



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 30 August 2012

**11505/04
EXT 2**

MIGR 63

PARTIAL DECLASSIFICATION

of document: 11505/04 MIGR 63 RESTREINT UE

dated 26 July 2004

new status : public

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

Delegations will find attached Commission document SEC(2004) 946 final/2.

Encl.: SEC(2004) 946 final/2

RESTREINT UE



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.07.2004
SEC(2004)946 final /2

DECLASSIFIED PART

**COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT**

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

DECLASSIFIED PART on 4.05.2012

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DECLASSIFIED PART on 4.05.2012

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.

Regarding these four readmission agreements, the Commission will now focus on ensuring their rapid conclusion and implementation. With regard to the latter, particular attention will be paid to the agreements with Hong Kong and Macao which, due to their most advanced status, serve as "pilot cases". The first meetings of the Joint readmission committees, set up under the respective agreements, will take place in Brussels in September 2004. At these meetings, the two Committees will adopt their rules of procedure, which have been prepared by the Commission following consultation of Member States; they will serve as a model ("blue print") for the joint committees of all subsequent readmission agreements.

As regards the remaining seven countries, less progress has been achieved. Negotiations with *Morocco, Ukraine, Russia and Pakistan* are progressing at a fair pace although some technical work still remains to be done. These four countries are considered also as short-term priorities as their willingness to conclude a readmission agreement with the Community depends to a large extent on our willingness to make concessions in the field of legal migration, visa facilitation and financial assistance. Formal negotiations on a Community readmission agreement with *China, Algeria and Turkey* are yet to commence and, therefore, can only be foreseen in the medium-term.

2.2 Possible new priorities

Although the Commission considers that, in the short-term, its primary focus should be on completing negotiations with the third-countries for which it has already received negotiating directives, it is also of the view that more appropriate attention should be given to increasing the relevance and coherence of the process for identifying possible further negotiation priorities.

The selection of most of the eleven already targeted third-countries did not follow a systematic coherent approach but was rather the result of political ad hoc considerations and arrangements between Member States in the Council. Nevertheless, at its meeting in April 2002, the Council identified the six concrete selection criteria: (1) the migration pressure exerted by a third-country; (2) its geographical position in relation to the EU; (3) the fact that the country must not be a candidate country with which the EU is already negotiating about accession; (4) considerations of geographical balance and regional coherence; (5) the existence of an EU association or co-operation agreement containing a readmission clause, and (6) the added value of a Community agreement in comparison to individual Member State agreements.¹

Although these Council conclusions of April 2002 certainly represent an important step in the right direction, the Commission has doubts as to whether it is possible to select readmission target countries in a sufficiently coherent way on the basis of a list of six criteria, for the application of which there does not seem to be any priority order. This has led to the fact that, up until now, they have never been really used. The Commission is therefore of the view that two of the criteria established by the Council should enjoy priority: (1) the geographical position of a third-country in relation to the EU, including considerations of regional coherence, combined with (2) migration pressure exerted by this country. Other factors like the existence of a readmission clause in an EU association or cooperation agreement would be beneficial but not decisive and thus rather accessory.

Indeed, the Commission considers that, when exploring the priorities for new Community readmission agreements with further third-countries, one should primarily focus on the EU's concrete geographical position and interests. In this context particular attention should be paid to the Western Balkans region and the new Neighbourhood policy. In addition, considerations of regional coherence and the need for enhanced efforts vis-à-vis the major countries of origin of illegal immigrants into the EU should also be taken into account.

¹ Council doc. 7990/02 MIGR 32 COR1 of 16 April 2002.

- Neighbouring countries

For an enlarged Union of 25 Member States, the efficient management of migration flows at its external borders is of utmost importance. Against this background and based on its new neighbourhood policy of March 2003², the Commission is of the view that concluding Community readmission agreements with all neighbouring countries would be in the common interest of all Member States. Therefore the Community should systematically conclude readmission agreements with all of its neighbouring States. Such arrangements would also contribute to a proper implementation by Member States of the safe third-country concept as found in Article 35A of the general approach of the Council on the Asylum Procedures Directive³, once the Council will have decided, upon a proposal of the Commission, to apply this concept to one of the neighbouring countries of the EU.

With regard to the *Western Balkans*, this would mean that the Community should, next to Albania, also start negotiations on readmission agreements with Croatia, Former Yugoslav Republic of Macedonia, Serbia and Montenegro and Bosnia and Herzegovina. All countries in this region have already committed themselves, in political declarations or in legally binding agreements, to an active readmission policy.

With regard to *Eastern Europe*, this would mean that the Community should also seek to conclude readmission agreements with Belarus and Moldova, complementing ongoing negotiations with Russia and Ukraine.

- Major countries of origin of illegal immigration

Finally, the need for Community readmission agreements should also be assessed for third-countries which are at the source of major flows of illegal immigrants into the EU. This criteria, however, presupposes that the Community first defines what it understands by a major source country. It is clear that a detailed analysis of the migratory situation would have to be conducted before the decision could be taken that a third country is a concern for the EU from the point of view of illegal immigration and should become a target for a Community readmission agreement.

² COM (2003) 104 final of 11 March 2003.

³ Council Doc. 8771/04 ASILE 33 of 30 April 2004.

3. DIFFICULTIES ENCOUNTERED IN THE READMISSION NEGOTIATIONS

There are, essentially, three categories of difficulties the Commission encountered in the readmission negotiations, which are related to (1) the third countries themselves and the negative economic and political consequences readmission agreements can have for them, (2) the technical substance and format of Community readmission agreements, especially the standard inclusion of provisions concerning the readmission of third country nationals, and (3) the need for the full and unreserved diplomatic and political support from all Member States. For a detailed description of these difficulties, see section IV of the annex.

In this connection it is worth noting that, in future, the new *monitoring and evaluation mechanism for the cooperation of third-countries in the field of migration*, which is currently being developed in line with the Council conclusions of 8 December 2003, will certainly help to improve the EU's ability to find appropriate reactions to third-countries, which have been unanimously considered by the Council to show an unjustified lack of cooperation in the joint management of migration flows. For details about the objectives and elements of this new mechanism, see section V of the annex.

3.1 The Commission approach

The main lesson learned from negotiations so far conducted is that negotiating Community readmission agreements often requires compensatory offers ("incentives") to enable their conclusion, in particular if the agreement is also supposed to cover third country nationals and stateless persons. Unlike in the case of own nationals, there is no obligation under (customary) international law regarding the readmission of third-country nationals, which could be invoked by the Commission in support of its negotiating position. Consequently, as all of the existing negotiating directives foresee the inclusion of third-country nationals, the Commission is now examining on a case by case basis the need to increase the means at its disposal which – in the context of a "package approach", tailored to each third country concerned – could provide a better negotiating position.

In its negotiations, the Commission has received a number of indications from its negotiating partners with regard to areas where a greater generosity on the part of the EU and its Member States is expected. These include requests concerning visa facilitation, enhanced legal migration opportunities, financial and technical support and trade concessions.

Visa facilitation

A recurring request on part of third countries is the facilitation of visa issuance or the lifting of visa requirements for their nationals. The Commission has repeatedly stressed that this would be a possibility in exceptional cases only, and that there is no direct link between visa regimes and the conclusion of a Community readmission agreement. The numbers of illegal migrants which pass into EU territory from most of the third countries with which agreements are being, or will be negotiated will often prevent the consideration of lifting of visa requirements, or even of facilitation of visa issuance. This does not exclude the possibility that such an action could be appropriate in exceptional cases. If necessary, a link between visas and readmission may even be established formally. Examples are the readmission agreements with Hong Kong and Macao. In these particular cases, however, a decision to lift visa requirements for permanent residents of these entities preceded the conclusion of a readmission agreement.

~~_____~~ The Community's approach towards Russia could be similar given that, in April this year, the Commission has requested from the Council directives for negotiating an agreement on visa facilitation for Russian nationals in parallel with ongoing readmission negotiations. Progress on visa facilitation should enable the Community to obtain progress on readmission as both negotiations will proceed in parallel in the future. Moldova and Belarus have already indicated that they would be ready to negotiate a readmission agreement in connection with the facilitation of the visa regime with the EU.

In this context it is important to note that there are several "facilitation options" short of the general lifting of the visa requirements for all nationals of the third country concerned. These include multiple entry visas for bona-fide applicants, increasing the number of consular services facilitating the issuance of visas, the lifting or expediting of consultation procedures or a reduction in visa fees.

Enhanced legal migration opportunities

Other requests which are often made in response to a Community offer to enter into a readmission agreement are those with regard to the opening or widening of ways to migrate legally to the EU for nationals of the particular third country. Such is of high interest to the countries involved, and in some cases not in the least for satisfying concerns and dispelling criticism on the part of national politics and the general public regarding the conclusion of agreements which arrange for the return of nationals abroad. In the view of the Commission, this is an area where substantial progress can be made in attaining cooperation in the field of readmission. In its recent Communication on the link between legal and illegal migration⁴, the Commission has listed a series of means which could be explored in this respect.

The least taxing in terms of commitment would be to offer a third country to enter into a dialogue on legal migration in order to exchange relevant information and to explore new possibilities in the field of legal migration to the EU.

The introduction of legal migration ceilings (or "offers") – although a sensitive issue for some Member States – should not be disregarded as a possible avenue for exploration. Member States ~~_____~~ have very positive experiences in terms of achieving agreement on readmission by offering a certain amount of yearly work visas and permits to source countries, often combined with a training and recruitment programme in the third country itself. However in this context it is important to stress that a significant degree of cooperation would be required from the Member States as to specific offers which could be tabled by the Commission during negotiations of a readmission agreement.

Financial and technical support

On March 2004, the Parliament and Council adopted Regulation N° 491/2004 establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS)⁵. This programme provides for the possibility to assist third countries in their efforts to better manage migration flows. It targets in particular (but not exclusively) third countries with which a Community readmission agreement has been

⁴ COM (2004) 412 final of 4 June 2004.

⁵ OJ L 80 of 18 March 2004, p. 1.

initialled, signed or concluded and can finance operations in various migration related areas. It is no doubt that financing on the basis of this instrument will be of interest in the promotion of the negotiation of readmission agreements.

However, the Commission does not consider it realistic to envisage an increased linkage with spending under the geographical instruments in the fields of external relations and development (TACIS, MEDA, CARDS, and ACP). These instruments already contribute substantially to the financing of many cooperation programmes in the area of migration (border management, fight against illegal immigration, migration management) as well as they serve a comprehensive set of objectives, including poverty eradication, conflict prevention, macro-economic reform, good governance and other aspects that – apart from being extremely important in their own right – also address the root causes of migration.

Trade concessions

Obligations arising from the EU's World Trade Organisation commitments rule out the use of unilateral trade concessions as an appropriate tool in seeking the conclusion of readmission agreements. Nevertheless, improving job opportunities in the countries of origin is an effective way to address the number one push factor of illegal migration: unemployment and lack of economic prospects. Further integration of countries of origin into the world trading system through the successful completion of the Doha Development Agenda – and the improved market access for exports from the partner country to the EU and other trading partners which will arise as a result of this – as well as fostering a climate conducive to more foreign investment will help in this respect.

Linkage with cooperation and association agreement

The quality and intensity of the EU's overall relations with a third-country can play an important role in facilitating the conclusion of a readmission agreement. The Community's bargaining position vis-à-vis a third country is usually strongest at the time when negotiations on the conclusion of an association, cooperation or similar agreement are being launched or ongoing. To wait until the agreement has been finalised would effectively mean that most of the "leverage" the agreement represents is lost.

For this reason, building upon the 1996 and 1999 readmission standard clauses, the Seville European Council of 21/22 June 2002 decided to include clauses concerning the joint management of migration flows in all future association, cooperation or equivalent agreements which are concluded between the EC or EU and third countries. Besides addressing cooperation on a wide variety of migration issues, these clauses establish the principle of readmission and contain the commitment to enter into negotiations on a readmission agreement if so requested by one of the parties to the agreement. However, by leaving the actual operational arrangements and procedural modalities to implementing agreements to be concluded at a later stage, such readmission "enabling clauses" make only limited use of the high bargaining potential of EU association or cooperation agreements and are indeed a missed opportunity concerning readmission. [REDACTED]

[...]

3.2 The risks related to an incentive-based approach

When regarding in general the practice of offering incentives in return for a readmission agreement, the Commission is aware of the involvement of certain potential disadvantages. These include the fact that third countries may come to view types of incentives as standard elements linked to the conclusion of readmission agreements, or view the EC as a forum for submitting a "shopping list" of their needs. Furthermore, there is a risk of third countries demanding equal or better treatment after it comes to their attention that one country was offered a particular incentive, resulting in a "race to the top" where demands for compensation accumulate.

The incentives identified, if granted to third countries, will sometimes constitute substantial concessions on the part of the Community while on the other hand, the readmission agreements to be conceded by third countries to the Community are only administrative and technical agreements. This means, using incentives may bring results in terms of concluding readmission agreements more rapidly than would otherwise be the case, but it may nonetheless be "expensive" for the Community.

The use of an incentive-based approach requires consensus between the Commission and the Council at each stage of the negotiating process on the line chosen.

In addition, the use of negative incentives, i.e. threatening not to give something, may in some cases be valuable for the successful conclusion of a readmission agreement. This type of incentive presupposes the establishment of explicit linkages between readmission and the conclusion of agreements between the EC or EU and third countries in other policy areas.

4. NEED FOR A MORE FLEXIBLE APPROACH

The first generation of readmission agreements so far concluded by the Community (Hong Kong, Macao, Sri Lanka and Albania) are very similar in structure and wording. They all cover own and third-country nationals and contain provisions on the readmission procedure and a section on transit operations. This similarity is largely due to the fact that the agreements have been based on virtually identical negotiating directives and that, like for sectorial agreements in other areas of EC law, the Commission pursues a standardised approach, seeking to achieve final texts which have an identical architecture and as many common features as possible.

However it has to be borne in mind that, as mentioned before, the category of third-country nationals often poses the biggest problems in negotiations, requiring lengthy and time-consuming discussions. For this reason, the Commission considers it worth reflecting upon the possibility to develop a standard text for a "*slimmed down*" version of a Community readmission agreement. Such agreements would only cover the category of own nationals plus provisions on the readmission procedure, dropping all readmission obligations vis-à-vis third-country nationals and the section on transit operations. Since such agreements are much easier to negotiate and require significantly less time, they could therefore be a valuable option in particular for negotiations with third-countries which are solely countries of origin of illegal immigrants and do not pose problems in terms of transit migration. Possible third-countries to be targeted by such "*slim*" readmission agreements are, for instance, the sub-saharan ACP countries on the basis of Article 13 Cotonou.

5. CONCLUSIONS AND RECOMMENDATIONS

The Commission proposes to develop the Community readmission policy along the following orientations:

- Implementation, as soon as possible, of the 4 readmission agreements that have already been signed, concluded or entered into force (Hong Kong, Macao, Sri Lanka and Albania);
- Before the end of 2004, the Commission will continue the ongoing negotiations with Russia, Ukraine, Pakistan and Morocco and will make efforts to launch negotiations with Turkey, China and, if possible, Algeria;
- Regarding new priorities, the Community should, in principle, conclude readmission agreements with all neighbouring countries and those source countries which are significant in terms of illegal migration flows to the European Union;
- The Commission should encourage non-EU countries to conclude readmission agreements among themselves;
- In its future readmission negotiations, the Commission will continue to use an incentive-based approach. The Commission may consult the Council on the use of one or another incentive as it considers appropriate;
- Member States should support the Commission's negotiating efforts in political and diplomatic terms and abstain from any bilateral negotiations;
- In appropriate cases, the Commission will propose to the Council the negotiation of a "slim" readmission agreement, covering only own nationals and the modalities for their return;
- In future, when the Commission will envisage the negotiation of new cooperation or association agreements with third countries pertaining to the geographical priorities defined in this communication, the Commission will also consider the appropriateness for negotiating in parallel a readmission agreement.

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*.⁶ 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 meetings⁶, in which growing concerns have been expressed about the slow progress made in this policy field.

The Commission has repeatedly stated⁷ 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. At the same time, however, it has pointed out that readmission agreements – although drawn up on a theoretically reciprocal basis – in practice largely work in the interest of the Community. Their conclusion therefore depends very much on the leverage at the Commission's disposal, i.e. of sufficiently strong incentives to obtain the co-operation of the third-country concerned on readmission. This is particularly true with regard to the readmission of non-nationals and stateless persons. Unlike own

⁶ 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.

⁷ 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).

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 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

- Hong Kong

Concluding a readmission agreement with Hong Kong was part of the political agreement reached in December 2000 when the Council decided to exempt Hong Kong SAR passport holders from the visa requirement for entry's into the EU. The Commission received negotiating directives in April 2001 and a draft text was officially transmitted to the Hong Kong side in June 2001. Following an informal meeting of technical experts in Brussels in September 2001 and one round of formal negotiations in Hong Kong in October 2001, the final text of the agreement was initialled in Brussels in November 2001. In April 2002 the Commission launched the two-step ratification procedure.⁸ The Council decision concerning the signing of the agreement was adopted on 23 September 2002 and the agreement formally signed in Brussels on 27 November 2002. The Council decision concerning the conclusion of the agreement was adopted on 17 December 2003. In accordance with its Article 20 (2), the readmission agreement entered into force on 1 March 2004 as the first instrument of its type ever concluded by the European Community.⁹ The Commission is currently preparing the first meeting of the joint readmission committee, which is expected to take place in Brussels in September 2004.

- Macao

Concluding a readmission agreement with Macao was part of the political agreement reached in December 2000 when the Council decided to exempt Macao SAR passport holders from the visa requirement for entry's into the EU. The Commission received negotiating directives in April 2001 and a draft text was officially transmitted to the Macanese side in July 2001. Following one round of formal negotiations in Macao in October 2001 and the exchange of several written notes, the final text of the agreement was initialled in Brussels on 18 October 2002. Early April 2003, the proposal for signature and approval of the agreement was transmitted to the Council.¹¹ The decision on the signing of the agreement has been adopted by the Council on 13 October 2003 and the agreement was formally signed on the same day. Following the approval of the agreement by European Parliament at the end of February 2004, the Council adopted the decision concerning the conclusion of the agreement at its meeting on 21 April 2004.¹² The agreement entered into force on 1 June 2004, in accordance with its Article 20 (2). The Commission is currently preparing the first meeting of the joint readmission committee, which is expected to take place in Brussels in September 2004.

⁸ SEC (2002) 412 of 18 April 2002; Council doc. 8518/02 of 2 May 2002.

⁹ OJ L 17 of 24 January 2004, p. 23.

¹⁰ OJ L 64 of 2 March 2004, p. 38.

¹¹ COM (2003) 151 final of 31 March 2003; Council doc. 8211/03 of 7 April 2003.

¹² OJ L 143 of 30 April 2004, p. 97.

2.2. Agreements in the process of ratification (negotiations completed)

- Sri Lanka

Concluding a readmission agreement with Sri Lanka was one of the measures recommended in the 1999 HLWG Action Plan on Sri Lanka. The Commission received negotiating directives in September 2000 and a draft text was officially transmitted to the Sri Lankan side in April 2001. Following two formal rounds of negotiations, which took place in Brussels in July 2001 and in Colombo in March 2002, the final text was initialled in Brussels in May 2002. At the end of March 2003, the Commission formally transmitted to the Council a proposal for two Council decisions on the signing and conclusion of the agreement.¹³ The Council adopted the decision on the signing of the agreement at its meeting on 25 November 2003. At the request of the Sri Lankan side, the signing ceremony took place in Colombo on 4 June 2004 (at Ambassador's level). The agreement is expected to enter into force in early 2005.

- Albania

Concluding a Community readmission agreement with Albania was requested by the Council in April 2002 and endorsed by the Seville European Council in June 2002. The Commission received negotiating directives on 28 November 2002 and a draft text for a Community readmission agreement was handed over to the Albanian authorities in Tirana on 25 March 2003. The first round of negotiations took place in Tirana on 15/16 May 2003 and the second round was held in Brussels on September 18. Technical negotiations could be successfully completed during the third round of negotiations, held in Tirana on November 5. Following the initialling of the agreement in Brussels on 18 December 2003, in mid-February 2004, the Commission submitted to the Council the final text together with two draft decisions concerning the signing and conclusion of it, which are currently being discussed in the Council.¹⁴ 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 which is the reason why this agreement is not expected to enter into force before early 2005.

2.3. Ongoing negotiations

- Morocco

Concluding a readmission agreement with Morocco one of the measures recommended in the 1999 HLWG Action Plan on Morocco. The Commission received negotiating directives in September 2000 and first draft text was officially transmitted to the Moroccan side in May 2001. Following a series of informal (preparatory) meetings, held in Rabat and Brussels in January, March, May and November 2002, in February 2003, Morocco officially agreed to launch formal negotiations on the basis of a revised draft text, which would take into account the outcome of the informal preparatory meetings. Following the transmission of a revised draft text in March 2003, the first round of negotiations was held in Rabat on 7 April 2003. In July 2003, the Moroccan side transmitted detailed written comments (« counter-proposals »), which were discussed with Member States in a special expert meeting on 17

¹³ SEC (2003) 255 of 21 March 2003; Council doc. 7831/1/03 REV1 of 9 April 2003.

¹⁴ COM (2004) 92 final of 12 February 2002; Council doc. 6329/04 of 13 February 2004.

September 2003. The second round of negotiations took place in Brussels on 22 September 2003 where it was agreed to continue negotiations on the basis of a further revised draft text from the Commission. Following a series of discussions between the Commission and Member States at expert and senior official level, a further revised draft text was sent to the Moroccan side in mid-February 2004. The third round of negotiations took place in Brussels on 27/28 April 2004, where good progress could be made. The two sides agreed to swiftly continue negotiations on the outstanding issues by holding the next round of negotiations in Rabat on 14 June 2004.

- **Pakistan**

Concluding a readmission agreement with Pakistan was one of the measures recommended in the 1999 HLWG Action Plan on Afghanistan. The Commission received negotiating directives in September 2000 and a draft text was officially transmitted to the Pakistani side in April 2001. Following several contacts at diplomatic level, preparatory technical talks could be held in Islamabad on 7 October 2003. As agreed in these talks, the Commission drew up a revised draft text which was handed over to the Pakistani side during a Ministerial Troika meeting in Islamabad on 21 October 2003. In this Troika meeting, as well as during the visit of the Pakistani Foreign Minister Kasuri to Brussels early November 2003, the Pakistani side confirmed its readiness to launch formal negotiations in early 2004. Following the Ministerial Troika meeting in Islamabad on 18/19 February 2004, the first round of formal negotiations was held in Islamabad on 20 April 2004, where good progress could be made. The two sides tentatively agreed to hold the next round of negotiations in Islamabad on 29/30 June 2004.

- **Russia**

Concluding a readmission agreement with Russia was one of the proposals made in the 1999 Common Strategy on Russia. The Commission received negotiating directives in September 2000 and a draft text was officially transmitted to the Russian side in April 2001. Following the political agreement reached on the Kaliningrad transit issue at the EU-Russia summit in November 2002, Russia declared its readiness to launch formal negotiations. The first round of negotiations took place in Moscow on 23 January 2003 and the second round was held in Brussels on 27/28 February 2003. In the joint EU-Russia summit statement of 31 May 2003, the two sides agreed – without establishing any link between readmission and visa issues – to conclude timely the negotiations on a readmission agreement.

DELETED

On 24/25 February 2004, the next round of “back-to-back” readmission/visa negotiations took place in Moscow, in which further technical progress could be made. It has been agreed to continue the readmission negotiations, once the Commission has also been authorised to negotiate a visa facilitation agreement between the European Community and Russia. The draft negotiating directives, which have been submitted by the Commission at the end of April 2004, are currently being discussed in the Council.

- **Ukraine**

Concluding a readmission agreement with Ukraine was one of the proposals made in the 1999 Common Strategy on Ukraine. The Commission received negotiating directives in June 2002. A draft text was officially transmitted to the Ukrainian side in August 2002. Following an informal preparatory meeting in Brussels in March 2002, the first round of formal negotiations took place in Kiev on 18 November 2002 and, subsequently, further rounds of negotiations were held in Brussels on 19/20 June 2003, in Kiev on September 29, in Brussels on 19 December 2003, in Kiev on 4 March 2004 and again in Brussels on 19 May 2004. Negotiations are well under way. DELETED

DELETED It is intended to maintain the current negotiating rhythm and to seek to complete negotiations before the end of 2004.

2.4. Negotiations not yet launched

- **China**

Concluding a Community readmission agreement with China was requested by the Council in April 2002 and endorsed by the Seville European Council in June 2002; the Commission received negotiating directives on 28 November 2002.

an ADS agreement, which could be initialled in October 2003 and which was formally signed in Beijing on 12 February 2004¹⁵; it entered into force on 1 May 2004. Building upon this success, on 15 January 2004, a draft readmission agreement and a 3-page explanatory non-paper were formally transmitted to the Chinese side. During the special EU-China High Level Consultations on Illegal Migration and Trafficking in Human Beings, held in Brussels on 26 May 2004, a first general discussion on readmission took place.

Both sides agreed to hold a technical meeting as soon as possible to further discuss the proposals from the two sides.

- **Turkey**

Concluding a Community readmission agreement with Turkey was requested by the Council in April 2002 and endorsed by the Seville European Council in June 2002; the Commission received negotiating directives on 28 November 2002. The draft text for a Community readmission agreement was handed over to the Turkish Ministry of Foreign Affairs in Ankara at the beginning of March 2003. DELETED

¹⁵ OJ L 83 of 20 March 2004, p. 12.

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- **Algeria**

Concluding a Community readmission agreement with Algeria was requested by the Council in April 2002 and endorsed by the Seville European Council in June 2002; the Commission received negotiating directives on 28 November 2002.

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IV. DIFFICULTIES ENCOUNTERED IN THE READMISSION NEGOTIATIONS

A first category of difficulties encountered by the Commission in the readmission negotiations is *related to the third countries themselves*. Readmission agreements can have significant (negative) economic and political consequences for the third-countries concerned. Even the reintegration of own nationals can generate additional constraints for the domestic labour market or on social programmes as it entails receiving back persons who are often low-skilled. Another negative consequence can be a reduction in remittance flows. Nor is it in the interest of third countries to receive back non-nationals who have transited their territory *en route* to the EU, or who have remained on their territory for a period of time. As transit countries, they can be confronted with considerable burdens, of both a technical and financial nature, since they will have to deal with the repatriation of the non-nationals readmitted from the EU. Such concerns have been amplified by the fact that third-countries concluding a readmission agreement would be confronted with potential returns from, by now, a block of twenty-five countries. Furthermore, where public opinion in the EU strongly demands action against illegal immigration including effective instruments for return, third countries concerned also have their national public to answer to.

Secondly, there are several *technical aspects related to the substance and format of Community readmission agreements*, which have been a complicating factor in negotiations. With regard to substance, the negotiating directives with which the Commission is provided by the Council are not only detailed and elaborate in technical terms but also ambitious in policy terms in order to make full use of the Community's "negotiating weight". This sometimes limits the room for manoeuvre for the Commission in negotiations at a technical level since the stakes are set high by the standard inclusion of provisions concerning the readmission of third country nationals, and transit provisions. It is superfluous to state that especially the readmission of third country nationals who have transited through the territory of the partner third-country, or have remained there for a certain period of time, is usually a difficult issue on which to reach agreement.

Finally, it is needless to recall that Community readmission negotiations – as any Community negotiations – require the *full and unreserved diplomatic and political support*

from all Member States. Without this support, the Commission's credibility and negotiating position is severely damaged and the advantages possibly gained by individual Member States from this situation are detrimental to the Community in its entirety. This could already be negatively felt by the Commission, in particular, in the negotiations with Sri Lanka and Pakistan, which have been considerably delayed, inter alia, by parallel bilateral Member States negotiations and contacts.

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.