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LIMITE

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"I/A" ITEM NOTE

from: K.4 Committee

to : COREPER/COUNCIL

No. prev. doc.: 5402/2/95 ASIM 73 REV 2

Subject: Draft Council Recommendation on the principles for the drafting of protocols on the implementation of readmission agreements

1. At its meeting on 30 November and 1 December 1994, the JHA Council adopted a Recommendation concerning a specimen readmission agreement for Member States to use as a basis in concluding their readmission agreements with third countries.
2. To supplement text, the K.4 Committee approved a draft Recommendation on the principles for the drafting of protocols accompanying the readmission agreements (see 5402/1/95 ASIM 73 REV 1) at its meeting on 4 May 1995. Only general linguistic reservations by the Finnish and Swedish delegations remain on this text.
3. Subject to withdrawal of these linguistic reservations, this text could be approved by COREPER at a forthcoming meeting and submitted to the Council for adoption.

SEMDOC

Statewatch European Documentation &
Monitoring Centre on justice and home
affairs in the European Union

PO Box 1516, London N16 0EW, UK
tel: 0181 802 1882 (00 44 181 802 1882)
fax: 0181 880 1727 (00 44 181 880 1727)

**DRAFT COUNCIL RECOMMENDATION ON THE
GUIDING PRINCIPLES TO BE FOLLOWED IN DRAWING UP PROTOCOLS
ON THE IMPLEMENTATION OF READMISSION AGREEMENTS**

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Union and in particular Article K.1(3) thereof,

Recalling that the Council has adopted a Recommendation concerning a specimen bilateral readmission agreement between a Member State of the European Union and a third country;

Whereas such readmission agreements are often accompanied by protocols laying down certain technical details for their implementation; whereas a series of guiding principles should therefore be adopted for Member States to use as a basis when negotiating such protocols;

RECOMMENDS that, as from 1 July 1995, the Member States of the European Union should use the following guiding principles as a basis for negotiations with third countries when drawing up protocols on implementing readmission agreements.

I. READMISSION PROCEDURES

1. *Common forms*

For the return/readmission of persons residing without authorization, it is recommended that provision be made for the contracting parties to use common forms. The forms concerned are as follows: –

- record of the return/readmission of a person under the simplified procedure;
- request for the readmission/transit of a person;
- record of the return/readmission of a person.

Member States could use the three documents annexed hereto as a basis for drawing up such forms, incorporating the relevant headings from them according to the specific nature of relations with the third country party to the agreement and the resulting information requirements.

The need for simplicity and speed should be the prime concern.

2. *Return/readmission under the simplified procedure*

Persons apprehended in a border area are to be returned/readmitted under the simplified procedure.

A provision allowing this should therefore be included in the protocol.

The contracting parties will determine the total time taken by the simplified readmission procedure (comprising the submission and answering of a request), which should in any event be very short. Member States may take as a basis agreements already signed by some of them in which that time does not exceed 48 hours.

Formalities for the return of a person should be simplified in the case of this procedure. Notification of the return would be given in any form (by telephone, fax, telex or orally) and it would be carried out directly by the local border authorities.

If necessary, a record (see I.1 above) may be drawn up.

3. *Return/readmission under the normal procedure*

This procedure is applicable where a person cannot be returned or readmitted under the simplified procedure.

The readmission request should be made and the answer given in writing. The parties could take as a basis the document annexed hereto.

Answers should be compulsory and be given within a short time determined by the parties. In accordance with the specimen draft bilateral agreement, the time in question must not exceed 15 days. However, it would be desirable for Member States to take as a basis agreements already signed in which this time is shorter.

II. MEANS OF IDENTIFYING PERSONS TO BE READMITTED

1. *Effect of proof or a presumption*

Proof produced of nationality and entry should have to be accepted by the parties without further investigation.

A presumption established of nationality and entry should be deemed accepted by the parties unless the requested party proves otherwise.

2. *Proof or a presumption of nationality or of entry via an external frontier*

The protocol should clearly lay down the means of proving or establishing a presumption of nationality.

Nationality may be proved by means of:

- nationality papers which can be definitely ascribed to a particular person;
- any type of passport (national, diplomatic or official duty passport or officially issued passport substitutes with a photograph) or any other travel document indicating nationality;
- consular registration cards;
- identity cards (even if provisional or temporary);
- a child's travel document in lieu of passport;
- provisional identity papers;
- service record books and military passes.

A presumption of nationality may be established in particular by means of:

- specific information from the official authorities;
- an official service pass;
- a company pass;
- a driving licence;
- an extract from register office records;
- a seaman's book;
- a bargeman's identity document;
- photocopies of any of the above documents;

- statements by witnesses;
- particulars supplied by the person concerned;
- the language of the person concerned.

The protocol should also clearly lay down the means of proving or establishing a presumption of entry via an external frontier, under Article 2 of the specimen readmission agreement.

Entry via an external frontier may be proved by means of:

- an entry stamp or equivalent entry in a travel document;
- an exit stamp of a state adjacent to a Member State, taking into account the travel route and the date of the frontier crossing;
- an entry stamp in a false or falsified passport;
- travel tickets which can formally establish entry across an external frontier;
- fingerprints taken by authorities at the time of crossing an external frontier.

A presumption of entry via an external frontier may be established in particular by means of:

- statements by the person to be transferred;
- statements by officials and other persons;
- fingerprints other than those taken by the authorities at the time of crossing an external frontier;

- travel tickets;
- hotel bills;
- cards for access to public or private amenities in the Member States;
- appointment cards for doctors, dentists etc.;
- data showing that the person to be transferred has used the services of a facilitator or travel agency.

III. DESIGNATION OF THE COMPETENT AUTHORITIES

The protocol should stipulate that Ministers with responsibility for border controls are to designate the border posts which may be used for aliens' readmission and entry in transit and the central or local authorities competent to deal with readmission and transit requests.

The choice should be geared to efficiency and speed.

IV. CONDITIONS FOR TRANSIT OF THIRD-COUNTRY NATIONALS UNDER ESCORT

In their relations with third-country contracting parties, Member States could make provision for the use of a readmission/transit form for requests for transit under escort in accordance with Article 7 of the readmission agreement. They could use the appropriate form annexed hereto as a basis.

However, the parties could dispense with such formalities for the transit of a third-country national being repatriated by one of the contracting parties via an airport in the other contracting party. In that event, the competent authority of the requesting party would notify the competent authority of the other party in good time of the intended repatriation, informing it of the identity of the person concerned, the flight details and the particulars of any official escorts.

V. DATA PROTECTION

An Article on data protection could be inserted; its content will largely depend on the legislation in force within Member States.

It should in any event be stipulated that information must be supplied only for the purposes for which the agreement has been concluded.

VI. CONDITIONS OF APPLICABILITY OF THE PROTOCOL

It should be stipulated that the protocol is to enter into force at the same time as the readmission agreement, that its application is to be suspended upon suspension of the agreement's application and that it will cease to be applicable once the agreement is no longer applicable.

RECORD

of the return/readmission of a person under the simplified procedure

1. On (date) at(time) in (place) the following person was transferred to

(name of readmitting country)-

Forename and surname

Date and place of birth

Place of residence (.....)

Nationality

Identity established on the basis of

.....
.....

(Designation, series and number of document; when, where and by whom issued; other means of establishing identity if any)

2. Time, place, manner and motive of illegal entry

.....
.....
.....
.....

(brief description of the act)

3. Other reasons for transfer (applies to nationals of the contracting parties)

.....
.....
.....

4. Evidence or circumstances substantiating presumption of illegal entry

.....
.....
.....

(*) Where space is insufficient write on separate sheets and list them in point 7.

5. Documents, money and other items to be transferred with the transferee
.....
.....
.....

6. Minors (.....) to be transferred together with the person referred to in point 1
(Forename, surname, date of birth)
.....
.....
.....

7. Annexes:
(a)
(b)
(c)
(d)
(e)

This record was drafted in
copies in the
language(s).

.....
.....

Forename, surname and position of the
transferring official

Forename, surname and position of the
receiving official

(Signature)

(Signature)

From:
(Place and date)

.....
(Designation of requesting authority)

Reference

To:
.....

.....
(Designation of receiving authority)

REQUEST FOR READMISSION/TRANSIT OF A PERSON

1. Personal details

- 1.1 Surname:
- 1.2 Forenames:
- 1.3 Maiden name:
- 1.4 Also known as:
- 1.5 Nationality: Language:
- 1.6 Date of birth: 1.7 Place of birth:
- 1.8 Residence in country of departure:
- 1.9 Designation and number of international travel document, by whom issued, expiry date:
.....

2. Circumstances of entry into the transferring State

- 2.1 Date and time of entry:
- 2.2 Place:
- 2.3 Circumstances of entry (in detail)
.....
.....
.....
.....
.....

3.	<u>Stay in receiving State</u>	.....
3.1	<u>Date and time of entry:</u>	.....
3.2	<u>Place of entry</u>	.....
3.3	<u>Duration of stay</u>	.....
3.4	<u>Place of stay:</u>	.....
3.5	<u>Route to frontier:</u>	..... ..... ..... .....
3.6	<u>Proof or grounds for presumption that a person not meeting or no longer meeting entry or residence requirements (illegal entry) entered via the external frontier</u>	..... ..... ..... .....

4.	<u>Special circumstances relating to the transferee</u>	.....
4.1	<u>Interpreter required for (indicate language):</u>	.....
4.2	<u>Accompanying items:</u> (documents, cash etc.)	..... .....
4.3	<u>Indication of particularly dangerous person:</u> (e.g. suspected of a serious offence, aggressive behaviour)	..... ..... .....
4.4	<u>State of health:</u> (poss. reference to special medical care)	..... ..... .....
4.5	<u>Minors (.....) being transferred together with the person referred to in point 1 (forenames, surname and date of birth):</u>	..... ..... ..... ..... ..... .....

4.6 Applications submitted to the competent authorities of the requesting State by the transferee and position of the competent authority, including any applications for recognition of refugee status or right of asylum

.....
.....
.....

5. Transit: ⁽¹⁾

5.1 Is the person to be admitted in transit?

.....

5.2 State of destination:

.....

5.3 Possible additional transit States

.....

5.4 Admission guaranteed in any transit States and the State of destination:

YES/NO (underline whichever applies)

5.5 Is direct repatriation of the person to the country of origin possible?

YES/NO (underline whichever applies)

⁽¹⁾ In matters of transit, particular attention must be paid to the Recommendation regarding transit for the purposes of expulsion adopted by Ministers in 1992 (SN 4687/92 WGI 1275), above all with respect to the protection of human rights.

6.	Proposed place, date and time of transfer
	
	
	

7.	Annexes
	
	

8.	Confirmation of receipt of request (place, date, signature)
	
	

.....
(Signature)

RECORD OF THE RETURN/READMISSION OF A PERSON

Place of transfer
 Time and date of transfer
 Returning authority
 Readmitting authority

In response to the request submitted on (date) ~
 by (returning State) the person(s) listed below was/were readmitted by
 (readmitting State).

1. ....	.....
(surname, forename(s))	(date of birth)
2. ....	.....
(surname, forename(s))	(date of birth)
3. ....	.....
(surname, forename(s))	(date of birth)
4. ....	.....
(surname, forename(s))	(date of birth)
5. ....	.....
(surname, forename(s))	(date of birth)

The following Annexes were handed over:

1.
2.
3.
4.
5.

Remarks:

.....
 (forename(s), surname and position
 of returning official)

.....
 (forename(s), surname and position
 of readmitting official)

.....
 (signature)

.....
 (signature)