

# Towards and Area of Freedom, Security and Justice

## COMMON READMISSION POLICY

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# *I. INTRODUCTION*

- Starting point of a common readmission policy: 1 May 1999 ► Entry into force of Amsterdam Treaty.
- Before ‘Amsterdam’: return of persons illegally residing in the EU a competence of Member States.
- After ‘Amsterdam’: explicit powers in this field conferred to European Community ►
- Article 63(3)(b) of Amsterdam Treaty: “The Council (...) shall (...) adopt measures on immigration policy within the following areas: (...) illegal immigration and illegal residence, including repatriation of illegal residents (...)”.
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# *I. INTRODUCTION*

- Article 63(3)(b) EC falls within Title IV. This implies:
  - external competence for the Community (Commission) to conclude readmission agreements with relevant third countries;
  - Council authorises Commission to negotiate Community readmission agreements;
  - special position of UK, Ireland and Denmark i.e. UK and Ireland are only bound if they “opt-in”, Denmark is always “out”.

## *II. STATE OF PLAY JANUARY 2006*

- Council has authorised Commission so far to negotiate Community readmission agreements with 11 countries: **Morocco, Sri Lanka, Russia, Pakistan, Hong Kong, Macao, Ukraine, Albania, Algeria, China and Turkey**
- Agreements in force: Hong Kong, Macao and Sri Lanka.
- Agreements in process of ratification: Albania and Russia.
- Ongoing negotiations: Morocco, Pakistan, Turkey and Ukraine.
- Negotiations not yet formally launched: China and Algeria.
- Priority now to finalise existing mandates, but new mandates are expected in 2006 and following years.

### *III. ADOPTING THE ACQUIS*

- Recall: agreements currently in force: Hong Kong, Macao and Sri Lanka.
- What do Community readmission agreements entail for EU Member States?
- To start three principles:
  - (1) All Community readmission agreements are reciprocal i.e. all the obligations included therein are equally applicable to both Contracting Parties;
  - (2) Community readmission agreements are not standard ► they are ‘tailor made’ for the third country in question.

### *III. ADOPTING THE ACQUIS*

(3) Community readmission agreements are without prejudice to rights, obligations and responsibilities arising from International Law.

- Now concretely: what do they mean for Member States?

#### (1) Readmission obligations for Member States (MS):

- MS shall readmit, upon application by the third country in question, its own nationals who fulfil the criteria stipulated in agreement;

- MS shall readmit **third country nationals and stateless persons** who fulfil the criteria stipulated in the

agreement;

### ***III. ADOPTING THE ACQUIS***

- MS shall issue the person(s) to be readmitted with a **travel document** required for his return;
- MS shall use for the purpose of readmission a commonly agreed **readmission application form**;
- for the purpose of establishing nationality and/or means of evidence regarding third country nationals and stateless persons, MS shall accept **commonly agreed lists**
  - MS shall adhere to the **time limits** stipulated in the agreement;
  - MS shall authorise the **transit of third country nationals or stateless persons** if so requested.

# ***III. ADOPTING THE ACQUIS***

## **(2) Data protection:**

- personal data protection will have to be ensured by MS pursuant to **Directive 95/46/EC** (the ‘data protection directive’).

## **(3) Joint Readmission Committee and Implementing Protocols:**

- Community readmission agreements foresee establishment of a **‘joint readmission committee’** which has the task of monitoring the agreement. MS’ experts assist the Commission in its role as co-chair of the Committee;



### ***III. ADOPTING THE ACQUIS***

- MS may draw up, under the EC agreement, bilateral implementing protocols with the third country in question, to arrange practical details such as contact points, etc.

#### **(4) Relation to bilateral readmission agreements or arrangements of MS:**

- Once Council has given readmission mandate to Commission, MS should abstain from negotiating a bilateral arrangement or agreement;
- Once EC readmission agreement has entered into force it takes precedence over any existing bilateral agreement or arrangement between a MS and the third country in question;

### ***III. ADOPTING THE ACQUIS***

\_ EC agreement also always takes precedence over bilateral implementing protocols .

## *IV. CONCLUSION*

- Community readmission agreements set out reciprocal readmission obligations on the Community and the third country in question.
- Community readmission agreements contain detailed administrative and operational procedures to facilitate the return and transit of illegally residing persons.
- Thus: Community readmission agreements requires MS to dispose of a sufficient and well functioning administrative capacity in order to ensure proper implementation.

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