EU/Cape Verde Agreement: readmission of persons residing without authorisation

2012/0268(NLE) - 25/09/2012

PURPOSE: to conclude the Agreement between the European Union and Cape Verde on the readmission of persons residing without authorisation.

PROPOSED ACT: Council Decision.

BACKGROUND: Cape Verde is a stable and democratic country characterised by high standards of governance and respect for the rule of law and human rights. Cape Verde and the European Union enjoy excellent relations in the context of the EU-Cape Verde Special Partnership, a framework of mutual interests with a major political dimension.

On 5 June 2008 Cape Verde and the European Union signed the Joint Declaration on a Mobility Partnership which provides for the opening of a dialogue between the two parties on readmission. In this context the annex to the Declaration contains an undertaking by the Commission to submit a recommendation to the Council under Article 13 of the Cotonou Agreement to authorise it to open negotiations on the conclusion of a readmission agreement with Cape Verde.

The negotiating directives for a European Union–Cape Verde Readmission Agreement were adopted by the Council on 4 June 2009. Negotiations were formally opened on 13 July 2009 in Brussels. Three rounds of official negotiations took place, with the last on 23 November 2011.

The draft text was submitted to wide consultation and was finally initialled in Brussels on 24 April 2012.

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

IMPACT ASSESSMENT: no impact assessment was undertaken.

LEGAL BASIS: Article 79(3) in conjunction with Article 218(6)(a) of the Treaty on the functioning of the European Union (TFEU).

CONTENT: the proposal constitutes the legal instrument for the conclusion of the readmission Agreement.

The proposed decision concerning the **conclusion of the Agreement** 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, will represent the Union within the Joint Readmission Committee set up by Article 18 of the Agreement. Under Article 18(5) of the Agreement, the Readmission Committee is to adopt its own rules of procedure. As for the other readmission agreements concluded by the Union thus far, the Union position in this regard is to 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 Readmission Committee, the Union position is to be established in accordance with the applicable provisions of the Treaty.

As regards its **final content**, the Agreement may be summarised as follows:

- the readmission obligations set out in the Agreement (Articles 2 to 5) are drawn up on a basis of f**ull reciprocity**, applying both to own nationals (Articles 2 and 4) and to third-country nationals and stateless persons (Articles 3 and 5);
- the obligation to readmit own nationals also includes former own nationals who have renounced, forfeited or been deprived of their nationality without acquiring the nationality of another State;
- the readmission obligation with regard to own nationals also covers **family members** (i.e. spouses and minor unmarried children), regardless of their nationality, 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 or held at the time of entering the territory of the requesting State 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. These obligations do not apply in respect of persons in airside transit or to whom the requesting State has issued a visa or residence permit before or after they entered its territory;
- Section III of the Agreement (Articles 6 to 12 in conjunction 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 and, in case of third-country nationals, a valid visa or residence permit issued by the requested State (Article 6(2) and (3));
- Article 6(5) of the Agreement sets out the **'accelerated procedure' which has been agreed for persons apprehended in the 'border region'**, i.e. within an area which extends up to 30 kilometres from the territories of seaports, including custom zones, and from international airports of Member States or of Cape Verde. Under the accelerated procedure, readmission applications have to be submitted within two working days, and replies have to be given within two working days;
- under the normal procedure, the time limit for replies is eight calendar days;
- the Agreement contains a section on transit operations (Articles 13 and 14 in conjunction with Annex 6);
- Articles 15, 16 and 17 contain the necessary rules on costs, data protection and the relation to other international obligations and existing EU directives. The agreement is without prejudice to other arrangements relating to areas other than readmission, such as voluntary return;
- the Joint Readmission Committee will be composed in accordance with Article 18, and have the tasks and powers set out there;
- in order to execute this Agreement in practice, Article 19 creates the possibility for Cape Verde 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 (Article 21 to 23) contain the necessary rules on entry into force, duration, termination and the legal status of the annexes to the Agreement.

Territorial provisions: the specific situation of the United Kingdom, Ireland and Denmark is reflected in the preamble, Article 1(d) and Article 21(2). The situation of Denmark is also mentioned in a joint declaration attached to the Agreement. The close association of Norway, Iceland, Liechtenstein and Switzerland with the implementation, application and development of the Schengen acquis is likewise reflected in a joint declaration attached to the Agreement.

BUDGETARY IMPLICATIONS: the proposal has no implications for the EU's budget.