Agreement of 29 March 1991 between the governments of the Schengen states and the government of the Republic of Poland on the taking back of persons with unauthorised residence

Introduction

Agreement of 29 March 1991 between the governments of the Schengen states and the government of the Republic of Poland on the taking back of persons with unauthorised residence

Reference:

Statewatch translation from original, 29 March 1991.

The governments of the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Poland, hereinafter called the "parties",

-in developing a common visa policy for the parties to the Agreement signed in Schengen on 14 June 1985,

-with a view to balancing out in particular the burdens which can result from the nationals of the states which are parties to this Agreement being able to travel without visas,

-in striving to facilitate the deportation of persons with unauthorised residence in the spirit of cooperation and on the basis of reciprocity,

-being prepared to invite the governments of other states to join this Agreement,

have agreed the following:

Article 1

1) At the request of another party and without filling in any forms, each party will take back any person, who does not fulfil or no longer fulfils the current conditions for entry or residence in the territory of the requesting party, in so far as it is proven or substantiated that the person possesses the nationality of the requested party.

2) The requesting party takes this person back under the same conditions, if checks show that the person, at the time of leaving the territory of the requesting party, did not possess the nationality of the requested party.

Article 2

1) The party whose external border was crossed by the person, who does not fulfil or no longer fulfils the current conditions for entry or residence in the territory of the requesting party, takes this person back at the request of this party and without filling in any forms.

2) "External border" in the sense of this Article denotes the first border which is crossed, which is not an internal border of the parties in accordance with the Agreement of 14 June 1985 concerning the abolition of controls at common borders.

3) The obligation to take a person back according to paragraph 1 does not exist in relation to a person, who, when entering the territory of the requesting party, was in possession of a valid visa or a valid residence permit of this party, or who was issued a visa or a residence permit by this party after their entry.

4) If the person according to paragraph 1 has a valid residence permit issued by another party or a valid visa, then this party takes back this person at the request of the requesting party and without filling in any forms.

5) "Residence permit" according to paragraphs 3 and 4 denotes any permit issued by a party, which entitles the bearer to reside in their territory. It does not include the limited authorisation to reside in the territory of one of the parties in relation to the processing of an asylum application or an application for a residence permit.

Article 3

1) The requested party will answer requests made to them to take a person back within eight days.

2) The requested party takes back the person, whom it was agreed would be taken back, within one month. This deadline can be extended at the request of the requesting party.

Article 4

The central or local authorities who are responsible for carrying out the requests to take a person back will be specified by the ministers responsible for border controls, and communicated through diplomatic channels to the other parties at the latest when this Agreement is signed or when a country joins it.

Article 5

1) The application of the Geneva Convention of 28 July 1951 on the status of refugees in the version of the New York Protocol of 31 January 1967, remains unaffected.

2) The obligations of the parties as member states of the European Community, which result from Community law, remain unaffected.

3) The application of the Schengen Agreement of 14 June 1985 on

the gradual abolition of controls at common borders, the Implementation Agreement of 19 June 1990, and the Dublin Agreement of 15 June 1990 on determining the state responsible for checking an asylum application made in a member state of the European Community, by the parties to these Agreements, remains unaffected.

Article 6

1) The signing of this Agreement takes place without a reservation of ratification or approval or with the reservation of ratification or approval, followed by ratification or approval.

2) This Agreement is provisionally applicable from the first day of the month after it has been signed.

3) This Agreement comes into effect on the first day of the second month after two parties have expressed their agreement to be bound by the Agreement according to paragraph 1.

4) For each party which later expresses their agreement to be bound by the Agreement, it comes into effect on the first day of the second month after the depositary has received the corresponding notification.

Article 7

1) The parties can, by joint decision, invite other states to join this Agreement. This decision is taken unanimously.

2) Joining this Agreement with provisional application can take place from when the Agreement is provisionally applied.

3) For the joining state, this Agreement comes into effect on the first day of the second month after the confirmation of membership has been lodged with the depositary, but at the earliest on the day that this Agreement comes into effect.

Article 8

1) Each party can notify the depositary of a suggestion for an amendment to this Agreement.

2) The parties conjointly determine amendments to this Agreement.

3) Amendments come into effect on the first day of the month after the day when the last party has expressed their agreement to be bound by the amendments to the Agreement.

Article 9

1) Each party can suspend or terminate this Agreement for an important reason after consultation with the other parties by addressing a notification to the depositary.

2) The suspension or cancellation takes effect on the first day of the month after the depositary has received the

notification.

Article 10

The government of the Grand Duchy of Luxembourg is the depositary of this Agreement.

In witness whereof, the properly authorised signatories have signed this Agreement.

Done at Brussels, on the twenty-ninth of March in the year 1991 in the German, French, Italian, Dutch, and Polish languages, whereby each wording is equally binding, in an original which is deposited in the archives of the government of the Grand Duchy of Luxembourg.

Protocol

On signing the Agreement on the taking back of persons with unauthorised residence, the parties to the Schengen Agreement of 14 June 1985, hereinafter called the parties, made the following joint statements:

1.Statement about Articles 1, 2 and 5 paragraph 3:

At the request of a party, the parties will come to a more detailed agreement about the methods for returning foreigners from third countries in view of the objectives of the Implementation Agreement of 19 June 1990, in particular about the question of returning a person according to Articles 1 and 2 of the Agreement on the taking back of persons, in a way which burdens the parties as little as possible. They will take the balancing out of financial imbalances in the sense of Article 24 of the Implementation Agreement of 19 June 1990 into consideration.

2.Statement about Articles 2 and 5 paragraph 3:

The parties' obligation to take a person back on the basis of this Agreement is provisionally limited to the nationals of the Republic of Poland. The obligation to take a person back can be extended to nationals of other states on the basis of a decision of the executive committee set up according to Article 131 (after the Implementation Agreement of 19 June 1990 has come into effect), or on the basis of a decision of the minister responsible according to national law (until the Implementation Agreement comes into effect).

3.Statement about Articles 8 and 5 paragraph 3:

The parties agree, on the occasion of the Implementation Agreement of 19 June 1990 coming into effect, together to check whether amendments to the Agreement on taking a person back are required.

4.Statement about Articles 9 and 5 paragraph 5:

If a party suspends or cancels this Agreement, then the other parties can also suspend or cancel it.

Done at Brussels, on the twenty-ninth of March in the year 1991 in the German, French, Italian, Dutch, and Polish languages, whereby each wording is equally binding, in an original which is deposited with the government of the Grand Duchy of Luxembourg.

Joint statement

On signing the Agreement on the taking back of persons with unauthorised residence on 29 March 1991 in Brussels, the parties undertake:

-not to apply the Agreement to nationals of third countries, if it is established that these persons entered the territory of the requesting party before the time of the provisional application;

-not to refer to the Agreement in the case of nationals of one of the signatory states if it is established that these persons entered the territory of the requesting party before the time of the provisional application.

The parties reaffirm their commitment to take back their own nationals according to the general principles of international law.

Done at Brussels, on the twenty-ninth of March in the year 1991 in the German, French, Italian, Dutch, and Polish languages, whereby each wording is equally binding, in an original which is deposited with the government of the Grand Duchy of Luxembourg.