EU/Turkey Agreement: readmission of persons residing without authorisation

2012/0122(NLE) - 22/06/2012 - Preparatory document

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

PROPOSED ACT: Council Decision.

BACKGROUND: the negotiating directives for a European Community - Turkey readmission agreement were adopted by the Council on 28 November 2002. Negotiations were formally opened on 27 May 2005 in Brussels. After first four negotiations rounds (fourth one on 7 December 2006), the negotiations restarted in 2009. A new draft text was prepared and transmitted to Turkey on 17 December 2009. Three further formal negotiation rounds took place in 2010. An additional meeting between the Chief negotiators was held on 14 January 2011 in Ankara. Those meetings brought the negotiations to the end at the level of Chief Negotiators.

The text was subject to the consultations on both sides. On the EU side, the outcome of the negotiations was endorsed by the Justice and Home Affairs (JHA) Council held on 24 February 2011. After further contacts with Turkey, the agreed text was initialled on 21 June 2012 in Brussels by the representatives of both Parties. Member States have been regularly informed and consulted at all (informal and formal) stages of the readmission negotiations. The European Parliament's consent will be required for the conclusion of the Agreement.

IMPACT ASSESSMENT: no impact assessment was carried out.

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

CONTENT: the proposed Decision 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 19 of the Agreement. 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 3 - 6) are drawn up in a fully reciprocal way, 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 includes also former own nationals who have renounced 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 holds a residence permit issued by the requested State (c) 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, all persons to whom the requesting State has issued a visa or residence permit before or after entry to its territory and all persons who enjoy a visa-free access to the territory of the Requesting State;
- the readmission obligation for third country nationals or stateless persons becomes applicable only three years after the entry into force of the whole agreement. During that period that obligation will be applicable to stateless persons and third country nationals coming from those third countries with which Turkey concluded readmission agreements. During the same period the bilateral agreements between Turkey and Member States remain applicable in the relevant parts (Article 24(3));
- **for own nationals**, in case there is no consular office of Turkey in a Member State or in case of the expiry of specified time limits for issuance of travel documents, **Turkey accepts its positive reply to the readmission application as sufficient travel document for the readmission of the person concerned**. In the same cases for third country nationals or stateless persons, Turkey accepts the use of the EU's standard travel document for expulsion purposes (Articles 4(3) and 4(4));
- Section III of the Agreement (Articles 7 to 14 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 13). 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, valid visa or residence permit issued by the Requested State (Article 7(3));
- in its Article 7(4), the Agreement sets out the so-called **accelerated procedure**, which has been agreed upon for persons apprehended in the "**border region**", i.e. an area within the Requesting State's territory extending inwards up to 20 kilometres from the external border of that State, whether or not the border is shared between the Requesting State and the Requested State as well as the sea ports including customs zones and international airports of the Requesting State. Under the accelerated procedure, readmission applications have to be submitted within 3 working days, and replies have to be given within 5 working days;
- under the normal procedure, the time limit for replies to readmission applications is 25 calendar days except for the Requesting State which has a shorter initial detention period in the national legislation, in which case that shorter period will apply. The initial period may be extended up to 60 calendar days except for the Requesting State with the maximum detention period of less or equal to 60 days;
- 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 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, and have the tasks and powers, as set out in Article 19;
- in order to execute this Agreement in practice, Article 20 creates the possibility for Turkey and individual Member States to conclude bilateral implementing Protocols. The relation between the bilateral implementing Protocols and this Agreement is clarified by Article 21;
- the final provisions (Articles 22 to 25) contain the necessary rules on entry into force, duration, technical assistance, termination and the legal status of the annexes to the agreement.

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

BUDGETARY IMPLICATIONS: this proposal has no implication for the EU budget.