who do not leave independently, with or without making use of voluntary assistance programmes.<sup>7</sup>

This report does not consider the readmission of third-country nationals and stateless persons by their country of previous residence. Although readmission agreements concluded in the Benelux or EU framework with a specific country of origin usually concern both the readmission of the country's own nationals and of third-country nationals and stateless persons who had previously transited its territory, the countries of destination rarely make use of the third-country national clause in practice.<sup>8</sup>

*No cost-benefit analysis*

This evaluation did not include a cost-benefit analysis.

*DT&V caseload*

The DT&V manages the departure of foreign nationals from the Netherlands and works to this end with migration partners, the Royal Military and Border Police (KMar), the police, the Immigration and Naturalisation Service (IND), the Custodial Institutions Agency (DJI) and, in the context of independent departure, with NGOs and the International Organization for Migration (IOM)). This report is concerned solely with the forced return of foreign nationals forming part of the DT&V caseload.

Forced returns also take place at the border. The KMar is responsible for border control (except for the Rotterdam port area, where the Seaport Police is responsible).<sup>9</sup> If a foreign national is denied entry to the Netherlands, the KMar can usually demand that the airline that transported the foreign national to the Netherlands return him/her to the point of departure.<sup>10</sup> Foreign nationals flying from destinations where the passenger

7 In Dutch policy and implementation law the term 'voluntary return' has been replaced by 'independent departure' to emphasise the foreign national's own responsibility to leave the Netherlands. Also, the use of this term shows that in reality these foreign nationals do not return on a basis of their own free will since they have a legal obligation to leave the country. Independent departure may be assisted or unassisted. In these cases there is usually no obstacle to obtaining travel documents once the nationality of the person in question has been established. Independent departure therefore falls outside the scope of this report.

8 Such a clause obliges the country with which the readmission agreement is concluded to readmit third-country nationals who have demonstrably lived in the country or have travelled through it. Communication from the European Commission concerning the evaluation of the EU Readmission Agreements (COM (2011)76), p. 10-11, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0076:FIN:EN:PDF>.

9 N.B. Foreign nationals who, after being refused entry, state that they wish to submit an asylum application are passed on to the Immigration and Naturalisation Service (IND).

10 Foreign nationals who after being refused entry cannot immediately travel back with the airline that transported them, are handed over to the DT&V.

data are supplied beforehand can be identified at the border<sup>11</sup> and, if undocumented or in possession of a falsified identity document, can be expelled on the basis of a Chicago Convention Letter (CCL, also known as a Chicago Convention Document or CCD) to countries that have ratified the Convention on International Civil Aviation (Chicago Convention).<sup>12</sup> In such cases it is unusual for problems to arise in relations with the countries of origin regarding forced return. The ACVZ has therefore not investigated the issue of return at the border and the role played by KMar in relation to countries of origin.

In implementing return policy the DT&V concentrates primarily on foreign nationals with a criminal background (including persons covered by the 1F exclusion clause of the Convention Relating to the Status of Refugees), families and unaccompanied minors. This report concentrates on the 32 countries of origin on the DT&V Focus Country List of January 2015.<sup>13</sup> These are the countries which for a variety of reasons are of relevance to the issue of return. The selection criteria for the list are as follows:

- a relatively large influx of their nationals into the departure process (DT&V caseload);
- a net annual number of LP applications known to the authorities of 60 or more.<sup>14</sup>

There are a number of exceptions to the selection criteria in the Focus Country List based on historical considerations and a strategic approach already put in place by Security and Justice and Foreign Affairs.<sup>15</sup>

The government awards priority to nine countries on the list, known as ‘Cabinet countries’ (MR countries): Afghanistan, Algeria, China, Egypt, Ghana, India, Iraq, Morocco and Somalia/Somaliland. The problems with forced return to these countries cannot be resolved within the migration policy domain only. An interministerial strategic approach towards these ‘Cabinet countries’ is needed. The DT&V manages the departure of foreign nationals from the Netherlands, and works according to a ‘scaling up’ model. It starts the LP application procedure with the authorities of the country of origin in order to obtain a travel document. The DT&V analyses any problems concerning forced return, and tries to resolve these problems together with the Ministry of Foreign Affairs and the Dutch embassies. If these efforts fail, the DT&V will suggest the use of positive or negative incentives within the migration policy area of the ministries of Security and Justice and Foreign Affairs or within other Security and Justice policy areas. If this strategy is not successful, the DT&V will suggest using incentives from other policy areas outside Security and Justice. In those cases a country of origin is listed as a ‘Cabinet country’.

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11 The airline is obliged to provide such passenger details under Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data, OJEU 2004, L261.

12 See <http://www.icao.int/publications/Documents/chicago.pdf> for a list of countries that have ratified the Chicago Convention.

13 The ‘focus countries’ are: Afghanistan, Algeria, Armenia, Azerbaijan, Burundi, China, Côte d’Ivoire, DR Congo, Egypt, Ethiopia, Georgia, Ghana, Guinea, India, Iraq, Iran, Lebanon, Libya, Morocco, Mongolia, Nigeria, Pakistan, Russia, Rwanda, Serbia, Sierra Leone, Somalia/Somaliland, Sri Lanka, Sudan, Suriname, Turkey and Ukraine. The list is updated every six months. Only three countries have been removed from the list since 2011 (Angola, Eritrea and Macedonia); after 2011 five countries were added: Côte d’Ivoire, Ethiopia, Lebanon, Libya and Pakistan.

14 With the exception of Somalia/Somaliland, in the absence of an LP procedure, and of Georgia, Pakistan, Sri Lanka, Turkey and Ukraine, which do have large numbers of nationals in the DT&V caseload, but the number of LP applications (readmission applications) is relatively low. The latter countries have a strong European focus, i.e. they have concluded readmission agreements with the EU. When an EU readmission agreement has been concluded, LP applications are submitted on the basis of the EU agreement.

15 These are Burundi, DR Congo, Ethiopia, Ghana, India, Lebanon, Rwanda and Sudan. These countries were selected earlier on the basis of the selection criteria.

### 1.3 The policy theory underlying the strategy

The SLM is based on a number of premises which are not always explicitly mentioned, but are decisive in answering the question of whether it can achieve the goals envisaged. Are the parties approached in the context of the interim objective capable of positively influencing the effectiveness of return policy? Can the instrument which is part of the political evaluation in the first ultimate goal be at all effective? Can the effectiveness of return policy be enhanced through improving the cooperation of countries of origin in forced return? The theory that the SLM is a suitable policy instrument to achieve the envisaged goals is based on a number of expected mechanisms, hereafter called assumptions.

The first assumption is that the possibility of forced return facilitates an effective return policy. The second is that the willingness of countries of origin to cooperate in cases of forced return is a decisive factor in relation to the effectiveness of return policy. The third assumption is that the cooperation of countries of origin can be improved by using positive incentives. The final assumption is that the cooperation of countries of origin can be achieved through good relations management and a customised approach.

#### **Assumption 1: the possibility of forced return facilitates an effective return policy**

It has long been a basic premise of Dutch return policy that the independent departure of foreign nationals who may no longer remain in the Netherlands is preferable to their forced return. To this end a number of instruments have been developed that are designed to encourage such persons to depart of their own accord. Generally speaking, countries of origin cooperate in the independent return of their nationals. In the cases where this is not so, and where the foreign national has demonstrably made an effort to return independently, the Netherlands has put in place a no-fault policy. Although the independent departure of foreign nationals no longer permitted to remain here remains preferable, forced return is regarded as an indispensable last resort. It is assumed that if forced return were to be impossible, many foreign nationals would not be prepared to leave independently.

The research for this report showed that forced return has far-reaching effects, in the first place of course for the person concerned, but also for his/her relatives, members of the diaspora, staff of the implementing agencies and the government of the country of origin. With regard to the latter, their consulates may experience the presentation of their nationals (when applying for a *laissez-passer*) as humiliating. In addition, the landing of government charter flights with people who have been forcibly returned entails a loss of face and may be interpreted as a sign of an unequal relationship between the Netherlands and the country of origin. Forced return is thus a difficult subject to discuss; indeed many respondents ask for a greater focus on the opportunities to improve the effectiveness of return policy through independent departure, thus making forced return unnecessary. The ACVZ would confirm that efforts should be aimed at preventing forced return as far as possible. Nevertheless, it has also emerged once again from the discussions held in connection with this report that it can be very difficult to persuade people who have set all their hopes on building a life in the Netherlands to cooperate in their return once they are no longer permitted to remain. Recent social developments relating to the varied group of people who occupied a church in Amsterdam and other shelters confirm this. Accordingly, the ACVZ endorses the assumption that the possibility of forced return facilitates an effective return policy.

## **Assumption 2: the willingness of countries of origin to cooperate in cases of forced return is a decisive factor in relation to the effectiveness of return policy**

In 1906 the Netherlands and Germany concluded a treaty containing agreements on the expulsion of their citizens because it had emerged that unilateral expulsion of a person to another country's territory without the permission of that country could give rise to interstate conflict. As long as a century ago, therefore, it was recognised that bilateral agreements are necessary for the removal of foreign nationals. Yet this aspect of return policy is often lost in the political and social debate, as witnessed by the common remark 'If they are not permitted to stay, all you have to do is expel them'. Although the importance of bilateral relations in Dutch return policy has long been acknowledged, there are still manifestations of a more unilateral approach. One example of unilateral expulsion from the past is the 'Roosendaal method', whereby the Netherlands put foreign nationals whose identity could not be established on the train to Belgium, without the knowledge of the Belgian authorities. This practice led to tension in Dutch-Belgian relations and did not end until 1993. In the survey of Dutch missions abroad, there was a single reference to an intended expulsion of a foreign national without the knowledge of the authorities of the country of origin concerned. The expulsion did not ultimately take place on the urgent advice of the Dutch embassy. In the case of Iraq, in the past there have been informal arrangements at operational level under which foreign nationals were expelled on the basis of an EU travel document.<sup>16</sup> In the past, similar strategies were adopted in Germany.<sup>17</sup> The research for this report has shown that the Dutch authorities are aware that bilateral agreements with countries of origin on the practical implementation of expulsions facilitate the expulsion of foreign nationals. It also shows that the cooperation of the country of origin is a pre-condition for forced return: there are hardly any examples of forced return to countries that refuse to cooperate in this process. What is more, research into the factors influencing the departure of persons held in aliens detention suggests that the cooperation of countries of origin in such cases is a more decisive factor than the willingness or otherwise of the foreign national in question to return.<sup>18</sup> However, the ACVZ notes that foreign nationals who have been held in aliens detention are in general less willing to depart independently. After all, the reason they

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16 The EU travel document was introduced on 1 January 1995 pursuant to an EU Council recommendation of 30 November 1994. Chapter A3/4.5 of the Aliens Act Implementation Guidelines (*Vreemdelingencirculaire 2000*) contains the following passage on the use of the EU travel document: The departure of the foreign national from the Netherlands may take place on the basis of an EU travel document. This document is issued by the DT&V if the nationality or identity of the foreign national is assumed on the basis of one or more indications. Documentary evidence is attached to the EU travel document to support the assumption of nationality or identity. Such evidence may not contain any information related to asylum. An EU travel document may be used:

- if the foreign national returns to his/her country of origin;
- if the foreign national returns to a country other than his/her country of origin;
- as a valid supporting document when crossing a border in the event of the foreign national being handed over to another European country.

All the following conditions must be met before an EU travel document can be used to facilitate the departure of a foreign national from the Netherlands:

- it has proved impossible to obtain in time from the authorities of the country of origin or a third country a valid document to enable the person to cross the border, or agreement has been reached with the authorities concerned on the use of the EU travel document;
- there are one or more indications on the basis of which the person's nationality or identity can be assumed;
- there is a reasonable chance that the person will be allowed entry into the country to which he/she has to return.

Interview with V&J.

17 Antje Ellerman, 'The Limits of Unilateral Migration Control: Deportation and Inter-State Cooperation', *Government and Opposition*, 2008, pp. 180.

18 G. Engbersen & A. Leerkes, 'Towards a Smarter and More Just Fortress Europe. Combining temporary labor migration and effective policies of return', in: N. Frost, J. Freilich & T. Clear (eds.), *Contemporary Issues in Criminal Justice Policy*, Belmont: Wadsworth Pub Co, 2010, p. 211-220. A. Leerkes & M. Kox *Pressured into deportation? Detainees' (un)willingness to 'return' and the moderating influence of international relations*. As yet unpublished.

were placed in detention was because expulsion was deemed necessary and there was a risk of them absconding.

In light of the above, the assumption that the attitude of countries of origin with regard to forced return is a decisive factor in relation to the effectiveness of return policy is endorsed. Consequently, if we wish to increase the effectiveness of return policy, a strategy for approaching these countries is required. To determine the nature of this strategy, it is necessary to answer the question of why some countries of origin fail to cooperate or cooperate insufficiently in forced return. Section 3.1 looks more closely at this question.

### **Assumption 3: the cooperation of countries of origin can be improved by using positive or negative incentives**

The third assumption underlying the SLM is that positive or negative incentives can be used to improve the cooperation of countries of origin in cases of forced return. The question of whether the use of incentives (or ‘conditionality’), possibly in the form of sanctions, can be effective has previously been posed in other policy areas by the Policy and Operations Evaluation Department (IOB) at Foreign Affairs and the Scientific Council for Government Policy (WRR).

In 2012 the IOB investigated the effectiveness of making good governance a condition for providing budget support over the period 2000-2011.<sup>19</sup> The evaluation showed that donor countries had had only limited influence on governance and that the suspension of budget support had rarely led to changes in the desired direction.

According to the WRR the withdrawal of aid is not an effective sanctioning instrument.<sup>20</sup> Ethiopia, Pakistan, Rwanda and Uganda are named as countries where budget support was cut in the past, for example as a result of electoral fraud. The WRR argues that such ‘politically correct’ interventions undermine the Netherlands’ negotiating position and make it difficult to set out a long-term strategy. Furthermore, according to the WRR, such small-scale cuts make no impression on recipient countries. Research has shown that there is little point in imposing ex-post conditionalities where development aid is concerned.<sup>21</sup>

In 2011 the European Commission published a Communication on the coordination of budget support to third countries<sup>22</sup> in which the emphasis on good governance and respect for human rights as preconditions for budget support was strengthened in relation to the past. The Overseas Development Institute (ODI) concluded that the new approach on the part of the Commission contained no clear strategy on the way in which budget support can contribute to desired political changes and democratisation.<sup>23</sup> The ODI researchers had more confidence in high-level policy dialogue than in political conditionalities. They also stated that any political conditionality had to meet certain

19 IOB, *Begrotingssteun, resultaten onder voorwaarden* (Budget support: conditional results) 2012, pp. 127-149, <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2012/09/01/begrotingssteun-resultaten-onder-voorwaarden.html>.

20 WRR, *Minder pretentie, meer ambitie, ontwikkelingshulp die verschil maakt* (Less pretension, more ambition), 2010, pp. 160-164, <http://www.wrr.nl/publicaties/publicatie/article/minder-pretentie-meer-ambitie/>.

21 P. Collier, *The bottom billion. Why the poorest countries are failing and what can be done about it*, Oxford, Oxford University Press, 2007; N. Molenaers & R. Renard, *Ontwikkelingshulp faalt: is participatie het redmiddel?* (Development aid is failing: is participation the solution?) Leuven, Acco, 2007; N. Molenaers & R. Renard, ‘The trouble with participation: assessing the new paradigm’, *Doing good or doing better: development policies in a globalising world*, M. Kremer, P. van Lieshout & R. Went (eds.), WRR research, Amsterdam, AUP, 2009.

22 COM (2011) 638, *The future approach to EU budget support to third countries*, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0638:FIN:EN:PDF>.

23 J. Faust et al., *The future of EU budget support. Political conditions, differentiation and coordination*, London, Overseas Development Institute (ODI), 2012, pp. 4. <http://www.oecd.org/dac/evaluation/dcdndep/50363784.pdf>

criteria:

- conditionality must depend on context and the incentive must be sufficiently substantial;
- policy vis-à-vis the third country must be coherent;
- sanctions must be credible.<sup>24</sup>

Other countries have previous experience with making a readmission agreement a condition for development cooperation. One example is Germany, which halted its development aid to Vietnam in 1994 because it was frustrated by that country's failure to cooperate in the readmission agreement concluded between them.<sup>25</sup> Conditionality was unsuccessful in this instance. Nor did the linkage between development aid and cooperation on readmission in Norway lead to concrete results.<sup>26</sup> Ellerman argues that conditionality only works when balanced by credible incentives, for example in the area of trade or visas. She states that small financial incentives will not induce countries to cooperate.<sup>27</sup> As support for this argument one need only look at the Eastern European member states, such as Romania, where the prospect of EU membership prompted them all to conclude and properly implement a readmission agreement.

The ACVZ concludes that the literature available seriously questions the assumption that the attitude of countries of origin can be shifted in the desired direction by using positive or negative incentives. The use of such instruments on a conditional basis is an important element of the SLM. In chapter 3 the ACVZ answers the question of whether the use of conditionality by the Netherlands in the context of the SLM has produced results. It also looks at any results achieved by Belgium, France, Spain and the United Kingdom by using or not using this instrument.

#### **Assumption 4: the cooperation of countries of origin can be obtained through good relations management and a customised approach**

The final assumption underlying the SLM is that good, long-term relations management, which includes a focus on the needs of the country of origin and thus makes a customised approach possible, can help to obtain the cooperation of such countries. In this context, reference is often made to the importance of an integrated approach in which all migration issues are viewed in relation to each other and as a whole, and as such are the subject of discussion with the countries of origin. An integrated approach can also look at the regional context. In the broadest sense, in this approach return as part of the migration issue can be considered as part of an integrated Dutch foreign policy.<sup>28</sup> The Global Approach to Migration and Mobility (GAMM), with instruments such as mobility partnerships and migration dialogues, is an example of an integrated approach at EU level, and is also termed the 'whole of governance' or 'coherent' approach.<sup>29</sup> It is based on an equal relationship between states with mutual respect for each party's position.

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24 See also: IOB Evaluation pp. 68-69.

25 Ellerman, op. cit., pp. 176, 2008.

26 Maja Janmyr, 'Norway's Readmission Agreements: Spellbound by European Union Policies or Free Spirits on the International Field?', *European Journal of Migration and Law*, 2014, pp. 181-208.

27 Ellerman, op. cit., pp. 179.

28 Interviews with Foreign Affairs, Security and Justice, ECRE, LOGO, the Dutch Council for Refugees (VWN) 'refugee ambassador', Armenian ambassador.

29 O. Rittener et al., 'Swiss Migration Partnerships, a paradigm shift', in R. Kunz et al., *Multilayered Migration Governance: The promise of partnership*, Routledge, 2011, pp. 252.

In the literature this approach nevertheless comes in for criticism, on the grounds that terms such as partnership disguise the fact that there is in practice an imbalance of power between the sending and receiving countries, in which the country of the returnee can be compelled to cooperate in readmission through economic dependence or dependence on an aid relationship.<sup>30</sup> In addition, it is alleged that ‘partnerships’ in the field of migration, with instruments such as training and capacity building, are used to convince countries of origin that European standards in the area of migration management are the only correct ones. This is known as ‘policy transfer’.<sup>31</sup> On the other hand, it is also argued that the importance attached by EU member states to controlling migration gives poor African countries a strategically more favourable negotiating position, from which they can operate as equal partners and put forward their own conditions and insights.<sup>32</sup> In this connection Jean-Pierre Cassarino uses the term ‘reversed conditionality’. The issue of reversed conditionality was the most frequently cited in the ACVZ’s investigation of why countries of origin sometimes fail to cooperate in forced return (see section 3.1.).

An integrated approach and the desire to adopt a customised approach have led to increasing use of informal agreements that are not legally binding. Although such instruments can be more easily adapted to the needs of the countries of origin, there is an inherent risk that they will not come under parliamentary or public scrutiny.<sup>33</sup>

The effort to achieve an integrated approach, also known as ‘policy coherence’, is evolving in other policy areas too. With respect to development cooperation, the WRR has concluded that achieving policy coherence has in practice proved difficult. Policy systems work better with issues that each have their own organisation and budget; there are conflicts of interest and the material can be highly complex. According to the WRR, the relationship between development policy and other themes is, for the time being, primarily an academic issue in the Netherlands, despite the fact that the Netherlands is often cited as an example of good practice by the EU:

*‘Many of the debates conducted are predictable in nature. The Minister for Development Cooperation is keen to become involved in broader themes – it has long been argued that this minister’s remit should become that of a minister for international cooperation – but other ministries are not so keen on this idea. Furthermore, as soon as the question is asked as to whether part of the 0.8% of GDP reserved for development cooperation can be used for these broader themes, the willingness to debate soon dissipates (Engel et al. 2009; Ministry of Foreign Affairs 2006, 2008).’<sup>34</sup>*

On the basis of the literature available, the ACVZ concludes that there is debate on the desirability of an integrated approach and that it can be difficult to implement such an approach in practice. Good relations management and a customised approach are important aspects of the SLM. Chapter 3 answers the question of whether the Netherlands’ endeavours in this area have been successful, and examines the results achieved by Belgium, France, Spain, the UK, and the EU in this respect.

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30 For example, Collyer (2012), op. cit., 17:2, 276-292; Alexander Betts, ‘The global governance of migration and the role of trans-regionalism’, in R. Kunz et al., op. cit.

31 Alexander Betts, op. cit., p. 42.

32 Jean-Pierre Cassarino (2007) ‘Informalising Readmission Agreements in the EU Neighbourhood’, *The International Spectator*, 2007, pp. 179-196.

33 Ibid., p. 193; Ellerman, op. cit., p. 181.

34 WRR, op. cit., par. 5.5.2, pp. 160-164.

## 1.4 Research methods

### *Literature search*

In drawing up this report, the ACVZ studied the relevant literature, case law, parliamentary papers (from 1996 onwards), EU documents (from 1995 onwards) and internet sources. In this process, it primarily examined how SLM policy has evolved over the years and what the developments have been at EU level.

### *Survey*

The ACVZ conducted a survey among the Dutch embassies/consulates that represent the Netherlands in the 32 countries on the DT&V Focus Country List.<sup>35</sup> Missions responsible for 23 countries completed the survey, nine did not. The response can therefore be qualified as good, although the possibility of selective dropout cannot be excluded.<sup>36</sup>

### *In-depth interviews*

The ACVZ conducted 41 in-depth interviews with representatives of a number of ministries, the DT&V and the European Commission (DG HOME and DG DEVCO), and with representatives of foreign embassies in The Hague. Some of the diaspora organisations approached by the ACVZ with the request for an interview were not prepared to cooperate. A list of persons interviewed appears in Appendix 1.

### *Study of 'best practices' in four other EU member states*

Belgium, France, Spain and the UK participated in the study of 'best practices'. The ACVZ visited these countries and spoke to:

- *Belgium*: the Immigration Service (Directie Vreemdelingenzaken; DVZ), part of the Federal Public Service, Interior (Federale Overheidsdienst Binnenlandse Zaken);
- *France*: Directorate-General for Foreign Nationals in France (Direction générale des étrangers en France), Ministry of the Interior (Ministère de l'intérieur);
- *Spain*: Directorate-General for International Relations and Immigration (Dirección General de Relaciones Internacionales y Extranjería), Ministry of the Interior (Ministerio del Interior);
- *United Kingdom*: the Migration Directorate, Foreign and Commonwealth Office, and the International Directorate, Home Office.

The nature of the subject of this report led to confidential information being shared in some cases. This is not included in specific detail in this report: the issues are in such cases described in general terms.

Where this report uses the term 'respondents' it is referring to respondents in the in-depth interviews, the survey and the study of best practices.

### *Figures on departure*

Since this report is confined to the DT&V case load, the ACVZ chose to use only that agency's figures in its research. These figures are used in this report as one of the effect indicators as listed in section 1.2.3. They do not tally with the system-wide departure statistics as presented in the statistical reports of the IND or on the Eurostat website. The latter figures also include departures via KMar, the Police and the IOM. However, the IND Reports list the DT&V departure figures in a separate table, alongside the system-

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35 When the survey was conducted, Eritrea, Liberia and Nepal were still on the Focus Country List. They were removed at the end of 2014 and Rwanda, Serbia and Turkey were added.

36 There is a risk that the missions that did not respond did so for specific reasons, which might skew the results.

wide figures.<sup>37</sup>

A European comparison on the basis of the figures has not been made since these figures include all the departures, including departure at the border, which have been excluded from this report. In addition, information from experts has revealed that the return statistics supplied to Eurostat are not harmonised and that EU member states use different approaches, for example to the issue of a return decision, which takes place earlier in the process in some member states than in others. Nor do all member states automatically issue a return decision if the conditions applying to such a decision have been met. The return statistics on the Eurostat website suggest that some member states issue hardly any or no return decisions for nationalities where return is in practice unachievable. This makes any comparison between the member states regarding the relationship between return decisions issued and actual departures pointless.

At the request of the ACVZ, the DT&V supplied figures on demonstrably independent and forced return to country of origin, the number of laissez passer (LP) applications according to country of return, the response of the competent authorities and the ultimate issue of LPs during the period 2009-2014. Furthermore figures on the issue of travel documents on the basis of Readmission agreements were supplied in the period 2013-2014. These figures have partly been published in Parliamentary Papers to the House of Representatives, and in some cases of requests based on the Freedom of Information Act. They are available in the preliminary study, Part C, in Dutch only (see section 1.5). In this report we will refer to them only in general terms.

Caution should be exercised in interpreting these figures. They reflect only part of the picture, and should always be interpreted in the context of the country of origin concerned. If a country of origin frequently refuses to issue an LP, that does not always mean that it is failing to cooperate in forced return. Another problem may play a role here: there may be many people who claim to have the nationality of the country in question when in fact this is not the case. The country then has good reason to deny LP applications. In addition, the issue of an LP does not always lead to the actual departure of the foreign national concerned. He or she may for example have instituted new proceedings and may await the outcome in the Netherlands, or he or she has absconded. In these cases too, the failure to leave cannot be blamed on the country of origin. The DT&V has agreed with some countries of origin that their nationals will return using an EU travel document once they have confirmed their nationality. In these cases an LP is not issued. Finally, forced return and independent departure have a reciprocal effect on one another. If forced return is a possibility, this affects the figures for independent departure: in these circumstances foreign nationals more often choose to leave of their own accord. In a number of cases the IOM will facilitate their return. Independent departure will partly take place out of sight of government officials. This means that if a country improves its cooperation in forced return, this does not always lead to an increase in the figures for forced return. It may result in a rise in the numbers leaving independently.

*There are a number of other difficulties with these figures.*

- They are sometimes insufficiently specific: for example, the figures for forced return also include persons who have been expelled while in possession of a passport. No LP need be applied for in the case of passport holders. Nor is a strategic country approach necessary: almost all countries allow entry to their own nationals if they have a valid

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37 Table 6.3 in the January-June 2014 Immigration System Report, p. 45, <https://zoek.officielebekendmakingen.nl/blg-385526>.

- passport.
- The figures on return on the basis of an EU travel document are not available.
- The figures on forced return do not distinguish between return on the basis of an LP, a passport, an EU travel document or a travel document issued on the basis of a readmission agreement. These figures concern all foreign nationals who demonstrably left through the DT&V. There are countries which do not issue LPs at all (Afghanistan, Burundi and Somalia/Somaliland for example, and in the past Iraq), but allow or tolerate forced return with an EU travel document on the basis of confirmation of nationality by the embassy or consular post.
- The LP figures do not distinguish between independent and forced return.
- An LP might be issued for a foreign national who in the end decides to leave on an independent basis. An LP requested by the DT&V might be issued but sent to the IOM. In such a case the DT&V will not register the LP although the authorities of the country of origin had in fact issued one. The annual figures do not necessarily refer to the same persons. For example, an LP may be requested for a particular person in one year that is only issued in the following year. The LP application procedure may take a long time. If the number of cases entering the DT&V caseload fluctuates sharply, it is even possible for more LPs to be issued in a specific year than were applied for.

#### *Consultative group*

An interministerial consultative group was set up for this evaluative report consisting of M.L. Kapoen (DT&V), J.L. Sandee and J.F. van Lammeren (Foreign Affairs), Dr A.S. Leerkes (Research and Documentation Centre, WODC), Dr N.G.W. van Niekerk (IOB), W.W.G. Oostelbos (Migration Policy Department (DMB), Security and Justice) and Professor M.E.H. van Reisen (Advisory Council on International Affairs (AIV), Foreign Affairs). The group was chaired by the ACVZ.

The consultative group met twice and the members focused primarily on the research design and methods.

Research began in April 2014 and concluded in April 2015. Policy changes and events after 30 April 2015 have not been taken into account, apart from one or two exceptions.

## **1.5 Note on the English translation**

The following chapter discusses the international, European and national legal framework of the SLM. Chapter 3 examines the results of the use of the SLM at national and international level, followed by the results in the countries where the study on ‘best practices’ was carried out in chapter 4. Chapter 5 formulates the ACVZ’s conclusions and recommendations.

The Dutch report includes a preliminary study. This study has not been translated into English. It consists of four parts: part A of the preliminary study gives an overview of the creation and development of the SLM since 1996 on the basis of policy memoranda and progress reports on return policy and on migration and development policy. Part B examines policy development at international level. Part C contains a list of the ‘focus countries’ (since 2011) that have been selected by DT&V because they are of relevance to the issue of return. The instruments deployed at national and European level are explored country by country. Figures on LP applications, LP issue and forced return are listed. Part D lists the national and European organisations and consultative fora that are involved in the SLM.

This advisory report was prepared by a sub-committee consisting of Dr H.H.M. Sondaal (chair), M.A. Beuving, A.C.J. van Dooijeweert, Dr T. de Lange and P. Stienen. ACVZ-member Professor J.P. van der Leun was specifically involved with the methodological aspects of this study. Members of the ACVZ secretariat involved in the work on this report were S.A.A. Avontuur (project leader), G.M.B. van Aalst- van Adrichem and H. Verbaten.

## CHAPTER 2

# The legal framework

This chapter describes the legal framework within which the SLM is applied. The framework is made up of international customary law and EU law, including the Return Directive and the readmission agreements, and Benelux law. The use of the SLM is limited by article 5 of the Return Directive (best interests of the child, the right to a family life, the state of health of the foreign national and the principle of non-refoulement) and article 7, paragraph 4, which describes the circumstances in which member states may proceed to expel a foreign national. The transposition of the Return Directive in the Aliens Act 2000 and its application to return decisions fall outside the scope of this report.

The SLM is part of general return policy in which independent return is always preferable to forced return.

### 2.1 International law

The Dutch government<sup>38</sup> and the EU<sup>39</sup> assert that an obligation on countries to readmit their own nationals arises from international law. However, this assertion is neither legally substantiated nor elaborated in national documents and parliamentary papers or in EU documents.<sup>40</sup> Nor does the literature devote much attention to the question of whether states are obliged to readmit their nationals. Nevertheless, a legal basis for this obligation can be construed from two existing rules of international law, namely the recognised fundamental right of the individual to return to the state whose nationality he/she possesses<sup>41</sup> and the sovereign right of a state to expel foreign nationals.<sup>42</sup> The state has a broad measure of discretion in determining whether the presence of a foreign national in its territory is contrary to its interests and whether expulsion should follow. However, this is limited by international law and human rights, for example the principle of non-refoulement.<sup>43</sup> The sovereignty of the state as the legal basis for an interstate obligation to readmit own nationals who have been expelled from elsewhere is not uncontested in the case of forced return. For example, the Legal Service of the Council of the European Union stated in 1999: 'It is doubtful whether in the absence of a specific agreement [on readmission] between the States concerned, a general principle of international law exists which would oblige those States to readmit their own nationals if they do not wish to return to their country of origin.'<sup>44</sup>

38 See for example the letter from SvV&J to the House of Representatives, Parliamentary Papers II 2013/14, 30 573, no. 124 which states 'Readmission of a country's own nationals is an obligation under international customary law respected by virtually every country'.

39 See for example the conclusions of the Tampere Council, 15-16 October 1999, paragraph 26, COM (2001) 672 def.

40 S. Peers, 'Irregular migration and EU external relations', *Irregular migration and human rights: Theoretical, European and international perspectives*, Leiden 2004.

41 Article 13(2), Universal Declaration of Human Rights, article 12(4) ICCPR and article 3(2), Protocol 4 to the ECHR. It is generally accepted that the right to return to one's own state is only meaningful if linked to an obligation on the state to readmit its own nationals.

42 Territorial sovereignty empowers the state to determine which persons are permitted to enter and remain in its territory. This also implies a power to expel foreign nationals whose presence is considered undesirable. See the study conducted by the UN International Law Commission, 10 July 2006, ref. A/CN.4/565, paragraphs 185-200: 'The right of a State to expel aliens from its territory'.

43 UN International Law Commission, op. cit., sections 201-298: 'General limitations on the right of a State to expel aliens'.

44 See Council document 6658/99; <http://database.statewatch.org/article.asp?aid=6225>.

The literature frequently cites the *Van Duyn* judgment, a ruling of the European Court of Justice in which the Court referred to a principle of international law that precludes any limitation on the right of a country's own nationals to enter or remain in its territory.<sup>45</sup> Because this principle has not been codified, except in many readmission agreements, it is referred to as a principle that derives from international *customary* law.<sup>46</sup>

It may be concluded that many parties assume that a legal basis for an obligation on states to readmit their own nationals can be found in international customary law,<sup>47</sup> certainly in the case of independent return. In the literature a discussion about the application of this principle of international customary law to forced return is ongoing, but in practice it also applied to forced return.

An obligation to admit third-country nationals, or officially recognised refugees or stateless persons, cannot be deduced from international law, unless it follows from treaties or readmission agreements. Without a third-country national clause in a readmission agreement, there is no legal basis to demand the forced return of such persons.

## 2.2 European law

### *EU Return Directive*

In recent years steps have been taken at European level to set up a legislative framework for return measures in the member states. The implementation of the Directive<sup>48</sup> is an important element in that framework.

The Return Directive establishes common standards and procedures for the return of third-country nationals who are residing illegally in the territory of the member states.

Article 3 gives the following definition of return:

‘the process of a third-country national going back – whether in voluntary compliance with an obligation to return, or enforced – to:

- his or her country of origin, or
- a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or
- another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted.’

More favourable provisions may be applied to persons to whom the Directive applies under bilateral or multilateral agreements with third countries.<sup>49</sup> Article 5 further provides that in implementing the Directive, member states must take due account of the best interests of the child, family life (unity of the family) and the state of health of the third-country national concerned, and that they must respect the principle of non-refoulement. Member states may proceed to remove a foreign national if no time period for independent departure has been set in accordance with article 7, paragraph 4 (risk of absconding, application for legal stay dismissed as manifestly unfounded or fraudulent,

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45 ECJ judgment of 4 December 1974 in the case of *Van Duyn*, 41/74, para. 22. See too *Barkoci and Malik*, C-257/99, para. 81 and the *McCarthy* judgment of 5 May 2011, C-434/09, para. 29. The Court established that a principle of international law precludes a member state from refusing its own nationals the right to enter its territory and remain there; that principle also precludes that member state from expelling its own nationals or making such a right conditional. See in a similar vein, judgments of 7 July 1992, *Singh*, C-370/90, para. 22, and 11 December 2007, *Eind*, C-291/05, para. 31.

46 K. Hailbronner, ‘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*, (1997), pp. 1-49.

47 See for example N. Coleman, *European Readmission Policy: Third Country Interests and Refugee Rights*, Leiden, Martinus Nijhoff publishers, 2009, pp. 27-41.

48 Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in the Member States for returning illegally staying third-country nationals. OJEU 2008, L348/98.

49 *Ibid.*, article 4.

risk to public policy, public security or national security) or if the period for independent departure has expired. This report is based on the premise that the use and possibility of forced return are limited by the legal framework and assumes that the EU readmission agreements are formulated accordingly.

#### *EU readmission agreements*

The Netherlands is bound by the EU readmission agreements. The EU is competent to conclude such agreements pursuant to article 79, paragraph 3 of the Treaty on the Functioning of the European Union (TFEU), in accordance with the procedure laid down in article 218 of the same Treaty. Under this article the Council of the European Union can authorise the European Commission to open negotiations with certain countries. Once the Commission has been duly authorised, the member states may not operate independently. The Council bases its choice of countries on criteria such as the pressure of migration from a particular country and its geographical location in relation to EU territory. There is a focus on countries which border the Union.<sup>50</sup> If the EU is mandated to conduct negotiations with a country, the Netherlands will not start its own negotiations on a readmission agreement so as not to undermine the EU process. If necessary, however, it will hold operational talks on cooperation with regard to return. As long as the EU does not make use of its power to conclude a readmission agreement, the member states remain competent to do so, either at bilateral or, as in the case of Benelux, at multilateral level. Where an EU readmission agreement has been signed, every member state is entitled to conclude its own separate implementing protocol with the country in question.

#### *Cotonou Agreement*

There is often a paragraph on readmission in other agreements concluded by the EU under article 79, paragraph 3, TFEU. One example is the 2000 Cotonou Agreement. The aims of this agreement between the EU and the ACP countries (less developed African countries south of the Sahara, and the Caribbean and Pacific states) are poverty reduction and economic development. To this end, it contains arrangements relating to trade and development aid, but also to migration. The budget for 2014-2020 is set at € 31.6 billion.<sup>51</sup> Failure by the ACP countries to cooperate in the return of nationals under article 13 of the Cotonou Agreement carries no sanction.<sup>52</sup> The readmission clause contains only a best-efforts obligation and provides a basis for further negotiations on readmission agreements. The EU started a migration dialogue with the ACP countries in June 2010 based on article 13 of the Agreement. A joint report with recommendations on visas, readmission of nationals and remittances was adopted in June 2012. The Agreement will have to be replaced in 2020 and negotiations on this subject are underway.

#### *Association Agreements*

The EU also concludes Association Agreements with third countries with the aim of setting up an all-embracing framework for bilateral relations, in particular economic

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50 The EU has concluded readmission agreements with Albania, Bosnia-Herzegovina, Georgia, Hong Kong, Cape Verde, Macao, FYR Macedonia, Morocco, Moldova, Montenegro, Ukraine, Pakistan, Russian Federation, Serbia, Sri Lanka and Turkey.

51 The budget for 2008-2013 was € 22.7 billion.

52 There is as yet no consensus within an EU framework that failure to cooperate in return may lead to reductions in aid. Nevertheless, the Netherlands is in favour of making the application of such a sanction possible. There is however a consensus on the issue of rewarding cooperation by offering the prospect of increasing cooperation with the EU in the field of migration, in other words, positive incentives. See the letter from the Minister for Foreign Trade and Development of 30 October 2013 in response to questions from the permanent committee on foreign affairs, defence and development cooperation (BDO).

cooperation.<sup>53</sup> The Agreements also cover other fields, like migration, and often contain a readmission clause involving a best-efforts obligation.

#### *Supporting legal measures*

Worthy of mention are VIS<sup>54</sup> and SIS,<sup>55</sup> databases designed to improve the (re) documentation of foreign nationals in the EU. The EU expects the VIS Regulation (no. 767/2008) to become an important instrument in identifying and documenting foreign nationals returning to their countries of origin. One of its aims, under article 2(e), is to assist in the identification of persons who may no longer fulfil the conditions for residence in the EU. Biometric data can speed up the process of establishing the identity of foreign nationals who have lost their documents.

#### *EU travel document*

The EU member states, including the Netherlands, occasionally make use of an EU laissez-passer (EU standard travel document)<sup>56</sup> in order to expel a foreign national to his/her country of origin. The EU laissez-passer is issued by the Member State and used as a travel document. It is not a document that guarantees readmission to the country of origin. The authorities of that country will make a decision on readmission based on the documentation and/or the statements made by the returnee at the border. In some cases, the unilateral use of an EU travel document is not accepted by the country of origin.<sup>57</sup>

## 2.3 Benelux law

The Benelux member states conclude joint readmission agreements pursuant to the Benelux Treaty. In joint consultations, the three states decide which countries of origin they will open negotiations with and which Benelux state will take the lead. The decisive factor is the extent of return problems in the three countries. Benelux readmission agreements are usually accompanied by an implementing protocol concluded simultaneously with the agreement and containing specific implementing provisions. This protocol is also concluded with the country of origin by the Benelux states acting together. A range of readmission agreements have been concluded by the Benelux states.<sup>58</sup> A list of agreements and a procedural protocol governing their use can be found on the DT&V website.<sup>59</sup> Negotiations on implementing arrangements are still underway with a number of countries.<sup>60</sup>

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53 The EU concludes Association Agreements with three groups of countries. First, countries that have special historical ties with the EU, such as former colonies and some developing countries. Second, countries in the European Economic Area, like Norway. And third, with some neighbouring countries that may accede to the EU like Serbia and Turkey. To promote compliance with the Agreement, an Association Council is set up under each Agreement for discussion of the main issues. The parties in the Association Council have no sanctions – apart from terminating the Agreement – they can impose if the readmission clause is not observed. The following Association Councils are relevant to the SLM: EU-Algeria, EU-Egypt, EU-Georgia, EU-Morocco, EU-Turkey and EU-Ukraine.

54 The Visa Information System (VIS) registers visas issued for travel to the EU.

55 The Schengen Information System (SIS) is a digital register providing police and justice authorities in every Schengen State with permanent access to law enforcement information originating from other parties to the 1985 Schengen Agreement.

56 See chapter 1.

57 See the note to ABRvS 13 March 2009, JV 2009, 126: ‘Afghanistan’s Consulate General considers forced removal on the basis of an EU travel document to be contrary to the 2002 Memorandum of Understanding’.

58 Letter from the Minister of Foreign Affairs, Parliamentary Papers, House of Representatives 2013/14, 33 813, no. 1. [http://www.dienstterugkeerenvertrek.nl/Kennisbank/Terug-en\\_Overnameovereenkomsten/index.aspx](http://www.dienstterugkeerenvertrek.nl/Kennisbank/Terug-en_Overnameovereenkomsten/index.aspx).

60 A Benelux readmission agreement has been concluded with most of the EU member states, and with Armenia, Kosovo, Macedonia and Switzerland. The implementing protocols to EU readmission agreements are concluded in a Benelux framework; the countries in question are Albania, Georgia, Russia and Serbia. negotiations with several other countries are still in progress.

## 2.4 Dutch law

The EU Return Directive came into effect in the Netherlands on 15 December 2011.<sup>61</sup> The rules applying to return were incorporated in Chapter 6, Part 1, *Departure* (sections 61-62c) and Part 2, *Expulsion and Return* (sections 63-66) of the Aliens Act 2000. Whether the directive was properly transposed and its application to return decisions falls outside the scope of this report.

The Committee would emphasise that the deployment of the SLM should take place within the international human rights framework,<sup>62</sup> as also stated in the EU Return Directive and in Dutch return policy. The Netherlands works primarily towards independent return. In the case of the forced return of a foreign national to his/her country of origin, the Committee takes as its starting point for this report the assumption that the decision preceding return can be carefully assessed by the Dutch courts, the European Court of Human Rights (ECtHR) or the European Court of Justice (ECJ).

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61 Act 15 December 2011 amending the Aliens Act 2000 in implementation of Directive no. 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in the Member States for returning illegally staying third-country nationals (OJEU 2008, L348/98), Bulletin of Acts and Decrees (*Staatsbulletin*) Stb. 2011, 663.

62 See for example the Council of Europe's guidelines on forced return in relation to the European Convention on Human Rights (ECHR): [http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20\\_Guidelines\\_Forced\\_Return\\_en.pdf](http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf).



## Forced return and results of the strategic country approach to migration

The cooperation of countries of origin is a decisive factor in achieving an effective return policy (see section 1.3) and there are a number of countries that are failing to cooperate fully. It is therefore essential to develop a strategy for approaching these countries to increase the effectiveness of return policy. To shape such a policy, an answer is needed to the question why some countries fail to cooperate fully or do not cooperate at all in forced return. This is the key question addressed in chapter 3. Sections 3.2 and 3.3 examine which SLM instruments are deployed in practice at national and international level, and whether the goals of the SLM are being achieved as a result.

### 3.1 Why some countries fail to cooperate fully or do not cooperate at all in forced return

In its research the ACVZ examined the question of why some countries fail to cooperate fully or do not cooperate at all in forced return. It emerged from the interviews and the literature search that there is a broad consensus on the rule of customary law that countries should readmit their own nationals even when their return is not voluntary. Only Iran explicitly questions this rule. Afghanistan and (Central)-Iraq do not cast doubt on the rule itself but take the view that in light of their present situation, it is currently impossible for them to facilitate forced return.

Despite the broad consensus on this international obligation, there are still a number of countries that fail to cooperate or do not cooperate fully in forced return. The most commonly cited reasons emerging from the interviews and the survey are as follows.

*The country of origin also adopts a strategic approach in which national political considerations and regional issues play a role.*

The most commonly cited reason that cooperation in forced return does not run smoothly in the case of certain countries is that these countries too are pursuing a strategic approach in their bilateral relations and link other aspects of their relations with the Netherlands to cooperation in forced return.<sup>63</sup> In addition, national political considerations (forced return does not attract votes)<sup>64</sup> and the regional context play a role in the strategic assessments made by the countries of origin.<sup>65</sup> The literature on readmission agreements describes how countries wishing to return foreign nationals are often too little aware of the strategic priorities of countries of origin.<sup>66</sup> This is termed a ‘unilateral approach’. The rule of customary law referred to above is cited as justification for such an approach. In other words, because there is an international obligation on countries to readmit their own nationals, no *quid pro quo* is needed. From this

63 Interviews with Foreign Affairs, V&J, Ministry of Social Affairs & Employment (SZW), Ministry of Defence, Ministry of Infrastructure and the Environment (I&M), France, Safe Haven International Partnership (SHIP), DG DEVCO, an academic survey.

64 Interviews with V&J, IOM, the ambassador of the country of origin, France, DG HOME, ECRE, SHIP, an academic survey.

65 Interviews with an academic, V&J, ambassadors of the countries of origin.

66 Antje Ellerman, 2008, op. cit., pp. 168-169.

perspective, an approach in which countries of origin are rewarded for readmitting their own nationals is in fact undesirable, because this might threaten the rule of customary law.<sup>67</sup>

*Problems have arisen in connection with establishing identity/nationality*

Authorities of countries of origin do not usually consider the readmission of nationals who have a passport a problem. Problems with countries of origin regarding readmission of their nationals primarily arise in the case of undocumented or insufficiently documented persons. In the case of a number of countries (Morocco and India, for example) establishing identity and deciding when nationality is sufficiently proven are factors that seriously delay the LP process. Operational agreements on the acceptance of evidence are the most important aspect of readmission agreements and implementing protocols.

*The third-country national clause is an obstacle to the conclusion of readmission agreements*

The readmission agreements concluded by the Benelux and the EU always contain a third-country national clause obliging the country of origin to readmit such persons if they have demonstrably transited the country. This clause is frequently cited in the interviews as an obstacle to cooperation on the part of countries of origin with respect to readmission agreements and thus to the conclusion of such agreements.

*Readmission costs money and the countries of origin are faced with capacity problems*

The view that countries of origin should cooperate in readmission without anything in exchange ignores the capacity problems of many of these countries and the fact that readmission costs money. These factors were frequently referred to in the interviews. Costs include both operational costs and those incurred in the reintegration of returnees. If a person is returned forcibly, there is much less or even no financial support for reintegration in the country of origin. The idea behind this is that there must be some incentive for the returnee to cooperate in voluntary departure. The countries concerned often have little institutional capacity to deal with the problem of return and reintegration and other national policy issues. What is more, facilitating forced return from Europe may not be a priority for countries of origin that are in a conflict or post-conflict situation, or for those which are failed states with large numbers of internally displaced persons.<sup>68</sup>

*Loss of face, remittances and pressure from members of the diaspora*

Forced return entails loss of face, not just for the foreign national in question, but also for members of the diaspora and the government of the country of origin. This makes forced return difficult to discuss and has consequences for the degree of cooperation provided.<sup>69</sup> Both governments of countries of origin and the diaspora regularly question the lawfulness of decisions made in entry and removal procedures, invoking human rights such as the right to family life or to protection of human dignity. Furthermore, remittances are often cited as the reason why countries of origin are not keen to cooperate

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67 Interview with respondents Security and Justice. This view can be seen in the Communication of the European Commission to the European Parliament and the Council which argues that readmission of own nationals should be automatic and that incentives can be linked to accepting third-country nationals. COM(2011) 76 final, 23 February 2011 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0076:FIN:EN:PDF>.

68 Interviews with an academic, respondents Security and Justice, the ambassador of the country of origin and ECRE.

69 Interviews with respondents Foreign Affairs, Security and Justice, Ministry of Finance, I&M, Ministry of Defence, IOM, DG HOME, the National Municipal Consultative Platform on Reception and Return Policy (LOGO), SHIP, VWN's 'refugee ambassador', the foundation Goedwerk, and Spain. The ACVZ approached several diaspora organisations for an interview without success.

in return and why the diaspora exercises pressure on the government concerned not to cooperate.<sup>70</sup> It is estimated that \$1,6 billion was transferred in 2014 from the Netherlands to the countries on the DT&V Focus List.<sup>71</sup> According to the World Bank,<sup>72</sup> remittances as a proportion of total money flows into developing countries have grown steadily over time. Again according to the World Bank, remittances make a significant contribution to reducing poverty, improving access to education and health care, improving financial development and increasing expenditure by families, which in turn has a stimulating effect on the economy. What is more, in the recent economic crisis remittances have proved to be a stabilising factor in household consumption and the growth of consumption in countries of origin. These factors demonstrate why countries of origin benefit from nationals residing elsewhere, and have no interest in nationals returning to their homeland.

## 3.2 The results of national policy

This section and the following section assess the results of the strategic country approach to migration in light of the interim objective and ultimate goals, as formulated in section 1.2.3 by the ACVZ. The interim objective and ultimate goals are given here once more.

### **Interim objective and ultimate goals of the strategic country approach to migration**

Interim objective: parties that can positively influence the effectiveness of return policy are made aware of the problems associated with return.

Ultimate goal 1: a political evaluation of return as against other Dutch interests takes place which also addresses the effectiveness of the instrument that may potentially be deployed (process goal).

Ultimate goal 2: the effectiveness of return policy is enhanced through improving the cooperation of countries of origin in the forced return of their nationals.

Below the ACVZ examines first the national deployment of the SLM, subdivided into deployment outside the policy areas falling under Security and Justice and Foreign Affairs, and deployment within their policy areas. The following section discusses the results of the international deployment of the SLM.

### 3.2.1 Deployment of the strategic country approach to migration outside Security & Justice and Foreign Affairs policy areas

The ACVZ's research has shown that a genuine linkage with areas outside the competence of Security and Justice/Foreign Affairs has not as yet taken place, although it has been discussed since 2002.<sup>73</sup> Since the summer of 2011 the approach has been given

70 Information from interviews with an academic, Security and Justice, IOM, Belgium, DG HOME, LOGO, VWN's 'refugee ambassador', the foundation GoedWerk.

71 World Bank bilateral remittances matrix 2014. Figures on remittances to Libya and Somalia are not available.

72 World Bank Group, *Global Economic Prospects, having Fiscal Space and Using it*, 2015, pp. 175-179.

73 From 1996 onwards all aspects of bilateral relations formed part of discussions with countries of origin on the subject of readmission of their nationals. The letter of 1 February 2002 regarding the implementation of return policy announced that the coordinated approach to countries of origin would be expanded to include other ministries.

more substance as part of the Rutte I coalition agreement. Subsequently, several attempts were made to establish a link with areas outside the Security and Justice/Foreign Affairs sphere but without success. These attempts are discussed below.

#### *The inclusion of readmission clauses in bilateral agreements*

Since February 2004 the basic premise of the policy memorandum on the inclusion of readmission clauses in bilateral agreements – to the effect that such a clause should in principle be included in certain bilateral agreements – has been applicable.<sup>74</sup> These agreements are, for example, tax conventions or social security agreements. The policy memorandum also describes the interministerial procedure according to which the decision is made as to whether the inclusion of a readmission clause is expedient. The 2004 policy memorandum on the inclusion of a readmission clause in bilateral agreements contained a non-exhaustive list of cases in which linkage is not required:

- if the Netherlands is the requesting party;
- if the position of Dutch nationals abroad is at stake;
- if there are economic or political interests that weigh more heavily for the Dutch public authorities and/or the Dutch business sector;
- there are social interests at stake to which the Netherlands attaches greater priority.

On the basis of its research the ACVZ concludes that there's only one ministry (Finance) that acts in accordance with the policy memorandum and contacts Foreign Affairs/ Security and Justice of its own accord when negotiations on a bilateral agreement begin. This Ministry included this principle in its 2011 policy memorandum on fiscal treaty policy.<sup>75</sup> The Ministry of Finance is committed to pursuing a coherent policy and takes a pragmatic approach. Yet this has never led to the inclusion of a readmission clause in a tax convention. Whenever relevant, and in consultation with Security and Justice/Foreign Affairs the Ministry has always opted for another way of drawing the issue of return to the attention of the country of origin, for example by presenting a *note verbale* (a type of diplomatic communication) concerning this issue.<sup>76</sup> The importance of establishing a tax convention and that of including a readmission clause were weighed against each other at Cabinet level and priority was awarded to establishing the convention.<sup>77</sup>

#### *Raising the return problem while on working visits abroad*

Ministers and state secretaries from other government departments regularly raise the return problem while on working visits abroad. Usually, the country in question merely takes note of such remarks. There is no evidence from the research to show that this had ever had any practical effect. However, the impact of diplomatic relations is difficult to assess, so it cannot be definitively concluded that such remarks have no effect. The transmission of a *note verbale* on the return problem is seen as inappropriate to the context by the other parties, which therefore merely take note of it. Such a step could only have any effect if the *note verbale* were to reach the officials responsible for immigration policy.

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74 Parliamentary Papers, House of Representatives 2003/04, 29 344, no. 20, Policy Memorandum on the inclusion of readmission clauses in bilateral agreements, with a list of countries with which no readmission clause need be agreed (6.1.I), 11 February 2004. See also the update: Annex to the letter of 1 July 2011, Return in immigration policy. Further elaboration of the measures, pp. 19-20. In 2011 only four DT&V focus countries were defined as priority countries for the inclusion of readmission clauses in bilateral agreements: Afghanistan, India, Iran en Libië.

75 Parliamentary Papers, House of Representatives 2010/11, 25 087, no. 7, Annex to policy memorandum on fiscal treaty policy, p. 71.

76 Information from interviews with the Ministry of Finance and Security and Justice.

77 Information from interview with the Ministry of Finance and Security and Justice.

### *Integral assessment in the framework of the SLM outside Security and Justice/Foreign Affairs*

Due to the efforts of Security and Justice, the issue of return has been raised several times in interministerial consultations and Cabinet meetings in recent years. During the first Rutte government (2010-2012) the choice of countries where linkage would be introduced was considered at political level.<sup>78</sup> The so-called ‘Cabinet countries’ (countries of origin of relevance to return to which the Netherlands had awarded priority) have not been discussed in Cabinet meetings for two years. The State Secretary of Security and Justice now consults directly with the competent minister where necessary. And at official level, ad-hoc consultations take place between staff of Security and Justice and other ministries (for example, Finance or I&M). In the consultations held every two weeks by the Integrated Country Approach to Return Task Force or TILT (composed of representatives from DT&V, the Migration Policy Department (DMB), the Immigration and Naturalisation Service (IND), the European and International Affairs Department (DEIA) and Foreign Affairs) the opportunities for linking other policy areas with return are discussed. The body designated within the ‘Immigration System Plan’<sup>79</sup> as the central platform for discussion and decision-making with regard to strategic issues in the immigration system (*Topberaad*) is not as yet involved in the strategic country policy; this role is played by TILT - MTDGvZ (Directorate-General for Immigration Management Team (Security and Justice)).<sup>80</sup>

The policy areas falling under the Ministries of Economic Affairs, I&M and Finance involve substantial economic interests for the Dutch public authorities or the Dutch business sector which take priority over return.<sup>81</sup> This is primarily the case when the Netherlands is the requesting state and has little to offer the third country in question in return for cooperation. Exports to and contracts entered into by Dutch companies in third countries that are worth millions (and the indirect benefits for the labour market in the Netherlands) weigh more heavily than the more limited Dutch interest in effecting forced return. This is for example the case with China<sup>82</sup> and India. Ghana ranks third as a Dutch export market in Africa.<sup>83</sup> Trade missions took place in 2014 to these three countries. Though ministers/state secretaries accompanying such missions raise the issue of return in the margins of the visit, no conditions are set in this respect.

In the case of the Ministry of Social Affairs and Employment (SZW), too a possible link with the return policy area comes up against Dutch economic and political interests. This applies to the conclusion<sup>84</sup> or termination of social security agreements and to restrictions on the entry of labour migrants on the basis of the Foreign Nationals (Employment) Act (WAV).<sup>85</sup> The renegotiation or termination of social security agreements and restrictions on labour migration are policy priorities for the second Rutte government. In 2014 there was an opportunity to improve relations with China by relaxing the entry rules for top Chinese chefs. However, SZW supports a general policy when it comes to labour migration, and is not willing to make any exceptions. Some time later the temporary ‘Wok agreement’ was concluded with the Asian hospitality sector in

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78 Information from interviews with Security and Justice.

79 Ministry of Security and Justice, *Immigration System Plan 2013-2017*, 23 September 2013.

80 Information provided by e-mail by an official at Security and Justice.

81 Information from interviews and the survey.

82 Research shows that China invested \$ 2,3 billion in the Netherlands in 2014:

<http://www.advocatie.nl/baker-mckenzie-chinese-investeringen-europa-bereikten-recordhoogte-2014>.

83 Information from parliamentary papers, interviews and the survey.

84 See case study India.

85 Measures to tighten up the WAV are linked to the government’s goal for everyone to participate in society as much as possible, according to ability; the amendments entered into effect on 1 January 2014, *Stb.* 2013, 499 and *Stb.* 2013, 556.

the Netherlands, and this window of opportunity to improve relations with China was closed.<sup>86</sup>

Lately SZW seems to have taken a different position towards Morocco. In line with government policy, SZW had earlier announced its plans to terminate the bilateral social security agreement with Morocco as of 1 January 2016. As a direct result Morocco decided to stop its cooperation on forced return immediately.<sup>87</sup> The Netherlands consequently postponed the termination of the bilateral social security agreement. Morocco then resumed its cooperation on the readmission of its nationals. According to a common statement of 6 May 2015 the two countries will start negotiations on the amendment of the social security agreement.<sup>88</sup> This is a good example of a country using a strategic approach of its own and offering cooperation in forced return to achieve results in another policy area (social security agreement). The Netherlands has many ties with Morocco in a variety of policy areas: in the field of migration and social security, but also in the area of police cooperation and combating terrorism. Here an assessment of cabinet priority interests involved is needed and the termination of the social security agreement seems to be, at least for now, of less importance than other Dutch interests in its relations with Morocco.

No link has been established with return within the remit of the Ministry of Defence. An integrated police training mission was conducted in Afghanistan (Kunduz) from 2011 to 2013/14 in order to contribute to the training of civilian police and strengthening the justice system, including judicial bodies, in that country.<sup>89</sup> These projects in the framework of the rule of law programme ran until 2014. No conditions relating to the return of Afghan nationals were attached to the mission. This was partly due to the fact that the parliamentary process of coming to the political decision to contribute to security in Afghanistan was a difficult one.

#### **Case study: linkage with an aviation agreement (Afghanistan)**

Outside the purview of Security and Justice/Foreign Affairs there has been only one attempt to include a readmission clause in a bilateral agreement, namely an aviation agreement with Afghanistan. The Ministry of I&M was asked by officials at Security and Justice to raise this issue during negotiations. Afghanistan took the initiative to start negotiations on an aviation agreement because the existing agreement between the Netherlands and Afghanistan was outdated and no longer corresponded to the needs of the aviation business sector. According to representatives of the Ministry of I&M primarily Dutch commercial interests were being served, at least until Amsterdam Airlines went bankrupt in November 2011. KLM/Martinair resumed negotiations with a view to future prospects of commercial flights in the region. However, the negotiations broke down prematurely when Security And Justice informed the Afghan authorities that the inclusion of such a clause was a *conditio sine qua non* for the conclusion of the agreement. No agreement was concluded.

86 Government Gazette (*Staatscourant; Scrt.*) 2014, no. 27559.

87 Information from interviews with Security and Justice and Foreign Affairs and judgments of the ABRvS of 2 April 2015, case nos. 201500942/1 and 2015091797/1.

88 Parliamentary Papers, *House of Representatives II* 2014/15, 34 052, no. 7, <https://zoek.officielebekendmakingen.nl/kst-34052-7>. Addendum: Common statement Morocco-the Netherlands, <https://zoek.officielebekendmakingen.nl/blg-508290>.

89 <http://www.rijksoverheid.nl/nieuws/2013/03/08/nederland-beeindigt-missie-kunduz.html>.

### **Case study: linkage with a Human Resources Mobility Partnership (India)**

In October 2009 SZW concluded a social security agreement with India, without including a readmission clause despite the existence of government policy seeking to achieve this goal. Because the government still wished to reach agreement with India on return, a combined delegation from SZW/Security and Justice started negotiations with India on a Human Resources Mobility Partnership. In exchange for the Indian authorities' cooperation in the return and readmission of illegal Indian nationals the Netherlands would promote the mobility of highly skilled migrants and students from India. Since SZW had already built up a degree of good will through the conclusion of the social security agreement, it took the lead in the negotiations. In fact the Netherlands had little to offer in this respect: an arrangement (for highly skilled migration and student migration) already existed and nothing extra was offered. India wanted to achieve a more favourable arrangement for highly skilled migrants but the Netherlands has a general policy and did not want to make an exception for India (or other third countries) to this already very flexible arrangement. The MoU was never concluded.

During a visit to India the Minister of Health, Welfare and Sport (VWS) raised, in passing, the Human Resources Mobility Partnership again. Talks with Indian officials revealed that India was interested in labour migration for Indian nursing staff who could not enter the Netherlands under the highly skilled migration rules. Because of the economic crisis and growing unemployment in the Netherlands (and Europe), SZW believed that such a bilateral agreement was not politically feasible. In addition, as mentioned already, SZW has a general policy and therefore makes no exceptions for specific countries.<sup>90</sup>

At a later stage, another attempt was made to reach agreement with India via OCW. This ministry was negotiating with India on setting up a Netherlands Education Support Office (Nuffic Neso)<sup>91</sup> in India. In this instance the Netherlands was the requesting party and had an economic interest in the establishment of the office. It was therefore difficult to make additional demands and so the return issue was not raised in the negotiations. The government asked OCW if it could offer extra facilities for Indian students but this ministry also pursues a general policy. OCW does have a scholarship programme but this is not aimed at specific countries,<sup>92</sup> due to the autonomous nature of the Dutch education system. It is not OCW's task to determine which students from third countries are eligible for scholarships: that decision is made by the educational institutions, which have a better understanding of which countries can send top students to the Netherlands. In this case the deployment of the SLM in the policy areas of highly skilled migration (SZW/Security and Justice domain) and student migration (OCW/Security and Justice domain) failed.

### **3.2.2 Deployment of the strategic country approach to migration within Security and Justice and Foreign Affairs policy areas**

The deployment of the SLM within the policy areas of Security and Justice and Foreign

90 N.B. Labour migration is part of the Minister of SZW's portfolio while highly skilled migration comes under the authority of Security and Justice and SZW.

91 The Nesos' main task is general promotion of Dutch higher education; information from an interview with OCW.

92 The international scholarship programme is worth € 5 million annually and is intended to encourage students from third countries to come and study in the Netherlands and Dutch students to study abroad. In addition, there are a small number of grants administered by Nuffic and awarded under a cultural agreement, for example with China.

Affairs embraces a variety of instruments. First, instruments may be used that fall under the migration policy of one of the two ministries, like the development cooperation budget for migration and development (Foreign Affairs) or capacity-building projects run by the IND or the DT&V (Security and Justice). Second, instruments may be used that fall under the responsibility of Foreign Affairs or Security and Justice but are not directly related to migration policy. These include development cooperation outside the area of migration (Foreign Affairs) or police cooperation (Security and Justice). Third, good long-term management of relations with third countries, in which Foreign Affairs plays an important role, provides another potential instrument.

### **Migration policy**

#### *Security and Justice, migration policy area: highly skilled and student migration*

It is worthy of note that Security and Justice does not link return to highly skilled and student migration. See for example the case study on India above, in which SZW negotiated on behalf of Security and Justice regarding a Human Resources Mobility Partnership. Security and Justice pursues a general policy and offers no extra facilities for specific countries over and above the very flexible arrangements covering highly skilled and student migration. Nor is a negative link with highly skilled migration on the cards. For example, the Netherlands is not prepared to stop allowing highly skilled migrants from India to enter the country if India does not cooperate in forced return. The State Secretary of Security and Justice stated in a meeting with members of the House of Representatives that a negative link between highly skilled migration and return was ‘putting the cart before the horse’.<sup>93</sup> According to representatives of the Ministry of SZW, such a development would be harmful to the business sector.

#### *Security and Justice/Foreign Affairs, migration policy area: capacity-building, reintegration and reception projects*

The understanding that return is not an isolated problem but is related to other areas of migration policy has grown over time. With a view to such a broad approach to migration, Security and Justice launched a number of capacity-building projects for the immigration services of a number of countries of origin (Azerbaijan, Burundi, Ghana, Guinea Conakry, Nigeria, Somalia). These may involve training or supporting immigration officials, for example, or providing technical assistance in checking travel documents. Agreements on cooperation over the broad spectrum of migration, including return, are usually laid down in an MoU (a document in which the parties record their intention to undertake common activities; an MoU is not legally enforceable). The letter of 10 June 2011<sup>94</sup> on international migration and development explicitly stated that the cooperative relationship with a third country is not solely directed at return but at all aspects of migration: legal migration, inflows, combating illegal immigration, return, protection in the region, border control, capacity building and involving the diaspora in the development of countries of origin. Since 2011 the term ‘strategic country approach to return’ has thus become the ‘strategic country approach to migration’. Policy became more proactive and regionally oriented.

It was recognised as far back as 1996 that through the reintegration and reception of foreign nationals in their countries of origin, development cooperation could make a positive contribution to countering the negative effects of migration. The link between

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93 Parliamentary Papers, House of Representatives 2013/14, 30 573, no. 125, p. 19, report of committee meeting on 5 March 2014, <https://zoek.officielebekendmakingen.nl/kst-30573-125.html>.

94 Parliamentary Papers, House of Representatives 2010/11, 30 573, no. 70, letter from the State Secretary for Foreign Affairs and the Minister for Immigration and Asylum, 10 June 2011.

migration and development cooperation made in the Migration and Development Programme was further developed in a number of policy memoranda and letters (2004, 2008, 2011 and 2014) and is now more closely focused on countries relevant to return. A separate budget of € 9 million has been earmarked for the Programme. The criterion that this budget could only be spent on development cooperation partner countries was abandoned in 2011. Nevertheless, Egypt, the Russian Federation, Rwanda<sup>95</sup>, Serbia, Surinam and Ukraine (DT&V focus countries) are not included in the Programme. A letter of 28 November 2014 announced the new policy priorities of the Migration and Development Programme:

- reception in the region;
- strengthening of migration management;
- involving the diaspora in the development of countries of origin;
- the promotion of voluntary return and sustainable reintegration.<sup>96</sup>

The Netherlands carries out projects for reintegration in countries of origin that are financed by the European Return Fund (ETF).<sup>97</sup> These are directed at foreign nationals who return, voluntarily or not, to for instance Afghanistan, Armenia, DR Congo, Georgia, Guinea, Iran, Iraq (Kurdistan Autonomous Region (KAR) in Northern Iraq), Nigeria, Morocco, Pakistan, the Russian Federation, Somaliland and Sri Lanka. In addition, there are a few projects for the reception of unaccompanied minor foreign nationals in reception centres in Angola and the DR Congo. In fact, unaccompanied minors have never been housed in these centres. In practice, they are all taken in by family on their return. Funding the centres nevertheless made it possible to return unaccompanied minors to Angola and the DR Congo.<sup>98</sup>

#### **Case study: linkage with capacity building, reintegration and scholarships (Iraq)**

In 2010 the government proposed giving support to Iraq if it would cooperate in the forced return of Iraqi nationals. In the period between 2003 and 2009, the Netherlands granted 1300 Iraqi nationals a temporary residence permit on the basis of the categorial protection policy. When this policy ended in 2009, this group of Iraqis were supposed to return, either voluntarily or not, to Iraq. The government asked Iraq to cooperate in the forced return of this group, offering € 5.5 million from the migration and development budget for capacity building, reintegration projects and 50 scholarships for Iraqi residence permit holders and other Iraqi nationals. However, Iraq responded with supplementary demands in the form of a substantial financial contribution for Iraqis returning independently. These demands were not acceptable to the Netherlands. Nor did Iraq accept the Dutch offer.<sup>99</sup> In 2011 an Iraqi parliamentary committee stated that it was against forced return.<sup>100</sup> It has not reviewed this statement since.

95 Rwanda is a development cooperation partner country, nevertheless it is not included in the Programme.

96 Parliamentary Papers, House of Representatives 2014/15, 30 573, no. 129.

97 For an overview on Assistance for Voluntary Return on the DT&V website: <http://english.dienstterugkeerenvertrek.nl/>.

98 See: UNICEF, *Children's rights in return policy and practice in Europe. A discussion paper on the return of unaccompanied and separated children to institutional reception or family*, Voorburg: UNICEF The Netherlands, 2015, pp. 33-34.

99 In addition to negotiations with the central authorities of Iraq, the Netherlands will also try to cooperate with the Kurdistan Regional Government (KRG) on forced return to the Kurdistan Autonomous Region.

100 Source: Interview ambassador Iraq and respondents V&J.

### **Case study: linkage with capacity building and development cooperation (Somalia/Somaliland)**

In the case of Somalia and Somaliland the Netherlands has recently made cooperation in forced return a condition for projects in the field of capacity building and development cooperation.<sup>101</sup> In 2014 an MoU with Somaliland was concluded. The Netherlands is co-financing the Somaliland Development Fund (in the framework of the New Deal Compact) to the amount of € 4 million for a period of three years. This contribution is funded from the cooperation development budget. Part of it is invested on the condition that Somaliland cooperates in forced return. The MoU with Somalia has not yet been officially concluded (April 2015). The Netherlands is also cofinancing a project designed to strengthen the capacity of migration management and border control in Somalia on the condition that Somalia cooperates in the forced return of its nationals, which includes persons with a criminal record, a category that has high priority in relation to return.<sup>102</sup> In mid-2014 a number of Somali pirates were expelled on the basis of an oral agreement with the head of Somalia's border control authority. In November, the State Secretary of Security and Justice informed the House of Representatives that the Somali security minister had agreed to accept a small number of expulsions pending negotiations.<sup>103</sup>

The Netherlands aims to support countries of origin that appear on the DT&V List of Focus Countries through the projects outlined above. The ACVZ's research has shown that some countries are encountering problems such as pressure from the diaspora, national political considerations and capacity problems. A contribution towards, for example, reintegration of returnees improves the relationship with the country in question. The government can show its population that there is a quid pro quo, and that there is a balanced mutual relationship that involves rights and obligations for both sides. These efforts have in a number of cases (Armenia, Azerbaijan, Somalia/Somaliland) helped improve cooperation in the area of forced return. However, this approach has had no success in the case of Iraq.<sup>104</sup>

Only positive links have been established within the Migration and Development Programme. The only explicit negative link with development cooperation ever made by the Netherlands was not related to this programme (and occurred in the case of Ghana listed below).

### **Other policy areas falling under Security and Justice/Foreign Affairs**

#### *Other policy areas falling under Foreign Affairs: development cooperation (OS)*

In the past there has been criticism of linking development cooperation to return policy. In one of its advisory reports, the Advisory Council on International Affairs (AIV) argued that development cooperation should primarily focus on poverty reduction and may

101 Parliamentary Papers, House of Representatives 2013/14, 30 573, no. 124. p. 3; information from an interview with Security and Justice.

102 The project designed to strengthen the capacity of migration management in Somalia runs from 2014 to 2016 and is funded from the budget of the Migration and Development Programme.

103 <http://www.inlia.nl/news/show/hoofd-grensbewaking-somalia-komt-bij-aanslag-om-het-leven>; Parliamentary Papers, House of Representatives 2014/15, 19 637, no. 1924, <https://zoek.officielebekendmakingen.nl/kst-19637-1924.html>.

104 In the past, one or two forced returns to the Kurdistan Autonomous Region took place. These were Iraqi nationals with a criminal record, from this region.

not be made subordinate to migration policy. Nor should OS funding be deployed as a sanction under return policy.<sup>105</sup> Nowadays, an integrated examination of the relationship with the country of origin is made, and sanctions are not excluded. If a country does not cooperate in the return of its nationals, such conduct might have consequences in the framework of development cooperation.

The ACVZ's research revealed that foreign economic relations and foreign trade, both Foreign Affairs policy areas, have never been deployed to achieve an improvement in cooperation in forced return. In view of the Netherlands' economic interests, Foreign Affairs considers the deployment of these policy areas undesirable. Staff at the ministry and the minister/state secretary do however regularly raise the issue in dialogue with countries of origin where return plays a role.

#### **Case study: linkage to development cooperation (Ghana)**

Only a few of the countries relevant to return belong to the 15 OS partner countries,<sup>106</sup> which makes linkage with development cooperation outside the Migration and Development Programme impossible for most of the relevant countries. Ghana is one of the 15 partner countries. In December 2012 € 10 million of development aid to Ghana (of total € 170 million budget 2012-2015) was withheld due to long-term failure to cooperate in forced return.

Most of the respondents, and the State Secretary of Security and Justice, are of the opinion that this reduction was not helpful in Ghana's case.<sup>107</sup> The failure of a sanction may also be due to lack of impact and the fact that other countries or organisations like the EU apply no sanctions.<sup>108</sup> The figures on the issue of LPs and forced return to Ghana do not show that the cuts in OS support led to a deterioration in results in this area. It cannot be concluded on the basis of a single example that this approach can never be productive. Most respondents nevertheless have serious misgivings about such sanctions, because they damage relations. In Ghana's case, the sanction did have an effect at the implementation level.

The study of 'best practices' showed that other member states have sometimes been successful with this approach. This involved negative linkage that directly affected the diplomatic staff of the countries of origin, or implicit or explicit delaying tactics in issuing visas to these countries' nationals, for example (see chapter 4).

#### *Other policy areas falling under Security and Justice*

In recent years, links have been established between return policy and Security and

105 Advisory Council on International Affairs, *Migratie en Ontwikkelingssamenwerking: de samenhang tussen twee beleidsterreinen* (Migration and Development Cooperation: the connection between two policy areas), The Hague, AIV, 2005.

106 The OS partner countries are: Afghanistan, Burundi, Mali, the Palestine Territories, Rwanda, South Sudan, and Yemen (aid relationship) and Bangladesh, Benin, Ethiopia, Ghana, Indonesia, Kenya, Mozambique and Uganda (transitional relationship). Also: the policy memorandum entitled 'A world to gain: a new agenda for aid, trade and investment', Parliamentary Papers, House of Representatives 2012/13, 33 625, no. 1, p. 20. The policy memorandum distinguishes between countries with which the Netherlands has an aid relationship, a transitional relationship or a trade relationship. Countries falling in the last category are not OS partner countries although OS funds may be invested there on an incidental basis, for example through scholarship programmes or via EU programmes.

107 Information from interviews with Security and Justice, Foreign Affairs, survey. Parliamentary Papers, House of Representatives 2013/14, 30 573, no. 125, pp. 15-16, report of committee meeting on 5 March 2014, <https://zoek.officielebekendmakingen.nl/kst-30573-125.html>.

108 See also chapter 1 on the criteria with which political conditionality must comply according to the Overseas Development Institute.

Justice policy areas outside migration. These involve capacity-building projects in the field of police cooperation (Security and Justice/DG Police), custodial institutions (Security and Justice/Custodial institutions Agency (DJI)) and/or the rule of law (Security and Justice/Council for the Judiciary). According to some respondents, countries of origin often ask for training for their police, prison staff or judges and prosecutors, but in practice the Netherlands has little to offer.<sup>109</sup> What is more, police cooperation and the rule of law are not part of State Secretary's portfolio.<sup>110</sup> Other respondents argue that there are opportunities here to pursue an integrated policy because all these areas are currently the responsibility of Security and Justice, and because in countries of origin the policy areas of migration, police and judicial cooperation, and custodial institutions are often in the purview of a single Ministry, namely the Interior Ministry.<sup>111</sup> According to Security and Justice respondents there are an increasing number of cross-cutting links being established between the various policy areas of Security and Justice in which its European and International Affairs Department (DEIA) plays a major coordinating role.

In Afghanistan the Netherlands participated in projects in the framework of the rule of law programme until 2014. The projects were part of the integrated police training mission in Kunduz. The Dutch embassy supervised implementation. At the time no conditions were attached to the projects in relation to the return of Afghan nationals.<sup>112</sup>

#### **Case study: linkage with capacity building and police cooperation (Burundi and Rwanda)**

Successes have been achieved with the strategic approach in the case of Burundi and Rwanda, both relevant to the Netherlands in terms of the issue of return and both OS partner countries.

As early as 2008 the Netherlands and Burundi established arrangements regarding cooperation in the field of migration and capacity building. The forced return of Burundi nationals was part of the MoU. In 2012 and 2013 supplementary arrangements were made which were formally confirmed and added to in 2014. In that same year, at Burundi's request, the Netherlands sent a police adviser to the country for a long-term posting. In addition, training courses were provided for police officers and equipment was supplied for the checking of travel documents (the Edison database). The State Secretary of Security and Justice was personally involved, which led to a stepping-up of cooperation with Burundi.

In 2014 cooperation with Rwanda in the fields of capacity building, police cooperation and return was laid down in an MoU. This was partly the result of good judicial cooperation in tracing and prosecuting war criminals established in 2010 at Rwanda's request. In addition, the State Secretary of Security and Justice made a personal investment in the relationship with the Rwandan authorities. The agreements reached with Rwanda have also made possible the forced return to Rwanda of suspected Rwandan war criminals who fall under the 1F exclusion

109 Information from interview with Security and Justice.

110 Information from interviews with Security and Justice.

111 Information from interviews with Security and Justice.

112 Information from interview with Security and Justice.

clause, a category that has high priority in relation to return.<sup>113</sup> The choice was made in the case of Burundi and Rwanda to deploy police cooperation as instrument. However, these are not priority countries for Security and Justice/DGPOL. Because in this case the Netherlands could fulfil a wish expressed by these countries, the assessment favoured migration interests. Due to the personal involvement of the State Secretary of Security and Justice and its rapid fulfilment of the agreements, the Netherlands won these countries' trust and cooperation in the field of return was resumed.

Whenever an assessment is made of the interests involved in return as against other interests served by Security and Justice, those other interests (such as counter-terrorism) may prevail. In addition, priority countries have been designated in other policy areas, like police and judicial cooperation, and these are not always the countries that are relevant to return. The choice of countries is partly determined by rule-of-law considerations.<sup>114</sup>

#### *Relation management*

The ACVZ's research revealed that building and maintaining good relations with countries of origin is a major precondition for obtaining their cooperation in forced return. As far back as 2003, return policy was an explicit component of the Minister's immigration policy. However, any practical effect was confined to talks with ambassadors in the Netherlands.<sup>115</sup> When the DT&V was set up in 2007 as an implementing body concerned with the return of foreign nationals who are not allowed to remain in the Netherlands, the importance of relations management was explicitly recognised. Until then LP applications were made by three different organisations, the Royal Military and Border Police (KMar), the police and the Immigration and Naturalisation Service (IND). From 2007 on the application procedure was centralised at the DT&V with the ultimate goal of improving relations management. To this end a department of strategic relations was introduced within the organisation. Recently (autumn 2014) a department of international affairs was created at DT&V that will focus on regional relations management.

Foreign Affairs had little interest in placing return within the broader bilateral relations context. This Ministry's attitude has changed in recent years, leading to considerable progress in cooperation. Foreign Affairs and Security and Justice now work closely with each other in the field of return policy. Foreign Affairs takes a proactive approach to raising matters related to return in connection with the interministerial travel agenda of the Minister/State Secretary. Security and Justice can make prior agreements with other Ministries to discuss return during foreign visits. The same applies to incoming working visits. Thanks to the efforts of these two Ministries, return has acquired a much more prominent place in the Netherlands' bilateral relations. Most of the Dutch embassies and consulates in the countries on the DT&V Focus List discuss return with the local authorities and consult with Security and Justice on the issue. On occasion, talks on return are incorporated into discussions on business and the development relationship.<sup>116</sup> Other missions, however, have different priorities, usually because of limited staffing.

113 [http://www.rijksoverheid.nl/nieuws/2014/01/07/nederland-en-rwanda-sluiten-overeenkomst-over-migratie.html?ns\\_campaign=regeringsnieuws&ns\\_channel=nb](http://www.rijksoverheid.nl/nieuws/2014/01/07/nederland-en-rwanda-sluiten-overeenkomst-over-migratie.html?ns_campaign=regeringsnieuws&ns_channel=nb); letter of 31 January 2014 on cooperation with Rwanda, Parliamentary Papers, House of Representatives 2013/14, 33 750 VI and 19637, no. 108, <https://zoek.officielebekendmakingen.nl/kst-33750-VI-108.html>.

114 Information from interviews with Security and Justice.

115 Information from interview with Security and Justice.

116 Information from the survey.

Contacts are maintained at different levels, from implementation level (DT&V) to political leadership level. The DT&V's strategic advisers maintain contact at operational level with the diplomatic missions in the Netherlands and the authorities in countries of origin relevant to return. Usually, every year the DT&V organises a meeting for the ambassadors and consuls it works with in the context of return. This meeting offers an opportunity to discuss matters in an informal setting. Missions to countries of origin are jointly prepared by the DT&V and Foreign Affairs. In talks with a Minister or other high-ranking official there, the DT&V adviser is assisted by the Dutch ambassador or consul, who opens the discussion. At operational level (working arrangements) the DT&V director or adviser talks directly to the Minister or other high-ranking official of the country of origin. The research shows that in countries with a hierarchical and centralised structure, nothing can be done at operational level without permission from Ministers and policymakers. In its 2012 annual report the former Supervisory Commission on Repatriation (CITT) recommended appointing a 'return ambassador' who would maintain a relationship at high level with the authorities of the countries of origin. This official would have a good understanding of diplomacy and be familiar with the network; he or she would operate under the responsibility of Security and Justice. Foreign Affairs argues that the ambassadors and consuls at the Dutch diplomatic missions can better fulfil this role because they are experienced diplomats who know much more about the local situation through living in the countries of origin and being familiar with the network. Some respondents argue that more would be achieved through more intensive contacts (working visits) between Security and Justice/Foreign Affairs Ministers/State Secretaries and the authorities in the countries of origin. It is also important for Ministers and high-level officials to invest in the personal relationship with their counterparts in countries of origin who make working visits to the Netherlands.<sup>117</sup>

Where poor cooperation from countries of origin is due to doubts regarding nationality, the Netherlands has invited task forces from third countries to remove those doubts. Sometimes these task forces are invited at the request of the country of origin. They may also be invited if the case load is particularly large or if the foreign embassy involved lacks staff. The task forces come from countries including Armenia, Azerbaijan, Guinea Conakry, Iraq, Liberia, Nepal, Nigeria and Sierra Leone.<sup>118</sup> According to the respondents the deployment of task forces has in most cases had a positive effect on the determination of nationality and thus on the issue of LPs.<sup>119</sup>

The IND's immigration liaison officers (ILOs) could play a role within the migration network and at airports in the countries of origin. ILOs are stationed at Dutch embassies in 12 countries of origin and serve an entire region.<sup>120</sup> They are primarily concerned with preventing illegal immigration by advising and providing training courses for airlines on matters such as fraudulent document recognition, Schengen rules, profiling and identifying impostors (Persons claiming to be someone else and travelling with someone else's passport or other identity document). They also provide training courses for immigration services and the consular sections of embassies. In addition, they play a facilitating role with regard to return, in connection with charter flights for example, and with regard to conditions attached to individual returns, such as arranging for medical

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117 Information from interviews with Security and Justice and Foreign Affairs.

118 Information from the survey; letter of 28 October 2013 on the deployment of task forces in the context of return policy, Parliamentary Papers, House of Representatives 2013/14, 19 637, no. 1743, <https://zoek.officielebekendmakingen.nl/kst-19637-1743.html>.

119 Information from interviews with Security and Justice and survey.

120 In Panama, Russia, Ukraine, Turkey, Ghana, Nigeria, Kenya, South Africa, Thailand, China (Shanghai, Beijing), Dubai and Oman. It has not been possible to station an ILO attaché in Egypt and India. In a number of insecure countries an ILO cannot function effectively, for example in Afghanistan and Somalia.

assistance on arrival at the airport. ILOs maintain contacts with the local migration authorities and are well-informed about the country. The respondents did not favour the creation of special return ILOs as this would entail extra costs and such officers could not achieve more than the DT&V advisers through their networks.

In the European Union the project 'EU Return Liaison Officers (EURLO)' will start in the autumn of 2015. In a number of countries of origin a special EU Return Liaison Officer will be in charge (on a temporary basis) of promoting cooperation on return between EU countries and the country of origin. In which countries of origin an EURLO will be posted is as yet unknown. The DT&V is participating in this project.

The ACVZ's research shows that officials working in other areas such as international police and criminal justice cooperation could play a bridging role to improve cooperation on forced return. This applies particularly where there are good personal contacts and successful cooperation in other policy areas between the Netherlands and the country of origin. A broad relationship with a country of origin in the judicial, economic and cultural fields can help to restore dialogue on the issue of return.<sup>121</sup>

### 3.2.3 The deployment of the strategic country approach to migration within security and justice and foreign affairs policy areas and the effectiveness of return policy

In recent years the Netherlands has achieved improvements in cooperation on return with a number of countries according to respondents at Security and Justice and Foreign Affairs. Examples include Armenia, Azerbaijan, Burundi, Guinea, Nigeria, Rwanda and Somalia/Somaliland.<sup>122</sup> Only the latter is listed as a Cabinet country meaning that it requires a government-wide interministerial approach. The respondents indicate that these improvements are the result of investment in the mutual relationship at several levels and of a customised approach; reliability and mutual respect play a role. Below the results with regard to these countries of origin are presented in the light of the effect indicators listed in section 1.2.3.

#### *Armenia*

The improvement in cooperation in forced return in the case of Armenia is partly due to agreements in the framework of the European Union. The Netherlands is party to the Mobility Partnership (MP) with Armenia, which includes an EU readmission agreement. A Benelux implementing protocol has not yet been concluded, but in practice cooperation is satisfactory.<sup>123</sup> The Netherlands co-finances the Migrant Counselling Centre in Armenia, which offers assistance to returnees in reintegrating in society, particularly those with medical problems (see also section 3.3, the results of international efforts, and the case study Armenia). Apart from this project, assistance is available through a post-arrival assistance project which runs from 1 October 2014 until 1 July 2015. According to the DT&V, Armenian task forces who were invited to remove doubts about nationality of the returnees have had a positive effect on the determination of nationality.

In 2014 the DT&V submitted 275 LP applications.<sup>124</sup> The Armenian authorities denied 15 LP applications, and determined nationality in 200 cases. Only 30 replacement travel documents were issued. It is important to note that the DT&V figures are yearly figures,

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121 Information from interviews with V&J.

122 See too the results of international policy. The Netherlands is a party to the Mobility Partnerships with Armenia and Azerbaijan, which include readmission agreements. In 2014 an MoU was concluded with Nigeria and since 2012 relations with Guinea have improved: in 2014 Guinea and the Netherlands announced their intention to conclude a new MoU. The MoU with Burundi was confirmed and supplemented in 2014 and in the same year an MoU was concluded with Rwanda.

123 Information from interviews with V&J and ambassador of Armenia.

124 Figures mentioned in the report are rounded up or down to five.

and thus do not provide for an insight in the number of persons involved. Respondents mentioned that Armenian nationals often submit a new application for a residence permit on medical grounds.<sup>125</sup> Thus an LP application might be submitted several times for one person only. In 2014 there were 30 forced returns, and 95 independent departures to Armenia. In 2014, a response to an LP application was not received in 55 cases, a decrease compared to previous years (2013 (90) and 2012 (130)), also taking into account the number of applications in those years. The DT&V has a good working relationship based on understanding and cooperation with the embassy of Armenia in the Netherlands.<sup>126</sup>

#### *Azerbaijan*

The Netherlands and Azerbaijan concluded an MoU in 2009 on cooperation in the field of migration and capacity building. This was implemented at the highest level and included a visit by the Dutch Minister for Justice to Azerbaijan in 2010. The improvement in cooperation in forced return in the case of Azerbaijan is partly due to agreements in the framework of the European Union. The Netherlands is party to the Mobility Partnership (MP) with Azerbaijan, which includes an EU readmission agreement (see also section 3.3, the results of international efforts). The DT&V and IND provided assistance to the Immigration Service of Azerbaijan through a twinning project which ran from 1 January 2013 until 1 January 2015 and consisted of the transfer of know-how in the field of fighting irregular migration. In Azerbaijan several post-arrival assistance projects were financed. Azerbaijani nationals who return independently and those who are forced to return can benefit from reintegration assistance. Task forces were deployed to establish the nationality of returnees. These task forces were also deployed at the request of the embassy of Azerbaijan. In 2014 the DT&V submitted 95 LP applications. The Azerbaijani authorities denied 75 of these applications, and determined nationality in 35 cases. Five replacement travel documents were issued. In 2014, a response to an LP application was not received in 15 cases, a decrease compared to previous years (2013 (20) and 2012 (40)), also taking into account the number of applications in those years. In 2014 there were fewer than 5 forced returns, and 10 independent departures to Azerbaijan.

#### *Burundi*

The Netherlands and Burundi concluded an MoU in 2008 on cooperation in the field of migration (including forced return) and capacity building. This was supplemented in 2012 and 2013. The MoU with Burundi was confirmed and supplemented in 2014. Cooperation in the framework of the Security Sector Development Programme was continued, and training as well as technical devices to detect travel document fraud were offered to police officers. The Netherlands Forensic Institute will investigate the need for technical support with Burundi police officers. Furthermore a Dutch advisor will temporarily assist the Burundi Ministry of Public Safety in introducing reforms. The Dutch State Secretary of Security and Justice visited both the Minister of Justice and the Minister of Public Safety to discuss the agreement in person. Burundi does not issue LPs. Forced return takes place using an EU travel document once nationality has been established. In 2014 the Burundi authorities determined nationality in 25 cases. In 5 cases a response to an application for the determination of nationality was not received, which is a decrease compared to previous years (2013 (30) and 2012 (55)), also taking into account the number of applications in those years. In 2014, forced return occurred only a couple of times, namely in fewer than 5 cases. There were 10 independent departures in 2014.

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125 Information from interviews V&J.

126 Information from interviews V&J en ambassador of Armenia.

### *Guinea (Conacry)*

Relations with Guinea have improved since 2012, which is partly due to a change in the officials occupying certain high-level government posts in Guinea. In 2012 a Guinean task force visited the Netherlands. As a result nationality was determined in a significantly higher number of cases in 2012 compared to previous years (2012 (95), 2011 (5), 2010 and 2009 (<5)). In 2014 Guinea and the Netherlands agreed to negotiate on a new MoU.<sup>127</sup> The DT&V submitted 140 LP applications in 2014. The Guinean authorities determined nationality in 15 cases, and issued 15 LPs. In 2014 there were 10 forced returns and 5 independent departures to Guinea. Guinean nationals can benefit from reintegration assistance through the post-arrival assistance project which runs from 1 February 2015 until 1 June 2016, whether their return is forced or independent.

### *Nigeria*

The Netherlands and Nigeria concluded an MoU in March 2014 on cooperation in forced return. A Dutch ILO assists the Nigerian Immigration Service in detecting false or forged travel documents. In 2012 Nigerian task forces visited the Netherlands to establish the nationality of a number of returnees. Nigerian nationals can benefit from reintegration assistance through the post-arrival assistance project which runs from 1 February 2015 until 1 June 2016. An earlier reintegration project ran from 1 June 2012 until 1 December 2013 (see also section 3.3, the results of international efforts). In 2014 the DT&V submitted 120 LP applications. The Nigerian authorities determined nationality in 75 cases, and issued 20 LPs. In 40 cases a response to an LP application was not received, a decrease compared to previous years (2013 (70) and 2012 (80)), also taking into account the number of applications in those years. In 2014 there were 45 forced returns and 20 independent departures to Nigeria.

### *Rwanda*

The Netherlands and Rwanda concluded an MoU in January 2014 on cooperation in the field of migration, police and forced return. Closer cooperation in the area of extradition between these two countries was followed by structural cooperation in forced return. The State Secretary of Security and Justice visited Rwanda to discuss the agreement in person. The Netherlands invested in capacity building projects in the field of justice. The Netherlands Forensic Institute will investigate the need for technical support with Rwandan police officers. In addition, three Rwandan immigration officials were trained in the Netherlands. According to respondents, the cooperation of the Rwandan authorities in forced returns improved in 2014. The agreement includes cooperation in the forced return of nationals who have been accused of war crimes (persons covered by the 1F exclusion clause of the Convention Relating to the Status of Refugees), a priority group. On 1 January 2014, the DT&V caseload consisted of 10 1F cases. In 2012 and 2013 there were no cases of forced return to Rwanda. Since 2014 there were a few forced returns to Rwanda (<5), in addition to 5 independent departures. In 2014 and 2013, a response to an LP application was not received in a few cases (<5), a decrease compared to 2012 (10).

### *Somalia/Somaliland*

In 2014 the Netherlands concluded an MoU with Somaliland and offered to conclude an MoU with Somalia. The Netherlands co-finances a capacity-building project at the Somali Immigration Service and contributes to the Somaliland Development Fund on the condition of cooperation in the field of forced return. The DT&V does not submit

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<sup>127</sup> Negotiations on the MoU were postponed due to the resignation of the Minister of the Interior and Security of Guinea and the outbreak of Ebola.

LP applications in the case of Somalia/Somaliland. In 2014 there were 10 forced returns and 10 independent departures. Negotiations with the Somali authorities have led to the expulsion of a number of Somali pirates and the consent of the authorities to a very limited number of expulsions.

For some countries of origin, however, efforts to improve relations management have as yet had no success in terms of the effect indicators. Iraq has explicitly stated that it will not cooperate in forced return. In the case of other countries, this is abundantly clear from practice. With regard to some of these countries the government has decided that there are other interests involved which the Netherlands does not wish to jeopardise and that therefore no serious pressure can or will be exerted. This is true in the case of Iran (because of the economic sanctions) and China, India and Iraq (economic interests). The DT&V nevertheless continues to start LP procedures for these countries' nationals to 'keep up the pressure'. It attaches great importance to giving foreign nationals an unambiguous signal that departure is the only option. In this way, time, effort and money are invested in currently 'hopeless' cases.

### 3.2.4 Conclusion

#### *Deployment of the SLM outside Security and Justice/Foreign Affairs policy areas*

Outside the domain of Security and Justice/Foreign Affairs, the instrument of linkage has to date only been deployed in order to induce countries of origin readmit their nationals with respect to a few countries (Afghanistan – aviation agreement; India – HRM partnership/highly skilled and student migration), but without success. This component of policy thus exists largely only on paper. The attempt to establish a policy linkage involving SZW and OCW in the field of highly skilled and student migration failed and it became clear that neither ministry could offer extra facilities to persuade India to cooperate. Since February 2004 the basic premise of the policy memorandum on the inclusion of readmission clauses in bilateral agreements – to the effect that such a clause should in principle be included in certain bilateral agreements – has been applicable, but such a clause has never effectively been included in any bilateral agreement.

For the Ministries of Economic Affairs, Finance, I&M, SZW and OCW, their own policy priorities take precedence and Dutch economic interests weigh more heavily than the limited interest of return. Apart from raising the issue during working visits abroad, these ministries have to date made no real contribution to the SLM. Only the Ministry of Finance is aware of the issue of forced return and considers a general approach in their bilateral relations with countries of origin. Thus the interim objective of the SLM (parties that can positively influence the effectiveness of return policy are made aware of the problems associated with return) has not been achieved outside the Ministries of Security and Justice and Foreign Affairs, with the exception of the Ministry of Finance. SZW and OCW pursue a general policy where migration is concerned; as a result it is impossible to offer certain countries permanent extras over and above the existing arrangement. In view of the above, the first ultimate goal (ensuring that a political evaluation of return as against other Dutch interests takes place) as formulated in this chapter, has been achieved only to a very limited extent outside the Foreign Affairs/Security and Justice policy areas. Because no real linkage outside this domain has been created, the second ultimate goal (enhancing the effectiveness of return policy by improving the cooperation of countries of origin in the forced return of their nationals) has not been achieved through an interministerial approach.

#### *Deployment of the SLM within Security and Justice/Foreign Affairs policy areas*

In recent years Security and Justice/Foreign Affairs have focused more – from operational to political leadership level – on building and maintaining good relations with the countries of origin. Most of the Dutch embassies and consulates in countries on the DT&V Focus Country List discuss problems with forced return with the authorities in countries of origin. As a result, the interim objective of the SLM (parties that can positively influence the effectiveness of return policy are made aware of the problems associated with return) has been achieved in relation to Security and Justice/Foreign Affairs.

To date, the linkage of policy areas to induce countries of origin to readmit their nationals has been almost exclusively done within the Security and Justice/Foreign Affairs domain. And within this domain, the first ultimate goal of the SLM (ensuring that a political evaluation of return as against other Dutch interests takes place) has been achieved to a limited extent. The outcome of the political evaluation it entails is that in the sphere of migration, the choice was made not to make a positive link with highly skilled and student migration because the Netherlands pursues a general policy and believes that the arrangements are already very flexible. A negative link with highly skilled and student migration is not at issue because the Netherlands has an economic interest in the entry of highly skilled migrants and students from third countries.

The second ultimate goal (enhancing the effectiveness of return policy by improving the cooperation of countries of origin in the forced return of their nationals) has been achieved in a number of cases thanks to the efforts of Security and Justice/Foreign Affairs. Cooperation with Armenia, Azerbaijan, Burundi, Guinea, Nigeria, Rwanda and Somalia/Somaliland has improved. The Committee assessed the effectiveness of return policy as a result of the deployment of the SLM in relation to these countries on the basis of a number of effect indicators, such as the conclusion of an agreement (MoU or readmission agreement), and good relations/cooperation in the field of forced return according to respondents at Security and Justice and Foreign Affairs. The improvements are the result of investment in the mutual relationship at several levels and a customised approach in which reliability and mutual respect also play a role.

In other cases Security and Justice and Foreign Affairs have as yet failed to achieve the second ultimate goal. This applies to Algeria, China, Ghana, India and Iraq, for example.

### **3.3 The results of international efforts**

Since the mid-nineties, when the problems associated with cooperation by countries of origin in forced return began to surface in political debate, the Netherlands has worked towards European cooperation on this issue and often played a pioneering role in developments. In 1997, under the Dutch EU Presidency, the High-Level Working Group on Asylum and Migration was set up. More recent Dutch initiatives include EURINT, a network focusing on operational cooperation in which the member states share their experiences on working with countries of origin, and the pilot project with Bangladesh, Nigeria and Pakistan launched last year on the initiative of the State Secretary of Security and Justice.

Below the Committee looks at the results of international efforts: readmission agreements, the GAMM, including mobility partnerships and other instruments, the interaction between the Netherlands and the EU, European operational cooperation and other international cooperation.

### 3.3.1 Readmission agreements

These agreements are concluded within an EU framework and a Benelux framework. Where the EU is concerned, the European Commission negotiates on behalf of the member states, as mandated by the Justice and Home Affairs (JHA) Council. In the case of the Benelux, all three countries (Belgium, Luxembourg and the Netherlands) are involved, with one country as leader. In concluding a readmission agreement, the parties commit to readmitting their own nationals and, subject to certain conditions, to taking back third-country nationals and stateless persons (the ‘third-country national clause’).<sup>128</sup> Operational and technical arrangements regarding the acceptance of evidence are an important aspect of readmission agreements. It is important to realise that in concluding a readmission agreement the Benelux/EU is the requesting party and therefore has a unilateral interest in its conclusion. The respondents emphasise that concluding such an agreement is not a goal in itself, but one of several ways of creating a broader framework of bilateral cooperation between the Netherlands and the country in question, also in other strategic (and possibly more important) policy areas such as trade, energy, security and counter-terrorism.

In general, the respondents were positive about the way the EU readmission agreements are working, though they are not an automatic guarantee of success. Facilitation or liberalisation of visa regulations is often sufficient leverage to establish an effective readmission agreement.<sup>129</sup> Choosing to conclude an EU readmission agreement is a departure from Dutch priorities for the simple reason that each of the 28 member states has its own priorities. As yet, none of the EU readmission agreements are with the ‘Cabinet countries’, which in the Netherlands have priority under the SLM. Negotiations are currently underway with Morocco, which is one of the ‘Cabinet countries’. In the case of nine of the 32 countries on the Focus Country List there is an EU readmission agreement and/or an implementing protocol. The length of negotiations by the Commission preceding the conclusion of a readmission agreement is seen by member states as an obstacle. The member states may not themselves enter into negotiations while the EU is negotiating with a third country.

Several respondents indicated that there were problems with the countries with respect to which the European Commission is mandated to enter into negotiations on a readmission agreement, but has been unsuccessful, such as Algeria.<sup>130</sup> The Commission has had a mandate since 2002 to negotiate on an agreement, but no results have been achieved so far. According to some respondents it would be better if the European Commission were to return the mandate if it is unsuccessful.<sup>131</sup> The Commission disagrees. In the past a number of member states concluded a bilateral readmission agreement with Algeria. Nowadays, however, Algeria is no longer prepared to conclude bilateral agreements (or with the Benelux). In practice, member states sometimes make informal arrangements with a country, in the form of an MoU for example, and thus achieve interim results.<sup>132</sup>

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128 Such a clause obliges the country with which the readmission agreement is concluded to readmit third-country nationals who have demonstrably lived in the country or have travelled through it.

129 Interviews with the EC, Foreign Affairs, Security and Justice and the countries surveyed in the study of ‘best practices’.

130 Interviews with Security and Justice, CITT, Belgium.

131 Interview with Security and Justice, Foreign Affairs.

132 The purport of the MoU may not run counter to the negotiations being conducted by the EU in the context of a readmission agreement.

In the respondents' view, the Benelux readmission agreements are in general working well.<sup>133</sup> In practice, however, whether the agreements reached are properly implemented always depends on the country of origin. Benelux readmission agreements always include an implementing protocol. The duration of the negotiating and conclusion process varies from country to country and is not always shorter than the time taken to conclude an EU readmission agreement. In 2013 a list of priorities for the period 2013-2017 was drawn up comprising 24 countries with which the Benelux was keen to conclude a readmission agreement.<sup>134</sup> Due to historical reasons or existing migrant population groups, the three Benelux states have different priority countries.<sup>135</sup> The Benelux reviews whether it can conclude a readmission agreement with countries where the European Commission has no mandate to negotiate. Often, countries of origin ask for an exemption from the visa requirement for holders of diplomatic passports or service passports in return. Both the State Secretary of Security and Justice and the Belgian State Secretary for Asylum and Migration wish to link visa liberalisation to agreements on independent and forced return.<sup>136</sup> This means that when a country no longer wishes to be subject to visa requirements, the Benelux will ask it in return to readmit its nationals who are residing illegally in the Benelux, including those who have exhausted legal remedies, and to conclude a readmission agreement. It will then be decided on a country-by-country basis whether a third-country national clause is to be included in the agreement.<sup>137</sup> The Benelux has achieved results with the following focus countries: Georgia,<sup>138</sup> Serbia,<sup>139</sup> the Russian Federation,<sup>140</sup> and Ukraine.<sup>141</sup>

The effect indicators that the Committee has employed to assess whether the measures taken have increased the effectiveness of return policy (the second ultimate goal) are listed in section 1.2.3. Two of the international effect indicators are that a Benelux or EU readmission agreement has been concluded (with a Benelux implementation Protocol) and that it has been implemented (according to respondents at Security and Justice/ Foreign Affairs/ European Commission and on the basis of figures on forced return). Table 1 presents the results with regard to the countries of origin that are relevant in the framework of the Dutch strategic country approach to migration.

With reference to the results given in Table 1, the Committee concludes on the basis of the interviews with respondents,<sup>142</sup> as well as the figures on forced return, that there has been a genuine improvement in cooperation by these countries in forced return (the second ultimate goal). For details of the results for Azerbaijan and Armenia see section 3.2.2. In the case of Georgia, Serbia, the Russian Federation and Ukraine, there was also an increase in determinations of nationality and a decrease in cases where no response

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133 Interviews with Security and Justice and Belgium.

134 Afghanistan, Algeria, Angola, Bangladesh, Burundi, Egypt, Ethiopia, Cameroon, Côte d'Ivoire, Democratic Republic of Congo, Gambia, Ghana, Guinea-Conakry, India, Iran, Iraq, Liberia, Libya, Mali, Mongolia, Senegal, Sierra Leone, Togo and Tunisia.

135 Interview with Security and Justice and Belgium. The Balkan countries are of primary interest to Belgium, while agreements with countries in West and East Africa are the most relevant for the Netherlands.

136 See the declaration of intent of 24 February 2015, <http://www.government.nl/news/2015/02/24/netherlands-and-belgium-sign-declaration-of-intent-to-cooperate-on-migration.html>.

137 Interview with Security and Justice and Belgium.

138 Implementing protocol between the Benelux and Georgia, signed on 5 September 2013. The protocol has not yet entered into effect, but its spirit is being observed.

139 Implementing protocol concluded between the Benelux and the Republic of Serbia on 25 January 2013 (Dutch Treaty Series (*Trb.*) 2013,57).

140 Readmission applications are handled in accordance with the Benelux Implementing Protocol of 9 March 2011, which entered into effect on 1 November 2011.

141 The negotiations between the Benelux and Ukraine on an implementing protocol have not yet been concluded but a readmission application can be submitted in accordance with an arrangement with the diplomatic mission in the Netherlands.

142 Interviews ministries Security and Justice and Foreign Affairs as well as European Commission DG Home.

to an LP application was received following the conclusion and implementation of readmission agreements (figures listed below relating to LP applications on the basis of an EU readmission agreement have been rounded off).

**Table 1 Overview of EU readmission agreements (and/or Benelux protocols) relevant to the strategic approach:**

Country	Interim objective	Ultimate goal 1	Ultimate goal 2
<b>Algeria</b>	Achieved	Not achieved	Not achieved
Armenia	Achieved	Achieved	Achieved
Azerbaijan	Achieved	Achieved	Achieved
<b>China</b>	Achieved	Not achieved	Not achieved
Georgia	Achieved	Achieved	Achieved
<b>Morocco</b>	Achieved	Achieved, negotiations in progress on a readmission agreement	Not achieved
Pakistan	Achieved	Achieved, implementation of the readmission agreement insufficient	Not achieved
Russian Federation	Achieved	Achieved	Achieved
Serbia	Achieved	Achieved	Achieved
Sri Lanka	Achieved	Achieved, implementation of the readmission agreement insufficient <sup>143</sup>	Not achieved
Turkey	Achieved	Achieved	Awaiting implementation <sup>144</sup>
Ukraine	Achieved	Achieved	Achieved

*The 'Cabinet countries' are marked in bold. The ACVZ has formulated the following goals:  
Interim objective: parties that can positively influence the effectiveness of return policy are made aware of the problems associated with return*

*Ultimate goal 1: a political evaluation of return as against other interests takes place (in this case at European level) which addresses the effectiveness of the instrument that may potentially be deployed (process evaluation).*

*Ultimate goal 2: the effectiveness of Dutch return policy is enhanced by improving the cooperation of countries of origin in the forced return of their nationals.*

#### *Georgia*

The European Union and Georgia concluded an EU Readmission Agreement on 22 November 2010, which entered into effect on 1 March 2011. An implementing protocol between the Benelux and Georgia was signed on 5 September 2013. The protocol has not yet entered into effect, but its spirit is being observed. In 2014 the DT&V submitted

<sup>143</sup> According to respondents, the poor implementation of the EU readmission agreements with Pakistan and Sri Lanka is attributable to the fact that no visa facilitation or other form of leverage was applied to these agreements.

<sup>144</sup> DG Home will regularly monitor implementation (two annual meetings of the joint Readmission Committee). The third-country national clause will not apply until 1 October 2017.

55 LP applications (2013: 70). The Georgian authorities denied 10 applications and determined nationality in 35 cases (2013: 50). In 2014 there were 20 forced returns (2013: 30) and 60 independent departures to Georgia (2013: 70). In 2014, a response to an LP application was not received in 10 cases (2013: <5), a more or less stable figure, also taking into account the number of applications in previous years (2009-2012). According to respondents at Security and Justice, Georgia was already cooperating well in forced return in previous years, and continues to do so.

#### *Serbia*

The Benelux and Serbia concluded a Benelux Readmission Agreement on 19 July 2002, which entered into effect on 29 May 2004. The European Union and Serbia concluded an EU Readmission Agreement on 18 September 2007, which entered into effect on 1 January 2008. An implementing protocol between the Benelux and Serbia was signed on 25 January 2013. The protocol has not yet entered into effect, but its spirit is being observed. In 2014, the DT&V submitted 60 LP applications (2013: 70). Serbia denied 10 applications (2013: <5), and determined nationality in 60 cases (2013: 50). In 2014, there were 35 forced returns (2013: 50), and 155 independent departures to Serbia (2013: 180). In 2014, a response was received on every single LP application (2013: in <5 cases no response was received). In previous years the number of forced returns was stable (between 40 and 50). 2013 and 2014 showed a remarkable increase in independent departures compared to previous years (2009-2012: between 15 and 55). According to respondents at Security and Justice Serbia cooperates well in forced return.

#### *The Russian Federation*

The European Union and the Russian Federation concluded an EU Readmission Agreement on 25 May 2006, which entered into effect on 1 June 2007. An implementing protocol between the Benelux and the Russian Federation was signed on 9 March 2011, and entered into effect on 1 November 2011. In 2014, the DT&V submitted 110 LP applications (2013: 125). The authorities of the Russian Federation denied 30 applications (2013: 40), and determined nationality in 50 cases (2013: 45). In 2014, there were 20 forced returns (2013: 20), and 35 independent departures to the Russian Federation (2013: 105). In 2014, a response to an LP application was not received in 10 cases (2013: 20). The number of forced returns was stable, but independent departure to the Russian Federation decreased in 2014. In previous years the number of forced returns was stable as well (2009-2012: between 20 and 35). From 2011 until 2013 independent departures took place on a much larger scale (between 105 and 435). According to respondents at Security and Justice, the Russian Federation cooperates well in forced return.

#### *Ukraine*

The European Union and Ukraine concluded an EU Readmission Agreement on 18 June 2007, which entered into effect on 1 January 2008. In 2014 the DT&V submitted 45 LP applications (2013: 40). Ukraine denied 20 applications (2013: 15) and determined nationality in 25 cases (2013: 20). In 2014 there were 30 forced returns (2013: 45) and 45 independent departures to Ukraine (2013: 15). In 2014, a response to an LP application was not received in less than 5 cases (2013: <5). In 2014 the number of forced returns decreased, but the number of independent departures increased. In previous years numbers of forced returns were higher (2009-2012: between 90 and 120 forced returns), but the number of cases where no response to an application was received clearly decreased. According to respondents at Security and Justice, Ukraine cooperates well in the forced return of their nationals.

The third-country national clause referred to in the Introduction, which some member states insist on, are an obstacle to the success of negotiations for countries of origin and for the European Commission. The Netherlands hardly ever makes use of this clause. A factor at issue in practice is that the burden of proof (providing evidence that they have previously been in the country in question) for the readmission of third-country nationals is heavy. Some of the countries in the study of ‘best practices’ have concluded bilateral agreements without such a clause. The clause plays an important role in the EU negotiations with Morocco. A large proportion of third-country nationals in this case enter Morocco via its border with Algeria. The EU has not succeeded in concluding a readmission agreement with Algeria, but in Morocco’s view is asking Morocco to act as its proxy in the implementation of Europe’s expulsion policy with regard to the transit of third country nationals (including Algerian nationals) through its territory.<sup>145</sup>

If a member state believes that more can be achieved bilaterally than within an EU framework, it will not be enthusiastic about a readmission agreement. Both Dutch respondents and the countries that participated in the study of ‘best practices’ indicate that informal and operational arrangements work better in some cases. And countries of origin may prefer bilateral agreements because they get more in return and can play one member state off against another.

### 3.3.2 The Global Approach to Migration and Mobility

#### *GAMM*

Since 2005 the external dimension of EU return policy has been part of the Global Approach to Migration (GAM). This EU policy framework was expanded in 2011 to include important issues such as mobility and international protection. Currently, the EU is conducting a broad dialogue on migration as part of the Global Approach to Migration and Mobility (GAMM) with a variety of regions and countries. The development of this dialogue is a priority for the Netherlands too. The GAMM emphasises practical cooperation with countries, and this is seen as a great advantage by respondents, including the European Commission and the four countries described in the study of ‘best practices’ (chapter 4). Another advantage in their view is the voluntary nature of the member states’ participation in the various migration dialogues. These comprise:

- migration dialogues with the Eastern region (Prague Process, Eastern Partnership and Budapest Process);
- migration dialogues with the Southern region (EU-Africa Partnership, EU-ACP (sub-Saharan Africa, the Caribbean and Pacific), the Rabat Process, the Khartoum Process, Dialogue on Mediterranean Transit Migration);
- migration dialogues with individual countries such as China, India, Russia and the United States.

Coordination between member states takes place in the High-Level Working Group on Asylum and Migration (HLWG). The dialogues cover a range of issues including building asylum capacity in a third country, strengthening cooperation on migration, information exchange, support for projects on reception in the region, return and reintegration, agreements on evidence establishing a person’s nationality, biometrics and development. In the framework of the Budapest Process the Netherlands works with other EU member

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145 See S. Wolff, ‘The Politics of Negotiating EU Readmission Agreements: Insights from Morocco and Turkey’, *European Journal of Migration and Law* 2014, pp. 69-95. The fear of becoming a proxy country of return for other African states also plays a role in the difficult negotiations between the EU and the ACP countries on the 2020 Cotonou Agreement.

states on capacity-building projects in Afghanistan, Iraq and Pakistan.<sup>146</sup>

### *Mobility partnerships*

The most far-reaching cooperation on migration between the EU and countries of origin is regulated in mobility partnerships (MPs). These always contain agreements on visa facilitation and a readmission agreement with the country concerned. The political debate on the use of MPs goes back to the beginning of the nineteen nineties, but they only became a reality with the founding of the GAM in 2005. On the one hand, MPs constitute a balanced and integrated approach to migration in line with the EU's migration and development policy.<sup>147</sup> On the other hand, MPs are more a reflection of Europe's focus on security and border controls than an instrument based on sound labour market considerations.<sup>148</sup> In the beginning, the emphasis in MPs was still heavily oriented towards opportunities for circular migration, but this was not particularly productive.<sup>149</sup> This has led to dissatisfaction among some of the countries that have concluded an MP with the EU.

#### **Case study: national deployment Security and Justice/Foreign Affairs and international deployment MPs and EU readmission agreement (Armenia)**

The cooperation between the EU and Armenia is an example of a successful integrated approach at both national and international level. The Ministries Security and Justice and Foreign Affairs deployed various components of the SLM. Cooperation with the Armenian embassy in the Netherlands is good.<sup>150</sup> In 2005 an MoU was concluded on cooperation to combat illegal migration. The use of task forces from Armenia to establish the nationality and identity of the foreign national concerned reflect the closeness of cooperation. Determining that a person has Armenian nationality is not always easy: in the past Armenians living temporarily in Russia sometimes acquired Russian nationality automatically. A complicating factor on the Dutch side is that Armenian nationals frequently submit repeated applications for a residence permit (primarily on medical grounds) which is an obstacle in the return process. The main obstacle in the return process with regard to Armenia lies thus not in lack of cooperation by the Armenian authorities but in the procedures in the Netherlands and the poor reception facilities in Armenia. This is particularly the case with (alleged) medical problems.<sup>151</sup> The Armenian embassy has suggested opening a clinic in Armenia

146 The Silk Routes Partnership for Migration was developed as part of the Budapest Process at the Ministerial Conference in Istanbul on 19 April 2013. The Netherlands participates in the Silk Routes Programme Working Group, alongside relevant countries of origin such as Afghanistan and Iraq.

147 According to EU development and external migration policy, migration contributes to the prosperity of countries of origin, transit and destination. Research shows that following the change in the international discourse, the Union incorporated the 'migration-development nexus' in its policy as of 2005 (GAM in 2005, expanded in 2011 to become the GAMM).

148 See K. Eisele, 'Externe dimensies van het EU-migratiebeleid - Op weg naar een alomvattende aanpak van migratie voor Europa?', *Journal Vreemdelingenrecht* 2013, p. 22 ff G. Engbersen & A. Leerkes, 'Towards a smarter and more just Fortress Europe. Combining temporary labour migration and effective policies of return', in: N. Frost, J. Freilich & T. Clear (eds.), *Contemporary Issues in Criminal Justice Policy*, Belmont: Wadsworth Pub Co, 2010, pp. 211-220.

149 See S. Carrera & R. Hernández i Sagrera, 'Mobility Partnerships: Insecurity partnerships for policy coherence and migrant workers human rights in the EU', in: R. Kunz, S. Lavenex & M. Panizzon (eds.), *Multilayered migration governance, the promise of partnership?*, London: Routledge, 2011, pp. 97-115. S. Lavenex & R. Stucky, 'Partnering' for migration in EU external relations', in: R. Kunz, S. Lavenex & M. Panizzon (eds.), *Multilayered migration governance, the promise of partnership?*, London: Routledge, 2011, pp. 116-142.

150 Interview with the Armenian embassy and interviews with Security and Justice.

151 Similar problems with complex procedures regarding stay on medical grounds are at issue in the case of SLM countries like Azerbaijan, the DR Congo and Nigeria. The (alleged) changes in the foreign national's state of health and poor reception in the country of origin are often the subject of discussion in repeated applications for residence on medical grounds.

and training Armenian staff in Dutch medical treatment procedures that are compatible with the medication licensed for use in Armenia. This could reduce the problems associated with return and eliminate medical reasons as a cause for migration.<sup>152</sup>

At European level too, deployment has produced good results. The Netherlands and Armenia participate in the EU's migration dialogue in the Eastern Partnership (2009-today) which focuses on improving political and economic cooperation, and also in the Budapest Process and the Prague Process.<sup>153</sup>

An important result of the integrated approach to migration and development is the conclusion of the EU-Armenia Mobility Partnership on 6 October 2011.<sup>154</sup> The Netherlands is a partner in this MP. Dutch participation in the MP is focused on reintegration and capacity building in Armenia. Currently, the *Post Arrival Assistance Armenia project* is underway. Armenian nationals who return on a forced or independent basis to Armenia receive assistance in kind. The *Targeted Initiative for Armenia project* is part of the EU-Armenia MP. The Netherlands co-finances this project and France is the leading partner. Part of this initiative is the *Migrant Counselling Centre* which offers assistance to returnees in reintegrating in Armenian society, particularly those with medical problems. This project runs from 1 March 2014 until 31 December 2015, and may be extended to 2016. As a result of agreements incorporated in the MP, an EU-Armenia readmission agreement was signed on 19 April 2013. This entered into effect on 1 January 2014. As yet no Benelux implementing protocol to this agreement has been concluded, negotiations are ongoing.

The negotiations with Morocco and Tunisia on an MP were successful, partly because of the inclusion of future visa facilitation in it and linkage to a future parallel EU readmission agreement. A positive development was the MPs concluded by the EU with 'Cabinet country' Morocco and focus countries Armenia (see case study), Azerbaijan and Georgia. Nearly all the respondents consider it important to develop looser, more informal kinds of cooperation, like MPs, with major return countries as part of the integrated approach to migration. A reservation that should be made in connection with partnerships<sup>155</sup> is that there has to be a degree of realism with regard to what can actually be achieved between the EU and third countries in the field of migration and mobility. The fact is that the EU has chosen to conclude MPs with relatively 'easy' countries in the Eastern Partnership (Armenia, Azerbaijan, Georgia and Moldova), only three with African countries (Cape Verde, Morocco and Tunisia) and only one with a Middle Eastern country (Jordan). All these countries are seeking closer ties with the EU.<sup>156</sup>

The European Commission has expressed dissatisfaction with the member states' participation in MPs. The Netherlands however is very active in this context and is a partner in MPs with Armenia, Azerbaijan, Cape Verde, Georgia and Morocco. The Netherlands focuses its efforts on strengthening migration management in these

152 Interview with the Armenian embassy.

153 [http://www.europa-nu.nl/id/vi4vbw1tpls3/oostelijk\\_partnerschap](http://www.europa-nu.nl/id/vi4vbw1tpls3/oostelijk_partnerschap).

154 Council document, no 14963/11 ADD 1; partnership between Armenia and the EU and the participating member states (Belgium, Bulgaria, the Czech Republic, Germany, France, Italy, the Netherlands, Poland, Romania and Sweden).

155 It is argued in the literature that the word 'partnership' disguises the fact that there is a power imbalance between the sending and receiving state in which the latter can be compelled to cooperate in readmission through economic dependence or dependence on an aid relationship.

156 See S. Lavenex & R. Stucky, op. cit..

countries, sustainable return and reintegration, and migration and development.<sup>157</sup>

As stated above, the countries of origin are disappointed that the MPs offer little opportunity for legal migration. The other respondents generally regard MPs as a potentially effective instrument to supplement readmission agreements because they allow for a more customised and integrated approach to migration. There are reservations about their ‘soft law nature’, lack of transparency and the democratic deficit in terms of monitoring the conclusion or implementation of this hybrid form of agreement between countries.<sup>158</sup>

The effect indicators that the Committee has employed to assess whether the measures taken have increased the effectiveness of return policy (the second ultimate goal) are listed in section 1.2.3. One of the international effect indicators is that agreements have been made in the framework of an MP or a CAMM. The second ultimate goal has not been achieved until these agreements have been implemented, in the case of MPs by concluding an EU readmission agreement. Table 2 presents the results for this effect indicator in relation to countries of origin relevant to the Dutch strategic country approach to migration.

**Table 2 Results of mobility partnerships (MPs) and Common Agenda on Migration and Mobility (CAMM):**

Land	Interim objective	Ultimate goal 1	Ultimate goal 2
<b>Algeria</b>	No results	Not achieved	Not achieved
Armenia	Achieved, MP concluded on 6 October 2011	Achieved (readmission agreement)	Achieved (readmission agreement)
Azerbaijan	Achieved, MP concluded on 5 December 2013	Achieved (readmission agreement)	Achieved (readmission agreement)
China	No results	Not achieved	Not achieved
Georgia	Achieved, MP concluded on 30 November 2009	Achieved (readmission agreement)	Achieved (readmission agreement)
<b>India</b>	Achieved	Achieved, a CAMM is in preparation	Not achieved
<b>Morocco</b>	Achieved, MP concluded on 7 June 2013	Partly achieved (see readmission agreement table)	Not achieved
Nigeria	Achieved	Achieved (a CAMM was concluded on 12 March 2015)	Achieved for the Netherlands <sup>159</sup>

157 In addition to the MP with Armenia (see case study), for example the twinning project met Azerbaijan, under which the DT&V and IND, working with the Latvian and Romanian immigration services, have in the last two and a half years conducted over 50 training courses, seminars and workshops in order to develop and strengthen the knowledge and capacity of the Azerbaijan State Immigration Service (SMS). In addition, over a hundred amendments to immigration legislation have been drafted, action plans on preventing illegal migration launched, training programmes devised and public information campaigns advising migrants of their rights and obligations organised. Source: DT&V newsletter, 26 March 2015. Another example is provided by the cooperation in the form of an MP with Georgia. See the annex to the Joint Declaration on a Mobility Partnership between the European Union and Georgia, of 20 November 2009, no. 16396/09, under which the Netherlands provides free legal advice and psycho-social support to highly skilled migrants willing to return to Georgia, and supports the Georgian authorities in creating a sustainable return and reintegration programme.

158 Interview with an academic, ECRE. See S. Carrera & R. Hernández i Sagrera, op. cit.

The ‘Cabinet countries’ are marked in bold. The ACVZ has formulated the following goals:

*Interim objective: parties that can positively influence the effectiveness of return policy are made aware of the problems associated with return.*

*Ultimate goal 1: a political evaluation of return as against other interests takes place (in this case at European level) which addresses the effectiveness of the instrument that may potentially be deployed (process evaluation).*

*Ultimate goal 2: the effectiveness of Dutch return policy is enhanced by improving the cooperation of countries of origin in the forced return of their nationals.*

#### *Other instruments and pilot project*

The Common Agendas on Migration and Mobility (CAMMs) that the EU concludes with a variety of countries form an alternative to MPs, are more flexible and constitute a ‘lighter’ form of cooperation. CAMMs are concluded with countries located further away from the EU’s external borders. The EU is in negotiation with a number of countries including India and Nigeria. In the case of Nigeria cooperation is already good and a CAMM was concluded on 12 March 2015. A striking development is that CAMMs are sometimes initiated by third countries themselves. Ethiopia, for example, which is one of the focus countries, has shown interest in starting negotiations on a CAMM.<sup>160</sup> To date, no results have been achieved with Algeria and China, although an EU-China dialogue has been launched (EU-China High Level Dialogue on Migration and Mobility). The negotiations with the ACP countries on the Cotonou Agreement which expires in 2020 are encountering difficulties with the issue of return.<sup>161</sup> Failure by the ACP countries to cooperate in the return of nationals under article 13 of the Agreement is not liable to sanctions. The readmission clause in the Agreement contains only a best-efforts obligation and provides a basis for further negotiations on readmission agreements. Morocco now claims that the EU is applying a double standard in that it does not press the ACP countries to implement article 13 of the Cotonou Agreement, but is insisting on a third-country national clause in a readmission agreement with Morocco. Although in practice article 13 is a dead letter, the Netherlands has not as yet taken any steps vis-à-vis the ACP states in the field of migration (for example, with regard to visas,<sup>162</sup> seasonal labour or circular migration) linked to readmission of their nationals on the basis of the Cotonou Agreement. However, the DT&V does refer to the Cotonou Agreement when negotiating an MoU with an ACP country of origin. It is noteworthy that Spain seems to have had more success than the Netherlands in developing bilateral relations with West African ACP countries by invoking the Cotonou Agreement.

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159 The Netherlands enjoys good relations with Nigeria with respect to cooperation in return, though this is not the direct result of the CAMM.

160 See Council document 13605/14 of 8 October 2014. This is in fact worthy to note, since in 2007 Ethiopia participated in an EU cooperation platform which ceased to exist in 2010. According to one academic, the platform was a failure because in addition to differences of opinion among the ten participating member states, Ethiopia probably undermined cooperation through a series of what were seen as deliberate misinterpretations of the nature and form of readmission of third-country nationals to Ethiopia. See M. Janmyr, ‘Norway’s Readmission Agreements: Spellbound by European Union Policies or Free Spirits on the International Field?’, *European Journal of Migration and Law*, 2014, p. 206.

161 The EU-ACP migration dialogue, based on article 13 of the Cotonou Agreement, was launched in June 2010. A joint report with recommendations on visas, return and remittances was adopted in June 2012. The negotiations on further steps in these areas and on combating people smuggling and human trafficking are still underway. [http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/acp/dv/st0211614/st0211614en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/acp/dv/st0211614/st0211614en.pdf).

162 The declaration of intent by SvV&J and the Belgian State Secretary for Asylum and Migration of 24 February 2015 would appear to be the first step in the direction of visa exemptions for some ACP countries, provided there is agreement on the readmission of their nationals. It was not stated whether this would be for a limited number of national visas (including exemptions for holders of diplomatic and service passports), nor was there any reference to seasonal labour or circular migration. See <http://www.rijksoverheid.nl/nieuws/2015/02/24/nederland-en-belgie-tekenen-intentieverklaring-tot-migratiesamenwerking.html>.

The EU also concludes Association Agreements with third countries which often contain a readmission clause (see section 2.2). MPs and CAMMs also contain agreements with third countries involving a best-efforts obligation. Implementation is dependent on further investment in bilateral relations.

What applies to all the instruments the EU can deploy is that the member states are frequently unwilling to offer genuine incentives; this is also true for the Netherlands. One example is the recently launched pilot project,<sup>163</sup> where the Netherlands is of the opinion that the funding must come primarily from the European Commission's budget and the European Commission believes that the member states must call upon their relations with the countries concerned and their own resources. The idea is that within the EU the pilot project can contribute to the interim objective of 'putting return on the agenda' of parties that may be able to play a positive role and, more important, launch the integrated approach for the EU. The Netherlands has presented the pilot as an example of the 'more for more' approach, which means that linkages may only be positive.<sup>164</sup> This led the Justice and Home Affairs Council to pledge its support in June 2014 for the continuance of the pilot. Respondents indicate that the pilot will already be a success if the EU makes a political assessment of return in relation to other European interests and pledges joint resources (partly supplied by the European Commission, partly by member states) to this end.<sup>165</sup> However, the use of negative incentives at EU level, for example by linking development aid to cooperation in return is in general not appreciated by some of the countries participating in the study of 'best practices' and the European Commission.<sup>166</sup> It is questionable whether effective incentives will be employed by the EU in the future, thereby achieving a real improvement in cooperation in forced return by the selected countries of origin. Of the three countries selected for the pilot project only Pakistan is of relevance to the Netherlands.<sup>167</sup>

**Case study: international deployment EU readmission agreements, migration dialogues, EURINT, ERIN and pilot project (Pakistan)**

Pakistan is an example of a country where the deployment of the SLM has to date produced fewer results. Although the influx of Pakistani nationals into the DT&V caseload is large, the number of LP applications (readmission applications) is relatively low. Cooperation has been difficult for several years. If the Pakistan embassy responds at all, it takes a long time for nationality to be determined. The DT&V stresses the importance of implementing the readmission agreement in talks with the Pakistan ambassador. Foreign Affairs has stepped up its contacts with Pakistan through the Dutch embassy in Islamabad.

163 At the JHA Council on 5 March 2014, SvV&J received support from various member states and the Greek Presidency for a joint EU pilot aimed at certain countries which are not cooperating sufficiently in return. The aim is an improved common approach to return and linkage of policy areas at EU level, for example visa facilitation, trade, education and culture. On 5 June 2014 during the JHA Council, the Council conclusions, including the Dutch proposal for a pilot project, were formally adopted. The parties involved (the European Commission, the European External Action Service and the participating member states) have in the meantime started preparations for the pilot by selecting three countries: Bangladesh, Nigeria and Pakistan.

164 The 'more for more' approach of the European Commission is one of the pillars of the European Neighbourhood Policy (ENP) and is based on positive conditionality: the more reforms a partner country carries out, the more support it receives from the EU. On example is that if the human rights situation in a country improves, the EU will invest more. In terms of migration policy, the EU will invest more in the areas of migration and development in a country if it improves its cooperation in return.

165 Interviews with Foreign Affairs, DG HOME.

166 Interviews with DG DEVCO, Belgium, France and Spain.

167 Bangladesh is not relevant to the SLM, and the Netherlands' relations with Nigeria with regard to return are good.

The Dutch deployment of the SLM with regard to Pakistan (as in the case of Sri Lanka, Turkey and Ukraine) has a strong European focus, because the EU has concluded a readmission agreement with these countries. Pakistan is a special case because on 26 October 2009 it concluded a readmission agreement with the EU which entered into effect on 1 December 2010, yet there is no effective implementation of binding commitments in that agreement. This is partly because no leverage (for example visa facilitation) was used for this agreement (nor indeed for the agreement with Sri Lanka, which has been in effect since 1 May 2005).<sup>168</sup> Visa facilitation and liberalisation was used as leverage in the EU readmission agreements with Turkey and Ukraine, and in the case of these two countries cooperation in return is good.

The Netherlands plays an active role in the Budapest Process, a consultative forum consisting of representatives of countries of destination in Europe, transit countries to the east of Europe and countries of origin along the Silk Routes (including Pakistan). The Netherlands has contributed € 300,000 to a project designed to strengthen the migration management capacity of a number of Silk Routes countries: Afghanistan, Iraq and Pakistan.<sup>169</sup>

In addition, within the framework of EURINT<sup>170</sup> the Netherlands is working to improve operational cooperation with Pakistan. Following a visit by a number of like-minded EURINT members (including the Netherlands) to Pakistan, the European Commission put pressure on Pakistan to implement the readmission agreement with the EU. The first meeting of the Joint Readmission Committee took place in June 2012. Pakistan has not responded to the offer of an implementing protocol to the EU readmission agreement made by Belgium on behalf of the Benelux countries. The EU readmission agreement however can be implemented without such a protocol. According to the DT&V, cooperation on the sole basis of the EU readmission agreement might be sufficient, because cooperation with the Pakistan embassy has improved since December 2014.

Pakistan is one of the target countries of the two-year ERIN project, in which over 600 migrants from a variety of countries have been assisted with reintegration following return. It is also one of the countries selected for the pilot project proposed to the JHA Council by the State Secretary of Security and Justice in June 2014. The European Commission and the participating member states are engaged in preparing for the implementation of the pilot project. The aim is arrive at an improved joint approach to return at EU level, based on the ‘more for more’ principle, by linking positive incentives in fields such as visa facilitation, trade, education and culture.

### 3.3.3 Interaction between Dutch and EU policy

Since the first move towards developing an EU return policy in 1995, the EU has repeatedly expressed its commitment to finding new ways to achieve better control of

168 Interview with DG HOME.

169 Parliamentary Papers, House of Representatives 2013/14, 30 573, no. 124, p. 4, letter of 25 February 2014 on current situation with regard to the strategic country approach to migration; Silk Routes Partnership Project, see <http://www.icmpd.org/Budapest-Process.1528.0.html>. Other donors include the European Commission, Bulgaria, Hungary, Norway, Sweden, Switzerland and Turkey.

170 EURINT is an intergovernmental initiative of the Netherlands in which the member states have been exchanging practical experiences regarding cooperation with countries of origin since 2013. See also section 3.3.4.

migration flows through the deployment of its external relations. In 2002, the European Council even gave permission for possible punitive measures against countries of origin that were not cooperating in efforts to control migrations flows in the direction of Europe.<sup>171</sup> The ACVZ notes that such measures were never actually taken, partly due to the resistance in the European institutions to explicit negative conditionality. The deployment and effect of the strategic country approach by the Netherlands is partly dependent on European agreements with countries of origin, which can sometimes strengthen the Dutch approach but also weaken it or even render it completely ineffective. The European Commission usually listens to critical observations from the member states, including the Netherlands. Most of the respondents indicate that the Netherlands needs the scale of the EU in the case of certain countries such as Afghanistan, Algeria, China, Egypt, India, Iraq, Morocco and Pakistan in order to achieve results.<sup>172</sup> An example illustrating this point is the fact that EU enters into relations and makes investments in certain regions which can serve as leverage. State Secretary's letter of 6 March 2013<sup>173</sup> states that alongside the national strategic country approach, more effort is to be put into European strategies, since the EU can exert more influence than the Netherlands alone. In this context steps have been taken in which the Netherlands has played an active role.<sup>174</sup>

The scale of the EU also has its disadvantages, because the European institutions must first reach internal agreement with 28 countries, all with different interests, before it can arrive at a common external strategy. The result of the European Commission's negotiations with a country of origin is a compromise between the priorities of the member states. Furthermore, concluding a readmission agreement with the EU means the country of origin involved is obliged to readmit its nationals from all 28 member states. This can be an obstacle in negotiations. The Commission is bound by its mandate from the Council in negotiating readmission agreements and MPs and this often involves lengthy treaty-making procedures.<sup>175</sup> In some cases, member states have longer and more intimate ties than the EU institutions with a country of origin which can more quickly and more effectively be used as leverage.<sup>176</sup> In bilateral relations with countries of origin it all comes down to the art of diplomacy, dialogue, patience and persistence.<sup>177</sup>

### **What opportunities are there for linkage at EU level?**

At EU level, linkage in the framework of the 'more for more' approach in the field of migration (including visa facilitation and border controls) and justice (including police and judicial cooperation) in the Justice and Home Affairs domain, is easier to establish than in the areas of trade, development cooperation, education, access to the labour market policy and foreign affairs. This is explained in more detail below.

171 N. Coleman, *European Readmission Policy: Third Country Interests and Refugee Rights*, Leiden: Martinus Nijhoff publishers, 2009, pp. 113-114.

172 Interviews with Security and Justice, Foreign Affairs, LOGO.

173 Letter from SvV&J of 6 March 2013, Parliamentary Papers, House of Representatives 2012/13, 29 344, no. 116.

174 Letter from SvV&J of 15 February 2014, Parliamentary Papers, House of Representatives 2013/14, 30 573, no. 124.

175 The European Parliament only has the right of assent in the conclusion of treaties.

176 The United Kingdom has had more success with Commonwealth countries like India, Nigeria and Pakistan; France with countries like China and some in North and West Africa, such as Algeria and Morocco; Belgium with countries such as China, DR Congo, Morocco and Pakistan; Spain has been more successful through close cooperation based on mutual respect with countries in North and West Africa, including Morocco and Senegal, using a strong network of over 50 International Liaison Officers in West Africa and elsewhere.

177 Interview with Foreign Affairs.

### *Visa facilitation or liberalisation*

Most of the respondents and the European Commission see visa facilitation or liberalisation as effective leverage. The list of countries wishing to be exempted, partially or otherwise, from visa requirements in the Schengen framework can be found in the annex to the Visa Regulation.<sup>178</sup> Since the Schengen Agreement was concluded in 1995, the Schengen states issue hardly any national short-stay visas. This means that the policy on linking visa facilitation or liberalisation to agreements on return is determined within the Schengen framework. This leads to a second problem: because of their varying interests in relation to countries of origin, it is difficult to get all the Schengen countries in line.<sup>179</sup> Some respondents state that influencing visa policy is no longer such an obvious course of action. In the past the Schengen states were able to take measures on their own authority, such as the temporary reinstatement of a visa requirement if the visa procedure was being abused or if there was a large influx of foreign nationals.

In March 2015, the European Council considered linking cooperation of third countries in the return of their nationals to a new Visa Regulation.<sup>180</sup> Under the current Visa Regulation visa facilitation only applies to individuals from third countries. The degree of cooperation in forced return by a particular country will probably be listed as an indicator in the revised Visa Regulation. It may also become possible to reconsider visa facilitation if third countries do not cooperate in the forced return of their nationals.

It's worthy of note that the United Kingdom, which is not a party to Schengen and still has a bilateral visa system, has not directly linked visa issue to cooperation in return. The question depends on the totality of the UK's relations with the country concerned.<sup>181</sup>

### *Border control*

The EU invests in projects aimed at strengthening border controls. According to the IOM this can be better coordinated at EU level since there is often an overlap with migration and (voluntary or forced) return. One member state may invest in a border authority, another in a computer network, while yet another provides training courses etc.<sup>182</sup> Under the 'more for more' approach, contributions towards building capacity in the border control system can be disbursed in instalments and made dependent on cooperation in return.

### *Police and judicial cooperation*

As far as the ACVZ has been able to ascertain, no link between police and judicial cooperation on the one hand and return on the other has been established at EU level but is not inconceivable. Cooperation between the EU member states in the field of migration is currently further advanced than cooperation in the police and criminal justice areas. The difference in integration between two policy areas may have an influence on linkage. But the one policy area does not by definition exclude the other.<sup>183</sup>

178 Council Regulation (EC) no. 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

179 Interview with V&J, Belgium.

180 <http://www.statewatch.org/news/2015/apr/eu-council-return-readmission-discussion-paper-7156-15.pdf>.

181 Interview with the United Kingdom.

182 For example, the Netherlands has provided an Edison system, Germany gives on-the-spot training, France offers a course in Paris etc. This often involves overlap. From an interview with the IOM.

183 Interview with V&J.

### *Trade*

The current Dutch government, like the previous one, explicitly stated in the coalition agreement that return should be linked wherever possible to other policy areas, trade being specifically mentioned. Though this was raised by the Netherlands in negotiations within the EU on the conclusion of international agreements by the EU, the other member states were not enthusiastic. Trade is an exclusive EU competence. That has been the case for trade agreements for decades, and since the entry into force of the Treaty of Lisbon it also applies to investment protection agreements. The member states in the Council are cautious because they do not see the relevance of migration to trade. But the European Commission does see the potential of ‘mode 4’ trade agreements<sup>184</sup> with regard to highly skilled service providers who come to the EU temporarily to provide a particular service. In this case, the trade policy area can be linked to agreements on migration and return because there is a natural connection here between trade and migration. And countries of origin want transparency on migration and visa regulations for their nationals who supply services in the EU.<sup>185</sup>

### *Development cooperation*

Both the countries participating in the study of ‘best practices’ and the European Commission take the view that the aim of development cooperation is to reduce poverty and may not be linked to cooperation in return. One example is the relationship with Egypt, where the EU pledged € 5 billion in aid for reconstruction following the Arab Spring without the European Commission linking the aid to other policy areas, such as return.<sup>186</sup>

### *Education*

As far as the ACVZ has been able to ascertain, there is also no direct linkage between the policy area of education and return policy. During the drafting of the revised Study Directive a potential link with return was discussed at EU level, but there was insufficient support from the member states.<sup>187</sup> The Netherlands does not deploy this instrument because it can damage national interests. This consideration also applies at European level. What is more, if an agreement on return is included in the Study Directive, the Netherlands has less room to manoeuvre at national level<sup>188</sup> since the EU acquires this competence and related monitoring powers. When this point was raised during the revision of the directive, OCW informed Security and Justice that it was not in favour.<sup>189</sup>

### *Foreign policy*

The diplomats who staff the European External Action Service (EEAS) are responsible for carrying out external EU policy (including migration dialogues and

184 The General Agreement on Trade in Services (GATS) is an agreement between the World Trade Organization members containing commitments and obligations relating to the international trade in services. GATS has four ‘modes’: 1. Cross-border supply 2. Consumption abroad 3. Commercial presence, and 4. Presence of natural persons supplying a service.

185 Interview with Foreign Affairs, Security and Justice, DG HOME.

186 Interview with Security and Justice.

187 In the draft of the revised Study Directive the possession of sufficient resources to cover the cost of return and the reference to the Return Directive were scrapped, see <http://www.statewatch.org/news/2015/jan/eu-council-researchers-16343-14.pdf>.

188 The entry of students into the Netherlands falls under general entry policy, just as it does at European level. Currently, return policy is not linked to student migration either at national or EU level. One possibility would be to link the granting of scholarships to students from certain countries. In the Netherlands it is not the Education Ministry but the institutions of higher education that decide from which countries of origin students are recruited and whether to grant (international) scholarships.

189 Interview with OCW.

the GAMM). According to one academic, DG HOME should send more of its staff to the EEAS Delegations and work towards the integration of the two DGs.<sup>190</sup>

#### *Access to the labour market*

In the field of labour migration EU member states have more leverage than the EU. Currently, member states are competent in the area of the admission of lower skilled labour migrants. On 26 February 2014, the seasonal workers directive was adopted.<sup>191</sup> Member states' laws, regulations and administrative provisions have to comply with this directive by 30 September 2016. According to article 7, the directive does not affect the right of member states to determine the volumes of admission of third-country nationals entering its territory for the purpose of seasonal work. Under articles 5 and 6 member states will need to verify that the third-country national does not present a risk of illegal immigration, and that he intends to leave the territory of the member states at the latest on the day of expiry of the authorisation.

The EU has adopted a number of directives related to the admission of highly skilled labour migration, such as the Council directive on a specific procedure for admitting third-country nationals for the purposes of scientific research (2005/71/EC), which will be revised,<sup>192</sup> and the Council directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ((2009/50/EC Blue Card directive).

As of 19 June 2011, highly skilled migrants from third countries can apply for an EU Blue Card. The European Commission intends to revise and expand this directive.<sup>193</sup> Alongside the EU Blue Card permit, the Netherlands provides for a special Dutch residence permit for highly skilled migrants. Compared to the Dutch regulation, the EU Blue Card directive attaches more requirements to the admission of migrants, such as a higher salary threshold. Apart from the conditions in these EU directives, the admission of third-country nationals to the labour market is a national competence.

The issues outlined above relate to EU competences (shared with the member states) and the powers of the European Commission vary according to the policy area. Harmonisation in the EU is a complex process and it is difficult to get all the member states in line within the Council. The reality is also that, similar to the Netherlands, the interests served in other policy areas simply carry more weight. According to some respondents the political rhetoric with regard to return should be moderated and the focus should shift in the direction of quiet diplomacy with the countries of origin. Another problem is that the initiative to create linkage in various fields (see box) comes from the member states (including the Netherlands), which although they want the Commission's support, do not want the Commission to acquire competence in the

190 Interview with an academic. According to this source, DG HOME works well with DG ENLARG vis-à-vis the Council with regard to the accession negotiations between Turkey and the EU. Training of DG Trade experts in the field of visas could also be relevant.

191 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers. Other relevant directives in this area are Directive 2011/98/EU on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

192 Both directives on the admission of scientific researchers and students will be revised. See: <http://www.statewatch.org/news/2015/jan/eu-council-researchers-16343-14.pdf>.

193 See [http://europa.eu/rapid/press-release\\_MEMO-15-4544\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-4544_en.htm).

area in question.<sup>194</sup> Furthermore, the Netherlands has pledged no extra funding.<sup>195</sup> In addition, similar to the situation between the Dutch ministries, there is as yet insufficient horizontal harmonisation in the Commission to allow for linkage of policy areas.<sup>196</sup> EU programmes and the fragmented way the European institutions work can undermine the Dutch strategic country policy. The research revealed several examples of EU projects in the field of migration and development for countries that systematically refuse to readmit their own nationals. These projects are worth millions.<sup>197</sup>

The conclusions of the European Council of 26/27 June 2014 emphasise that migration policy must become a much stronger integral part of the Union's external and development policies, applying the 'more for more' principle and building on the Global Approach to Migration and Mobility. The Council established guidelines for the post-Stockholm programme, focusing among other things on establishing an effective common return policy and enforcing readmission obligations in agreements with third countries. There are indications that the European Commission, which took office on 1 November 2014 under President Jean-Claude Juncker, will award higher priority to cooperation with countries of origin in the field of migration and return.<sup>198</sup>

194 See M. Panizzon, 'Readmission Agreements of EU Member States: A Case for EU Subsidiarity or Dualism?', *Refugee Survey Quarterly*, 2012, part 4.

195 Interview with Security and Justice, Foreign Affairs, European Commission.

196 Interviews with Security and Justice, Foreign Affairs, an academic, Belgium.

197 The EU Asylum, Migration and Integration Fund and its Internal Security Fund are together worth a total of € 1.8 billion in the period from 2014 to 2020. The Fund is administered by DG HOME and cannot be used for migration aims in external policy. [http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2015/20150325\\_01\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2015/20150325_01_en.htm).

For an overview of funding per member state between 2007 and 2013 see: [http://ec.europa.eu/dgs/home-affairs/financing/fundings/mapping-funds/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/financing/fundings/mapping-funds/index_en.htm).

For the period from 2014 to 2020 DEVCO has a total budget of € 82 billion. € 30.5 billion goes to the European Development Fund, mainly focused on the ACP countries, and € 51.5 billion is earmarked for financial instruments in the EU's external relations, including development aid. Below are a number of examples (see <http://ec.europa.eu/europeaid>).

In Algeria DEVCO is funding a project (€ 1.9 million, 2010-2013) to strengthen judicial and procedural capacity building in the area of asylum migration (DCI-MIGR/2010/259-700). In Algeria, Egypt, Mauritania, Morocco and Tunisia DEVCO is funding a project (€ 1.5 million, 2011-2014) for capacity building in North Africa in the field of controlling migration flows (DCI-MIGR/2011/229-042). In China DEVCO is funding a project (€ 1.6 million, 2010-2013) to build capacity in migration management (phase 2) (DCI-MIGR/2010/229-653). In Ethiopia and Kenya DEVCO is funding a project (2009-2011) to build capacity in the migration services in the Horn of Africa, the emphasis being on Ethiopia (DCI-MIGR/2008/151-975). In Bangladesh, India and Nepal DEVCO is funding a management project (€ 1.8 million, 2009-2012) in the field of combating human trafficking in and from South Asia (DCI-MIGR/2009/153-330). In India, Nepal and Pakistan DEVCO is funding a project (€ 2 million, 2013-2016) to promote labour migration (DCI-MIGR/2013/282-607). In Ghana DEVCO is funding a project (€ 1.8 million, 2010-2013) for the management and control of migration (DCI-MIGR/2010/256-096). In 2010 in Iraq the EU funded a border control project to the amount of € 7 million.

In all these examples no link was made with the issue of forced return of countries' own nationals because of the resistance to conditionality in the field of development aid. By way of comparison, in 2013 the Netherlands earmarked € 6.7 million for return within the budget for migration and development. See the Annex to Parliamentary Papers, House of Representatives 2012/13, 30 573, no. 119.

198 At the first joint meeting in Rome of the foreign Ministers and the Ministers responsible for migration on 27 November 2014 the Commissioner for Migration, Dimitris Avramopoulos, and the High Representative for Foreign Affairs and Security Policy, Federica Mogherini, were unanimous in their view that migration is the ideal subject for the integrated approach which in the long term should lead to a 'whole of government approach'. The Commissioner for International Development and Cooperation and the member states would also be closely involved. The first concrete step is the return pilot project being conducted with three countries of origin. The mission letters to the Commissioners can be found on the website of the European Commission: [http://ec.europa.eu/commission/sites/cwt/files/commissioner\\_mission\\_letters/avramopoulos\\_en.pdf](http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/avramopoulos_en.pdf) [http://ec.europa.eu/commission/sites/cwt/files/commissioner\\_mission\\_letters/mogherini\\_en.pdf](http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/mogherini_en.pdf). At the JHA Council on 12 and 13 March 2015 the EDEO pointed out the importance of an integrated approach including towards external relations. This EU approach must be forged in cooperation with the countries of origin and transit. In this context, a number of mobility partnerships are of relevance, as is the Khartoum Process. With regard to the Western Balkans, the High Representative takes an active role in contacts between certain countries. See Parliamentary Papers, House of Representatives 2014/2015, 32317, 278 and the letter to the President of the House of Representatives of 30 March 2015 with a report of the meeting of the Joint Committee and the JHA Council.

On 20 April 2015, a specially convened joint Foreign and Home Affairs Council launched a ten-point action plan on migration in response to the crisis situation in the Mediterranean.<sup>199</sup> A new programme for the rapid return of irregular migrants will be coordinated by Frontex from South-European member states, while respecting the right to asylum. The action plan also lists a project relating to EU Return Liaison Officers (EURLOs), which will probably start by the end of 2015 (see too section 3.2.2). The ‘smart border package’ will be one of the priorities of the Dutch EU Presidency in 2016 (alongside cybersecurity and the fight against terrorism). The Netherlands plans to take negotiations on the smart border package to a higher level.<sup>200</sup> The smart border package aims to contribute to the effectiveness of border surveillance and thus facilitate the mobility of bona fide travellers, and to fight irregular migration. Return policy is earmarked as a major priority for Dutch EU Presidency in 2016.

### 3.3.4 European cooperation at operational level

EURINT is an intergovernmental initiative of the Netherlands (DT&V) in which the member states have been exchanging practical experiences regarding cooperation with countries of origin since 2013. The aim of the project is to create a network in which national services develop a common strategy vis-à-vis countries of origin or transit countries, to encourage cooperation in return, and/or carry out more combined return operations. Over twenty European states are partners in EURINT.<sup>201</sup> Operational cooperation in EURINT is highly valued by the respondents from the Netherlands and the countries in the study of ‘best practices’. The respondents indicate that the issue of return cannot be solved by legislation and policy alone: exchanging experiences with other member states and making use of the good relations they have with third countries can be extremely useful.<sup>202</sup> The EURINT working groups on Afghanistan, Algeria, Ethiopia, Guinea, India, Iran, Iraq, Morocco, Nigeria and Somalia are relevant to the Dutch strategic approach.

The European return instrument (ERIN, formerly ERI)<sup>203</sup> focuses on improving both voluntary and forced return procedures. The two-year (1 June 2014 – 1 June 2016) project is financed out of the European Return Fund. The aim is to support the reintegration of migrants from Afghanistan, DR Congo, Guinea, Iran, Iraq (Kurdish Autonomous Region – KAR – in Northern Iraq), Nigeria, Morocco, Pakistan, the Russian Federation, Somaliland and Sri Lanka who return on a forced or independent basis. The Netherlands works with various EU member states (including Belgium, Germany, Finland, France and the United Kingdom) and with Norway to organise reintegration

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- 199 [http://europa.eu/rapid/press-release\\_IP-15-4813\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4813_en.htm). In May 2015, the European Commission will present a European agenda on Migration, which will include proposals to approach migration issues in a more systematic and integral way (regions).
- 200 Registration of non-nationals upon entry or exit will be improved. It is expected that this information can also be used in the return process. A lack of documents regularly results in problems when the foreign national is presented at the embassy in order to determine nationality. The smart border package consists of a number of Proposals:  
 - Proposal for a Regulation amending Regulation (EC) no. 562/2006 as regards the use of the Entry/Exit system (EES) and the Registered Travellers Programme (RTP), COM (2013) 96;  
 - Proposal for a Regulation establishing a Registered Travellers Programme, COM (2013) 97;  
 - Proposal for a Regulation establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union, COM (2013) 95.  
 The European Commission has stated that the existing proposal for a smart border package will be replaced by an amended proposal. The results of a technical study (March – September 2014) will be taken into account. See: Letter from SvV&J of 9 March 2015, Parliamentary Papers, House of Representatives 2014/15, 33 614, no. 6.
- 201 The project partners (financers) are: Austria, Belgium, Denmark, Germany, Estonia, France, Hungary, Luxembourg, the Netherlands, Norway, Romania, Sweden, the United Kingdom and Frontex. Finland, Greece, Ireland, Liechtenstein, Poland, Portugal, Spain and Switzerland are associated members.
- 202 Interviews with V&J, Foreign Affairs, countries in the study on ‘best practices’, DG HOME.
- 203 European Reintegration Network. The ERIN project is a joint European initiative in the area of return and reintegration. [http://www.bamf.de/EN/Rueckkehrfoerderung/ProjektERIN/projekt\\_erin-node.html](http://www.bamf.de/EN/Rueckkehrfoerderung/ProjektERIN/projekt_erin-node.html)

programmes. In the framework of ERIN, the Netherlands offers post-arrival assistance mainly in the case of forced return, since there are other Dutch programmes offering support to those who leave independently.

### 3.3.5 International cooperation

#### *International consultations*

International consultations take place on migration and development in a number of intergovernmental forums within an EU and UN framework.<sup>204</sup> The government has informed the House of Representatives that it is difficult to conduct the debate on the nature of the relationship between migration and development in an UN context because the various regional blocs, perspectives and interests work against each other. The Netherlands continues to favour a more informal, non-binding dialogue and does not wish to see the migration debate embedded in the UN structure.<sup>205</sup>

#### *IGC best practices*

The IGC<sup>206</sup> was set up in 1985 and in the Dutch view it is an effective platform for exchanging information and best practices with other countries.

#### *Deployment SLM with like-minded countries*

The Netherlands endeavours to act with like-minded countries, as well as with the EU and the Benelux, to put conditionality on the agenda. For the Netherlands these countries include Australia, Canada, Norway, Switzerland and the US. At regular intervals ad hoc meetings are arranged with these countries.<sup>207</sup> The number of multilateral contacts and initiatives is growing. Respondents stated that this has added value because non-European countries are also involved.<sup>208</sup> Another advantage cited, is the ability to work with these like-minded countries in negotiations with a country of origin, thus limiting the country of origin's scope for playing one country off against another, as used to happen. One example is the intergovernmental cooperation in the 'Brussels Group', in which many European countries as well as the US and Australia work together to maintain a dialogue with Iraq. A similar dialogue is in place for Somalia and Afghanistan. The Netherlands (Dutch embassy in Nairobi) has initiated a dialogue with Somalia, in which Denmark, Norway, the United Kingdom and the United States also participate. Somalia has instituted an interministerial task force, in which both the Somali Minister of National Security and the Minister of Foreign Affairs participate, in order to come to unambiguous agreements with partner countries. The Netherlands has worked with Norway, Sweden and the United Kingdom in projects relating to Afghanistan, which aimed to achieve adequate reception for unaccompanied minors to Afghanistan (ERPUM project).<sup>209</sup> In 2014 the project ended, with no results.

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204 The most important forums at UN level for the Netherlands are the United Nations High-Level Dialogue on International Migration and Development (HLD) and the Global Forum on Migration and Development (GFMD).

205 Parliamentary Papers, House of Representatives 2012/13, 30573, No. 119, *Progress Report on Migration and Development 2012*, p. 8, annexed to the letter of 3 July 2013 from the Minister for Foreign Trade and Development Cooperation.

206 The Intergovernmental Consultations on Asylum, Refugees and Migration (IGC) is an informal forum for intergovernmental information exchange and brings together 16 countries (Australia, Belgium, Canada, Denmark, Finland, Germany, Greece, Ireland, the Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, the United Kingdom and the USA), the IOM, UNHCR and the European Commission to discuss a variety of asylum and migration issues. As stated, the United Kingdom also takes part in the IGC and considers the platform to have added value because countries such as the US and Canada also participate.

207 Interview with Foreign Affairs, Security and Justice.

208 Interview with Security and Justice, Foreign Affairs, United Kingdom.

209 EMN, *Annual Policy Report 2013*, Rijswijk: European Migration Network, 2014, p. 66, <http://ec.europa.eu/dgs/home-affairs/what-we-do/networks>.

### 3.3.6 Conclusion

#### *Results of the SLM through Dutch deployment of international instruments*

With regard to certain countries the Netherlands needs the scale of the EU to achieve the desired results. Efforts in the Benelux and EU frameworks have clearly contributed to the success of the SLM in the form of readmission agreements containing detailed, binding arrangements with countries of origin. Within the JHA area the interim objective of the SLM (parties that can positively influence the effectiveness of return policy are made aware of the problems associated with return) has been achieved by the deployment of readmission agreements. The first ultimate goal (a political evaluation of return as against other Dutch interests takes place which also addresses the effectiveness of the instrument that may potentially be deployed) has been achieved to a limited extent within this area. In the Benelux, priorities with regard to the conclusion of readmission agreements accord well with the Dutch SLM. One reservation that should be made is that the choice to conclude an EU readmission agreement with a specific third country can be a departure from Dutch priorities. There are 12 EU priority countries that match with Dutch priorities.<sup>210</sup> An EU readmission agreement and/or a Benelux implementing protocol has been concluded with nine of the 32 focus countries: Armenia, Azerbaijan, Georgia, Pakistan, the Russian Federation, Serbia, Sri Lanka, Turkey and Ukraine. The second ultimate goal ‘enhancing the effectiveness of return policy by improving cooperation by the countries of origin in the forced return of their nationals’ has largely been achieved for nine countries on the Focus Countries List, though this remains dependent on the implementation of binding commitments in the readmission agreement by the country of origin (section 3.3.1, table 1). Sri Lanka and Pakistan have not fully implemented the EU readmission agreements because the EU did not offer visa facilitation or another incentive in exchange. To date, no EU readmission agreement has been concluded with one of the nine ‘Cabinet countries’ which have priority in the Netherlands’ SLM. Negotiations with Morocco, which is a ‘Cabinet country’, are still underway. The EU has not achieved any results with Algeria and China. However, a dialogue with China has been launched (EU-China High Level Dialogue on Migration and Mobility). The European Commission was mandated in 2002 to start negotiations with these countries. Negotiations with some third countries may result in lengthy procedures. Member states will experience this as an obstacle because they are not competent to start negotiations on a readmission agreement during this period. The third-country national clause is also cited as an obstacle in negotiations on a readmission agreement, notably in the case of Algeria and Morocco.

The EU Mobility Partnerships and Common Agendas pursue a balanced, integrated approach to migration and return. The Netherlands is a participant in MPs with Armenia, Azerbaijan, Georgia and Morocco. It also takes part in the major migration dialogues conducted by the EU with various regions. Practical cooperation with the countries of origin is the focus of the GAMM, which is in line with Dutch policy priorities (SLM). It can be concluded with respect to these instruments – the MPs, CAMMs and migration dialogues – that the interim objective and the first ultimate goal have been achieved, because they contribute, generally speaking, in a positive way to Dutch goals in the field of the SLM. The second ultimate goal has been achieved in part for four focus countries (Armenia, Azerbaijan, Georgia and Nigeria) because the agreements include a best-efforts obligation. This is dependent on further implementation of the ‘soft law’ arrangements.

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210 This report focuses on countries relevant for the Dutch strategic approach only. The EU has concluded readmission agreements with a number of other countries.

Operational cooperation in EURINT and ERIN is highly valued by the relevant respondents in the Netherlands and the countries participating in the study of ‘best practices’. They indicate that the issue of return cannot be solved by legislation and policy alone: exchanging experiences with other member states and making use of the good relations they have with third countries can be extremely useful. As a result, the interim objective (parties that can positively influence the effectiveness of return policy are made aware of the problems associated with return) has been achieved in the case of countries like Afghanistan, Algeria, India, Iran, Iraq, Morocco, Nigeria and Pakistan. The first ultimate goal is not relevant in this context, since no political evaluation at EU level needs to be made for operational cooperation in EURINT or ERIN. It is questionable whether and to what extent operational cooperation has led to the achievement of the second ultimate goal of the SLM. The results vary per country, are unclear and it is difficult to attribute them to operational cooperation.<sup>211</sup>

In addition, the Netherlands has put conditionality for Afghanistan, Iraq and Somalia on the international agenda (interim objective) through intergovernmental cooperation and working with like-minded countries. With regard to priority setting, the Netherlands is dependent on countries with substantial leverage with the country of origin in question. Iraq does not cooperate at all in forced return (with the exception of the KAR), and Afghanistan (MoU concluded in 2003) and Somalia accept forced returns to a limited extent only,<sup>212</sup> which in itself can be explained by the fact that these countries are either engaged in a civil war or have only recently entered the phase of reconstruction, and therefore lack the capacity to receive large numbers of displaced persons. It is worthy of note that the Netherlands has not managed to achieve the interim objective through intergovernmental cooperation with regard to countries like Iran<sup>213</sup> and Ethiopia, where these problems are absent or less serious.

#### *Effectiveness of the SLM in light of the interaction between Dutch and EU policy*

Despite 20 years of political debate in the EU concerning return policy, the internal and the external dimensions of the EU are still insufficiently connected. The reality is that in the EU, just as in the Netherlands, the interests served by other policy areas often prevail. The ACVZ’s conclusion with regard to possible linkage at EU level is that some results have been achieved within the JHA area, primarily through deployment of two instruments (visas and border control), but not yet in the field of police and judicial cooperation. The European Commission regards the use of visa facilitation or liberalisation as effective leverage. Outside the area of justice and home affairs, no perceptible results have been achieved for the Dutch SLM. As far as the ACVZ has been able to ascertain, no direct links have been established at EU level between return and trade, development cooperation, education and foreign policy, to the extent that these areas are connected to migration and return.

The pilot project (section 3.3.2) was initially greeted with reservations in Europe, but is now supported by a number of member states. The interim objective (parties that can positively influence the effectiveness of return policy are made aware of the problems associated with return) has thus been achieved in this context. The Netherlands has received sufficient support at EU level to be able to make use of the positive incentives in the SLM. It could strengthen their impact by making extra resources available to the

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211 For the lessons learned from Belgium, France, Spain and the United Kingdom, see chapter 4.

212 These primarily concern Somali nationals with a criminal record, suspected war criminals (article 1F of the Refugee Convention) or Somali pirates.

213 Iran is the only country that has stated at UN level that it will not cooperate in forced return because it believes that its nationals are at liberty to reside in another territory, without prejudice to the right of the country of destination to decide who may or may not reside on its territory.

European Commission. However, the use of negative incentives, for example by linking a cut back in development aid to a lack of cooperation in return, has no support at European level.

## CHAPTER 4

# Best practices in the strategic approach in other European countries

Are there other countries following a strategic approach comparable to that of the Netherlands? If so, how do they go about it? This chapter answers these questions.

On the basis of exploratory discussions and a literature survey, the ACVZ asked four European countries, Belgium, France, Spain and the United Kingdom, to collaborate on a study of ‘best practices’. Interviews were conducted in these countries with public officials with relevant responsibilities (see Appendix 2). In addition, the countries involved often provided supplementary information in the form of policy documents. The results of the survey are discussed below, country by country.

Generally speaking, it can be noted that all the countries in the study of ‘best practices’ are encountering comparable problems. In their attempts to resolve these issues, all four countries are using an approach that has similarities with the Netherlands’ strategic country approach to migration.

The information in this chapter is based on the interviews conducted by the ACVZ, except where otherwise stated. The occasional statement in a footnote that the information comes from an interview is there to avoid confusion as to sources in paragraphs which also include a reference to the literature.

### 4.1 Belgium

#### *Organisation of return policy*

In Belgium the Immigration Service (Dienst Vreemdelingenzaken; DVZ), part of the Federal Public Service, Ministry of the Interior (*Federale Overheidsdienst Binnenlandse Zaken*), is responsible for forced returns. The Federal Agency for the Reception of Asylum-seekers (*Federaal agentschap voor de opvang van asielzoekers*; Fedasil)<sup>214</sup> manages the voluntary return of foreign nationals in collaboration with the International Organization for Migration (IOM) and other organisations working in this field, such as Caritas. In addition, the municipal authorities, local and federal police, the airlines and the Ministry of Foreign Affairs play a role in the return process. In 2011 SEFOR (Sensibilisation, Follow-up and Return) was set up as part of DVZ. SEFOR’s task is – either through local partners or directly – to encourage people who have received an order to leave the territory to actually do so. Providing information about the order to leave and explaining what happens if the person does not leave is the responsibility of the municipalities. They also issue decisions refusing residence. Together with the foreign national, municipalities complete an identification card and make a copy of the passport or other identity documents; this information is forwarded to DVZ. The foreign national must report twice a month to the municipality to explain what he has done to prepare for departure. Failure to report is passed on to SEFOR. His permanent or temporary place of residence is then checked. Subsequently a decision is taken on whether to arrest

214 Fedasil falls under the authority of the State Secretary for Asylum and Immigration, (State Secretary to the Minister of the Interior) (since October 2014).

the person in question and place him in detention to facilitate the organisation of forced return.

In 2001 an Asylum Taskforce (*Taskforce Asiel*) chaired by the prime minister was set up.<sup>215</sup> The Taskforce later became COTER (*Coördinatie terugkeer*, coordination of returns). In COTER representatives of the State Secretary for Asylum and Immigration, representatives of various ministries (the Ministries of Foreign Affairs, Justice and Defence), the Federal Public Service Foreign Affairs, the Federal Police, DVZ, the Federal Public Service Defence, the Council for Refugees and the Stateless (*Commissariaat-Generaal voor de Vluchtelingen en de Staatlozen*) and Fedasil, come together to discuss the problems associated with return. COTER has six working groups: on public policy, foreign affairs, forced return, voluntary return, justice and transit migration. Depending on the subject, different partners join the discussions.

#### *Basic principles of return policy*

Belgian return policy (both on voluntary and forced returns) awards priority to foreign nationals who represent a threat to public policy or public security. Furthermore, DVZ's aim is to achieve the best possible result with the limited resources available. In Belgium only 20 people can be deployed for the purposes of the LP (*laissez-passer*) procedure. DVZ has decided to focus available capacity on cases that have a good chance of success.

#### *Connection with other policy areas*

In its bilateral relations with countries of origin, Belgium makes no connections with policy areas outside migration. In 2005/2006 a possible linkage with development cooperation was considered, but it was concluded that it was not appropriate to create an official link between the issue of travel documents and development aid. It was assumed that some of what are known as 'preferred' countries would have great difficulty with the principle of conditionality being imposed on development cooperation with Belgium. Moreover, the Minister for Development Cooperation valued his autonomy above cooperation in linking policy areas. The new government's coalition agreement (led by Charles Michel) states that Belgium will concentrate development cooperation on geographically homogenous regions where poverty and instability are extensive and which have an impact on migration to Belgium.<sup>216</sup>

DVZ takes a positive view of the 'more-for-more' principle, but Belgium's federal structure makes it difficult to put into practice. Powers with regard to policy areas such as labour and foreign trade lie at regional level. As a result, the federal government no longer has oversight. The three regions also have different political, strategic and economic interests.

There are no concrete links in Belgium between projects run by Fedasil and cooperation in forced returns, but if Fedasil has a project to which DVZ can contribute, DVZ will make use of that. For example, DVZ is a partner in Fedasil's ERI project. This project has a joint selection committee which explores what is useful and possible in the area of voluntary and forced return. DVZ also has projects in the area of capacity building for the staff of migration services in third countries.<sup>217</sup> Together with the UK and Switzerland, Belgium is building border control posts, for example, in the DR Congo which are financed from development cooperation funds. In addition, Belgium focuses

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215 K. Bergans et al., 'Het Verwijderingsbeleid' (Removals Policy), in M.C. Foblets, D. Vanheule, *Migratie en Migrantenrecht* (Migrants and Migration Law), no. 13, Die Keure Printing & Publishing, 2010, p. 9.

216 Regeerakkoord: Een economisch engagement, een sociaal project  
[http://www.premier.be/sites/default/files/articles/accord\\_de\\_gouvernement\\_-\\_regeerakkoord.pdf](http://www.premier.be/sites/default/files/articles/accord_de_gouvernement_-_regeerakkoord.pdf).

217 *Ibid.*, p. 107

on prevention through information campaigns in places such as the Balkans and India, and has achieved success in these efforts.

Belgium has a budget for reintegration in the case of forced return of persons belonging to vulnerable groups. The mobile immigration official (see under Relations management and dialogue) prepares such a reintegration process with the case officer and the authorities in the country of origin, and sometimes with the IOM.

Belgium now has around 10 current MoUs and is working towards concluding more of them with countries relevant to return. The advantage of an MoU is that it contains a description of the identification procedure which can be referred to in bilateral relations. Belgium made use of a negative incentive as far back as 2001. Prime Minister Guy Verhofstadt ordered the Belgian embassy in Moscow not to issue any more visas in order to force the Russian Federation to engage in talks on readmission. This ultimately led to an agreement which functions well.<sup>218</sup> It subsequently threatened to use this measure again on several occasions, sometimes successfully. In addition, Belgium has sometimes decided to take its time with visa applications from countries of origin who were failing to cooperate in returns. In February 2015 the Netherlands and Belgium signed a declaration of intent in which they stated that they would link visa liberalisation to agreements on voluntary and forced return.<sup>219</sup>

#### *Relations management and dialogue*

The Belgian Prime Minister has regularly played an important role in achieving better bilateral cooperation. In welcoming heads of state from countries such as Afghanistan, Algeria, China and India, Guy Verhofstadt raised the issue of their responsibility to readmit their nationals. The successive Ministers under whose authority DVZ falls have also played an essential role in negotiations on agreements. During foreign missions undertaken by Minister of the Interior Patrick Dewael (July 2003 to March 2008), readmission was always one of the major themes, including in talks with the DR Congo and Morocco.<sup>220</sup> The Ministry of Foreign Affairs is regularly asked to raise the problems associated with return, for example during trade missions, but no conditions are imposed on the countries where the missions are taking place. This sometimes leads to results, sometimes only to promises. In addition, the aim is to maintain a constant dialogue with the embassies of the countries of origin. The experience is that problems may be person-related. A change of ambassador can have an influence on relations. Or the embassy staff may come under pressure from their own diaspora not to cooperate or to work as slowly as possible on returns.

Close cooperation exists with the Protocol Directorate of the Ministry of Foreign Affairs, Foreign Trade and Development Cooperation, which works in the interests of return policy, since experience has shown that the Directorate plays a very important role in relations with countries of origin. A protocol can provide the basis for cooperation with the embassy; it also covers matters such as the issue of residence permits and visas for family members, the issue of vehicle number plates and tax issues.

In addition, Belgium has an 'immigration ambassador' (with his own staff) who is active at high international level, for example in the Global Forum on Migration and Development (GFMD). It also employs mobile immigration officials who are stationed for short periods in countries where they are needed. In the past there were three permanent civil servants doing this work, but Belgium concluded that this was not working. Nowadays there is only one permanent immigration official, posted to Kinshasa, who

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218 Ibid., p. 108.

219 <http://www.rijksoverheid.nl/ministeries/V&J/nieuws/2015/02/24/nederland-en-belgie-tekenen-intentieverklaring-tot-migratiesamenwerking.html>

220 K. Bergans et al., op. cit., p. 108.

alternates between Kinshasa and Brussels at three-monthly intervals. The rest are deployed on a mobile basis. The mobile immigration officials act as trouble-shooters and establish and maintain contacts with the local authorities. They also accompany special return flights. Because these officials are only stationed abroad for short periods of time and have a different job description to that of the Dutch immigration liaison officers (ILOs) who are always stationed abroad for a longer period of time, Belgium has not as yet experienced any problems with stationing like those that sometimes arise with the ILOs. Their role lies somewhere between that of the DT&V's strategic advisors and the Dutch ILOs; they make strategic recommendations and draft country reports, but are also involved in operational affairs.

As a result of its focus on achieving maximum results with limited resources, DVZ wastes no time on LP applications to embassies where it knows in advance that the application is doomed to failure. The focus is on making headway in relations at the level of Ministers, or in direct contact with the authorities in countries of origin. Whenever there is a turnaround of staff at an embassy or consulate, there is always an endeavour to initiate or continue cooperation in the field of return.

#### *Relation management with China, Morocco, DR Congo, India and Algeria*

DVZ and the Ministry of Foreign Affairs have put considerable energy into managing relations with the Chinese authorities and this has proved productive. The Chinese Ministry of Public Safety sends identification missions to Belgium which are achieving acceptable results. This is also the case with Morocco, because mutual relations are good and practical working arrangements have been established with the three consuls general. On the whole these arrangements are complied with. Belgium has made compromises in this area and only applies for presentation at the consulate for certain categories of undocumented migrants. The trade-off is that LPs are issued more quickly in cases where copies of documents are available. Belgium maintains good contacts with the immigration service in the DR Congo, while DR Congo citizens still have strong ties with Belgian society which has a positive effect on cooperation.

Belgium experiences the same problems with bureaucracy as the Netherlands in relation to India. The majority of efforts are devoted to the return of Indians who have copies of their documents, while undocumented Indian nationals are hardly ever presented at the embassy because the chances of success are minimal. In the case of Algeria too, Belgium focuses primarily, and with some success, on migrants with papers.

#### *Readmission agreements*

Belgium has had positive experiences with these agreements, though it knows that not every member state can always say the same. It has had more success with the EU readmission agreement with Pakistan than the Netherlands. In the opinion of DVZ, this is due to their bilateral contacts. DVZ has devoted time and energy to establishing these contacts and has visited Pakistan for the same purpose. Alongside the readmission agreement, a practical form of cooperation has been developed. In some countries this is a pre-condition for the success of a readmission agreement.

With regard to readmission agreements with the Balkan countries, Georgia, Moldova and Ukraine, Belgium has had the same positive experience as the Netherlands. Belgium maintains good relations with the Balkan countries; delegations from there frequently visit Brussels. Belgian officials, sometimes at the level of state secretary, regularly travel to the Balkans to provide information.

In DVZ's view, because of their limited capacity it is vitally important to the smaller member states like Belgium and the Netherlands that the EU concludes readmission agreements. Belgium finds that negotiations sometimes take too long, and has problems with countries like Algeria, where the European Commission has been mandated to

conduct negotiations on a readmission agreement, but has had no success. The fact that it is then impossible to conclude an agreement bilaterally or in the Benelux framework is regarded by Belgium as an obstacle. In DVZ's opinion, it would be better for the European Commission to return the mandate if it achieves nothing. Furthermore, Belgium is in favour of dropping the third-country national clause in readmission agreements if it is not possible to negotiate on them, and to look elsewhere for solutions. It also believes that there is too little horizontal consultation within the European Commission, for example between DG DEVCO and DG HOME. Measures taken by DG DEVCO may have an influence on negotiations on DG HOME's migration policy.

#### *GAMM*

Belgium regards the instrument of mobility partnerships favourably and takes part in such partnerships with Armenia, Georgia, Morocco and Tunisia.<sup>221</sup> The policy it pursues in this context is a selective one and Belgium wishes to be visible in the partner country wherever it decides to participate.

In addition, Belgium takes a positive view of the pilot project with Bangladesh, Nigeria and Pakistan and is prepared to take part in it. The degree to which it participates will depend on available capacity. In DVZ's view, it is useful to have a strategic approach alongside the operational approach of the EURINT network.

*The ACVZ concludes that the following lessons for the Netherlands can be drawn from the Belgian approach.*

- Don't keep flogging a dead horse. If cooperation at operational level has no chance of success, there is no point in continuing to submit LP applications. It is better to try and improve cooperation at a different level.
- If the decision is made to use a negative incentive, choose one that is connected with migration and affects the persons or bodies directly involved.
- Gather further information from the Belgian authorities on the role of the mobile immigration officials in general, and their work in assisting in reintegration after forced return in particular. The role of the head of protocol also merits further study to see if this could make a positive contribution to the Dutch SLM.
- Results can be achieved if the relevant members of government play an active role at the highest level in spreading the message that countries of origin are expected to cooperate in forced return.
- Be prepared to compromise in negotiations with countries of origin. This may be more productive in certain cases than holding on to our own objectives whatever the circumstances.

## **4.2 France**

### *Organisation of return policy*

France's approximately 100 prefectures are responsible for the return and readmission of foreign nationals.<sup>222</sup> They issue residence permits, make and issue return decisions and hand them over. The border police are responsible for actual removal.

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221 Federal Migration Centre, 2013 Annual Migration Report, p. 182.

222 The prefecture represents central government at local level, in the *département*.

In 2013 the Directorate-General for Foreign Nationals in France (*Direction Générale des Étrangers en France*) was set up. This DG is part of the Ministry of the Interior and is the successor to the Secretariat-General for Immigration and Integration at the same ministry. The Secretariat was itself the successor to the former Ministry of Immigration (2007-2010), which was established with the aim of introducing a coherent approach to migration policy. In furtherance of that aim, officials from the Ministry of the Interior, the Ministry of Foreign Affairs and the Ministry of Social Affairs were transferred to the new ministry in 2007.

The Directorate-General is subdivided into different departments, one of which is the Immigration Department (*Direction de l'Immigration*), under which the Division for the Combating of Irregular Migration (*Sous-direction de la lutte contre l'immigration irrégulière*) falls. This division employs around 50 people working closely with the border police and the prefectures. In addition, the division maintains close contact with EU partners and is responsible for negotiating and implementing EU legislation on migration issues, including readmission agreements. It maintains ties with the foreign consulates in France. The division's broad aim is to bridge the gap between the executive agencies and political leaders.

Although the prefectures normally carry out the LP procedure, in the case of certain countries – Azerbaijan, Bangladesh, Côte d'Ivoire, Haiti, Hong Kong, Kosovo, Serbia and the Russian Federation – LP applications are centralised, and are handled by the Division for the Combating of Irregular Migration. Centralisation is a response to problems or to requests from the countries concerned. In addition the LP procedures in relation to 21 other countries have been transferred to the border police. This is due to the fact that these countries have only one consulate in France, which complicates matters for prefectures located far from Paris.

#### *Basic principles of return policy*

France's return policy is based on the Returns Directive.

#### *Connection with other policy areas*

In the past, France used development aid as leverage for cooperation in the field of returns by combining both in a range of projects. These agreements on 'shared management of migration flows and co-development' were set up in 2006 by the new Minister of Immigration, as a follow-up to the Global Approach to Mobility and Migration (GAMM). They offer a broader framework for exchange with participating states than simply a consular relationship for the issue of LPs, since they embrace every aspect of the movement of persons. A list of occupations per region that are open to legal migration is part of the agreement. In the case of these occupations, the priority awarded to EU workers does not apply.<sup>223</sup> The agreements also contain minimum quotas for certain categories of labour migrant, opportunities to apply for residence permits to acquire work experience in France after obtaining a Master's degree at a French university, and they expand the options for circular migration, multiple-entry visas and the extension of visas for nationals of the countries which have signed an agreement.<sup>224</sup> The success of these agreements in terms of return is heavily dependent on the country concerned. According to the Division, they are not a recipe for guaranteed success.

Mali refused to sign an agreement because of a clash with France concerning measures

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223 M. Panizzon, 'Franco-African pacts on Migration', in: R. Kunz, S. Lavenex & M. Panizzon (eds.), *Multilayered Migration Governance, the promise of partnership?*, New York:Routledge, 2011, p. 213.

224 *Ibid.*, p. 217.

within the framework of the agreement to regularise the status of Malian nationals living illegally in France. The literature on this particular case provides conflicting information on how it progressed. One version is that France offered regularisation for 1 500 Malians, while Mali was demanding 45 000, and that in order to demonstrate that there were no conditions attached to the agreements, France did not cut its aid budget after Mali's refusal.<sup>225</sup> The other version states that Mali demanded 1 500 regularisations and that as a result of the failure to reach an agreement, France stopped financial assistance to Mali provided within the framework of the solidarity fund.<sup>226</sup> Whatever the truth may be, this case shows that for the Mali government, the situation of illegal Malian nationals in France weighed more heavily than the development relationship.<sup>227</sup>

The aim was to conclude agreements with 28 countries in what is known as the Priority Solidarity Zone. These are the countries with a considerable migrant population in France and they lie mostly in North and West Africa.<sup>228</sup> Ultimately, seven agreements were concluded between 2006 and 2009 (with Benin, Burkina Faso, Cape Verde, the DR Congo, Gabon, Senegal and Tunisia), but at this moment there are no negotiations on new agreements.<sup>229</sup>

Since 1 January 2013, the Ministry of Foreign Affairs has been responsible for development cooperation in the areas of mobility, migration and development. In this context it has established guidelines aimed at reinforcing the contribution made by mobility and migration to the development of countries of origin. This strategy is based on the specific needs of partner countries in this area and supports them in integrating migration into their development strategy. Return (forced or voluntary) is not covered in these guidelines.<sup>230</sup>

France's previous government sometimes used negative incentives to compel better cooperation in the field of return. In the case of eight countries, tax exemptions on cars and fuel for diplomats were withdrawn. According to France this measure worked well but has to be used with caution, since it can damage relations with the country concerned. On one occasion France also froze four million euros of a ten-million-euro project on migration management because the LP procedure was encountering difficulties. This led to a dialogue on the issuing process.

France has signed agreements with a number of African countries on seasonal labour, but these are not directly related to return. Such an agreement does not always lead to improved cooperation in the field of return.

#### *Relations management and dialogue*

France has concluded relatively few MoUs because it prefers a more binding form of agreement. It has however negotiated with Algeria on an MoU and signed an MoU with Vietnam in 2011.

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225 Ibid., pp. 213-214.

226 F. Trauner & S. Deimel, 'The impact of EU migration policies on African countries: the case of Mali', *International Migration*, 2013, pp. 24-25.

227 Ibid., p. 25.

228 M. Panizzon, op. cit..

229 Information from interview with the French authorities.

230 French Contact Point for the European Migration Network, *EMN Annual Policy Report 2013 on Asylum and Migration*, pp. 63-69. April 2014. [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/annual-policy/2013/10a.france\\_national\\_policy\\_report\\_migration\\_asylum\\_2013\\_en\\_version\\_final.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/annual-policy/2013/10a.france_national_policy_report_migration_asylum_2013_en_version_final.pdf).

With a view to full cooperation from the countries of origin or transit the French authorities focus on maintaining regular and ongoing contacts with the consular and central authorities of these countries. When the number of LPs issued is too low and cooperation unsatisfactory, the Ministry of the Interior can set up an action plan to increase this number (this has mainly been the case with 16 countries in a gradual process that started in mid-2013; Bangladesh is one of these countries). The action plan is combined with meetings with the relevant ambassadors in France and has two variants, depending on the degree of cooperation from the country concerned.

A demanding dialogue is engaged in with countries that have been awarded high priority: regional departments or the Immigration Department call in the ambassadors for talks in which problems are raised, aims are set, an operational calendar for follow-up is drawn up, the consuls general are invited to technical meetings and so on. In the case of countries with medium priority, the aim is keep the dialogue going to make the other party aware, in routine discussions, of the problems that are being encountered. The French ambassadors abroad have to complement this approach by establishing contact with the competent ministerial authorities in the country concerned.

The Ministry of Foreign Affairs is responsible for making any diplomatic *démarches* involving conditionality because diplomacy is its core business.. The position of the French ambassadors means they have a broad and complete oversight of French policy towards countries of origin, including policy on illegal immigration and the issue of LPs. They can therefore raise all the issues.

The trips made by ministers, the prime minister and the president to the major countries of origin also present an opportunity to raise issues relating to France's diplomatic relations as a whole, including questions relating to return. In the event of differences of opinion regarding the degree of priority awarded, the foreign minister asks the prime minister to arbitrate.

Action plans are in effect for countries including Algeria, Bangladesh, Côte d'Ivoire, Egypt, Mali, Morocco, Pakistan and Tunisia. According to the French authorities, there are many reasons why some countries of origin are failing to cooperate in forced return from France, but historical ties and issues related to sovereignty may be a major factor.

France has a network of 22 ILOs who play an important role in the return procedure in respect of illegal foreign nationals. It is their task to create a degree of uniformity in return policy. They supply relevant information to the Directorate-General for International Cooperation and the Directorate-General for Foreign Nationals. Where necessary, they work together with officials carrying out return procedures and facilitate the progress of a person's return in the country of origin with regard to identification, contact etc.

#### *Return to Afghanistan, Iraq, Somalia, Algeria and China*

Due to the overall situation there, France does not return illegal foreign nationals to Afghanistan, Iraq and Somalia (in the latter case, with the exception of pirates). Results with regard to Algeria have improved because France has improved its relationship with the consuls. Even though contacts with Chinese diplomats in Paris are good, France has problems in relation to return and readmission to China. In the experience of the French, the identification process in China is very basic.

#### *Readmission agreements*

France has concluded around forty bilateral readmission agreements. In most cases, cooperation is satisfactory, however good will continues to play a major role. France discusses the cooperation regularly with the ambassadors of the countries of origin.

Both the Ministry of the Interior and the Ministry of Foreign Affairs take part in these discussions. Countries of origin sometimes try to renegotiate the terms of an agreement, but as a rule, France will not enter into any such negotiations once the agreement has been signed. If a readmission agreement is in place yet no LPs are being issued, France sometimes uses an EU travel document to facilitate removal. This is a unilateral decision. The use of the EU travel document can be effective if sound agreements have been made at operational level with the border police of the country in question. The French embassy in that country is always informed of an impending removal.

In a few cases, France has concluded readmission agreements without a third-country national clause, for example with Cape Verde. The inclusion of such a clause must be appropriate within the general context of negotiations with third countries. This must be evaluated on a case-by-case basis.

Alongside bilateral readmission agreements, France also makes use of EU readmission agreements. The EU-Albania Readmission Agreement has been very helpful to France in improving its conduct of forced returns.

#### *ERIN, EURINT and the pilot project*

France is the main beneficiary of the European Reintegration Instrument (ERIN). By June 2013, 153 of its projects had been funded by the organisation.

France is part of the EURINT network and participates in the working groups on Afghanistan, Algeria, India, Morocco and Nigeria. It is chair of the working group on Algeria.<sup>231</sup> By taking part in EURINT France hopes to benefit from the expertise and knowledge of other EU member states relating to forced return to target countries. Its most important motivation for participation is to promote a common European approach to contacts with the authorities in third countries and to set up an exchange network. In the opinion of the French authorities, EURINT-I was a success because it enabled the member states to share their knowledge and experiences with forced return, which undoubtedly led to better operational cooperation. Generally speaking, France's collaboration with the target countries has improved.

The French Ministry of the Interior supports the pilot project relating to Bangladesh, Nigeria and Pakistan. Pakistan, and above all Bangladesh, are of importance to France. However, France's overall position in diplomatic relations is of course the responsibility of the Ministry of Foreign Affairs.

*The ACVZ concludes that the following lessons for the Netherlands can be drawn from the French approach.*

- Good results can be achieved by concluding readmission agreements, possibly on a bilateral basis and without a third-country national clause.
- If the decision is made to use a negative incentive, choose one which directly affects the diplomats involved or is connected with migration. Use such incentives with caution: they can damage relations.
- A good relationship with the diplomatic missions of the countries of origin can be the key to success.

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231 French Contact Point for the European Migration Network, *EMN Annual Policy Report 2013 on Asylum and Migration*, p. 34, April 2014, [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/annual-policy/2013/10a.france\\_national\\_policy\\_report\\_migration\\_asylum\\_2013\\_en\\_version\\_final.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/annual-policy/2013/10a.france_national_policy_report_migration_asylum_2013_en_version_final.pdf).

- Negative linkage with development cooperation is pointless if countries of origin attach more weight to the position of their diaspora in Europe than to development aid.
- Gather further information from the French authorities on their experiences with projects that link cooperation in return to limited access to their labour market and other aspects of the movement of persons. According to French officials, these can be productive, though they do not offer guaranteed success.
- In view of the extremely limited results the Netherlands has achieved in this respect, reconsider efforts to carry out expulsions to countries of origin that are in a conflict or post-conflict situation and/or can be described as failed states. Some EU members states do not carry out expulsions to such countries. This is very beneficial in terms of capacity.

### 4.3 Spain

#### *Organisation of return policy*

In Spain responsibilities for the migration policy area have gradually shifted over the years from one ministry to another, as in many European countries. In the nineteen nineties, responsibility for immigration as a whole fell to the Ministry of the Interior. Some aspects of labour migration came under the authority of the Ministry of Labour. In 2004, the government decided to make migration a joint responsibility of the Ministry of the Interior and the Ministry of Employment & Social Security. That situation still applies today. The Ministries of the Interior and of Foreign Affairs share responsibility for relations with the countries of origin. The Ministry of the Interior is responsible for police matters relating to immigration law, such as measures to combat illegal immigration, criminal networks, human trafficking etc. Other migration-related issues like education or health are decentralised and fall under the responsibility of the autonomous regions.

#### *Basic principles of return policy*

Spanish migration policy is based on three basic principles:

- management of migration flows, bearing in mind the needs of the labour market and the contribution made by immigrants to economic growth and competitiveness;
- promotion of integration;
- improving measures to tackle illegal immigration through a comprehensive approach and promoting cooperation with the countries of origin and transit.

Spain's first priority is the return of foreign nationals with a criminal record.

#### *Connection with other policy areas*

Since 2006, at the time of the crisis involving irregular migrants landing on the Canary Islands, Spain has concluded agreements and established cooperation with countries in West and North Africa. This is known as the 'Africa Plan'.<sup>232</sup> Three ministries collaborate on the Plan: the Ministry of the Interior, the Ministry of Employment & Social Security and the Ministry of Foreign Affairs. Often, cooperation with these countries is not based on funding, but on agreements on capacity-building in the areas of police services and border control, and a considerable number of exchanges between services, in combination with opportunities for labour migration. The agreements have sometimes been very effective: returns to Mali rose from a total of five persons between 2002-2005 to 2,567

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232 M. Panizzon, 'Franco-African pacts on Migration', in: R. Kunz, S. Lavenex & M. Panizzon (eds.), *Multilayered Migration Governance, the promise of partnership?*, New York: Routledge, 2011, p. 220.

between 2006-2008.<sup>233</sup>

Spain links different issues in order to achieve forced returns and understands that this is not a comfortable situation for the countries of origin. It does not link the budget for development cooperation directly to the fight against illegal migration, but there is a connection. For example, Spain has a development relationship with Senegal and Mali, and this offers more leverage in negotiations and creates an atmosphere of cooperation, yet there is no direct conditionality. Most of the development cooperation agreements with West African countries were concluded in 2004, two years before the crisis on the Canary Islands. Spain cannot therefore be accused of offering development aid in exchange for cooperation in the field of migration only. As a result of the economic crisis, Spain has had to cut its development cooperation budget for countries including Mali. Mali understood this step since it was clear that Spain was doing everything it could.

Whenever circumstances allow, Spain offers seasonal migration opportunities, mainly in agriculture, to countries in North and West Africa with which it has agreements on the regulation of migration flows.<sup>234</sup> The programme is managed by the Ministry of Employment & Social Security and is not only intended to 'give something back' to these countries but to attract good workers who can fill shortages on the Spanish labour market.

A policy of circular migration has been developed under which migrants go home after six months and can return to Spain the following year if they meet all the conditions. The Spanish model is based on the needs of the private sector and implemented through recruitment missions by Spanish employers (multinationals like Acciona, Carrefour and McDonalds). Before the economic crisis there was a quota of around 4,000 per year for Senegalese workers.<sup>235</sup> Though the crisis led to considerable reductions in numbers, the programme was maintained, partly because it is an instrument for cooperation with the countries of origin.<sup>236</sup> At one point Spain could only offer 40 jobs in response to a request from Mali, and according to Spain, Mali saw this as an exceptional effort because they knew the precariousness of Spain's situation as a result of the economic crisis. However, the literature states that Spain was accused of failing to observe the terms of the deal by issuing fewer work permits than had been agreed.<sup>237</sup>

In addition, there is a national list of occupational shortages. Due to the economic crisis this list now offers posts in only two fields: professional sport and the merchant navy.<sup>238</sup> Catalonia has autonomous powers to grant initial residence permits for the purpose of work to third-country nationals<sup>239</sup> and some residence permits have a territorial limitation (for example in the Canary Islands).<sup>240</sup>

The opportunities for legal labour migration and the dialogue maintained on this subject have helped Spain to achieve greater control over migration flows. The fact that there are opportunities has a beneficial effect on the relationship in the field of forced return.

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233 F. Trauner & S. Deimel, 'The impact of EU migration policies on African countries: the case of Mali', *International Migration*, 2013, pp. 24-25.

234 Known as 'shared management of recruitment in countries of origin'.

235 M. Panizzon, 'Franco-African pacts on Migration', in: R. Kunz, S. Lavenex & M. Panizzon (eds.), *Multilayered Migration Governance, the promise of partnership?*, New York: Routledge, 2011, p. 221.

236 EMN: *Annual Immigration and Asylum Policy Report, Spain, 2013*, European Migration network, 2014, p. 23.

237 F. Trauner & S. Deimel, 'The impact of EU migration policies on African countries: the case of Mali', *International Migration*, 2013, pp. 24-25.

238 EMN: *Annual Immigration and Asylum Policy Report, Spain, 2013*, European Migration Network, 2014, p. 23. [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/annual-policy/2013/26a.national\\_policy\\_report\\_spain\\_2013\\_en\\_version.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/annual-policy/2013/26a.national_policy_report_spain_2013_en_version.pdf).

239 EMN: *Annual report on migration and asylum policy, Spain, 2012*, European Migration Network, 2013, p. 12. [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/annual-policy/2012/25a.spain\\_annual\\_policy\\_report\\_2012\\_en\\_version\\_november2013.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/annual-policy/2012/25a.spain_annual_policy_report_2012_en_version_november2013.pdf).

240 *Ibid.*, p. 17.

It is extremely difficult for countries of origin to collaborate in forced return because of the loss of face involved. If a government has nothing to offer its citizens to justify cooperating with Spain, it finds itself in a difficult position.

In 2008 a ECOWAS-Spain Fund on Migration and Development with a total value of € 10 million was set up.<sup>241</sup> The main aim of the Fund is poverty reduction through sustainable regional integration and institutional development. It also seeks to influence the free movement of persons, irregular migration, the fight against human trafficking and the development of a link between migration and development.<sup>242</sup>

Spain thus takes a broad approach to dealing with migration flows that involves establishing a link with the country concerned. It does not focus on a single aspect of migration as a phenomenon but on all the different aspects, including development cooperation, legal migration and the fight against illegal migration. Spain does not employ negative incentives. Sometimes African countries make promises which they fail to fulfil. To maintain the relationship and to achieve implementation Spain may then decide not to fulfil its part of the agreement but doubts whether this can be seen as a negative incentive.

#### *Relations management and dialogue*

Spain continues to work towards maintaining high standards of border control despite the huge pressure, especially around Ceuta and Melilla. The strong bilateral cooperation ties established with third countries like Mauretania, Morocco and Senegal also aim to strengthen border control. In 2013 MoUs were signed with Mauretania and Senegal designed to facilitate the operational and humanitarian cooperation needed to manage illegal immigration in Europe. An MoU was also concluded with Morocco laying the basis for operational and humanitarian cooperation to prevent illegal immigration. In Ceuta and Melilla the Guardia Civil participates in joint patrols with the Moroccan agencies. This form of cooperation is sensitive and has attracted criticism.<sup>243</sup>

The Spanish government works actively with the relevant authorities in third countries to prevent and control illegal immigration. The joint activities with countries of origin include training and assistance, mainly in West Africa and Latin America. According to the Spanish authorities, cooperation has to be a 'genuine and honest' process in which countries of origin are provided with instruments they can make use of and must get something in return for their cooperation, so that the incentives are not purely negative. In this context Spain follows the same rules as it does in relation to other European countries; the aim is to demonstrate that negotiations take place on a level playing field and countries are not compelled to do things they do not want to do. It takes a realistic, practical and honest approach which entails asking the countries of origin what they need, while emphasising that there is no point in asking Spain to do the impossible.

In addition, Spain has a strong network of over 50 ILOs<sup>244</sup> stationed in West Africa and elsewhere, its experience being that the physical presence in these countries of such an officer who is able to establish good communication with the authorities is very valuable. These ILOs are stationed at the embassies but come under the authority of the Ministry of the Interior and serve this ministry's interests, including, for example, counter-terrorism. The strong relationship Spain has with countries in West and North Africa encourages human traffickers to choose other avenues. This shows that working to maintain a relationship based on trust and honesty is of the utmost importance. African countries

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241 EMN: *Annual Immigration and Asylum Policy Report, Spain, 2013*, European Migration Network, 2014, p. 57.

242 EMN: *Annual report on migration and asylum policy, Spain, 2012*, European Migration Network, 2013, p. 53.

243 'Hot returns'. *When the State acts outside the law*, Legal report, 27 June 2014, <http://www.statewatch.org/news/2014/oct/eu-hot-returns-legal-report.pdf>.

244 EMN: *Annual Immigration and Asylum Policy Report, Spain, 2013*, European Migration Network, 2014, p. 61.

must not get the impression that they are being used.

#### *Readmission agreements*

In the nineteen nineties and the beginning of the twenty-first century Spain concluded a number of bilateral readmission agreements with countries of origin. These provide a framework in which to discuss combating illegal migration but that has to be supported by practical cooperation. In addition, Spain relies in its bilateral relations with ACP countries on article 13 of the Cotonou Agreement, which offers a legal basis.

Spain has few migrants from the countries of the Eastern Partnership of the EU who have to be compelled to return. It considers the EU readmission agreements to be useful instruments because they offer a legal framework and contain a monitoring mechanism. Together, the EU member states have more power and can thus achieve more. EU readmission agreements combined with a bilateral protocol drawn up afterwards are beneficial to relations in the field of return. On 22 October 2013, for example, a protocol relating to an EU readmission agreement with Moldova was signed. Spain has indicated that close bilateral cooperation with the countries of origin is sufficient, but that an EU readmission agreement provides a framework in which the return procedure can be implemented. There is specific bilateral cooperation with countries in Latin America and above all in West Africa with regard to forced returns.

#### *GAMM*

Like several other member states, Spain has in recent years supported the EU's comprehensive approach to migration. In the case of China, and more specifically India, where Spain encounters serious bureaucratic obstacles in the return process, the EU might be able to help Spain achieve better results. Spain sees political dialogue as a necessary instrument in keeping communication channels open where migration management is concerned, and participates in the Rabat Process, the EU-Africa Dialogue and Euromed.<sup>245</sup> It is a one of the members of the mobility partnership with Morocco and Tunisia and participates in the negotiations with Jordan.<sup>246</sup>

Spain continues to work towards the development of voluntary return programmes, subsidised by the Ministry of Employment & Social Security and co-financed by the European Return Fund. Effective voluntary return programmes linked to setting up economic or business activities in the countries of origin have also been strengthened.<sup>247</sup> Voluntary return is encouraged, especially that of unemployed citizens of third countries. Since 2013 Spain has also participated in the Seahorse project with six other member states and Libya. The aim is to combine forces through an agreement with the countries around the Mediterranean to reduce illegal immigration. The project is an extension of the accords between African countries on the Atlantic Ocean.

Spain supported the proposal for a pilot return project in the Council of the European Union, even though some of the target countries are not the most interesting ones for Spain. It regards the 'more for more' principle subscribed to in the pilot project as a realistic approach. In negotiating with these countries on forced returns, there must be a

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245 A partnership between the EU and 16 countries in the Mediterranean, which is nowadays called 'Union for the Mediterranean'. Euromed aims at the economic integration and democratic reforms in 16 partner countries, See: [http://eeas.europa.eu/euromed/index\\_en.htm](http://eeas.europa.eu/euromed/index_en.htm).

246 EMN: *Annual Immigration and Asylum Policy Report, Spain, 2013*, European Migration Network, 2014, p. 56-57.

247 For example, with support from the EU Return Fund 24 biometric identification systems were bought and 28 booths installed in Spanish consulates in North Africa in 2009, enabling fingerprinting and facial identification procedures to be carried out with the privacy required by the Islamic culture. In 2010 the Fund supported a small-scale voluntary return project to Bolivia so that 14 people could start their own businesses after their return.

quid pro quo. It is not known whether Spain has made a contribution.

*The ACVZ concludes that the following lessons for the Netherlands can be drawn from the Spanish approach.*

- A cooperative relationship with countries of origin that combines development cooperation and agreements on labour migration and readmission can produce good results for both the country of destination and the country of origin.
- The same applies to investment in an honest, respectful and equal relationship.
- Article 13 of the Cotonou Agreement can serve as a basis for negotiations on bilateral relations.
- Practical cooperation and a physical presence are major factors in managing relations with African countries.

## 4.4 United Kingdom

### *Organisation of return policy*

In the UK the Country Returns Operations and Strategy (CROS) team at the Home Office is responsible for the operational aspects of return, including maintaining relations with diplomatic missions in London.

The FCO's Migration Directorate, in particular the Overseas Network of the Foreign and Commonwealth Office (FCO), is responsible for maintaining relations with countries of origin. The Directorate is staffed by around 18 people, mostly from the FCO and the Home Office; its funding comes primarily from the Home Office. Its priorities are return, combating modern slavery, advising the foreign secretary on visa policy and multilateral relations. The close collaboration between the Home Office and the FCO in the area of migration dates back to the early 2000s and has been very productive.

### *Basic principles of return policy*

The UK has a government-wide approach to return and there is no country to which people are not returned. The best approach in return is decided on a case-by-case basis. Voluntary return is preferred to forced return. Returning criminals has the highest priority; in this area Home Office works with the police and custodial institutions. The UK further focuses on countries from which the largest flows come and carries out what are known as 'signal removals', to countries where it is generally thought that expulsion is very difficult. Such a signal removal can be the beginning of more structured cooperation.

### *Connection with other policy areas*

A formal link between migration and development cooperation is not feasible in the UK: 0.7% of GBP is earmarked for development aid and it cannot be made conditional on cooperation in other policy areas. Thanks to cooperation in the field of counter-terrorism, the UK has increased its influence, which can be helpful in other areas of bilateral relations. But it does not use conditionality in the sense of 'blunt equations' or 'a direct trade-off'. Migration is regarded as a constituent element of broader relations and as such part of a broad-based dialogue. The question of whether migration has priority within this dialogue is ultimately answered within the framework of the broader relationship.

The UK did not adopt the Schengen immigration and visa policy acquis, and therefore has its own national visa policy. Visa regimes are evaluated on a regular basis, and risks in the field of immigration, organised crime and security as well as possibilities for growth and bilateral relations are taken into account. Decisions regarding cooperation in the

field of return form part of the general assessment of immigration risks. The UK does not have labour migration agreements with specific countries or other mobility programmes related to the return issue. The UK has a fund for return and reintegration. This is a joint fund set up by the FCO, Home Office, Department for International Development (DFID) and the Ministry of Justice, and managed by the FCO. The programme finances projects that contribute to the government's objectives with regard to migration. In the 2014/2015 financial year it has £ 13 million available for disbursement. The fund can be used for help with reintegration, capacity-building projects, or campaigns to inform people about legal migration and the risks of irregular migration.

#### *Relations management and dialogue*

In its relations with countries of origin in the area of return, the UK has a preference for cooperation in an operational framework, supplemented by diplomatic relations. They have a long-term approach to building and managing relations.

The operational framework relies on the following mechanisms:

- informal return agreements
- agreements on the use of charter flights
- documentation missions (known in the Netherlands as task forces)
- visits to the UK
- meetings for the diaspora.

The documentation missions are seen as cost-effective in the case of countries with many applications: the UK has achieved positive results with this approach. However, it is important that the right people take part in the missions. The missions can solve the problem of refusal to cooperate in the documentation process and expedite the issue of documents. The focus in the visits to the UK is on the integrity of the UK's asylum and return policy and on access to effective legal remedies. Its experience with such visits has been positive. Meetings for the diaspora devote attention to the programmes for assisted voluntary return (AVR).

In relations with third countries a common, government-wide approach is adopted, which is considered to be important in starting up relations. The FCO in general and the Overseas Network in particular are involved here. Deployment at political level (i.e. senior diplomats and Ministers) as part of a broader relationship has proved to be crucial in removing obstacles. This contributes to third countries' awareness of the importance of good mutual relations in the field of migration. These senior figures also contribute to the attempts to make it possible to use charter flights, and they intervene directly in high priority cases where leverage at senior diplomatic level is needed.

The UK's experience is that MoUs can work well, but are no guarantee for success. Because they are not legally binding, the results depend on good will. They do however provide a useful framework for cooperation. Generally, the MoUs are evaluated at least once a year, allowing for discussion of problems. Paragraphs on help with reintegration, assisted voluntary return or broader arrangements in the field of migration can be included in MoUs.

The UK has a Return Liaisons Network that is responsible for pre-identification in some cases. This means that the liaison officer gathers information in the country of origin beforehand to support the application for an LP and to expedite its issue. In the case of the return of vulnerable persons, the UK ensures that post-arrival assistance is available.

### *Readmission agreements*

The UK regards readmission agreements as useful instruments in that they provide a legal framework and a return mechanism for cases where existing bilateral agreements do not suffice. Together, the EU member states have more power and can thus achieve more.

The UK has decided not to use its opt-in in the situation of countries in which it is not interested, or where it estimates that existing bilateral relations are sufficient. Since 2002, it has signed up to 14 readmission agreements. The UK has decided not to participate in the negotiations with Armenia, Azerbaijan, Belarus and Cape Verde. It makes little use of the agreements with smaller countries but in 2011 returns to large countries of origin with which agreements had been concluded rose sharply.<sup>248</sup> The disadvantage of the agreements is that negotiations can be lengthy.

The House of Lords has stated that it is in favour of the UK's participation in the EU readmission agreements. It believes that they can be important instruments in facilitating returns, particularly if bilateral relations between the UK and certain third countries were to deteriorate.<sup>249</sup>

### *GAMM*

The original GAM was a UK initiative and is still supported by the UK. The UK sees the added value of a joint approach to migration management for the EU and partner countries, but disagrees with the idea that the GAMM should be centred on the rights and empowerment of migrants. It is further critical of the 'migrant-centred' approach advocated by the Commission since the GAMM replaced the GAM).<sup>250</sup> However, the UK supports a number of regional and bilateral instruments developed under the GAMM (such as the Silk Road Dialogue and the Khartoum Process), which have increasingly led to concrete cooperation, including efforts to combat irregular migration and related organised crime.<sup>251</sup>

The UK has decided not to participate in the pilot project with Bangladesh, Nigeria and Pakistan, but it is following the project with interest.

### *EURINT, ERIN and IGC*

The UK is very positive about EURINT and ERIN (European Reintegration Network), both of which have proved their worth. The UK chairs one of the working groups of the EURINT network. In addition, it participates in the Intergovernmental Consultations on migration, asylum and refugees (IGC). The added value of these consultations is that non-EU countries such as the US and Canada also take part.

*The ACVZ concludes that the following lessons for the Netherlands can be drawn from the UK approach.*

- Long-term, close cooperation between responsible ministries, which in the UK has even resulted in one integrated department (the Migration Directorate), staffed by officials from the Home Office and the FCO, has produced results.
- Making a single government department responsible for maintaining relations with countries of origin prevents confusion as to roles, miscommunication and lack of clarity on where ultimate responsibility lies.

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248 House of Lords, European Union Committee, 8th Report of Session 2012-13: *The EU's Global approach to migration and mobility*, 18 December 2012, p. 38.

249 *Ibid.*, p. 38.

250 *Idem.* p. 57.

251 *Ibid.*, p. 57.

- The deployment of senior diplomats and members of government can remove obstacles.
- Providing information on residence procedures, legal protection and respect for human rights to the authorities of countries of origin can also remove barriers.
- A government-wide approach to third countries that includes migration and which weighs the different government interests can be the beginning of a 'coherent' or 'integrated' approach. A direct exchange of two random interests (for example, an aviation agreement in return for a readmission clause) does not have this effect.
- Pre-identification procedures prior to LP applications and documentation missions can speed up processing time.



# Conclusions and recommendations

In this chapter the Committee answers the following questions.

### Research questions

- How has the strategic country approach to migration been shaped in the Netherlands in recent years and what are the results?
- To what extent can the strategic country approach to migration be more effectively deployed as an instrument in migration policy?

## 5.1 Conclusions

The Committee's conclusions are set out below under the four sub-questions posed in chapter 1.

### How has the strategic country approach to migration been shaped in the Netherlands?

The idea of linking return policy to other policy areas is not new. Parliamentary papers reveal that it has been discussed in the Netherlands since 1996. Initially, the discussion centred on a link with development cooperation; the conclusion was that the individual aims of the two policy areas conflict and the countries to which they apply overlap only partially, both of which make linkage difficult to achieve. In 2003 a detailed description of return policy was drawn up and a separate policy memorandum was published on the inclusion of a readmission clause in bilateral agreements. In the period between 2008 and 2014 members of government regularly reported to the House of Representatives that 'conditionality' would be built into relations with countries relevant to return, allowing for the possibility of using positive and negative incentives, where necessary in policy areas outside the remit of Security and Justice and Foreign Affairs.

On several occasions, members of government or officials of ministries other than Security and Justice and Foreign Affairs have drawn attention to the importance of cooperating in return in their bilateral contacts. The ACVZ's research has also shown that two attempts were made to establish linkage outside the remits of these two ministries but to no effect. Nor has a readmission clause ever been included in bilateral agreements. Other ministries' own policy priorities take precedence and Dutch economic interests prevail over what is seen as the limited interest of return. Nevertheless, succeeding governments have continued, on paper, to follow more or less the same path without any reconsideration of the policy in the interim. What is more, for a long period the House of Representatives has asked hardly any questions regarding the practical implementation of the plans announced by the government. Only in 2013 did the State Secretary of Security and Justice ask the ACVZ to issue an advisory report on the strategic country approach to migration. The House of Representatives finally asked for an evaluation in 2014.

As a result, the instrument of linkage of policy areas to induce countries of origin to readmit their nationals has almost exclusively been deployed within the domain of

Security and Justice and Foreign Affairs. In addition, from operational to political leadership level these ministries have put greater effort into building and maintaining good relations with countries of origin. A political evaluation of return in relation to other Dutch interests is regularly made within Security and Justice and Foreign Affairs, the outcome of which is often unfavourable for return.

In the context of the strategic country approach the Netherlands has actively sought to establish European cooperation. This aspect is further discussed below.

### **What is the interaction between EU return policy and the Dutch strategic country approach?**

Since the political debate on the cooperation of countries of origin in forced return began in the mid-nineties, the Netherlands has worked towards and played an active role in European cooperation on this issue. In 1997 the High-Level Working Group on Asylum and Migration was set up under the Dutch EU Presidency. More recent initiatives include EURINT and the pilot project with Bangladesh, Nigeria and Pakistan. In addition, the Netherlands is an active participant in mobility partnerships, common agendas and migration dialogues.

Since the first steps towards the development of an EU return policy were taken in 1995, the EU has repeatedly expressed its commitment to finding new ways to achieve better control of migration flows through the deployment of its external relations. In 2002, the European Council even gave permission for punitive measures. However, such measures were never actually taken, due to the resistance in the European institutions to explicit negative conditionality.

The deployment and effect of the strategic country approach by the Netherlands is partly dependent on European agreements with countries of origin. On the one hand, this may sometimes strengthen the effect, due to the scale of the EU, which has strong instruments at its disposal such as readmission agreements, readmission clauses in treaties, association agreements and mobility partnerships (for the results of European instruments see the answer to following sub-question). Furthermore, relations between the EU and third countries, and investments in some regions may also serve as leverage.

On the other hand, action by the EU can sometimes weaken Dutch efforts in relation to the strategic country approach. The research results include several examples of EU support for migration projects to assist countries that systematically refuse to readmit their own nationals. These projects are worth millions. The budget which the Netherlands can reserve for incentives to improve cooperation pales in comparison, while the dialogue it tries to maintain on the subject loses credibility whenever the EU makes no mention of the issue in its diplomatic relations.

The ACVZ concludes that EU return policy may strengthen the effect of the strategic approach, but may sometimes weaken Dutch efforts in relation to the strategic country approach to migration.

### **What results has the strategic country approach achieved, partly in light of EU return policy? To what extent can the approach be regarded as effective?**

In chapter 1 the ACVZ defined the interim objective and two ultimate goals of the

strategic country approach to migration. The results of the approach are discussed below in light of these goals. The question of whether the interim objective and the first ultimate goal have been achieved concerns a process evaluation. The question of whether the second ultimate goal has been achieved concerns an outcome evaluation. The Committee stated that efforts to achieve an ultimate goal on process-oriented aspects of policy can never stand alone, and the achievement of such a goal cannot lead to the conclusion that a policy is effective. In the end, only the effects produced by deploying policy instruments in practice can justify such a conclusion.

**Interim objective: parties that can positively influence the effectiveness of return policy are made aware of the problems associated with return.**

In recent years awareness of the position of return in bilateral relations has gradually grown within the Ministries of Security & Justice and Foreign Affairs. At all levels, greater effort has been put into building and maintaining good relations with countries of origin. There is a general realisation that action or inaction in other policy areas can have consequences for return policy. Most Dutch missions discuss, where necessary, the problems associated with forced or voluntary return with the authorities in countries of origin.

Beyond these two Ministries the interim objective has been achieved on only a limited scale. Only the Ministry of Finance is aware of the issue and the fact that it should play a role in its bilateral relations. The research showed that this awareness is not present in other Ministries. Security and Justice and Foreign Affairs must constantly and actively remind them of government policy on this issue.

Certain parts of the EU (JHA Council, DG HOME) are very aware of the importance of an effective return policy in the multilateral relations with countries of origin. It is likely that the consistently active Dutch contribution in this respect is partly responsible for this. As a result, the EU has developed a number of instruments that could positively influence multilateral relations. Nevertheless, like the Netherlands, the European Commission suffers from fragmentation and few cross-cutting links have been established between the different policy areas. The importance of return is rarely on the agenda of directorates-general other than DG HOME.

The ACVZ concludes that the interim objective has been achieved within Security and Justice, Foreign Affairs and Finance, but not beyond these Ministries. At European level the interim objective has only been achieved within the field of Justice and Home Affairs and DG HOME.

**Ultimate goal 1: a political evaluation of return as against other Dutch interests takes place which also addresses the effectiveness of the instrument that may potentially be deployed (process evaluation).**

*Political evaluation at national level*

Since the significance of bilateral relations for the success of return policy has not really been put on the agenda with respect to Ministries other than Security and Justice, Foreign Affairs and Finance, these other Ministries carry out no political evaluation of return in relation to other Dutch interests unless Security and Justice or Foreign Affairs request them to do so. Such an evaluation does take place at regular intervals within Security and Justice, Foreign Affairs and Finance (in the case of the latter Ministry, in consultation with

Security and Justice). The outcome is seldom in favour of return policy. Either interests in other policy areas carry greater weight or Dutch economic interests prevail over what is seen as the more limited interest in return. The same applies to policy areas within the migration remit of Security and Justice, Foreign Affairs, Social affairs and Employment (SZW) and Education, Culture and Science (OCW). In addition, a consistent choice is made within these ministries for a general policy, which makes it impossible in specific cases to use facilities in the fields of labour, student or highly skilled migration, for example, as leverage for return policy.

Where a political evaluation takes place of the interest in return and other Dutch interests, the outcome is often unfavourable for return. Though good reasons may underlie these choices, the ACVZ notes that there is a discrepancy here between the lip service paid to return in the political debate and the importance it is given in practice.

#### *Political evaluation at European level*

Within the EU the Netherlands is working towards a political evaluation of return and other interests at European level. Such an evaluation is already being conducted within the Justice and Home Affairs (JHA) domain, as witnessed by the instruments that have been developed: readmission agreements, mobility partnerships, common agendas and migration dialogues. The Netherlands makes an active contribution to all these instruments. The reality is that in the EU, just as in the Netherlands, the interests served by other policy areas often prevail. The ACVZ notes that at European level no linkage has as yet been made between return and areas such as police and judicial cooperation, development cooperation, trade and foreign policy, to the extent that these areas have a connection with migration and return. Though there is resistance within the EU to negative conditionality, there is support for the use of positive incentives. Efforts to involve DGs other than DG HOME in return policy have so far been unsuccessful. The pilot project is the first step towards improving the integrated approach to return policy at European level.

The ACVZ concludes that the first ultimate goal has been achieved to a limited extent at national level, within Security and Justice, Foreign Affairs and Finance. Outside these three ministries it has been achieved to a very limited extent. At European level, the aim has only partly been achieved within the area of Justice and Home Affairs and DG HOME.

#### **Ultimate goal 2: the effectiveness of return policy is enhanced through improving the cooperation of countries of origin in the forced return of their nationals.**

The fact that the political evaluation of return in relation to other Dutch interests is often unfavourable for return has of course an impact on the effectiveness of return policy: the result is that instruments that might have been effective cannot be deployed.

The many attempts to involve Ministries other than Security and Justice and Foreign Affairs in return policy have as yet been unsuccessful. This part of the policy cannot be qualified as effective.

The effectiveness of the policy is also limited within Security and Justice and Foreign Affairs because, here too, the outcome of the evaluation is often unfavourable for return or because greater value is attached to pursuing a general policy than to increasing the effectiveness of return policy. Instruments falling under the migration policy of Foreign Affairs or Security and Justice which have been deployed have sometimes produced results. Instruments that are not directly related to migration policy have either produced no results (development cooperation in relation to Ghana) or have had limited success (police cooperation in relation to Burundi and Rwanda). In the case of some countries improvements in cooperation have been achieved through investment in the mutual relationship at several levels, and through a customised approach such as capacity-building projects, in which reliability and mutual respect also play a role. This has produced tangible results with Armenia, Azerbaijan, Burundi, Guinea, Nigeria, Rwanda and Somalia/Somaliland.

A few countries have explicitly stated that they will not cooperate in forced return. In the case of others, this is abundantly clear from practice. With regard to some of these countries the government has decided that there are other interests involved which the Netherlands does not wish to jeopardise and that therefore no serious pressure can or will be exercised. In such cases, the only solution is either to scale up the effort via the EU, or wait for a moment when genuine changes in bilateral relations are taking place.

The international deployment of the strategic country approach to migration and the interaction with EU return policy have in some cases been productive. The Netherlands needs the scale of the EU in relation to certain countries in order to achieve the desired results. One such result is the readmission agreements that have been concluded with the focus countries Armenia, Azerbaijan, Georgia, Serbia, the Russian Federation, Turkey and Ukraine. The readmission agreements with Pakistan and Sri Lanka have produced few results so far. An obstacle to negotiations is the inclusion of a third-country national clause, which some member states insist on. Generally speaking, migration dialogues and mobility partnerships make a positive contribution to the Netherlands' goals with regard to the strategic country approach. Furthermore, operational cooperation and the exchange of experiences with other member states, making use of the good relations they have with third countries could be productive. The ACVZ takes the view that limited results have been achieved in the field of Justice and Home Affairs (primarily through the instruments of visa facilitation, and projects for capacity building and border control), but no other tangible results have been achieved for the Netherlands.

The ACVZ concludes that the deployment of the Dutch strategic country approach to migration within the remit of Security and Justice and Foreign Affairs can be regarded as effective to a certain extent, but it is limited by the fact that the evaluation of competing interests is often unfavourable to return. Dutch efforts in Europe within the policy areas of JHA/DG HOME have largely been effective.

Are there other countries following a strategic country approach comparable to that of the Netherlands? If so, how do they go about it? What lessons can be drawn from the strategic country approach adopted by other countries?

The study of 'best practices' in which Belgium, France, Spain and the UK participated showed that these countries share the Dutch experience that a number of countries of origin do not cooperate or do not cooperate fully in the forced return of undocumented or insufficiently documented foreign nationals. In their attempts to find a solution, all four

countries pursue an approach that has similarities with the Netherlands' strategic country approach to migration. These approaches are described in chapter 4. The same chapter sums up, per country, the lessons the Netherlands could potentially learn from their approach. The most important overall lessons that can be learned from the study of 'best practices' are listed below.

- A broad cooperative relationship with countries of origin, which includes a coherent approach to migration and possibly development cooperation, can produce good results provided the cooperation has attractive aspects for the country concerned, such as opportunities for labour or student migration. A direct exchange of two random, unrelated interests would not be an appropriate instrument in this context.
- Cooperation between several ministries is necessary for such a broad approach, but it must be clear which ministry has the power to ultimately take decisions to resolve any impasse.
- A good, respectful relationship can be the key to success. In this context it may be necessary to deploy high-ranking diplomats and ministers to get things moving. A physical presence in the country of origin helps maintain the relationship. If cooperation at operational level has no chance of success, there is no point in continuing to focus efforts in this area.
- Negative incentives may work if they are connected to migration and/or directly affect those immediately involved. They must however be used with caution since they can damage the relationship.
- All four countries in the study of 'best practices' are largely positive about the role the EU and its instruments can play.

## 5.2 Recommendations

In this section the ACVZ addresses the question of the extent to which the strategic country approach to migration can be deployed more effectively.

Return policy is an essential component of migration policy. If it is to be credible, it must also be effective. This demands a clear vision that is understood by all the parties involved. The ACVZ endorses the view that although forced return should be avoided where possible, it is necessary for a consistent return policy. It has further noted that the cooperation of countries of origin in forced return is a decisive factor in the effectiveness of return policy. A strategy aimed at maintaining bilateral relations in the field of return must therefore be part of a clear vision on return and can contribute to a successful return policy. It was pointed out in chapter 1 that earlier research has shown that the use of incentives, a customised approach and relations management does not automatically produce the desired results. The same conclusion emerges from the research conducted for this report. On the basis of its conclusions, the Committee has arrived at the following recommendations.

- 1) Invest in developing a coherent and integrated migration policy which, in addition to return and efforts to combat irregular migration, addresses highly skilled, labour and student migration and the internationalisation of migrants' social insurance rights. In this context, reconsider the choice for a general policy and/or consider introducing extra facilities for countries that cooperate in forced return.**

The ACVZ is of the opinion that a strategic country approach to migration is necessary in order to promote cooperation in forced return. It also takes the view that the strategic

country approach must be applied in a more consistent and structural way than is the case at present. In the first place, a consistent and structural policy requires a clear choice when it comes to the scope of the approach and action in line with that choice thereafter. The scope chosen can in theory cover the whole of government policy (across all Ministries), migration policy in its entirety or the remits of Security and Justice and Foreign Affairs alone.

The Committee believes that linkage with policy areas such as those in which aviation agreements or tax conventions fall, which have nothing to do with migration policy, should be avoided. To date, there is no evidence that such linkage has ever been successful. What is more, it entails a risk of damaging Dutch interests in another area without achieving the desired result.

The Committee does however see added value in a genuinely coherent and integrated approach to migration policy and related policy areas. Student and labour migration, and social security agreements would lend themselves to this approach. This would require the involvement of SZW and OCW, alongside that of Security and Justice and Foreign Affairs. The Committee recommends that this strategic approach be applied to all countries of origin relevant in Dutch migration policy, and to stop working according to the scaling up model where other policy areas are only considered once problems cannot be resolved by return policy alone. If an integrated strategic approach by these four ministries cannot be achieved, the strategic approach should be deployed by Security and Justice and Foreign Affairs only. Policy areas such as foreign trade, and development and judicial cooperation could then be part of the two ministries' combined efforts in the field of the strategic country approach.

**2) If forced return cannot be achieved in the case of a particular country at a particular time, reduce operational cooperation with the country in question to a minimum level. At the same time, continue to invest in diplomatic contacts through members of government and high-ranking officials, keep the dialogue going at this level and try if possible to step it up.**

The research did not show that the tactic of 'keeping up the pressure' that DT&V employs at operational level, which involves submitting LP applications which have no chance of success simply to send a message, has ever had any positive effect. Indeed it seems it is more likely to have a negative effect on relations with the country of origin. What is more, this tactic can be partly responsible for foreign nationals being detained unnecessarily or unlawfully because there is no real prospect of expulsion. The resources saved through bringing a halt to hopeless LP applications can better be used to promote assisted return and/or to make a greater investment in diplomatic relations. It is of course recommended that once a change takes place in diplomatic relations with a particular country, the LP procedures for that country should be resumed.

**3) Invest in the long-term relationship with countries of origin.**

The ACVZ's research shows that relations management is an indispensable part of the strategic country approach to migration. Good bilateral relations management should take into account the strategies, problems, wishes and capabilities of the other country. Countries of origin also pursue a strategic approach in their bilateral relations in which national political considerations and regional aspects play a role. Other factors influencing their actions include capacity problems, the major role played in forced return by loss of face, and the pressure not to cooperate in forced return exerted on governments by members of the diaspora. Ultimately, the only solution is to build a relationship based on

trust by conducting a dialogue that leads to acknowledgement of the fact that migration is a shared responsibility.

The ACVZ offers the following guidelines for this broadly formulated recommendation.

- In formulating the strategy bear in mind the strategies pursued by the countries of origin themselves in bilateral relations and the reasons why these countries do not cooperate or do not cooperate fully in return.
- In relations with countries of origin, remain alert to regional issues and regional coherence.
- Build realistic and credible incentives into cooperation, adopting a customised approach.
- Try to avoid as far as possible the feeling of loss of face associated with forced return of a country's nationals and always take account of it in presentations of foreign nationals at consulates, and during expulsions.
- Discuss the issue of return regularly with high ranking officials and ministers.
- Be prepared to compromise.
- Avoid explicit negative incentives as much as possible since they undermine equality in a relationship.
- If nevertheless the decision is made to use a negative incentive, ensure first of all that this is communicated clearly and in a timely manner to the country concerned and that it is also perceived as such by the country concerned; ensure too that the negative incentive is proportionate and affects the persons or bodies directly involved in readmission policy.
- Consider investing in staff of Dutch embassies abroad, thus enabling them to manage relations with third countries. Practical cooperation and a physical presence are major factors in managing relations with a number of countries.

#### **4) Continue to work towards the promotion of forced or independent return in the EU framework.**

In contacts with third countries the EU can exert more influence than the Netherlands alone. Readmission agreements in exchange for visa facilitation, mobility partnerships, migration dialogues and the regional approach are all instruments that can help shape an integrated migration policy which takes account of the above recommendations; they have tangibly improved results in the case of a number of countries. The pilot project involving Bangladesh, Nigeria and Pakistan, a Dutch initiative, can provide insights into how a broad strategic country approach to migration can function at European level.

The Committee has formulated the following guidelines for this recommendation.

- In the European context keep in mind the fact that other member states and parts of the European Commission may have different opinions. Policy that the Netherlands sees as desirable is not always feasible at European level, examples being the deployment of development cooperation or negative incentives. It is thus more effective to look to the European policy areas that do offer opportunities, such as visa facilitation and 'mode 4' GATS trade agreements.
- Reconsider the Dutch position regarding the inclusion of a third-country national clause in readmission agreements with countries to which the European Neighbourhood Policy does not apply.
- Put more effort into a regional approach to migration flows and return, and try to conclude wherever possible simultaneous readmission agreements and MPs with migrants' countries of origin.

## Abbreviations

ABRvS	Administrative Jurisdiction Division, Council of State
ACP	The African, Caribbean and Pacific Group of States
ACVZ	Advisory Committee on Migration Affairs
AIV	Advisory Council on International Affairs
AVR	Assisted Voluntary Return
BDO	Permanent committee on foreign affairs, defense and development cooperation
CAMM	Common Agenda on Migration and Mobility
CCD	Chicago Convention Document
CCL	Chicago Convention Letter
CITT	Supervisory Commission on Repatriation
COTER	Coordination of returns
CROS	Country Returns Operations and Strategy
DFID	Department for International Development
DG DEVCO	Directorate-General for International Cooperation and Development (EU)
DG HOME	Directorate-General for Migration and Home Affairs (EU)
DG POL	Directorate-General Police (V&J)
DJI	Custodial Institutions Agency
DMB	Migration Policy Department
DEIA	European and International Affairs Department
DT&V	Repatriation and Departure Service
DVZ	Immigration Service (Belgium)
ECOWAS	Economic Community of West African States
ECRE	European Council on Refugees and Exiles
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EEAS	European External Action Service
EES	Entry/Exit System (smart borders initiative European Commission)
ERIN	European Reintegration Instrument
ERPUM	European Return Platform for Unaccompanied Minors
ETF	European Return Fund
EU	European Union
EURINT	European Integrated Return Management
EURLO	European Return Liaison Officers
Euromed	Euro-Mediterranean Partnership
FCO	Overseas Network of the Foreign and Commonwealth Office
Fedasil	Federal Agency for the Reception of Asylum-seekers
GAM	Global Approach to Migration
GAMM	Global Approach to Migration and Mobility
GATS	General Agreement on Trade in Services
GFMD	Global Forum on Migration and Development
HLD	United Nations High-Level Dialogue on International Migration and Development
HO	Home Office
I&M	Ministry of Infrastructure and the Environment
IGC	International Consultations on Migration, Asylum and Refugees
ILO	Dutch Immigration Liaison Officer
IND	Immigration and Naturalisation Service

IOB	Policy and Operations Evaluation Department
IOM	International Organisation for Migration
JHA	Justice and Home Affairs
KAR	Kurdistan Autonomic Region
KMar	Royal Military and Border Police
KRG	Kurdistan Regional Government
LOGO	National Municipal Consultative Platform on Reception and Return
LP	Laissez-passer
MoU	Memorandum of Understanding
MP	Mobility Partnership
NESO	Netherlands Education Support Office
NGO's	Non-governmental organizations
OCW	Ministry of Education, Culture and Science
ODI	Overseas Development Institute
OS	Development cooperation
PV-EU	Permanent Representation of the Kingdom of the Netherlands to the EU
RTP	Registered Travellers Program
SEFOR	Sensibilisation, Follow-up and Return
SHIP	Safe Haven International Partnership
SIS	The Schengen Information System
SLM	Strategic Country Approach to Migration
SvV&J	The State Secretary of Security and Justice
SZW	Ministry of Social Affairs and Employment
TFEU	Treaty on the Functioning of the European Union
TILT	Integrated Country Approach to Return Task Force
UN	United Nations
V&J	Ministry of Security and Justice
VIS	Visa Information System
VWN	Dutch Council for Refugees
VWS	The Ministry of Health, Welfare and Sport
WAV	Foreign Nationals Employment Act
WOCD	Research and Documentation Centre
WRR	Scientific Council for Government Policy

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## APPENDIX I

# Persons and organisations consulted

### Implementing agencies and ministry policy departments

#### *Ministry of Foreign Affairs*

Consular Affairs and Migration Policy Department  
Directorate-General for European Cooperation  
Directorate-General for Foreign Economic Relations  
Directorate-General for International Cooperation  
Permanent Representation of the Kingdom of the Netherlands to the EU (PV-EU)

#### *Ministry of Security and Justice*

Directorate-General for Aliens Affairs  
Directorate-General for the Police (DGPOL)  
European and International Affairs Department  
Immigration and Naturalisation Service  
Migration Policy Department  
Repatriation and Departure Service

#### *Ministry of Defence*

Royal Military and Border Police International Liaison Officer

#### *Ministry of Education, Culture and Science*

Higher Education and Student Finance Department

#### *Ministry of Finance*

International Affairs and Consumer Taxation Department

#### *Ministry of Infrastructure and the Environment*

Civil Aviation Department

#### *Ministry of Social Affairs and Employment*

International Affairs Department

### European Union

Directorate-General for Migration and Home Affairs (HOME)  
Directorate-General for International Cooperation and Development (DEVCO)

### Other organisations

Supervisory Commission on Repatriation (CITT)  
European Council on Refugees and Exiles (ECRE)  
International Organization for Migration (IOM)  
National Municipal Consultative Platform on Reception and Return Policy (LOGO)  
Stichting Goedwerk (foundation)  
Safe Haven International Partnership (SHIP)  
Refugee ambassador, Dutch Council for Refugees (VWN)

### Representatives of foreign embassies in The Hague

His Excellency the Ambassador of the Republic of Iraq

Her Excellency the Ambassador of the Republic of Armenia  
His Excellency the Ambassador of the Republic of Turkey

### **Academics**

C.M.F. Mommers

Sarah Wolff

### **Survey of Dutch missions abroad**

*Responses received relating to:*

Algeria, Armenia, Azerbaijan, Burundi, China, Côte d'Ivoire, Egypt, Eritrea, Ethiopia, Georgia, Ghana, Guinea, India, Iraq, Lebanon, Liberia, Morocco, Nepal, Nigeria, Russia, Sierra Leone, Somalia, Sri Lanka.

### **Countries in the study of 'best practices'**

*Belgium:* Immigration Service (DVZ), Ministry of the Interior

*France:* Directorate-General for Foreign Nationals in France / Ministry of the Interior

*Spain:* Directorate-General for International Relations and Immigration / Ministry of the Interior

*United Kingdom:* Migration Directorate, Foreign and Commonwealth Office, and International Directorate, Home Office.

## APPENDIX 2

# Members of the Advisory Committee on Migration Affairs (ACVZ)

### Chair:

- A.C.J. van Dooijeweert (Adriana), investigating judge District Court The Hague

### Deputy Chair:

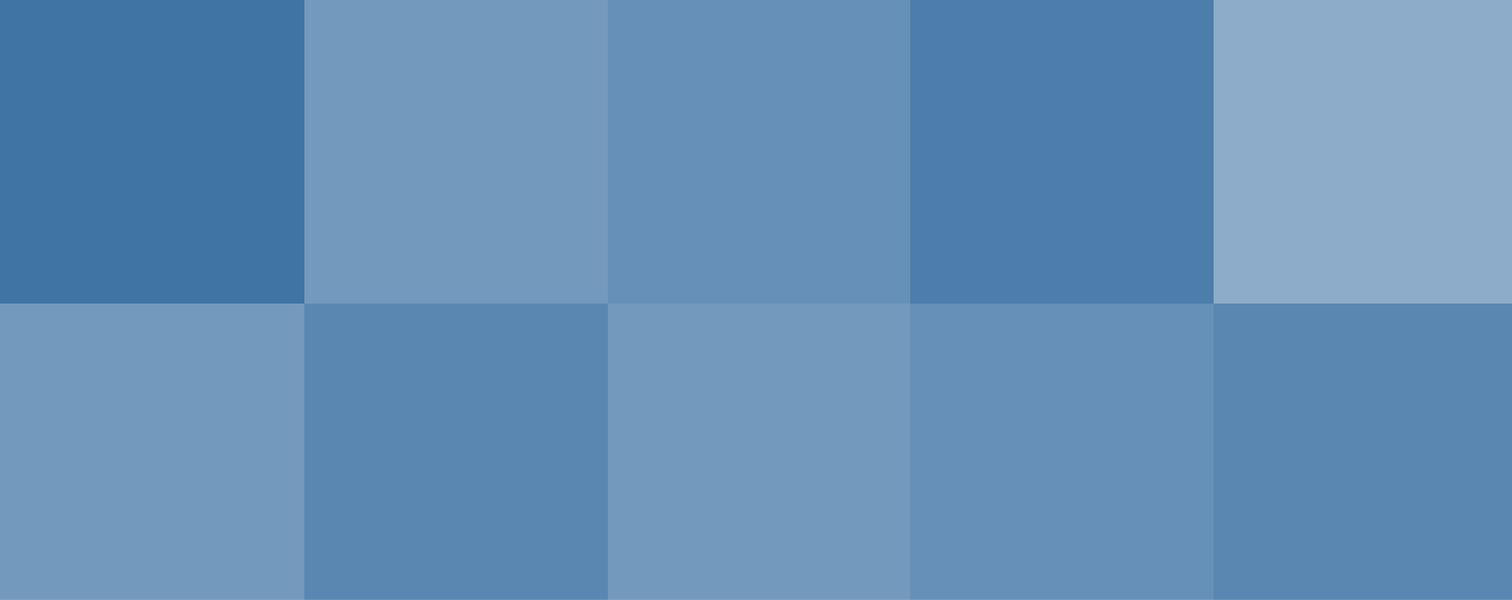
- Dr H.H.M. Sondaal (Hans), former ambassador of the Kingdom of the Netherlands

### Members:

- M.A. Beuving (Minze), former Chief Constable of Police, Commander of the Royal Military and Border Police (KMar) and Chair Frontex Management Board
- Professor P. Boeles (Pieter), Emeritus Professor of Immigration Law
- T.M.A. Claessens (Tom), former judge and member of the Dutch Council of State
- Dr T. de Lange (Tesseltje), Assistant Professor Administrative and Migration Law, University of Amsterdam
- Professor J.P. van der Leun (Joanne), Professor of Criminology, Leiden University.
- Dr C.R.J.J. Rijken (Conny), Associate Professor European and International Law, Tilburg University
- R.J.A. Schaaf (Ramon), judge

### Secretary:

- W.N. Mannens (Wolf)



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