Community Readmission Agreements with Third Countries – Objectives, Substance and Current State of Negotiations

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1. Introduction

Under the Maastricht Treaty, issues relating to the return of persons illegally residing in the European Union fell solely in the competence of the Member States. This legal situation changed on 1 May 1999 with the entry into force of the Amsterdam Treaty, which conferred explicit powers in this field to the European Community. Art. 63(3)(b) EC now enables the Council to adopt measures within the area of “illegal immigration and illegal residence, including repatriation of illegal residents”. The Community’s new powers under this article include the external competence to conclude readmission agreements with relevant third countries in order to accelerate and facilitate the return of such persons.

The reason for this transfer of powers was that conviction had gained momentum that individual Member States were no longer able to react appropriately to the increasing difficulties encountered by their competent authorities in the field of return. These difficulties are linked, among others, to the fact that return measures always require the co-operation of another State, i.e., either the transit country or the country of origin. This is the reason why illegally residing persons often succeed in delaying or, in individual cases, even completely thwarting their return because in the case of absence, loss or destruction of personal travel or identity documents, substitute papers then have to be obtained from the competent embassies or consulates through lengthy identification procedures, with the issue of such papers frequently only being possible upon examination by further authorities in the country of origin. Some third-countries even refuse to co-operate for political reasons or – openly or covertly – make readmission contingent upon, e.g., visa facilitation or financial considerations. Since a continuous presence of illegally residing persons also produces severe financial and social burden on Member

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States, it became clear that a common European response regarding repatriation and, more generally, the fight against illegal immigration had to be found.

In this common response, Community readmission agreements are supposed to play a prominent role as a key tool for a more efficient management – in partnership with the third countries concerned – of migration flows into the Union. Moreover they will also help to undermine the activities of internationally operating smuggling networks which are behind a significant part of the illegal immigration in Europe. Although, at Community level, such agreements are a new “post-Amsterdam” phenomenon, they can partly build upon standard readmission clauses, which have already featured for some years in EU association and co-operation agreements.¹

Up until now the European Commission has been authorized to negotiate Community readmission agreements with 11 third-countries or entities and the first of them are expected to enter into force before the end of 2003. This paper seeks to provide an overview on their current state of negotiations, describe the legal and political context, compare the key elements of the first three agreements and summarize some of the lessons learned from their negotiations.

2. Overview on the State of Negotiations²

Based on the new powers under Article 63(3)(b) in conjunction with Article 300 EC, the Council so far authorized the Commission to negotiate Community readmission agreements with Morocco, Sri Lanka, Russia and Pakistan (in September 2000), Hong Kong and Macao (in May 2001), Ukraine (in June 2002) and Albania, Algeria, China and Turkey (in November 2002). No further negotiating mandates are currently being prepared or planned, despite some initiatives to this end in the Council.³ Although negotiations with Hong Kong, Macao and Sri Lanka have already been completed, and the agreement with Hong Kong even been formally signed, none of them has so far entered into force.

¹ The present EU standard clauses were adopted by the Council on 3 December 1999 (Council doc. 13409/99), revising the 1996 standard clauses (Council doc. 4272/96) in order to adapt them to the new legal situation arising from the entry into force of the Amsterdam Treaty. These clauses do not constitute readmission agreements in themselves but establish a framework for negotiating such agreements in the future (“enabling clauses”). For more details, see in particular COM (2002) 175 of 10 April 2002, p. 24.
² For more details, see in particular Council docs. 12625/02 and 6023/5/03.
³ See e.g., the Spanish initiative regarding some ACP countries on the basis of Article 13 of the Cotonou Agreement of 23 June 2000 (Council doc. 14528/02).