EU/Georgia Agreement: readmission of persons residing without authorisation

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PURPOSE: to **conclude** an Agreement between the European Union and Georgia on the readmission of persons residing without authorisation.

PROPOSED ACT: Council Decision.

BACKGROUND: following the August 2008 conflict in Georgia, the Extraordinary European Council held in Brussels on 1 September 2008 decided "to step up relations with Georgia, including visa facilitation measures". According to the December 2005 COREPER common approach for the development of the EU policy on visa facilitation in principle, a visa facilitation agreement would not be concluded if no readmission agreement were in place.

On 27 November 2008, the Justice and Home Affairs Council formally authorised the Commission to negotiate a readmission agreement between the European Community and Georgia. In February 2009 the Commission transmitted a draft text to the Georgian authorities and the first round of formal negotiations could be held in Brussels on 2 April 2009.

Two further formal rounds of negotiations took place, the last one in Brussels on 24-25 August 2009.

Following a consultation and approval process on both sides as well as further clarification of a few additional points, the agreed text was initialled on 25 November 2009 in Brussels by the Chief Negotiators of both Parties.

Member States have been regularly informed and consulted at all (informal and formal) stages of the readmission negotiations.

The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft Readmission Agreement is acceptable to the Union.

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASIS: Article 79(3), in conjunction with Article 218 of Treaty on the Functioning of the European Union.

CONTENT: the proposal constitutes the legal instrument for the conclusion of the readmission agreement. The Council will decide by qualified majority.

The proposed decision concerning the **conclusion** sets out the necessary internal arrangements for the practical application of the Agreement. In particular**,** it specifies that the Commission, assisted by experts from Member States, represents the Union within the Joint Readmission Committee set up by Article 18 of the Agreement. Under Article 18(5), the readmission committee shall adopt its own rules of procedure. As in the case for the other readmission agreements so far concluded by the Union, the Union position in this regard shall be established by the Commission in consultation with a special committee designated by the Council. As regards other decisions to be taken by the Joint Committee, the Union position shall be established in accordance with the applicable provisions of the Treaty.

The **final content** of the Agreement can be summarised as follows:

- the readmission obligations set out in the Agreement (Articles 2 - 5) are drawn up in a **fully reciprocal way**, comprising own nationals (Articles 2 and 4) as well as third country nationals and stateless persons (Articles 3 and 5);
- the obligation to readmit own nationals includes also former own nationals who have renounced, forfeited or who have been deprived of their nationality without acquiring the nationality of another State;
- the readmission obligation with regard to own nationals covers also family members (i.e. spouses and minor unmarried children) regardless of their nationality and who do not have an independent right of residence in the Requesting State;
- the obligation to readmit third country nationals and stateless persons (Articles 3 and 5) is linked to the following prerequisites: (a) the person concerned holds, at the time of submission of the readmission application, a valid visa or residence permit issued by the Requested State or (b) the person concerned illegally entered the territory of the Requesting State coming directly from the territory of the Requested State. Exempted from these obligations are persons in airside transit and all persons to whom the Requesting State has issued a visa or residence permit before or after the entry to its territory;
- for own nationals as well as for third country nationals or stateless persons, in case of expiry of specified delay, Georgia accepts the use of the EU's standard travel document for expulsion purposes (Articles 2(5) and 3(3));
- Section III of the Agreement (Articles 6 to 12 in conj. with annexes 1 to 5) contains the necessary technical provisions regarding the readmission procedure (readmission application, means of evidence, time limits, transfer modalities and modes of transportation) and 'readmission in error' (Article 12). Some procedural flexibility is provided by the fact that no readmission application will be needed in cases where the person to be readmitted is in possession of a valid travel document or identity card (Article 6(2));
- in its Article 6(3), the Agreement sets out the so-called accelerated procedure, which has been agreed upon for persons apprehended in the "**border region**", i.e. within an area which extends up to 5 kilometres from the territories of seaports including custom zones and from international airports of Member States or Georgia. Under the accelerated procedure, readmission applications have to be submitted within 2 days, and replies have to be given within 2 working days whereas under the normal procedure, the time limit for replies is 12 calendar days;
- the Agreement contains a section on transit operations (Articles 13 and 14 in conj. with annex 6);
- Articles 15, 16 and 17 contain the necessary rules on costs, data protection and the relation to other International obligations;
- the Joint Readmission Committee will be composed, and have the tasks and powers, as set out in Article 18;
- in order to facilitate the implementation of this Agreement, Article 19 creates the possibility for Georgia and individual Member States to conclude bilateral implementing Protocols. The relation between the bilateral implementing Protocols and this Agreement is clarified by Article 20;
- the final provisions (Art. 21 to 24) contain the necessary rules on entry into force, duration, possible amendments, termination and the legal status of the annexes to the agreement.

Territorial measures: the specific situation of Denmark is reflected in the preamble and in a joint declaration attached to the Agreement. The close association of Norway, Iceland and Switzerland to the implementation, application and development of the Schengen Acquis is likewise reflected in a joint declaration to the Agreement.

Since the two agreements on visa facilitation and readmission are linked, both agreements should be concluded and enter into force simultaneously.

BUDGETARY IMPLICATION: the proposal has no implications for the Union's budget.