EC/Ukraine agreement: readmission agreement

2007/0071(CNS) - 18/04/2007 - Legislative proposal

PURPOSE: to conclude an Agreement between the European Community and Ukraine on readmission.

PROPOSED ACT: Council Decision.

BACKGROUND: in the common EU strategy of 11 December 1999 on Ukraine, the conclusion of a readmission agreement with this country was one of the measures proposed in parallel to proposal on the issuance of short-stay visas (see CNS/2007/0069). In 2002, the General Affairs Council formally authorised the Commission to negotiate a readmission agreement between the European Community and Ukraine. At the last formal round on 10 October 2006, the Commission presented Ukrainian side with a "package deal" on both agreements, which included, as far as the readmission agreement was concerned, a proposal for a 2 year transitional period for the entry into force of the provisions in the agreement dealing with the readmission of third country nationals and stateless persons. The final texts of the readmission and visa facilitation agreements were initialled at the occasion of the EU-Ukraine Summit in Helsinki on 27 October 2006.

CONTENT: 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 Community within the Joint Readmission Committee set up by Article 15 of the Agreement. Under Article 15 (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 Community, the Community 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 Community position shall be established in accordance with the applicable provisions of the Treaty.

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

Scope : the readmission obligations set out in the Agreement (Articles 2 to 4) are drawn up in a fully reciprocal way, comprising own nationals (Article 2) as well as third country nationals and stateless persons (Article 3) and 'readmission in error' (Article 4) (i.a. the Requesting State shall take back any person readmitted by the Requested State if it is established, within a period of 3 months after the transfer of the person concerned, that the requirements laid down in articles 2 or 3 of this Agreement are not met. In such cases the procedural provisions of this Agreement shall apply mutatis mutandis and the Requested State shall also communicate all available information relating to the actual identity and nationality of the person to be taken back).

The obligation to readmit own nationals (Article 2) includes also former own nationals who have renounced their nationality without acquiring the nationality or a residence authorisation of another State. In addition, Articles 2 is supplemented by a joint declaration concerning the deprivation of nationality.

Readmission of third-country nationals and stateless persons: the obligation to readmit third country nationals and stateless persons (Article 3) is linked to the following prerequisites:

a) the person concerned held at the time of entry a valid visa issued by the requested State and has entered directly from this State’s territory;

b) the person concerned held at the time of entry a valid residence authorisation issued by the requested State;

c) the person concerned illegally entered the territory of the requesting State 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 either granted visa-free access or issued a visa or residence authorisation with a longer period of validity.

In return for Ukraine agreeing to the aforementioned obligation regarding the readmission of third-country nationals and stateless persons, the European Community agreed to delay for 2 years after the entry into force of the Agreement the applicability of these obligations. During that two-year transitional period, Article 3 of the Agreement shall only become applicable to stateless persons and nationals from third-countries with which Ukraine has concluded bilateral treaties or arrangements on readmission. Moreover, during that two-year transitional period, the provisions in existing bilateral agreements or arrangements concluded between individual Member States and Ukraine concerning readmission of stateless persons and third country nationals shall continue to apply (Article 17 para. 2).

With regard to third-country nationals and stateless persons for whom it has given a positive reply to the readmission application, Ukraine accepts the use of the EU's standard travel document for expulsion purposes.

Technical modalities and readmission procedures: the Agreement contains a section on transit operations (Articles 10 and 11 in conj. with annex 6). Section III of the Agreement (Articles 6 to 9 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). Some procedural flexibility is provided by the fact that no readmission will be needed in cases where the person to be readmitted is in possession of a valid national passport and, if he or she is a third-country national, also holds a valid visa or residence authorisation of the State which has to readmit him or her.

The Agreement contains another important procedural element, 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 30 kilometres from the common land border between a Member State and Ukraine or within the territories of seaports and International airports of Member States or Ukrain e. Under the accelerated procedure, readmission applications have to be submitted, and replies have to be given, within 2 working days whereas under the normal procedure, the time limit for replies is 14 calendar days with the right to an extension of up to 30 calendar days in duly motivated cases.

Various measures: the Agreement contains the necessary rules on costs, data protection and the relation to other International obligations.

Entry into force and derogations: in order to execute this Agreement in practice, Article 16 creates the possibility for Ukraine and individual Member States to conclude bilateral implementing Protocols. The relation between the bilateral implementing Protocols and this Agreement is clarified by Article 17 para. The final provisions contain the necessary rules on entry into force, duration, possible amendments, termination and the legal status of the annexes to the agreement.

Territorial and final measures: this Agreement does not apply to Denmark. In such circumstances it is appropriate that Ukraine and Denmark conclude a readmission agreement in the same terms as this Agreement. The close association of Norway and Iceland to the implementation, application and

development of the Schengen Acquis is likewise reflected in a joint declaration to the Agreement.