EC/Pakistan agreement: readmission agreement

2009/0036(NLE) - 20/10/2010 - Final act

PURPOSE: conclusion of an Agreement with Pakistan on readmission.

LEGISLATIVE ACT: Council Decision 2010/649/EU on the conclusion of the Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation.

CONTENT: the proposed Decision aims to conclude an agreement on the arrangements for the readmission of nationals of each of the parties concerned, under a strict framework provided for in the agreement.

It should be noted that the Agreement previously concluded with the European Community has now been replaced by an Agreement with the 'European Union' as a consequence of the entry into force of the Lisbon Treaty on 1 December 2009.

The main provisions of the Agreement can be summarised as follows:

Principle of readmission: the Agreement provides for the principle of readmission on the basis of complete reciprocity. In principle, therefore, **the "Requesting State"** (Pakistan, in general) **is required to readmit to its territory its own nationals who do not fulfil or no longer fulfil the conditions for entry to the territory of the "Requested State"** (a Member States, in general), **upon the request of the latter**. The Requesting State must therefore provide without delay the travel document necessary for the return of the person to be readmitted, valid for a period of at least six months.

Similar provisions exist for the readmission of national of third countries and/or stateless persons residing without authorisation in the Requested State. The requirement to readmit third country nationals or stateless persons is linked to the following conditions:

> a) if the person has, at the time of submission of the readmission application, a valid visa or residence authorisation issued by the Requested State;
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> b) the person entered the territory of the requesting state unlawfully coming directly from Pakistan by air or ship without having entered another country in-between.

These obligations do not apply to persons in airside transit nor to those to whom a Member State has issue a visa or residence authorisation before or after entering its territory.

Where it relates to its own nationals or nationals of a third country or stateless persons, in all cases, Pakistan is required to establish, without delay, a travel document necessary for the return of the persons concerned.

Readmission procedure: the Agreement lays down the technical aspects relating to the readmission procedure. In particular, it lays down the provisions relating to:

- the readmission application (in general, a demand from a Member State to Pakistan for readmission),
- the readmission form and the content of the request,
- means of evidence regarding nationality if the documents cannot be relied upon (specific provisions in the case of third country nationals and stateless persons),

- time limits for the application request and the response (normally 30 calendar days),
- transfer modalities (3 months from the day of the acceptance of the request) and modes of transportation (escort, etc;).

Readmission in error: Pakistan or a Member State shall take back without delay any person readmitted in error within three months of the erroneous transfer of the person in question.

Transit operations: the Agreement contains a section devoted to transit operations as well as specific rules regarding transport and transit costs of those to be readmitted. In principle, the Requested State may allow the transit of a third country national or Stateless person when such a national or person cannot be returned to the State of destination directly after being satisfied, on the basis of written evidence, that the State of destination has committed itself to readmitting its national or the person as the case may be.

The Requested State may revoke consent if the onward journey in possible States of transit or the readmission by the State of destination is no longer assured. In such cases, the Requesting State shall take back the third country national or the Stateless person at its costs.

Other provisions: the Agreement contains the usual provisions on the data protection and on consistency with other legal obligations.

Entry into force and application: with a view to practical application, the Agreement provides Pakistan with the option of concluding bilateral implementing protocols with all the Member States. Final provisions govern the entry into force, the duration, eventual amendment, suspension and termination of the Agreement and define the legal status of its annexes. The Agreement also provides for the establishment of a Joint Readmission Committee responsible for facilitating the implementation of the Agreement and cooperation and exchanges of information between the Parties.

Annexes: the following annexes are an integral part of the Agreement:

- common list of documents the presentation of which is considered as evidence of nationality,
- common list of documents the presentation of which shall initiate the process for establishing nationality,
- common list of documents which shall be considered as means of evidence of the conditions for the readmission of third country nationals and stateless persons,
- common list of documents which are considered as means of evidence to initiate the investigations for the readmission of third country nationals and stateless persons,
- type model of readmission application,
- type model of transit application,
- several joint declarations.

Territorial provisions: in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom has notified its wish to take part in the adoption and application of this Decision, whereas Ireland has indicated it does not. Denmark, for its part, will not participate in the adoption of the decision nor in its application and the Agreement will not cover its territory (a declaration in the annex provides for the conclusion of a bilateral agreement between Denmark and Pakistan).

ENTRY INTO FORCE: the Agreement will enter into force when the necessary procedures will have been completed. The Decision enters into force on 7 October 2010.