

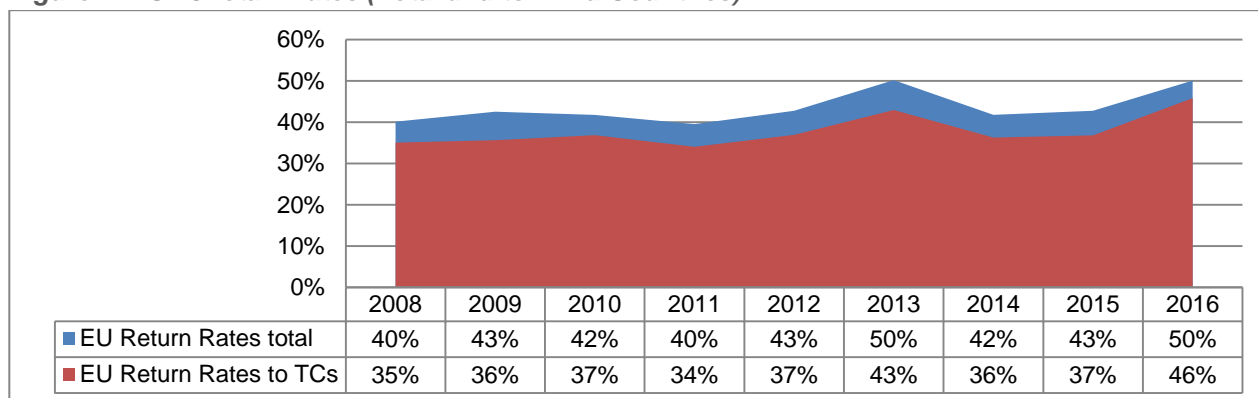
EU's Return Policy: Mission Accomplished in 2016?

Reading between the lines of the latest EUROSTAT return statistics

Sergo Mananashvili¹

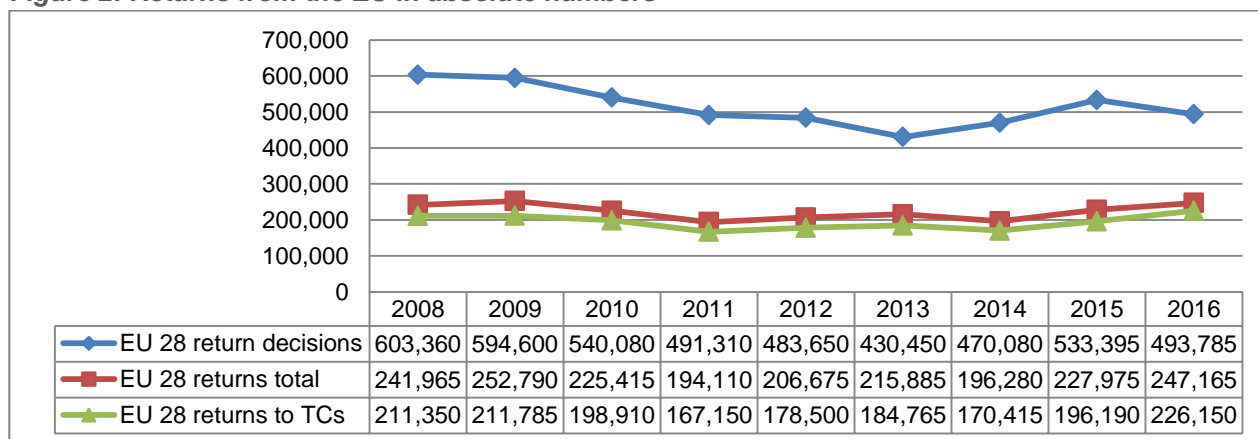
Eurostat's latest² [return statistics](#) for 2016 have good news for EU policy makers: **the rate of so-called effective returns**,³ i.e. the ratio between "third-country nationals ordered to leave"⁴ and "third-country nationals returned following an order to leave",⁵ **reached 50% in 2016.**

Figure 1: EU 28 return rates (Total and to Third Countries)



Source: Eurostat.

Figure 2: Returns from the EU in absolute numbers



Source: Eurostat.

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² 27.4.2017.

³ See more detailed analysis of return rates from 2015 and the shortcomings of this notion in: Pluim & Hofmann, Rethinking Post-Arrival Assistance: The Road Towards a European Return System, ICMPD Working Paper, June 2016.

⁴ I.e. all return decisions issued in a given year.

⁵ Those who were either removed or departed voluntarily after they had been issued with a return decision. This category includes two sub-categories: 1) Total number of persons returned (i.e. both to other MS and third countries, including countries of origin); and 2) Persons returned to a third-country. Theoretically, the second category does not necessary covers returns to countries of origin but as there are few cases – except Turkey – where third countries accept readmission of non-nationals, it can be assumed the majority of returns are taking place to countries of origin.

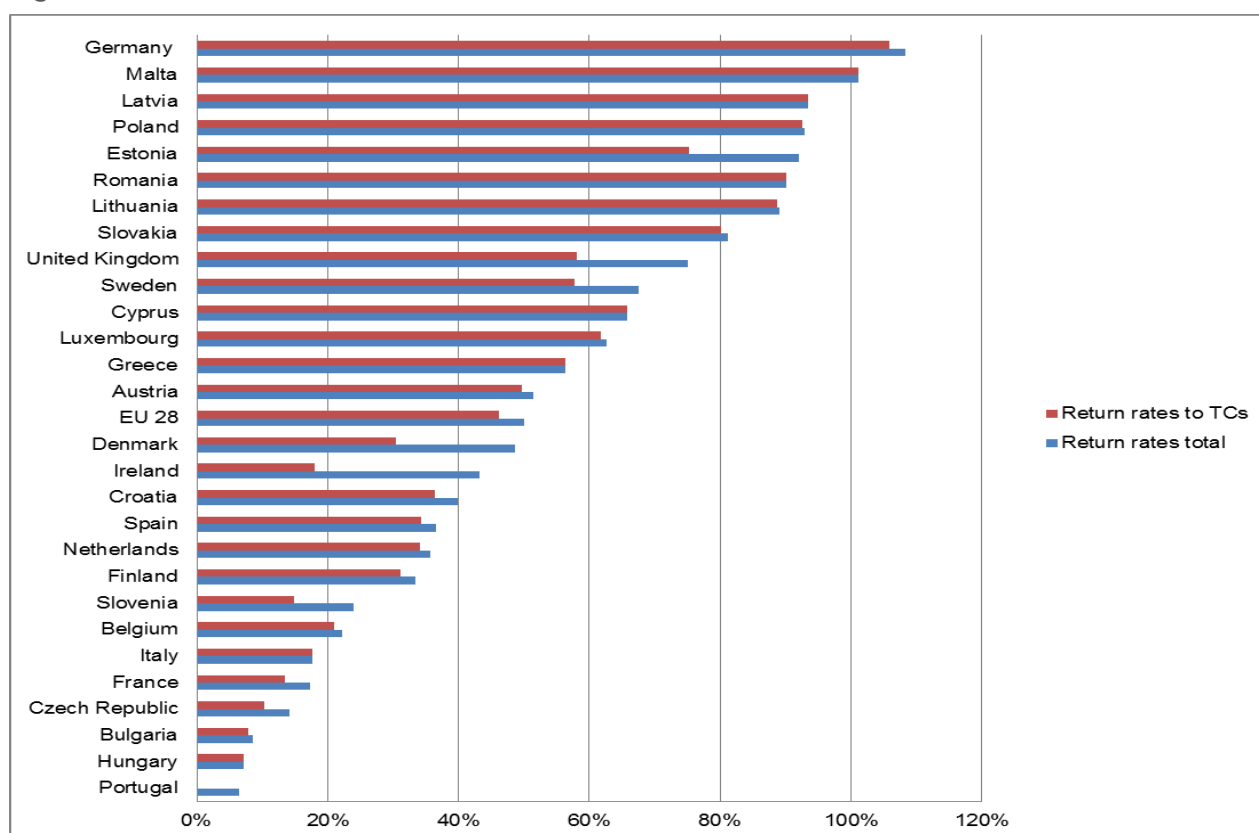
Why are these statistics music to the ears of relevant stakeholders? Because the return rates have been considered as a main indicator for measuring the effectiveness of the EU's return policy and as recently as two months ago, when the European Commission adopted a [Renewed Action Plan on Return](#), it was criticising -- based on the relevant return statistics from 2015 and 2014 -- that

“return rates at European Union level have not improved. While the total return rate from 2014 to 2015 increased from 41.8% to 42.5%, the rate of effective returns to third countries dropped from 36.6% to 36.4%.”⁶

Even if we apply the same methodology and subtract the number of intra-EU returns from the total number of returns, **the rate of so-called effective returns to third countries remains at 46%**. This means that in both categories – total returns and returns to third countries - **the return rates increased by approximately 10% over the span of just one year**. As illustrated in Figure 1, this translates into a 9-year high in return rates to third countries.

But does this tell the whole story? Not really. First of all, if we look at the return rates of individual EU Member States, we notice huge differences. There are return “champions” like Germany, Malta, Latvia, Poland, Estonia and Romania with return rates over 90%; Greece, Austria and Denmark being close to the EU average; and Italy and France with the return rates of under 20% despite being heavy-weights in terms of absolute numbers of adopted return decisions.

Figure 3: MS-level return rates 2016



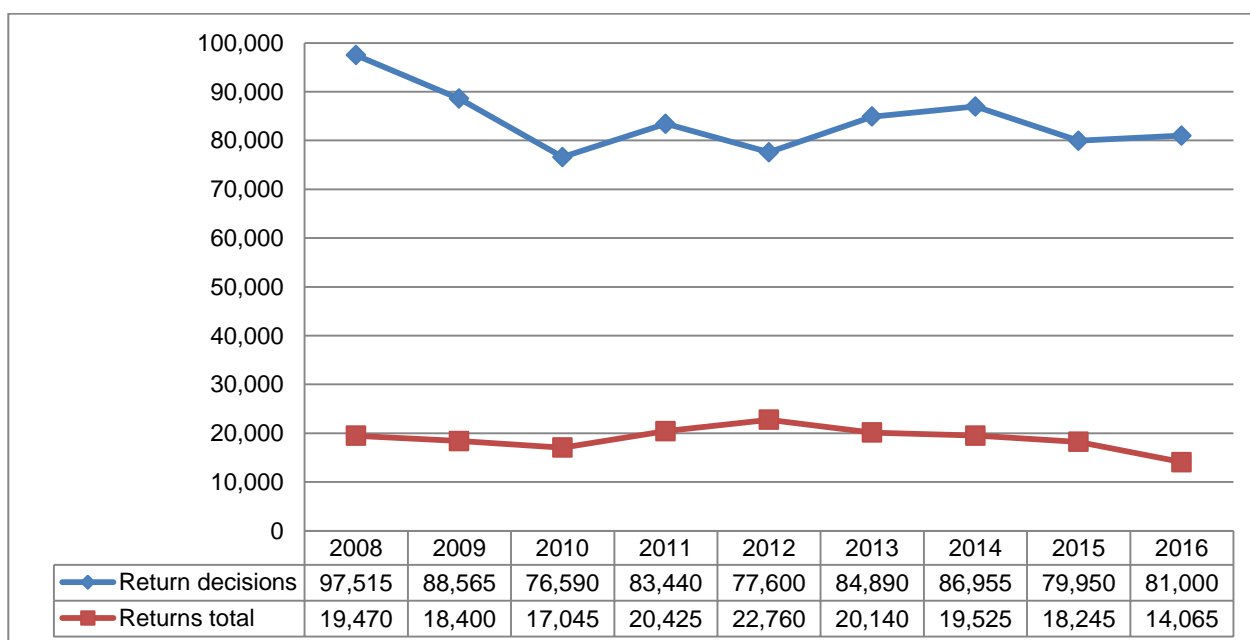
Source: Eurostat.

⁶ See p. 2 of the Renewed Return Action Plan.

French brakes

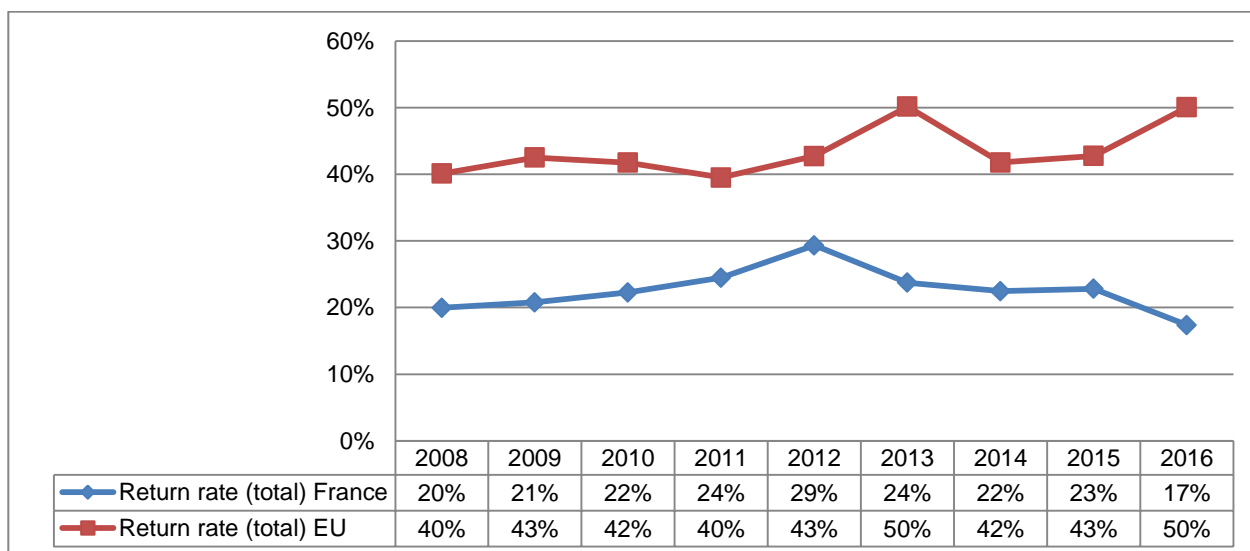
Looking at the numbers, one could argue that it is France which is pushing down the EU average. While in 2016 the French authorities adopted the most return decisions compared to their counterparts in other EU MS – a total of 81,000 or 16% of all return decision in the EU – only 14,065 third-country nationals (TCN) have been recorded to have left France following an order to leave.

Figure 4: France - absolute numbers of return decisions and total returns following return decisions



Source: Eurostat.

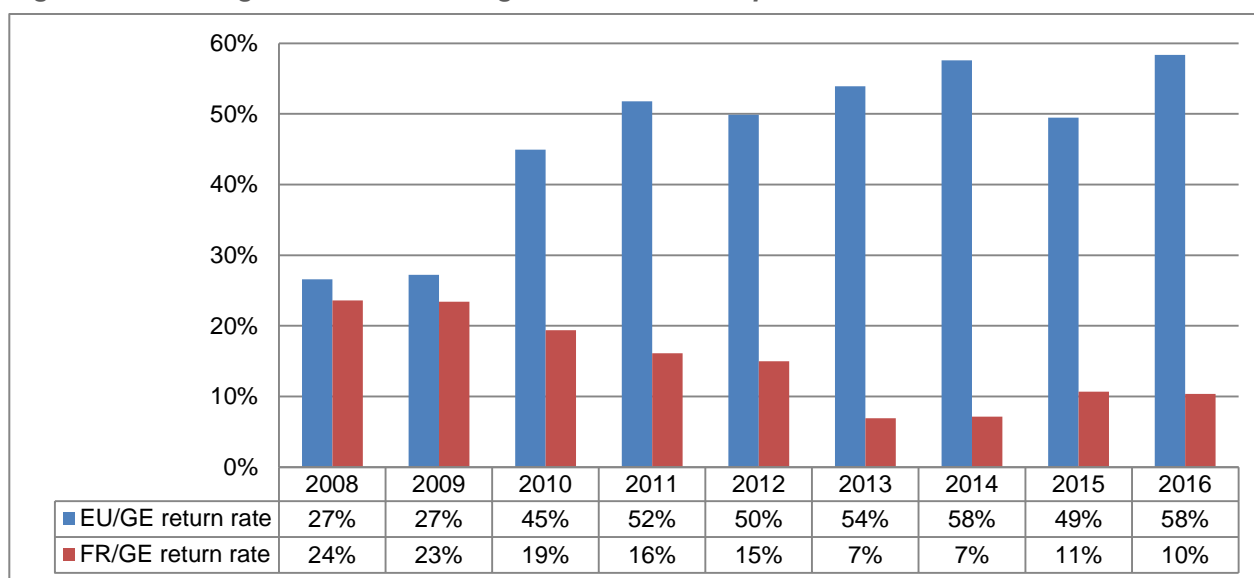
Figure 5: France – return rates compared to EU average



Source: Eurostat.

Without France, the EU average of return rates would stand at more than 56%. The challenges the French return system faces can also be illustrated on the example of returns of Georgian nationals. While Georgia is considered an exemplary country in terms of readmission cooperation with the 5-year EU average effective return rate of Georgians standing at 54%, in France the average return rate during the same period is at just 10%.

Figure 6: EU-Georgia and France-Georgia return rates compared



Source: Eurostat.

In addition to illustrating the weakness of the French return system, this example also shows that **return rates are not necessarily the right metric for measuring (good) cooperation between third countries and the EU (MS)**⁷.

To present a more complete picture about the return situation in France, it needs to be mentioned though that the Eurostat return statistics focus on adopted leave orders (i.e. return decisions) and returns following such orders, thus failing to take into account so-called “spontaneous” returns whereby individuals in an irregular situation leave the MS’s territory before a return decision has ever been issued. Such statistics are collected in France since 1 July 2014 and show that there were 3,187 “spontaneous” departures in 2014, 6,512 in 2015 and 5,591 in 2016.⁸ Although these numbers are not very high, their ratio vis-à-vis the total number of removals and voluntary departures is still considerable.

Is all that glitters gold?

Let us now examine the actual return situation in Germany - the Europameister in return – which has posted **return rates above 100% over the past two years**. Obviously, the fact that Germany displays return rates higher than 100% **demonstrates again how problematic it is to**

⁷ See, for instance, on p.5 of the Communication on New Partnership Framework where it is stated that “The short term objectives of the compacts are: ...To increase the rate of returns to countries of origin and transit” in connection with European Council’s June 2017 statement that “cooperation on readmission and return will be a key test of the partnership between the EU and these partners”.

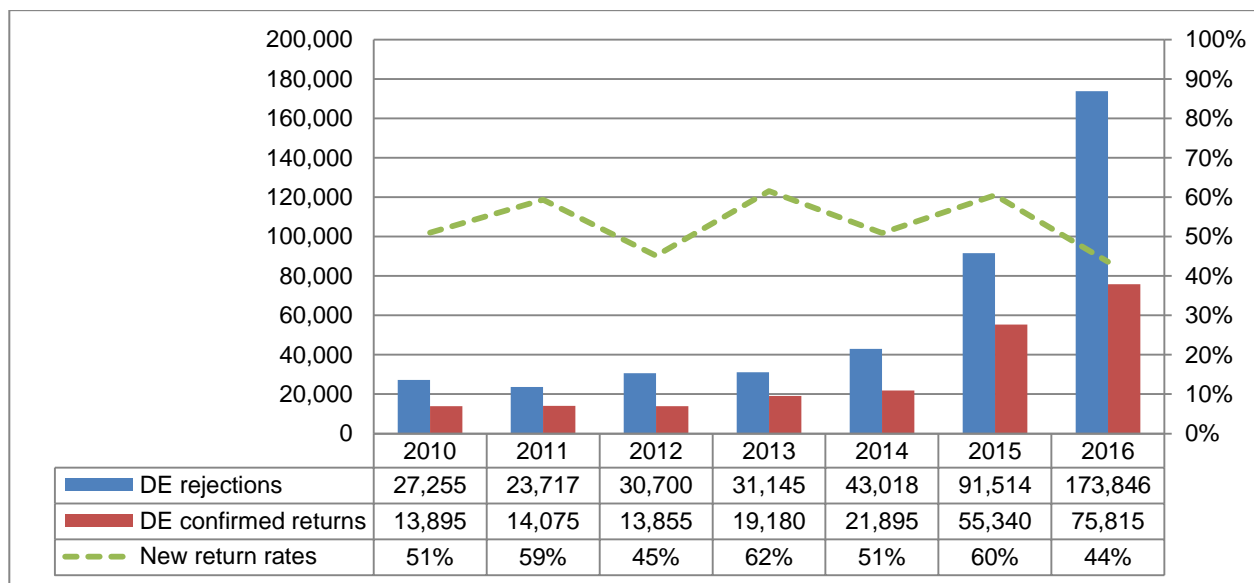
⁸ See the file « L'éloignement des étrangers en situation irrégulière » on :

<http://www.immigration.interieur.gouv.fr/fr/Info-ressources/Donnees-statistiques/Donnees-de-l-immigration-de-l-asile-et-de-l-acces-a-la-nationalite-francaise>

use standalone annual return rate as an indicator for measuring the effectiveness of the return policy. A return decision taken in a given year does not always lead to actual departure or removal in the same year. As a result, it is necessary to conduct a multi-annual analysis rather than take a single-year snapshot for making conclusions on return policies.

In order to assess the real return situation in Germany, it is important to look beyond return statistics and examine the number of rejected asylum applications. Due to the fact that according to the German (and not only German) legislation, the rejection decision on different forms of protection has to be accompanied with a return decision⁹, the rejection statistics are the best proxy for assessing the number of potential returnees, especially under the current circumstances. The national asylum statistics in Germany show that in 2016, out of 695,733 decisions on different forms of protection (including humanitarian), 173,846 decisions were rejection decisions while in 2015 the German Federal Office for Migration and Refugees rejected 91,514 applications.¹⁰ This is in stark contrast with the Eurostat statistics on return decisions, according to which, in 2016 Germany adopted 70,005 return decisions while the number of return decisions in 2015 stood at only 54,080. This means that **compared to 265,360 rejection decisions in 2015/2016, there have been only 124,085 return decisions in the same time-period**. If we go even further in our analysis and compare the total number of rejection decisions taken in 2015/2016 in Germany with the Eurostat data on “third-country nationals returned following an order to leave”, then **the 2-year average of return rates will no longer be more than 100% but instead 49.4%** (which is still more than the EU average for the same period).

Figure 7: German statistics relating to rejection of applications for different forms of protection compared to Eurostat data on all confirmed returns



Source: BAMF and Eurostat data.

The fact that not all rejection decisions are followed by return decisions (and this would be a violation of Art. 6 of the Return Directive) can further be illustrated on the example of Italy.

⁹ See p. 13 on: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-11a_germany_rejected_asylum_seekers_en.pdf

¹⁰ See p. 11 on: http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/aktuelle-zahlen-zu-asyl-dezember-2016.pdf?__blob=publicationFile

[According to the Italian Ministry of Interior](#), in 2016, Italy rejected 54,254 applications for different forms of protection while issuing only 32,365 return decisions with 41,503 rejections vs. 27,305 return decisions in 2015. In fact, if all rejection decisions were accompanied with a return decision in Italy, the rate of effective returns would be for 2016 only 10.5% while for 2015 it would even drop to 8.9%. **The political implications of this can hardly be denied and it remains to be seen whether the European Commission's previous threats¹¹ and recent efforts¹² in this respect will lead to the correction of the course in certain MS.**

Can money buy better return rates?

Recent return statistics offer a good opportunity to assess the results of the [implementation of the New Partnership Framework](#) (NPF). Even if the NPF was launched in [June 2016](#), the fact that the [EU Emergency Trust Fund for Africa](#) started operating much earlier, not to mention that the countries covered by the NPF are also part of the [Valletta Action Plan](#) initiated in November 2015, the return statistics from 2016 should indicate whether all the efforts have been translated into the increase in returns to priority countries. It should be recalled here that according to the [European Council](#) "cooperation on readmission and return will be a key test of the partnership between the EU and these partners". So, what do the recent Eurostat return statistics tell us about the progress of this cooperation? If out of 5 partnership countries in Africa, we focus on Nigeria, Mali and Senegal as the countries of origin (Niger is mostly the country of transit and as in the case of Ethiopia the annual numbers of EU-wide return decisions are relatively small), the following picture emerges:

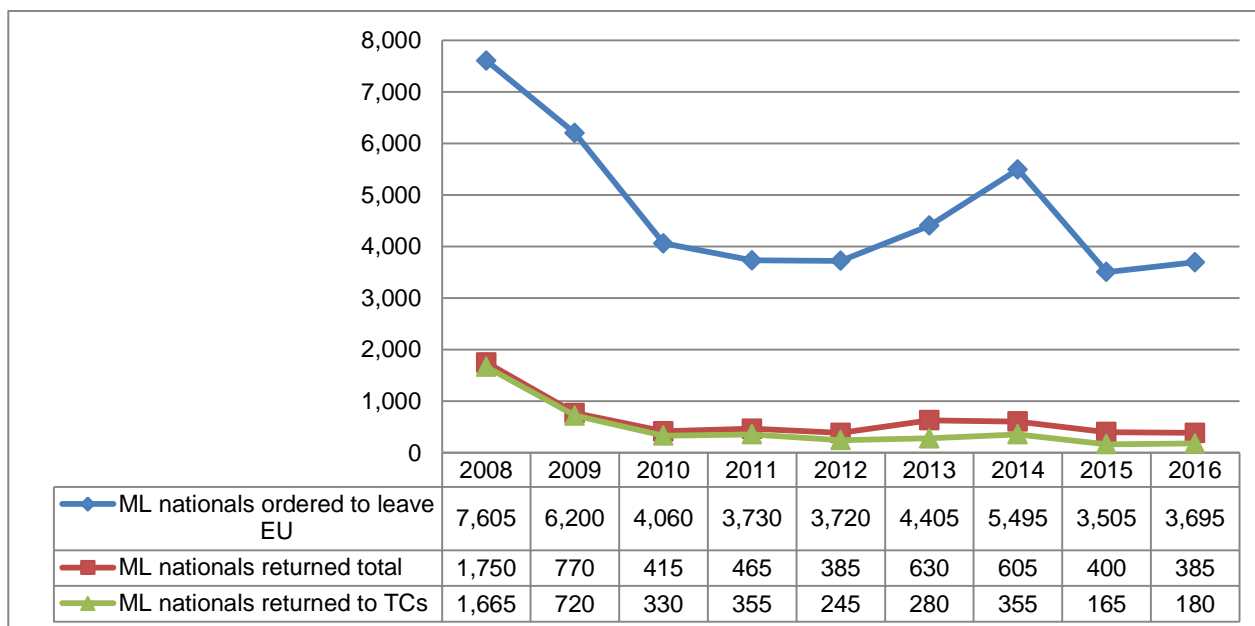
Mali

While the number of return decisions issued to Malian nationals increased from 3,505 in 2015 to 3,695 in 2016, the number of overall returns decreased from 400 to 385. However, these numbers include returns to other EU MS as well. If we look only at returns to third countries (most probably Mali in this case), then we can observe that in 2016 Mali accepted 15 persons more than in 2015, i.e. 180 in 2016 compared to 165 in 2015. But these numbers are so low that we cannot really speak of an increased acceptance of returns. It is interesting to note here that in 2016, out of all return decisions issued to Malians, 75% were adopted in France whereas only 95 out of 2,765 Malians have been recorded as having left France to a third country (presumably to Mali) which is 10 persons less than in 2015. But in this particular case France does not stand alone and the situation with the extremely low returns rates to Mali is similar in Germany, Spain and Italy. The only MS which seems to have improved return rates to Mali is the Netherlands (in 2016, with 75% of the return rate) but the numbers are too low (20 return decisions and 15 returns to third countries) to speak of a real success.

¹¹ See the EU Action Plan on Return, in which the Commission announced to initiate infringement procedures against Member States that do not fully comply with all provisions of the Return Directive, including with the obligation to issue and enforce return decisions.

¹² See the recent Commission Recommendation of 7.3.2017 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council, especially Recital 11 of the recommendation, in which the commission underlined that: "(11) In accordance with Article 6(1) of Directive 2008/115/EC, the Member States should systematically issue a return decision to third-country nationals who are staying illegally on their territory. The legislation and the practice in the Member States does not give full effect to this obligation in all circumstances, thereby undermining the effectiveness of the Union return system. **For instance, certain Member States do not issue return decisions following a negative decision on an asylum claim or a residence permit, or do not issue such decisions to illegally staying third-country nationals who do not hold a valid identity or travel document.**"

Figure 8: Return of ML nationals from EU

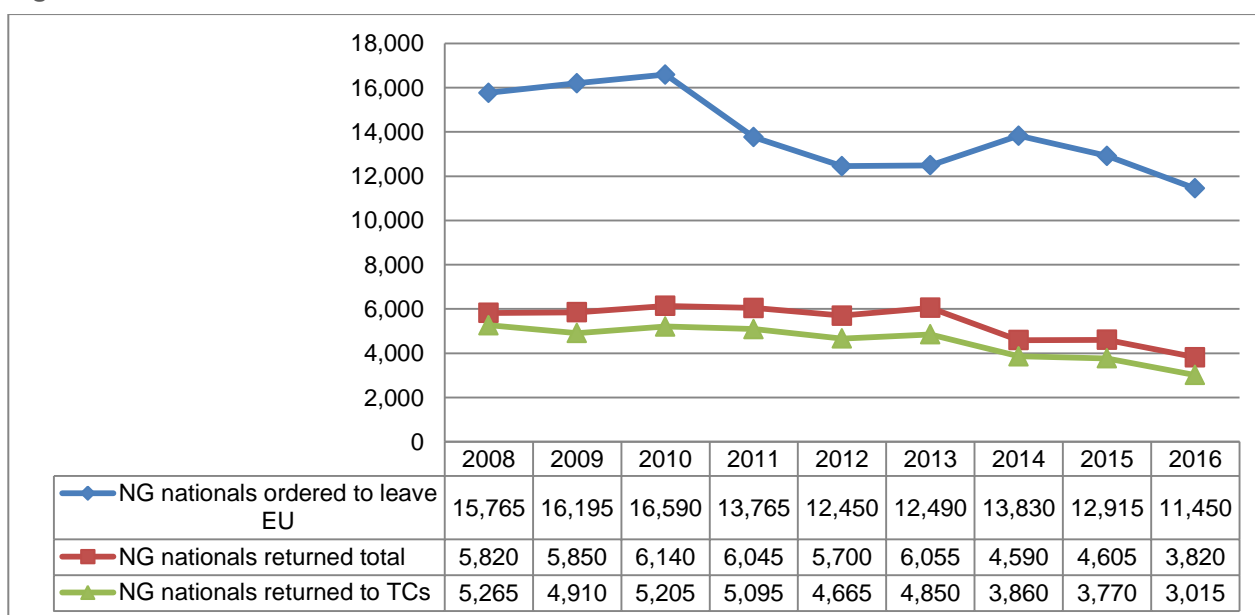


Source: Eurostat.

Nigeria

The situation is not better vis-à-vis Nigeria from where the arrivals to Europe keep on increasing. In 2016, there were 755 less returns of Nigerians outside the EU and this follows the decreasing trend of recent years.

Figure 9: Return of NG nationals from EU



Source: Eurostat.

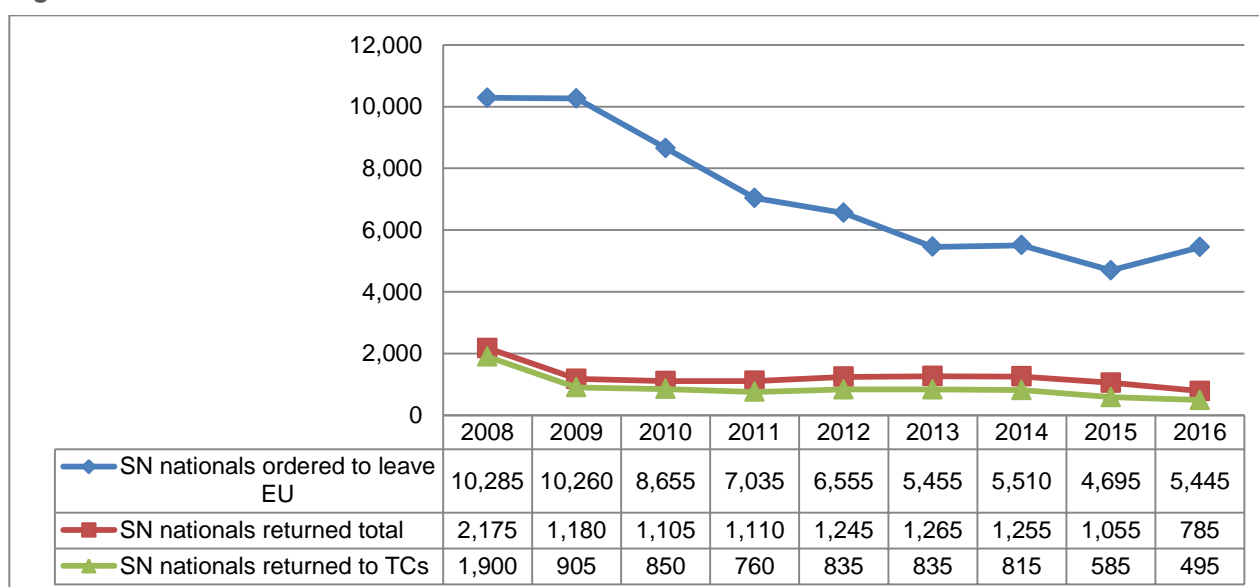
Only Belgium, Cyprus and Germany have been able to increase year-to-year numbers of returned Nigerians in 2016 while all other big players like France, Italy, the Netherlands and Spain managed to return fewer Nigerians than in 2015.

At the same time, it needs to be recalled that despite this quantitative decrease in cooperation there has been a qualitative improvement in such cooperation in 2016 as Nigeria agreed to start negotiations on concluding a readmission agreement with the EU (but again, [as the example of Pakistan shows](#), the existence of a readmission agreement does not necessarily guarantee better return cooperation).

Senegal

Judging only by the return statistics, the return cooperation with Senegal has not improved in 2016 either. While the number of return decisions adopted towards Senegalese nationals increased by 750 (i.e. 5,445 in 2016 vs. 4,695 in 2015), the statistics on Senegalese persons returned to a third country (again, presumably to Senegal) has decreased by 90 (495 in 2016 vs. 585 in 2015).

Figure 10: Return of SN nationals from EU



Source: Eurostat

Tacking stock

Based on the above analysis, we can conclude the following:

First, **looking at the overall return rate at the EU level is not enough to diagnose the state of the EU return policy. MS-level analysis gives a better picture on where the weak links of the system are.** Therefore, instead of talking about the entire EU and its problems in the field of return, it would be better to focus on those Member States that are facing difficulties.

Second, as shown by the example of Georgia, **excellent readmission cooperation on the side of third countries does not always translate into high return rates.** Therefore, **taking only the return rate as an indicator for measuring (good) cooperation of third countries with the EU (MS) is not always the right approach** and inward-looking analysis need to be conducted in addition in order to diagnose existing problems relating the effectiveness of the return system.

Third, as illustrated on the example of France, **Eurostat data provides an incomplete picture on the actual number of returns because it fails to take into account spontaneous returns of irregular migrants** without any outside intervention. Adding these returns to the equation can significantly alter the overall ratio of effective return.

Fourth, return rates of more than 100% (as in the case of Germany), resulting from the fact that return decisions taken in a given year do not always lead to actual departures or removals in the same year, make it **necessary to conduct a multi-annual analysis rather than using a single-year snapshot as a basis for making conclusions on the effectiveness of the return policies.**

Fifth, since the statistics on adopted return decisions might not always reflect the actual situation (for whatever the reason, including political), **in order to be able to correctly evaluate the state of the return system, the number of rejection decisions on applications for different forms of protection (instead of adopted return decisions) could be taken as a starting point of analysis.**

Finally, evidence shows that **money does not always buy the expected immediate results in the area of return.** As the return statistics on Senegal, Nigeria and Mali suggest, despite [last year's progress](#) in cooperation with those countries, the launched partnership did not immediately translate into an increase in returns, which was one of the main short-term goals of the compacts.¹³ However, as the implementation of many projects have started recently and others will come in the course of this year, 2017 return statistics should give a better picture about the impact of the New Partnership Framework on returns.

¹³ See in Fn. 7 above.