EUROPEAN UNION
THE COUNCIL

Brussels, 24 March 1994

5913/94

RESTREINT

ASIM 67

"I/A" ITEM NOTE

from : the Permanent Representatives Committee (part 2)

to : the Council

No. prev. doc.: 10370/93 ASIM 23

Subject: **Principles concerning the conclusion of readmission agreements with third countries**

1. At its meeting on 29/30 November 1993, the Council (JAI) reached agreement in principle on the text annexed to this note relating to the guiding principles to be used when drawing up readmission agreements, subject to the lifting of a Netherlands parliamentary scrutiny reservation.

2. The Netherlands delegation at the Council (JAI) held on 23 March 1994, stated that the above mentioned reservation had been lifted. As a result it is suggested that the Committee recommends the Council to adopt the text annexed to this note at one of its forthcoming sessions.

ANNEX

GUIDING PRINCIPLES

to be used when drawing up

readmission agreements

(i) **International agreements/conventions**

Readmission agreements should clearly state that they are without prejudice to and do not affect :

- the Geneva Convention relating to the Status of Refugees, as amended by the New York Protocol ;
- the European Convention for the Protection of Human Rights and Fundamental Freedoms ;
- the provisions of international conventions currently in force on extradition and transit for the purposes of extradition ;
- the provisions of international conventions on asylum, in particular the Dublin Convention determining the State Responsible for Examining Applications for Asylum, when it has been ratified by all the States.

(ii) **Scope**

Readmission agreements may be bilateral or multilateral in character, should be based on the principle of reciprocity and should cover nationals of the contracting parties and nationals of other States.

(iii) **Competent authorities**

Readmission agreements and, where applicable, those covering transit arrangements should specify the competent authorities. Procedures should be as simple as possible and avoid recourse to intermediaries as far as possible, in order to ensure rapid readmission.

(iv) **Nationality**

Nationality for the purposes of readmission may be :

(a) established ;
(b) validly assumed.

Agreements should stipulate in a protocol the documents which establish nationality (passports, ID cards, etc.) and those which allow nationality to be validly assumed (company passes, insurance papers, etc.).

Readmission agreements may also allow nationality to be validly assumed on the basis of statements by witnesses, languages spoken, etc.

These protocols will vary in content from country to country and be subject to negotiation.

(v) **Time Limits**

The time limit for replying to a request for readmission should be set at a maximum of 15 days following submission of the request. The time limit for returning a person accepted for readmission should be fixed at not more than one month after legal and/or administrative obstacles to expulsion have been removed.

(vi) **Conditions governing readmission of aliens not having the nationality of a Contracting State**

§ 1. Readmission agreements will have to provide that a readmission requirement exists where :

- the State addressed has issued a visa which is not a transit visa or a residence permit ;
- it has been established that the person whose réadmission is requested came directly from the State addressed, without the current entry requirements to the requesting State being fulfilled.

The duration of residence within the territory of the State addressed should not have any bearing. It may, however, be provided that transit through an airport transit area does not constitute a stay.

§ 2. A readmission requirement will not exist where :

- the requesting State has issued a residence document ;
- the person whose readmission is requested has resided for a certain time in the requesting State after his unauthorized presence was established. This time period should not be fixed at less than 6 months.

§ 3. Where the person whose readmission is requested is a national of a State adjacent to the requesting State, the requesting State will first endeavour to return that person to his/her state of origin.

(vii) **Transit**

The agreements should cover transit arrangements for persons originating from third countries where there is no readmission obligation under the agreement. Transit arrangements should be undertaken by the most efficient method in conformity with specific arrangements negotiated between the parties.

(viii) **Issue of travel documents**

Where required, the arrangements for the issue of travel documents should be agreed between the contracting parties.

(ix) **Expenses incurred**

An article should be included to the effect that the requesting party defrays the costs relating to the person being expelled as far as the frontier, including if need be, transit costs up to the border of the State addressed.

(x) **Data protection**

An article covering data-protection provisions may be included, the content of which will depend to a large measure on the current legislation of the contracting parties.

It should, however, be made clear that the transmission of information and/or computerized data should in principle take place only for the purposes for which the agreement is concluded.

(xi) **Return to the country of origin of persons not having the nationality of a contracting party**

An article may be included to the effect that where appropriate the contracting parties should make every effort to return to the country of origin aliens in an irregular situation.