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**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 October 1999

11672/99

LIMITE

**MIGR 62
COMIX 320**

NOTE

from : Presidency
to : Expulsion Working Party

**Subject : Discussion paper on a draft Council Directive concerning readmission
 between Member States of the European Community**

The Presidency believes that it is time to regulate questions concerning readmission between Member States of the European Union at the Community level. This could be achieved by creating a set of general guidelines on readmission between Member States of the European Community. These rules would apply to all situations where a Member State readmits a third-country national for the purpose of a readmission agreement concluded by the European Community, as well as in any case where a third-country national is illegally present in a Member State.

This Discussion Paper includes elements for a draft directive determining the State responsible for readmission between Member States of the European Communities.

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Draft Council Directive
determining the Member State responsible for readmission

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 63(3)(b) thereof,

Having regard to the initiative of the Republic of Finland

Having regard to the Opinion of the European Parliament

Whereas:

- (1) The Community policy on the repatriation of illegal residents also covers readmission of illegal residents,
- (2) Member States remain free to return third-country nationals found illegally present on their territory to their countries of origin, or to another third country, which they may lawfully enter

HAS ADOPTED THIS DIRECTIVE

GENERAL PROVISIONS

Article 1

For the purposes of this Directive

- (a) 'Third-country' national means a person who is not a citizen of the Union, under Article 17 of the Treaty establishing the European Community, nor a third-country national whose right to reside in the territory of a Member State is based on the Agreement on the European Economic Area.

- (b) 'Residence permit' means an authorisation of any type issued by a Member State entitling a third-country national to reside on the territory of that Member State. This shall not include temporary permission to reside on the territory of one of the Member States in connection with the processing of an asylum application or an application for a residence permit.
- (c) 'Visa' means an authorisation given, or a decision taken, by a Member State, which is required for entry into its territory with a view to:
- An intended stay in that Member State or in several Member States of no more than three months in all,
 - transit through the territory of that Member State or several Member States, except for transit through the international zones of airports and transfers between airports in a Member State.

Article 2

This Directive shall apply when a Member State readmits a third-country national on the basis of a readmission agreement concluded by the European Community. It shall also apply to all situations where a third-country national does not fulfil or no longer fulfils the conditions in force for entry to or residence on the territory of a Member State.

READMISSION OBLIGATION

Article 3

The Member State responsible for readmission shall be determined in accordance with the criteria defined in this Directive. The criteria set out in Articles 4 to 8 shall apply in the order in which they appear.

Article 4

Where a third-country national is in possession of a valid residence permit, the Member State which issued the permit shall be responsible for readmitting the third-country national.

Article 5

Where a third-country national is in possession of a valid visa, the Member State which issued the visa shall be responsible for readmitting the third-country national.

Article 6

Where a third-country national is in possession of more than one valid residence permit or visa issued by different Member States, the responsibility for readmission shall be assumed by them in the following order:

- (a) the State which issued the residence permit conferring the right to the longest period of residence or, where the periods of validity of all the permits are identical, the State which issued the residence permit having the latest expiry date;
- (b) the State which issued the visa having the latest expiry date where the various visas are of the same type;
- (c) where visas are of different kinds, the State which issued the visa having the longest period of validity, or, where the periods of validity are identical, the State which issued the visa having the latest expiry date.

Article 7

Where a third-country national is in possession of one or more residence permits which have expired less than two years previously, or one or more visas which have expired less than six months previously, and have enabled the third-country national to enter the territory of a Member State, Articles 3, 4, 5 and 6 shall apply for such time as the third-country national has not left the territory of the Member States.

Article 8

1. When it can be proved that a third-country national has irregularly crossed the border into a Member State by land, sea or air, having come from a third country, that Member State shall be responsible for readmitting the third-country national.

2. The Member State referred to in paragraph 1 shall cease to be responsible, however, if it is proved that the third-country national has been living in another Member State at least six months before it was established that the third-country national concerned does not fulfil, or no longer fulfils, the conditions in force for entry or residence. In that case it is the latter Member State which is responsible for readmitting the third-country national.

Article 9

The responsibility for readmission shall be incumbent upon the Member State responsible for controlling the entry of the third-country national into the territory of the Member States. However, if a third-country national, after legally entering a Member State in which the need for him or her to have a visa is waived, has entered another Member State in which the need for him or her to have a visa for entry into the territory is also waived, the latter State shall be responsible for readmission.

Article 10

The readmission obligation specified in Articles 3 to 9 shall not apply if a Member State has started to enforce the necessary measures for the third-country national to return to his country of origin or to another country which he may lawfully enter, so long as the third-country national has not left the territory of the Member States.

READMISSION PROCEDURE

Article 11

1. The application for readmission shall be submitted to the competent authorities of the requested Member State within a maximum of one year of the requesting Member State establishing that the person concerned does not fulfil, or no longer fulfils, the conditions in force for entry or residence.
2. The requested Member State shall reply to readmission requests addressed to it as soon as possible and, in any event, within a maximum of one month. Failure to act within that period shall amount to acceptance of the claim.

3. The requested Member State shall take charge of third-country nationals whose readmission it has agreed to, without delay and in any event within a maximum of one month. Upon application by the requesting Member State, this time limit may be extended as necessary to deal with legal requirements or practical difficulties.

TRANSIT

Article 12

A Member State shall allow the transit of third-country nationals if duly requested by another Member State and if admission by the State of destination and transit via any other States of transit is assured. This obligation shall not apply, however, where a third-country national can be returned, without excessive difficulties, to the State of destination directly.

DATA PROTECTION

Article 13

Insofar as personal data is communicated under this Directive the procedure, content and the way of using this information shall be in accordance with the Directive 95/46/EC of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

IMPLEMENTING MEASURES

Article 14

The Commission shall adopt, in accordance with the procedure laid down in Article 15, further measures necessary for implementation of this Directive, concerning in particular

- (a) The procedure for reciprocal notification and the practical aspects thereof,
- (b) The information which must be contained in readmission and transit applications,

- (c) The documentation and evidence required for readmission and the value to be attributed to such material,
- (d) Identification and notification of the authorities responsible for implementation of this Directive,
- (e) Cost arrangements and
- (f) The use of the EU standard travel document for the purpose of this Directive.

Article 15

1. The Commission shall be assisted by a management committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205 (2) of the Treaty, in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.
3. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided on for a period of three months from the date of such communication.
4. The Council, acting by a qualified majority, may take a different decision within the time limit provided for by paragraph 3.

FINAL PROVISIONS

Article 16

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by _____ at the latest.

Article 17

This Directive is addressed to the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Finland, the French Republic, the Greek Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Kingdom of Sweden and the Kingdom of Spain.

Done at Brussels, _____

For the Council
The President
