



EU and Afghanistan Get Deal on Migrants: Disagreements, pressure and last minute politics

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Finally, after a year of negotiations and some last minute hurdles – including on the Afghan side refusals to sign and an attempt to involve parliament – the European Union and Afghanistan have reached a ‘readmission’ agreement on how to return Afghans who have travelled to Europe and failed in their claims for asylum. President Ghani and Dr Abdullah both backed the agreement, while Minister for Refugees Balkhi said Afghans migrants should be allowed to stay, regardless of whether their claims for asylum were accepted or not. AAN’s Jelena Bjelica explains what happened in Kabul in the run-up to the signing (with parliamentary reporting from AAN’s Salima Ahmadi) and explains what the agreement actually says.

The readmission agreement, optimistically titled Joint Way Forward, was supposed to be launched during a high-level, ministerial dialogue in Brussels on 3 October 2016, during which the EU would also announce an 80 million Euros assistance package for migration-related activities. The launch of the agreement – or declaration, as the Afghan government now insists on calling it (1) – was planned to coincide with the run-up to the [Brussels Conference](#), a high-level aid pledging event. This was supposed to showcase Afghanistan’s willingness to cooperate on taking back Afghans who have failed in their asylum claims and to pre-empt



potentially difficult discussions during the conference around continuing development aid for Afghanistan up to 2020. (2) This plan ran into difficulties when it became clear that both the minister for refugees and the minister for foreign affairs did not want to sign the document, after their deputies had finished negotiating it – to great concern and exasperation among European diplomats.

Many European countries have seen a large influx of Afghan asylum seekers in 2015 and 2016, with over a quarter of a million Afghans migrating to Europe in this period (see AAN reporting on Afghan migration [here](#) and [here](#)). Germany, one of the main countries pushing for a deal, received the bulk of the influx, with 180,000 asylum applications by Afghans in 2015 and 2016. Various European countries had trouble trying to deport failed Afghan asylum seekers and getting the Afghan authorities to accept them back and the EU wanted a commitment from Afghanistan that it would cooperate, as matter of principle. The organisers of the Brussels conference moreover feared that failure to negotiate a readmission agreement with Afghanistan could hijack important discussions at Brussels on aid and would leave member countries reluctant to publicly commit to future funding. So when in the run-up to the conference, it became clear that the key document, the Joint Way Forward, as well as a several bilateral readmission agreements might not be signed at all, the EU and its member states, as well as the presidential palace, all of whom were keen to make the Brussels Conference a success, engaged in a flurry of diplomacy to still get the document signed in time.

The main controversies

President Ghani's position has always been that Afghanistan should take care of its own citizens. He has repeatedly reassured his EU counterparts that Afghanistan is obliged to accept the readmission of Afghans whose asylum applications have been rejected (see [here](#) and [here](#)). Refugees Minister Sayed Alemi Balkhi, however, had a different opinion. Balkhi has repeatedly said he believed "all asylum seekers who have reached their countries of destination" should be recognised without any kind of discrimination (see for example his [speech](#) at the 66th Session of the Executive Committee of UNHCR). By this, he appeared to mean that Afghans arriving in Europe should be granted protected status and not be treated differently from other nationalities, such as Syrians and Iraqis. He also repeatedly argued that forced expulsion was not an acceptable solution for Afghanistan (see for instance [here](#)).

As a result, Balkhi has been a difficult man to negotiate readmission agreements with. He has often gone public, showing himself as the 'guardian of the people's interest', most recently in his address to parliament. His position was that a lot of people had sold everything to take the perilous journey to Europe and, if returned, would be left with almost nothing in Afghanistan. He was not impressed by donor promises of assistance linked to such agreements, and according to an advisor at the ministry of refugees, Balkhi has repeatedly pushed back against suggestions by EU member states that future aid could be conditional on Afghanistan's cooperation in taking migrants back.

The public position of the Chief Executive Abdullah's camp was that they were in favour of the



agreement described in the Joint Way Forward. Javid Faisal, Dr Abdullah's deputy spokesperson, assured AAN on 21 September 2016 that both wings of the national unity government fully supported the agreement, saying "We know the issues related to migration that Europe is dealing with." The position held by both the president and the chief executive, he said was that all returns should be on a voluntary bases, that no more than 50 Afghans per flight could be sent back to Afghanistan, that vulnerable categories could not be returned to Afghanistan and that all returnees should be financially supported by the EU. The Joint Way Forward agreement, however, specifically also includes forced returns. Indeed, this was already agreed at the time of Faisal's interview.

The official line, however, was cooperative and Abdullah himself is said to have been constructive in the various negotiations. It was notable, though, that the two ministers (Rabbani and Balkhi) who could have signed the agreement, and refused to, were both Abdullah appointees and that the ministers and officials the president relied on to ultimately resolve the impasse were all his own appointees (for more background on recent trouble within the National Unity Government, see [this](#) recent AAN analysis).

Under international refugee law and international human rights Law, it is not illegal to deport people who have failed in their bids for asylum, (3) provided cases have been judged equitably and the home country is not so dangerous that there is a general ban on returning everyone. At the moment, only two countries are judged to be in this category: the UNHCR had issued non-return advisories for Syria (dangerous for everyone) and Libya (dangerous for foreigners). There is, on the other hand, no legal requirement for Afghanistan to take back its citizens.

An intense week of last-minute negotiations in Kabul

The text of the Joint Way Forward was initialled in Kabul on Monday 26 September 2016, less than a week before the intended ministerial dialogue, by the EU Special Representative to Afghanistan, Franz-Michael Skjold Mellbin, and three Afghan counterparts: Deputy Minister of Foreign Affairs Nasir Ahmad Andisha, Deputy Head of the National Security Council Faizullah Zaki and Deputy Minister of Refugees and Repatriation Dr Alema Alema.

The official signing of the document by Minister Balkhi and EUSR Mellbin had been planned for Thursday 29 September 2016, but it proved impossible for the Afghan side to convince Balkhi to sign. This had already become apparent on 28 September 2016, a German diplomat told AAN, when the German ambassador had been asked to come to the presidential palace to sign the bilateral German-Afghan readmission agreement. He spent an hour outside the meeting room, while Ghani and Balkhi had an intense argument about the signing of the agreement. The episode ended with the German ambassador leaving the palace empty-handed, without the agreement having been signed.

Concern in the European capitals was so high that German Chancellor Angela Merkel called President Ghani on 28 September 2016, asking him to ensure the agreements were signed.



The Wolesi Jirga hearings and some last minute politics

In the meantime, parliament had caught on to the fact that this was a hot issue. On 28 September 2016, the ministers of foreign affairs and refugees and repatriation were summoned to the house to answer questions on the issue of asylum seekers in Europe and preparations for the Brussels Conference.

Parliament was inquorate, as it has been at practically every session since the summer recess and in most before that; only 87 MPs had come to hear the ministers. Salahuddin Rabbani, Minister of Foreign Affairs, told the house, “European countries told us: you should either receive our aid [in the form of aid] to Afghan refugees in our countries, or for development projects in Afghanistan; you can choose between these two options. They asserted very clearly that they cannot help Afghanistan in both areas.” He also told MPs that Afghanistan had prepared a statement that it would present at the Brussels conference, making clear under which conditions and how many refugees could be returned to the country. He did not provide any details on the drafted statement – which by that time had already been finalised and initialled – and instead told the house that the document had not been signed yet and that before signing it, the government would consult the parliament.

Minister of Refugees and Repatriation Sayed Alemi Balkhi also told the house that the document would specify how many asylum seekers would be returned from Europe to Afghanistan and concluded that, “There are major national interests at stake here, as well as Afghanistan’s relations with European and other countries. In view of what was discussed here, as the people’s representatives, you should take a decision in line with the national interests.” Speaker of the House Abdul Rauf Ibrahimy concluded the session by saying that the government was obliged to convince the host countries not to forcefully expel Afghan asylum seekers from Europe.

After the unsuccessful attempt to sign the German bilateral agreement and the strong words spoken during the Wolesi Jirga hearing – with the ministers promising the house it would be consulted, possibly even asked to vote, on an already finalised agreement – the planned signing of the Joint Way Forward in Kabul for Thursday 29 September was put off. The part of the government that was convinced of the need to get the agreement signed, not least due to strong European pressure, was now frantically looking for a solution.

The insistence towards EU negotiators that an official agreement would need to go through parliament and Balkhi and Rabbani’s promises to parliament that it would be consulted seemed aimed at trying to prevent the agreement being signed at all. As parliament rarely has the needed quorum to vote on matters of substance, relying on it for confirmation was doubly unlikely: MPs were hostile to forced returns and, anyway, there are not enough MPs present to be effective on anything.

Resolving the impasse



The first step towards finding a way through this tangled web was to call a second parliamentary hearing, in an attempt to better explain the position of the government and change the MPs' mood. So on Sunday, 2 October 2016, at the request of the government, the Brussels Conference was again put on the agenda of the Wolesi Jirga. This time, in addition to Rabbani and Balkhi, Minister of Finance Eklil Hakimi (a driving force behind the Brussels conference and *de facto* co-organiser of the event) and Deputy Head of the National Security Council Faizullah Zaki (one of the three Afghan officials who had initialled the agreed text of the Joint Way Forward) presented it on behalf of the government. This time, the ministers urged the MPs to be patient and at times even defended the EU's position.

Balkhi, for example explained the need for a new document by referring to earlier Memorandums of Understanding between Afghanistan and various European countries, saying that: "The past documents and MoUs with European countries did not foresee the current problems of these countries, so they had no stipulations regarding the recent policy changes." (4) This, incidentally, seems to have been a previously agreed talking point within the chief executive's camp. For example, Faisal had earlier told AAN that, even though Afghanistan has a readmission agreement with the EU, that was signed in 2002 by President Karzai, it was not applicable to the current migrant situation in Europe.

Finance Minister Hakimi again told the parliament that no document had yet been signed on deporting failed asylum seekers, but added that, "partner countries do expect us to cooperate with them on the refugee issue [...] The EU countries cannot deal with the refugee crisis alone." He concluded by saying: "If Afghanistan does not cooperate with EU countries on the refugee crisis, this will negatively impact the amount of aid allocated to Afghanistan. Germany cannot provide aid money and deal with the refugees at the same time."

Foreign Minister Rabbani reminded parliament that in 2015 the EU had already requested Afghanistan to cooperate on the refugee issue, and added that at the end of the Brussels Conference there would be joint statement between Afghanistan and EU countries "on the deportation of refugees whose cases have been rejected."

So while the MPs were now being told there would indeed be an agreement on deportations, Balkhi kept insisting that the new document was "a statement, which has less legal weight than an agreement." He added that "Germany is insisting on this kind of statement."

One of the issues that was raised in the hearing was the report that the Afghan government had been forced to agree to a deal that would allow the deportation of at least 80,000 Afghans from the EU (see The Guardian's article [here](#)). (5) Balkhi assured the house that this was a rumour and the government had not signed any document that would allow this to happen. He added that all migrants would be individually processed and would have the right to appeal in court. NSC Adviser Zaki confirmed Balkhi's statement and said that, based on the declaration, deportations would only concern "those who have had their cases assessed and rejected by three courts." He added that it was expected that no more than 7,200 Afghans would be returned home in the first six months of the agreement.



Speaker Abdul Rauf Ibrahimi expressed the house's support for the activities of the government undertaken so far concerning the Afghan migrants in Europe.

After the 'political massaging' of the MPs, who did not insist on voting on the declaration, Deputy Minister of Refugees Dr Alema Alema – a family friend of the Ghanis who had been asked to help resolve the impasse – quietly signed the Joint Way Forward in a low-key event at the presidential palace on 2 October 2016. George Cunningham, Deputy Head of the EU Delegation, signed for the EU (for the brief, official EU statement see [here](#)). The German–Afghan bilateral agreement on readmission was signed at the same time by Dr Alema and the German ambassador, while two other bilateral agreements on readmissions, with Finland and Sweden, were initialled by Deputy Minister of Foreign Affairs Nasir Ahmad Andisha and the two ambassadors.

What the final document says

The [final version of the Joint Way Forward](#), like its earlier versions, lays out its aim as:

...to establish a rapid, effective and manageable process for a smooth, dignified and orderly return of Afghans who do not fulfil the conditions in force for entry to, presence in, or residence on the territory of the EU, and to facilitate their reintegration in Afghanistan in a spirit of cooperation.

The signed agreement is a back and forth between the positions of both sides. It states that, "Afghanistan reaffirms its commitment to readmit its citizens who entered into the EU or are staying on EU territory irregularly [...] *after due consideration of each individual case by member states.*" (emphasis added). It stipulates that, "Afghan nationals who are found to have no legal basis to remain in an EU member state [...] can choose to return voluntarily," but also that, "Afghan nationals who choose not to comply with such a decision on a voluntarily basis will be returned to Afghanistan, once administrative and judicial procedures with suspensive effects [ie legal procedures that suspend a deportation] have been exhausted."

The agreement says that special measures will be taken to ensure that vulnerable groups (unaccompanied minors, single women and women-headed families, the elderly and seriously sick people) will receive adequate protection, assistance and care throughout the return and reintegration process. Family unity will also be respected.

Regarding the mechanics of return, the agreement stipulates that every Afghan returning to Afghanistan on a voluntary or non-voluntary basis must be in possession of a recognised valid travel document. It specifies that the Afghan authorities will ensure that a passport or a travel document is issued within four weeks following a request made by an EU member state (or if a member state has evidence of the person's nationality, within two weeks). If travel documents are not issued within these time limits, member states may issue a travel document (ie a laissez-passer). It seems that EU negotiators were well aware of, and unwilling to depend on, the lengthy Afghan administrative procedures, which can sometimes take several months. A



humanitarian worker in Serbia, for instance, told AAN in June 2016 about the case of an Afghan minor who wished to return and who had been waiting for more than eight months for travel documents because of confusion as to which Consulate was responsible.

For the return of Afghan migrants, according to the agreement, the EU may use “scheduled or non-scheduled flights to Kabul airport (in existing designated facilities) and any other specified Afghan airports as mutually agreed, including joint flights returning Afghan nationals from several EU member states.” In terms of numbers, it said, “The EU member states understand that there should be limitation to the number of non-voluntary returnees to 50 per flight in the first six months following the signature of this declaration.” Additionally, the EU member states agreed to send details of returnees on non-scheduled flights to the Afghan government at least three weeks ahead of time. The document somewhat accommodates the government’s request for a new terminal for the returns, in exchange for agreeing to the readmission regime, although in rather vague terms, saying that, “both sides will explore the possibility to build a dedicated terminal for return in Kabul airport.”

The agreement further stipulates that, “EU Member States will sign bilateral and multilateral agreements with Afghanistan within the framework of the Joint Way Forward and will negotiate the technical and financial terms of repatriation after Afghanistan receives the data from each country and conducts a needs assessment” (no more details given). As mentioned before, new Finnish, Swedish and German bilateral readmission agreements were also negotiated in parallel with the Joint Way Forward. All bilateral agreements, so far, have come with financial commitments.

Finally, the EU agreement states that, “the return programmes and reintegration assistance are separate from and irrespective of the development assistance aid provided to Afghanistan.”

The ‘way forward’

The current document provides a basis for EU member states to accelerate both the voluntary and involuntary return of Afghans who have not been granted asylum. Critics of the agreement point out that the door is now open for the EU to send back large numbers of Afghans – many of them with large debts and after having spent long years on the road and in bureaucratic limbo – to a very uncertain future. They also point out that Afghanistan is not a safe country, disagreeing with the EU's insistence that at least some parts of the country are safe enough.

There are obvious concerns on the Afghan side that the EU will not uphold its part of the agreement, in terms of ensuring support for the returnees’ successful reintegration and making sure they are not deporting people back to misery or a life of fear. This is particularly important as the deportation of failed asylum seekers from Europe comes on top of the current forced return of huge numbers of Afghans from Pakistan, and to a lesser extent, Iran. There are also obvious concerns on the European side, that Afghan cooperation will remain reluctant and random, and that public support within Afghanistan will be very thin indeed.



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(1) A diplomat involved in negotiations told AAN that the Europeans were told that, if Afghanistan were to sign an agreement, it would have to be first approved by parliament. This is the reason why the government refers to it as a declaration, not an agreement.

(2) *Relevant decisions relating to EU-Afghanistan readmission agreements and the current EU-Afghanistan readmission agreement, the Joint Way Forward*

The Cooperation Agreement on Partnership and Development ([CAPD](#)) between EU and Afghanistan, which was initialled in July 2015 in the presence of President Ghani, states in article 28 that the parties agree to “increased cooperation on migration with the possibility to conclude a legally binding readmission agreement.”

The [EU Action Plan on return](#) from 9 September 2015, as communicated by the Commission to the European Parliament and the European Council called for the EU to engage in high-level political dialogues with relevant countries, including Afghanistan, as requested by the European Council on 25-25 June 2015.

On 1 December 2015, EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission Mogherini and the Afghan Foreign Minister Rabbani agreed to launch a High-Level Dialogue on Migration.

In March 2016, a [leaked EU non-paper](#) on Afghanistan described "possible leverages" across EU policies to enhance returns. The paper estimated that more than 80,000 persons could potentially need to be returned in the near future (which is what The Guardian article, referred to previously, based its numbers on).

The [EU Council Conclusions](#) on external aspects of migration from 23 May 2016, noted, “the Council [...] is committed to enhanced and more effective cooperation on return with key countries of origin and transit, in particular with Pakistan, Afghanistan and Bangladesh.”

The Council conclusions on Afghanistan from July 2016, urged “the Afghan Government to cooperate on the return and readmission of its nationals, in full respect of their human rights and in accordance with international obligations and commitments.” The document further stated: “This is the central and essential element of the Joint Way Forward, which addresses the growing pressure of irregular migration in parallel to Member States' initiatives and agreements aimed at achieving further cooperation on readmission. The EU would support this through reintegration assistance, to help create a conducive environment that can offer Afghan citizens opportunities within the country.”

For a timeline on the general EU response to migratory pressures see [here](#). For the EU's



statement on the EU-Afghan dialogue on migration on 4 October 2016, see [here](#).

(3) The presumption is that anyone who enters another country without permission (visa, passport, work permit etc) can be deported. The exception is if a person lodges a claim for asylum and is judged to be a refugee or given a status on humanitarian grounds. There is no entitlement to enter other states or to stay there.

(4) In the past 15 years, Afghanistan has signed memoranda of understandings on returns and readmissions with several EU/ Schengen members, including France (2002), UK (2002), Netherlands (2002), Denmark (2004), Switzerland (2005), Norway (2005), and Sweden (2006, until 2009).

In addition to bilateral readmission agreements, the EU passed the [Afghanistan return plan](#) in November 2002, following the fall of the Taleban regime and the establishment of the interim administration, led by President Karzai, which stated:

The return of Afghans shall first and foremost take place at their freely expressed wish based on their knowledge of the situation in intended places of return and any options for continued stay in the European Union. Afghans, who do not have protection needs or compelling humanitarian needs justifying prolongation of their stay in Member States, but who nevertheless, after the passage of reasonable time, continue to refuse to avail themselves of a voluntary return programme, may be subjected to forced return by those Member States wishing to do so.

The plan was based on a partnership with the relevant Afghan authorities and explicitly said: “The Commission and the EU Presidency shall establish the relevant information exchange with these authorities, and the Council Special Representative in Afghanistan shall in cooperation with the head of the Commission representation in Afghanistan ensure acceptance of the plan by the Afghan authorities.”

President Karzai endorsed this plan.

In 2005, in a [joint declaration](#) “Committing to a new EU-Afghan Partnership” signed in Strasbourg on 16 November 2005, both parties agreed to “share a common commitment to facilitating the process of voluntary return of refugees...[this] includes cooperation on programmes supporting the repatriation of Afghan nationals from the European Union.” President Karzai signed this document.

(5) The Guardian article refers to the leaked restricted EU [memo](#) from March 2016 that discusses “possible leverages” to enhance returns. The document states that despite a positive trend in asylum application acceptance rates, “more than 80,000 persons could potentially need to be returned in the near future.” The Telegraph had a longer [article](#) based on this memo when it was first leaked in March 2016. Earlier AAN migration reporting referred to the leaked document [here](#).