



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 23 May 2007

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MIGR 42

"I/A" ITEM NOTE

from: General Secretariat of the Council
to: Permanent Representatives Committee / Council
Subject: **Draft Council Conclusions on the evaluation of the progress and outcome of negotiations for Community readmission agreements with third countries**

1. The objective of these draft conclusions, which have been submitted by the Presidency, is to evaluate the progress and the outcome of negotiations for Community readmission agreements with third countries, with a view to taking appropriate action to improve the efficiency of the Community policy in the area of readmission.
2. The text of the draft Conclusion was considered by the Working Party on Migration and Expulsion at its meeting on 10 May 2007 and by the Strategic Committee on Immigration, Frontiers and Asylum at its meeting on 22 May 2007.
3. Following the agreement reached at the Strategic Committee on Immigration, Frontiers and Asylum meeting on 22 May 2007, the Permanent Representatives Committee is invited to suggest that the Council adopt, under part "A" of the agenda of a forthcoming meeting, the Conclusions as set out in the Annex to this note.

DRAFT COUNCIL CONCLUSIONS

on the evaluation of the progress and outcome of negotiations for
Community readmission agreements with third countries

THE COUNCIL OF THE EUROPEAN UNION,

Whereas:

- (1) Since 2000, the Council has issued the Commission (up to 14 March 2007) a total of 16 sets of negotiating directives with third countries on the conclusion of readmission agreements.
- (2) In the light of experience since 2000 in the Commission's negotiations with third countries and in the conclusion of Community readmission agreements, there is a need to evaluate the progress and outcome so far of negotiations for Community readmission agreements with third countries as well as the implementation of existing readmission agreements. This assessment should make it possible to conduct negotiations under still pending directives in a more targeted and timely manner,
- (3) Appropriate follow-up should be given to the Council Conclusions on the priorities for the successful development of a common readmission policy¹

¹ 13758/04 JAI 389 MIGR 92 RELEX 459

TAKES THE FOLLOWING VIEW:

1. With regard to the progress and outcome of negotiations for Community readmission agreements with third countries, the Council notes the following:

The structure and content of the negotiating directives issued since 2000 continue to meet Council requirements. They provide a sufficient working basis to identify the objective to be negotiated for by the Commission. No general need for amendment is at present apparent. However, the negotiating directives should include in any case a specific paragraph concerning time-limits, in order to stress the need for them to be compatible with the implementation of the national legislations, in particular, regarding detention periods. Moreover, they should also underline the validity of existing bilateral agreements for the aspects not covered by the future Community agreement, to the extent that they do not interfere with its implementation, as well as the possibility for interested Member States to assist, as appropriate, in the joint readmission committees. Negotiating directives could possibly be better clarified in some respects in order to tailor them to the third countries in question. A balance needs to be struck in each individual case between Council expectations and negotiating flexibility for the Commission.

In some cases, negotiations have been pursued up to five years or more, depending on the number of negotiating rounds and the willingness of the third country concerned to conclude an agreement. There is a need to speed up negotiations in order to achieve quicker results.

The completion of work under negotiating directives already issued should take precedence over the issuing of new negotiating directives. In individual cases the Council may grant new negotiating directives, as long as they have not a negative impact on negotiations on the basis of existing negotiating directives. The principle 'no agreement at any cost' should continue to be followed.

Further consideration needs to be given to the arrangements for evaluating progress on the negotiations including, in particular, the most appropriate responses to lack of progress.

The content of most readmission agreements concluded does in general correspond to Member States' expectations (in the light of the outcome of negotiations in individual cases). However, some results were not completely satisfactory, for instance with respect to the question of time limits for detention and to the possibility of returning the persons concerned by joint return operations, as well as to the practical implementation of the readmission of the third country nationals. In all cases, attention should be paid to the effect of precedent with respect to future negotiations.

The added value of Community readmission agreements or of readmission clauses included in EU and Community cooperation and partnership agreements lies in the establishment of uniform ground rules applicable by all Member States in dealing with the third country in question. The implementation of readmission agreements is expected to facilitate return, although this will not always automatically be accompanied by an improvement in cooperation with the third country.

The conclusion of a readmission agreement represents an important political development in the Community's relations with the third country in question.

While the requirement under international law for a country to readmit its own nationals to be returned is largely accepted, some countries deny that this rule of international law also covers assistance in determining the nationality of the persons believed to be nationals or whose nationality is uncertain. Along with the issuing of return travel documents, though, failure to establish the nationality is one of the main obstacles to enforcement of expulsion orders. The present standard clauses only operate on the assumption that the nationality of a person to be returned has already been established. The relevant standard clauses in EU agreements should therefore be extended so as to expressly require the Contracting Parties to assist in determining the nationality of people to be returned who are believed to be nationals or whose nationality is uncertain.

Council led evaluation regarding readmission agreements and the process of negotiations, as well as with respect to readmission clauses included in EU and Community cooperation and partnership agreements, is necessary to ensure good value is maintained.

2. The Council calls on:

- the Commission to conduct readmission agreement negotiations as swiftly as possible, using the political, legal and economic capacities available to it and setting aside sufficient resources for negotiations. It is important, in this context, not to search for an agreement at any cost, and to take into account, if need be, the most favourable provisions gained by Member States in their bilateral readmission agreements with third countries. A special attention has to be given to the operational and effective impact of the agreement concerning the issue of time limits and the successful readmission of third country nationals;

- the Commission, in the framework of the general evaluation of the Justice and Home Affairs policy, to make a special assessment of the conclusion of readmission agreements, taking into account both quantitative and qualitative improvements and external relations and migration aspects, with the inclusion of cost-benefit considerations;
- the Commission to make use of the available knowledge of Member States' diplomatic representations in third countries with which negotiations are conducted;
- the Commission to draw up proposals for the extension of the standard clauses so as to establish Contracting Parties' duty to assist in determining the nationality of persons to be returned who are believed to be nationals or whose nationality is uncertain and in issuing return travel documents;
- Member States to provide political support for the Commission's efforts in relation to the third countries in question;
- On Commission's initiative, Member States could make available the necessary technical expertise and in particular expert staff, throughout the negotiations, on a case-by-case basis;
- Member States and the Commission to further improve cooperation by allowing for more frequent direct feedback between the Commission, its Special Representative for Readmission and Member States, in the framework of the competent Council bodies responsible for migration, led by the Working Party on Migration and Expulsion, which is the committee appointed under Article 300 of the EC Treaty, with the involvement of the relevant External Relations Council bodies. The consultation of the Council bodies is relevant before and after individual rounds of negotiations, and, in any case, necessary at each important step of the negotiations, in particular before envisaging to initial a text. This consultation should take place by supplying the updated versions of draft agreements and progress reports on negotiations in good time before meetings of the Working Party on Migration and Expulsion;
- The Commission to report regularly on negotiations conducted on the basis of negotiating directives granted by the Council and Member States and the Commission to ensure that there is a regular political evaluation of the ongoing negotiations at the appropriate level with a view to taking the necessary actions.