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TO THE COUNCIL AND THE EUROPEAN PARLIAMENT**

Report on the priorities for the successful development of a common readmission policy

Table of Contents

1.	INTRODUCTION	3
2.	PRIORITIES OF A COMMON READMISSION POLICY	3
2.1	CURRENTLY IDENTIFIED THIRD COUNTRIES	3
2.2	POSSIBLE NEW PRIORITIES	4
3.	DIFFICULTIES ENCOUNTERED IN THE READMISSION NEGOTIATIONS	6
3.1	THE COMMISSION APPROACH	6
3.2	NOT DECLASSIFIED	9
4.	NOT DECLASSIFIED	9
5.	CONCLUSIONS AND RECOMMENDATIONS	10
	ANNEX	11

1. INTRODUCTION

The European Council of 16/17 October 2003, in paragraph 31 of its conclusions, invited “*the Council and the Commission to produce early next year a report identifying in particular the priorities of a common readmission policy and the measures to ensure the successful development of such a policy.*”

This report aims at describing the difficulties the Commission is confronted with in ongoing negotiations and the concrete measures it considers necessary in order to ensure the successful development of a common readmission policy. More fundamental policy issues, such as return and human rights, will not be addressed (again) as they have already been sufficiently dealt with in some of its earlier communications, most particularly in the October 2002 Communication on a common return policy.

For a more detailed description of the policy background and the substance and objectives of Community readmission agreements, see sections I and II of the annex.

2. PRIORITIES OF A COMMON READMISSION POLICY

2.1 Currently identified third countries

At present the Commission has been authorised to negotiate Community readmission agreements with eleven third-countries or territories. The Council adopted decisions on negotiating directives for *Morocco, Sri Lanka, Russia* and *Pakistan* in September 2000. Additional decisions were taken for *Hong Kong* and *Macao* in May 2001, *Ukraine* in June 2002, and *Albania, Algeria, China* and *Turkey* in November 2002.

These countries show a significant variety in terms of geographical proximity to the EU, the kind of migration problems involved, level of development, and intensity of relations with the EU. It therefore comes as no surprise that the negotiation of readmission agreements with these countries have not all met with the same degree of progress. For a detailed overview on the state of all Community readmission negotiations, see section III of the annex.

As at July 2004, the Commission has been able to successfully complete negotiations with *Hong Kong, Macao, Sri Lanka* and *Albania*. The agreement with Hong Kong entered into force on 1 March 2004 as the first ever Community readmission agreement. The next agreement to follow was the one with Macao, which entered into force on 1 June 2004. The agreements with Sri Lanka and Albania require further procedural steps before their formal conclusion can take place; they will probably enter into force in early 2005.

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I. POLICY CONTEXT

The European Council's request for this report has to be seen in the light of the fact that it is only since the entry into force of the Amsterdam Treaty on 1 May 1999 that the Community has powers relating to the return of persons illegally residing in the European Union. Article 63 (3) (b) TEC now enables the Council to adopt measures within the area of "*illegal immigration and illegal residence, including repatriation of illegal residents*". The Community's powers under this article include the external competence to conclude readmission agreements with relevant third-countries in order to accelerate and facilitate the return of such persons.

In May 1999, when holding a first debate on the future EU policy in this field, the Council concluded that readmission agreements would constitute a valuable instrument of an active return policy. In suitable cases, the Commission would therefore be authorized to conduct negotiations with relevant third countries on such agreements. The Tampere European Council broadly backed these conclusions in October 1999, when EU Heads of State or Government explicitly confirmed that the Amsterdam Treaty conferred powers on the Community in the field of readmission. In addition, the Tampere European Council invited the Council to start concluding readmission agreements with relevant third-countries or groups of third-countries.

Since September 2000, the Commission has been authorised to negotiate Community readmission agreements with 11 third-countries or territories. To date 4 of these negotiations have been completed. Over the last two years, the issue of readmission has therefore figured on the agenda of numerous Council and European Council meetings¹, in which growing concerns have been expressed about the slow progress made in this policy field.

The Commission has repeatedly stated² its readiness to make further efforts to push forward the current readmission negotiations in order to complete them as soon as possible and in line with the negotiating directives issued to it.

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Unlike own nationals, whose readmission is a non-negotiable obligation under International law incumbent on any State, there is no such legal obligation for third-country nationals and stateless

¹ See, in particular, the conclusions of the European Councils in Laeken (December 2001), Seville (June 2002) and Thessaloniki (June 2003) as well as the EU action plan to combat illegal immigration (OJ C 142 of 14 June 2002, p. 23) and the EU return action program (Council doc. 14673/02), adopted by the JHA Council in February and November 2002 respectively. The state of the Community's readmission negotiations with third countries has also been the subject of detailed discussions at several informal and formal meetings of the JHA Council under the Italian Presidency in the second half of 2003.

² See, in particular, the Green Paper of 10 April 2002 (COM (2002) 175 final) and the Communication of 14 October 2002 (COM (2002) 564 final) on a Community Return Policy, the Communication of 3 December 2002 on integrating migration issues in the EU's relations with third countries (COM (2002) 703 final) and the Communication of 3 June 2003 on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents (COM (2003) 323 final).

persons who have transited through, or resided in, the third-country concerned before arriving in the EU.

II. SUBSTANCE AND OBJECTIVES OF COMMUNITY READMISSION AGREEMENTS

Community readmission agreements are agreements which set out reciprocal obligations on the Community and its partner third-country, as well as detailed administrative and operational procedures to facilitate the return and transit of persons. They do not define the preconditions for the legality of a person's presence in the EU, they only come into play once the competent Member State authority – or a Member State court, as the case might be – finally establishes that the person concerned does not have under any circumstances, including humanitarian ones, a right to stay. Although the Commission is responsible for negotiating Community readmission agreements, it is not involved in their day-to-day operation. The actual physical return of a person rests entirely with the competent authorities of Member States. They have to comply with all relevant obligations under International law, including the principle of non-refoulement, and they can be held liable for their expulsion decisions before their national courts.

In policy terms, Community readmission agreements are a necessary tool for an efficient management of migration flows into the European Union. As they facilitate the swift return of illegal migrants, they are a major element in fighting illegal immigration and contribute to stable immigration and a reduction in entries in the EU Member States. Concluding such agreements is also seen as a means of giving to the public opinion, sensitive to the subject of immigration, a tangible proof of the willingness to take concrete measures for a greater control of migratory flows. This is a legitimate concern even if it is obvious that readmission agreements alone will never be sufficient to solve the problem of illegal immigration. Moreover they also help to undermine the activities of internationally operating smuggling networks, which are behind a significant part of the illegal immigration in Europe.

III. STATE OF COMMUNITY READMISSION NEGOTIATIONS

1. OVERVIEW

Based on the Community's new powers under Article 63 (3) (b) TEC, the Council so far authorised the Commission to negotiate Community readmission agreements with eleven third countries or entities: Morocco, Sri Lanka, Russia, Pakistan (September 2000), Hong Kong, Macao (May 2001), Ukraine (June 2002) and Albania, Algeria, China, Turkey (November 2002).

Negotiations have been completed with Hong Kong (November 2001), Macao (October 2002), Sri Lanka (May 2002) and Albania (November 2003). The agreement with Hong Kong was formally signed in November 2002 and concluded in December 2003; it entered into force on 1 March 2004 as the first ever Community readmission agreement. The agreement with Macao was formally signed in October 2003 and concluded in April 2004; it entered into force on 1 June 2004. The signing of the agreement with Sri Lanka took place in Colombo on 4 June 2004 (at ambassador's level). In mid-February 2004 the Commission officially transmitted to the Council the final text of the readmission agreement with Albania together with two draft Council decisions on the signing

and the conclusion of this agreement, which are currently being discussed in the Council. Due to EU enlargement and the considerable time needed for additional translation requirements, the signing of this agreement will not take place before autumn this year.

2. DETAILS

2.1. Agreements in force

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In conclusion, there are a series of external and internal factors of a political and technical nature which make the negotiating position of the Commission a challenging one and which explain (to a large part) the delay in the conclusion of some of the envisaged Community readmission agreements. At the same time, however, it is beyond doubt that, once successfully concluded, Community readmission agreements do provide a clear added-value due to their more comprehensive scope of application.

V. MONITORING AND EVALUATION MECHANISM

The Seville and Thessaloniki European Council reaffirmed that EU dialogue and actions with third countries in the field of migration should be part of an overall integrated, comprehensive and balanced approach, which should be differentiated, taking into account the existing situation in the different regions and in each individual partner country. In this respect, the European Council recognised the importance of developing a monitoring and evaluation mechanism for the cooperation of third-countries in the field of migration.

In its conclusions of 8 December 2003, the Council defined the objectives and elements of the monitoring and evaluation mechanism in more detail. The aim of the mechanism is to monitor the migratory situation in the third countries concerned and also their administrative and institutional capacity to manage asylum and migration, including the actions undertaken in order to tackle illegal migration. The mechanism is intended to provide the Council with all the relevant information for the systematic assessment and evaluation of the cooperation of the countries in question and the reasons that might hamper effective cooperation. The results of the monitoring and assessment activity are to be presented annually by the Commission. The Commission plans to present its first annual report before the end of 2004. This “pilot report” will cover six countries (Albania, China, Serbia and Montenegro, Morocco, Tunisia and Libya), five of which have already been identified by the Council as target countries for Community readmission agreements.

The final aim of the monitoring and evaluation mechanism is mentioned in conclusions 34 to 36 of the Seville European Council: in case, after a systematic compilation and assessment of all facts, and after full use has been made of existing Community mechanisms without success, the Council may unanimously find that a third country has shown an unjustified lack of cooperation in joint management of migration flows. In that event, the Council may, in accordance with the rules laid down in the treaties, adopt measures or positions under the Common Foreign and Security Policy and other EU policies, while honouring the Union’s contractual commitments and not jeopardising development cooperation objectives.