

EU/Azerbaijan Agreement: readmission of persons residing without authorisation

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

PROPOSED ACT: Council Decision.

BACKGROUND: the EU and Azerbaijan have agreed to move forward with the deepening and broadening of EU - Azerbaijan relations within the Eastern Partnership (EaP) framework. In this framework, the EU has recognized the importance of enhanced people-to-people contacts. During the Prague Eastern Partnership Summit in May 2009, the EU reaffirmed its political support for full liberalisation of the visa regime in a secure environment, and for promoting mobility by concluding visa facilitation and readmission agreements with EaP countries. According to the common approach for the development of EU policy on visa facilitation agreed by the Council, a visa facilitation agreement would not be concluded without a readmission agreement being in place.

On 19 December 2011, the Council formally authorised the Commission to negotiate a readmission agreement between the EU and Azerbaijan.

In February 2012 the Commission transmitted a draft text to the authorities of Azerbaijan following which the first round of formal negotiations was held in Baku on 1-2 March 2012. Three further formal rounds of negotiations took place, lastly in Brussels on 12-13 March 2013. The agreed text was subsequently initialled on 29 July 2013 in Brussels.

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

CONTENT: the proposed decision provides that the Council conclude the Agreement between the EU and Azerbaijan on the readmission of persons residing without authorisation on behalf of the Union.

The proposed Agreement sets out the necessary internal arrangements for the practical application of the Agreement.

Terms of the Agreement: the final content of this Agreement can be summarised as follows:

- the agreement contains an opening clause, reaffirming that it will be applied so as to ensure respect for human rights, and respect for the obligations and responsibilities of the Requested State and Requesting State under relevant international instruments applicable to them. It reiterates that the Requested State shall ensure the protection of the rights of persons readmitted to its territory in compliance with those international instruments. The same clause confirms that the Requesting State should give **preference to voluntary return over forced return**;
- the readmission obligations set out in the Agreement (Articles 3 - 6) are drawn up in a **fully reciprocal** manner, comprising own nationals (Articles 3 and 5) as well as third country nationals and stateless persons (Articles 4 and 6);
- the obligation to readmit own nationals also includes former own nationals who have renounced 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 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 4 and 6) 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 and directly entered the territory of the Requesting State after having stayed on, or transited through, the territory of the Requested State. Exempted from these obligations are persons in airside transit and persons who enjoy visafree access to the territory of the Member State;
- for own nationals, in case of expiry of the specified delay, and for third country nationals or stateless persons Azerbaijan accepts the use of the **EU's standard travel document** for expulsion purposes (Articles 3(5) and 4(3)). The equivalent standard document of Azerbaijan is included in Annex 8;
- Section III of the Agreement (Articles 7 to 13 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 13). 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 (Article 7(2));
- in Article 7(3), the Agreement sets out the **accelerated procedure**, which has been agreed upon for persons apprehended in an area which extends up to 15 kilometres from and including the territories of seaports and international airports, including custom zones, of the Member States or Azerbaijan. 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 15 calendar days (Article 11(2));
- the Agreement contains a section on transit operations (Articles 14 and 15 in conj. with annex 6);
- Articles 16, 17 and 18 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 19;
- in order to facilitate the implementation of the Agreement, Article 20 creates the possibility for Azerbaijan and individual Member States to conclude bilateral implementing Protocols. Article 21 clarifies the relationship between the bilateral implementing Protocols and the Agreement;
- the final provisions (Art. 22 to 25) contain the necessary rules on entry into force, duration, possible amendments, suspension, termination and the legal status of the annexes to the agreement.

Territorial provisions: the specific situation of Denmark is reflected in the Agreement. The close association of Iceland, Norway, Switzerland and Liechtenstein with the implementation, application and development of the Schengen Acquis has been taken into account, and is reflected in relevant joint declarations to the Agreement.