EUROPEAN PARLIAMENT

DIRECTORATE GENERAL EXTERNAL POLICIES OF THE UNION

BRIEFING PAPER

Policy Department External Policies

READMISSION AGREEMENTS AND RESPECT FOR HUMAN RIGHTS IN THIRD COUNTRIES. REVIEW AND PROSPECTS FOR THE EUROPEAN PARLIAMENT

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DIRECTORATE B
- POLICY DEPARTMENT -

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SUMMARY

Readmission agreements have been used for a long time as a key means of combating illegal immigration, whether at bilateral, intergovernmental or Community level.

To date, six agreements have been signed between the European Community and its Member States, for the one part, and third countries, for the other part. Several questions arise when we consider and analyse the development of European readmission policy and the negotiation and implementation of the agreements; they relate in particular to respect for fundamental rights, the implications and consequences of the process of negotiating such agreements, and institutional issues in the context of formulating that policy.

1. In regard to respect for fundamental rights, our questions relate to two main areas:

(a) **Infringement of the principle of 'non-refoulement' (return) laid down in the 1951 Geneva Convention on Refugees**. Although the agreements contain what is called a 'non-affection' clause, there is no provision that expressly protects asylum seekers from expulsion. Moreover, an 'accelerated procedure' (which involves very short readmission time limits) can be applied in the event of a person being apprehended in the border region of the requesting State after illegally crossing the border coming directly from the territory of the requested State. The situation of asylum seekers at the EU's border with Ukraine clearly shows that this principle has not been fully respected.

(b) **Infringement of the ban on torture or other inhuman or degrading treatment set out in the European Convention on Human Rights**. That ban applies to signatory States both in their own territory and in the territory of the country of return. An example is the situation in Morocco, where various non-governmental organisations report that the Moroccan authorities are almost systematically infringing the fundamental rights of migrants and asylum seekers (destruction of documents, raids, maltreatment, abandonment in the Sahara desert, etc.). Yet this issue also arises in regard to the implementation of the readmission agreements that third countries which have signed the Community agreement conclude with other third countries. Those are known as 'cascade agreements'.

Furthermore, when they apply readmission agreements, Contracting third countries may, as a result of the pressure put on them by the European Union, recognise as 'nationals' persons who do not come under their jurisdiction, thereby infringing the obligation under international law of all States to admit their own nationals. Nor must we forget the rights of returnees. In some cases (and this applies in particular to the Balkans) the agreements in question may have very serious implications if the requested State is threatened with a large influx of returnees while also facing difficulties in regard to housing, jobs, etc.

2. The negotiation process

There is little information available on the process of negotiating the readmission agreements. Whether those negotiations succeed depends very much on what 'levers' or even 'carrots' the Commission can offer the third countries concerned. The conclusion of those agreements therefore depends on those countries' level of dependence on the European negotiator. Sri Lanka, Russia and Morocco illustrate those difficulties very well.

3. Institutional issues

The European Parliament is informed neither of the content of the negotiating mandate the Council gives the Commission nor of the actual negotiating process. Despite the various requests the European Parliament has put to the Commission and the Council, the ‘democratic deficit’ in relation to information remains.

RECOMMENDATIONS

Giving priority to respect for fundamental rights

Priority must be given to respect for human rights. Readmission agreements should be concluded only if they provide for full respect for individual rights. That principle must therefore be enshrined at several levels:

1. Negotiating procedures

Although the European Parliament cannot intervene directly at this stage because of the institutional framework for negotiating readmission agreements, the importance of the issue at stake (respect for human rights) fully justifies keeping it better informed.

2. Implementation of the agreements

- by the Member States

The objectives and formal framework of Community readmission agreements justify and allow for an accurate record of the 'results' of their implementation by the Member States, i.e. the number of returned persons, their nationality and status. The Commission should compile national data with a view to drawing up an annual report to be submitted to the European Parliament for discussion.

- by the States of return

Follow-up of the implementation of the readmission agreements must extend to the conditions under which non-nationals are readmitted into third countries. Negotiations must incorporate the principle of an annual report to be drawn up by the competent authorities of the third country, which includes, as a minimum requirement, statistical data on the fate of readmitted persons (detention, release, expulsion in the case of third-country nationals).

3. Respect for guarantees

Aliens must be offered effective legal remedies to ensure that, if their rights have been infringed, either the readmission procedure is suspended, or any measure that has been taken is cancelled, and they are returned to the requesting countries and, in all cases, have access to compensation.

Finally, these few recommendations may also lead the European Parliament to take a broader look at European return policy in general. Indeed, even supposing that some of the above issues can be resolved, readmission as such seems to give rise to inherent risks that the objective sought may be incompatible with the principles of fundamental rights to which the European Union is committed.

1. INTRODUCTION

1.1 Definition

A readmission agreement is an act by which the signatory States undertake to readmit into their territory their own nationals who have been found in an illegal situation in the territory of another State, and also other aliens who are not their own nationals but who have crossed their territory in transit before being intercepted in another State. It is one of the European Union's key policy instruments in the fight against illegal immigration.

1.2 Development of readmission agreements

1.2.1 First stage: purely bilateral agreements

Initially, the readmission agreements signed in Europe were bilateral (between two Union countries or between a Union country and a third country). Member States have been signing agreements of that kind since the 1960s, with a view to making it easier to expel nationals of the other Contracting Party illegally residing in their territory. That is true of France, which concluded readmission agreements with neighbouring countries such as Germany (22 January 1960), Austria (30 November 1962) and Benelux (19 April 1964), and also of Germany, in its agreements with Denmark (1 June 1954), Sweden (same date), Norway (18 March 1955) and Benelux (1 July 1966). These are known as 'first-generation' agreements.

In the late 1980s, with the geopolitical upheavals in Eastern Europe, a new type of readmission agreement appeared. It was no longer a question of ensuring the readmission only of nationals of the Contracting Parties, but also of nationals of third countries who had crossed through their territory in transit to the European Union (or, at the time, to the 'Schengen area'). The agreements now took on a new function: the transit countries must bear responsibility for their inadequate border controls.[1] The readmission agreement between the Schengen countries (France, Italy, Germany, Belgium, Netherlands and Luxembourg) and Poland[2] – which was signed on 29 March 1991 and entered into force on 1 May the same year – concerning the expulsion of migrants from Central and Eastern Europe, was to be the precursor of what were called 'second-generation' agreements. It was also the prerequisite for Poland, firstly, to conclude an association agreement with the European Community[3], and then effectively to accede to the European Union on 1 May 2004. That did not stop Germany and Poland from rapidly concluding their own bilateral readmission agreement – which entered into force on 1 May 1993 – providing for the return within a very short time limit

[1] Caroline Intrand, 'La politique du donnant – donnant', in *Plein Droit*, No 57, June 2003.

[2] That agreement was signed on the basis of Article 23(4) of the Convention implementing the Schengen Agreement of 19 June 1990, which stipulated that '*such aliens* [illegally resident third-country nationals] *may be expelled from the territory of that Party to their country of origin or any other State to which they may be admitted, in particular under the relevant provisions of the readmission agreements concluded by the Contracting Parties.*' OJ L 239, 22.9.2000, pp. 19-62.

[3] Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, signed in Brussels on 16 December 1991, OJ L 348, 31.12.1993, pp. 2-180.

(48 hours) of refugees and other individuals entering from Eastern Europe.[4] Nor did it take long for Poland to conclude other readmission agreements with its neighbours: Czech Republic (30 October 1993), Slovakia (12 November 1993), Romania (19 January 1994), Ukraine (10 April 1994) and Moldova (28 May 1995). That came to be known as the 'domino effect',[5] which triggered a 'cascade' of readmission agreements in an ongoing process (see below).

1.2.2 Second stage: intergovernmental cooperation

Until then, there had been no question of the Community having competence to negotiate and conclude agreements of this kind with third countries. The Maastricht Treaty, which was signed on 7 February 1992 and entered into force on 1 November 1993, established the European Union on the basis of 'three pillars': European Communities, foreign and security policy (CFSP) and cooperation in the field of justice and home affairs (JHA). In regard to the third pillar, the former Article K.1 of Title VI provided that:

'*For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest:*
1. asylum policy;
2. rules governing the crossing by persons of the external orders of the Member States and the exercise of controls thereon;
3. immigration policy and policy regarding nationals of third countries;
(a) conditions of entry and movement by nationals of third countries on the territory of Member States;
(b) conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment;
(c) combating unauthorised immigration, residence and work by nationals of third countries on the territory of Member States;
(…).'

In that context, on 30 November 1994 the EU Council adopted a recommendation '*concerning a specimen bilateral readmission agreement between a Member State and a third country.*'[6] The aim was to offer Member States a framework for the possible conclusion of such agreements with third countries. The specimen agreement provided for the readmission, without any further formality, of nationals of the requested State and of third-country nationals who had passed through its territory in transit. The deadline for replying to readmission requests was 15 days. The requesting State had to bear the costs arising from readmission. Finally, it was proposed that a 'committee of experts' be set up, made up of representatives of each Contracting Party, to monitor the application and follow-up of the agreement.

The EU Council was to adopt a second recommendation on 24 July 2995 '*on the guiding principles to be followed in drawing up protocols on the implementation of readmission*

[4] Helmut Dietrich, 'Pologne, Etat d'urgence pour les réfugiés', in *Plein Droit*, No 65-55, July 2005, pp. 11-16.
[5] Mike King, 'Le contrôle des différences en Europe : l'inclusion et l'exclusion comme logiques sécuritaires et économiques', in 'Contrôles: frontières, identités. Les enjeux autour de l'immigration et l'asile', *Cultures et Conflits*, No 26 - 27, 1997, pp. 35-49.
[6] OJ C 274, 19.9.1996, pp. 20-24.

agreements.'[7] It set out the practical procedures for readmission: common forms, accelerated border control procedures, various types of proof of the identity of the persons concerned (proof of nationality, passport, national identity paper, driving licence, statements by witnesses or the person concerned) or proof of entry at the external borders onto the territory of the Contracting Parties (entry stamp on passport, travel tickets, fingerprints or even hotel bills).

On 4 March 1996 members of the Council agreed the conclusions relating to '*readmission clauses in mixed agreements concluded with third countries'*.[8] They provide that all cooperation agreements between the Community and its Members States and a third country must include a 'readmission clause'. This was put into practice quite quickly: such clauses were incorporated in the partnership and cooperation agreements concluded in the mid-1990s with Armenia, Azerbaijan, Georgia, Uzbekistan, Croatia and the former Yugoslav Republic of Macedonia, and also in the Euro-Mediterranean association agreements with Algeria, Egypt and Lebanon, not forgetting the Cotonou Agreement and its Article 13 (see below). Those clauses can also serve as the basis for negotiating bilateral readmission agreements between a Member State and the third country concerned, in particular with a view to laying down the conditions and procedures for the readmission of third-country nationals.

1.2.3 Third stage: Community readmission agreements

The Treaty of Amsterdam, which was signed on 2 October 1997 and entered into force on 1 May 1999, brought up for the first time the question of the European Community's competence to negotiate and conclude readmission agreements with third countries. Indeed, Article 63(3)(b) of Title IV of the Treaty establishing the European Community (TEC) provides that the Council shall decide '*measures on immigration policy within the following areas:*
(…)
(b) illegal immigration and illegal residence, including repatriation of illegal residents'.

Given that one of the EU Council's priorities is to combat illegal immigration, the extraordinary European Council concerning the Community's new competences in the field of justice and home affairs, known as the Tampere European Council, of 15 and 16 October 1999, incorporated the following in its conclusions: '*The European Council calls for assistance to countries of origin and transit to be developed in order to promote voluntary return as well as to help the authorities of those countries to strengthen their ability to combat effectively trafficking in human beings and to cope with their readmission obligations towards the Union and the Member States'*. It added that '*The Amsterdam Treaty conferred powers on the Community in the field of readmission. The European Council invites the Council to conclude readmission agreements or to include standard clauses in other agreements between the European Community and relevant third countries or groups of countries. Consideration should also be given to rules on internal readmission'*.[9] That marked the beginning of 'third-generation' agreements.

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[7] OJ C 274, 19.9.1996, pp. 25-33.
[8] These conclusions were to be reiterated and updated by the 'Justice and Home Affairs' European Council of 2 December 1999, 13461/99 (Press 386)
http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/fr/jha/13461.F9.html#_Toc473435361
[9] Tampere European Council, 15 and 16 October 1999, Presidency Conclusions, points 26 and 27.

On 15 November 2001, the Commission presented a communication to the Council and the European Parliament '*on a common policy on illegal immigration'*.[10] It fleshed out the conclusions adopted by the Tampere Council with the following proposals: '(…) *before the negotiation of any readmission agreement, the political and human rights situation of the country of origin or transit should also be taken into account. When the first Community readmission agreements are concluded and implemented, their effects have to be evaluated and assessed. Furthermore, readmission clauses should be included in all future Community association and cooperation agreements. Targeted technical assistance, if needed supported by Community funding, could be offered where appropriate. The EU should also use its political weight to encourage third countries, which show a certain reluctance to fulfil their readmission obligations.* (…)'[11] The Commission is therefore giving an idea of the key points that should underpin the negotiation and follow-up of the agreements: respect for human rights in the third country concerned, possible technical and financial assistance for implementing the agreement, the need to evaluate the effects of the implementation of agreements already concluded. They are in fact recommendations put forward in response to the development of the return and readmission policy set up in practice by the EU (see III: Issues).

At the Laeken European Council on 17 December 2001, Member States once again reflected on the policy to combat illegal immigration and on readmission agreements, giving that policy a dimension hitherto barely mentioned: the inclusion of immigration policy (and therefore combating illegal immigration) in the Union's foreign policy.

In fact the Presidency Conclusions point out that a common asylum and immigration policy implies '*the integration of the policy on migratory flows in the European Union's foreign policy. In particular, European readmission agreements must be concluded with the countries concerned on the basis of a new list of priorities and a clear action plan. The European Council calls for an action plan to be developed on the basis of the Commission communication on illegal immigration and the smuggling of human beings* (…).'[12] Since then, the 'external' dimension of immigration policy has always been taken into account in political debates, even becoming main axis of the Hague programme in the context of the area of freedom, security and justice.[13]

The action plan the Council had been hoping for was indeed adopted, on 28 February 2002.[14] Whilst noting the importance of readmission agreements as an instrument of combating illegal immigration, the Council pointed out that '*before the negotiation of any readmission agreement, the interests of the European Union and of the Member States should be taken into account'*,[15] which implies deciding which third countries should be given priority in regard to concluding such agreements. To that end, four criteria were to be defined:[16]
(a) the migratory pressure exerted by flows of persons from or via third countries;
(b) third countries with which the European Community has concluded association or cooperation agreements containing a readmission clause;

[10] Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration, COM (672) final, Brussels, 15 November 2001.
[11] *Idem*, p. 26.
[12] Laeken European Council, 17 December 2001, Presidency Conclusions, point 40.
[13] Claire Rodier, Study, '*Analysis of the external dimensionof the EU's asylum and immigration policies' – summary and recommendations for the European Parliament*, European Parliament, 8 June 2006, PE 374.366
[14] Council of the European Union, '*Comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union'*, Brussels, 27 February 2002, Document No 6621/1/02, REV 1.
[15] *Idem*, point 75).
[16] Council of the European Union, '*Criteria for the identification of third countries with which new readmission agreements needed to be negotiated'*, Brussels, 16 April 2002, Document No 7990/02 COR 1

(c) the existence of a common frontier between a third country and a Member State;
(d) the added value of 'Community' readmission agreements in relation to the negotiation by Member States of bilateral agreements.

Although the link between the 'readmission clause' and cooperation or association agreements with third countries (see above) had already been mentioned, a new step was taken at the Seville European Council of 21 and 22 June 2002. In the section on the 'integration of immigration policy into the Union's relations with third countries', after pointing out that '*closer economic cooperation, trade expansion, development assistance and conflict prevention are all means of promoting economic prosperity in the countries concerned and thereby reducing the underlying causes of migration flows*', the European Council '*urges that any future cooperation, association or equivalent agreement which the European Union or the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration.*[17] Moreover, any country that did not cooperate in combating illegal immigration could find its relations with the European Union if not compromised at least reconsidered. In this way, development aid policy is made the *sine qua non* of third-country cooperation in the management of migration flows. Very soon after, the EU Council was to designate nine priority countries for the introduction of 'enhanced' cooperation in that field.

Logically these were primarily countries with which the EU already had cooperation agreements: Albania, China, Federal Republic of Yugoslavia, Morocco, Russia, Tunisia, Ukraine and Turkey. But the Council also considered it 'essential' to initiate cooperation with Libya, a country with which there was no formal basis for opening negotiations in those areas.[18]

In that context, and in parallel, the EU Council gave the European Commission a mandate to negotiate and conclude readmission agreements with a number of third countries. We will be looking at the countries concerned, the content of the readmission agreements signed to date and the specific provisions contained in some of those agreements. We will then consider the issues arising from that readmission policy (and, more generally, European immigration and asylum policy) both in regard to respect for fundamental rights and also at institutional level. Finally, we shall put a few recommendations to the European Parliament with a view to ensuring that, as the representative of the people of the EU Member States, it can play its due role and take part in formulating a 'just, humane and fair' policy based on full respect for fundamental rights.

[17] Seville European Council, 21 and 22 June 2002, Presidency Conclusions, point 33.
[18] Council of the European Union, General Affairs and External Relations, Brussels, 18 November 2002, Document No 14183/02 Press (350)

2 LEGAL FRAMEWORK

2.1 Legal basis

The legal basis for negotiating and concluding readmission agreements is Article 63(3)(b) of the Treaty establishing the European Community (TEC), which provides for the Council to adopt measures on immigration policy within the following areas:
(b) illegal immigration and illegal residence, including repatriation of illegal residents.

Article 300 of that Treaty provides that where '*this Treaty provides for the conclusion of agreements between the Community and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct those negotiations in consultation with special committees appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it.*'

2.2 Mandates

To date, the Council has given the Commission 16 mandates for negotiating agreements. The 16 countries are as follows:

Morocco, Pakistan, Sri Lanka, Russia, in September 2000;
The Macao and Hong Kong Special Administrative Regions of the People's Republic of China, in May 2001;
Ukraine, in June 2002;
Albania, China, Turkey and Algeria, in November 2002;
Moldova, in July 2006;
Republic of Montenegro, Serbia, Bosnia-Herzegovina and the former Yugoslav Republic of Macedonia, in November 2006.

As a result of those 16 mandates, six readmission agreements have been signed, of which five have effectively entered into force.[19]

* the readmission agreement with the Hong Kong Special Administrative Region of the People's Republic of China, signed in Brussels on 27 November 2002 and concluded in December 2003, entered into force on 1 March 2004 (it was the first EU readmission agreement);
* the readmission agreement with the Macao Special Administrative Region of the People's Republic of China, signed in Luxembourg on 13 October 2003 and concluded on 21 April 2004, entered into force on 1 June 2004;

[19] The readmission agreements between the European Community and the three Western Balkan countries, the former Yugoslav Republic of Macedonia, Bosnia-Herzegovina and the Republic of Montenegro, were formally initialled on 13 April 2007, Commission press release, Brussels, 12 April 2007, IP/07/497.

* the readmission agreement with the Democratic Socialist Republic of Sri Lanka, signed in Colombo on 4 June 2004 and concluded on 3 March 2005, entered into force on 1 May 2005;
* the readmission agreement with the Republic of Albania, signed in Luxembourg on 14 April 2005, entered into force on 1 May 2006;
* the readmission agreement with the Russian Federation, signed in Sochi on 25 May 2006 and concluded on 19 April 2007, entered into force on 1 June 2007;
* finally, the readmission agreement with Ukraine was signed in Brussels on 18 June 2007 on the margins of the EU–Ukraine Cooperation Council.

2.3 Content

2.3.1 General clauses

Seven clauses are found in all the readmission agreements negotiated to date. They concern:

(1) Contracting Parties' readmission obligations;
(2) readmission procedure;
(3) transit operations;
(4) non-affection clause;
(5) protection of personal data;
(6) implementation of the agreement;
(7) territorial application of the agreements.

We shall consider the Contracting Parties' readmission obligations, the non-affection clause and the territorial application of the agreements. As regards the other general clauses, see Annex 5.2.

(1) Contracting Parties' readmission obligations

The Contracting Parties undertake to readmit two categories of person: (a) their own nationals and (b) third-country nationals and stateless persons who have transited through the territory of one Contracting State before entering that of the other Contracting Party.

(a) Readmission of persons holding the nationality of a Contracting Party to the agreement

The requested State must, upon application by the requesting State, and without further formalities other than those specified in the agreements, readmit any person who does not, or who no longer, fulfils the entry or residence conditions applicable in the territory of the requesting State, provided it can be proved or indicated by *prima facie* evidence that the person concerned is a national of the requested State. The various documents serving as proof or *prima facie* evidence of nationality of one the Contracting Parties are listed in the annexes accompanying each readmission agreement.

In the event of a positive reply, the requested State must issue the person to be readmitted with the travel document required for his return, with a period of validity of at least six months. Where, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document originally issued, the requested Party must, within 14 calendar days, extend the validity of the travel document or issue a new travel document with the same period of validity. If, within that 14-day period, the requested State

has not issued a new travel document or extended its validity, it is deemed to accept the use of the EU's standard travel document for the purposes of expulsion.[20]

There are, however, some differences regarding this point among the signed agreements. In the agreement with Sri Lanka, for example, if the requested Party does not issue or renew the travel document in question within a period of 14 days, which can, however, extend to 30 days, or if it does not confirm receipt of the readmission application made by the requesting Party, it is deemed to accept the use of a provisional travel document, which is annexed to the agreement. In the case of Ukraine and Albania, if the requested State does not issue the travel document within the time limit or does not renew it, it accepts the expired travel document.

The agreement with the Federation of Russia contains the largest number of special features in this regard. In respect of its own nationals, it provides that after the requested State has given a positive reply to the readmission application, the competent diplomatic mission or consular office must, without delay, issue a travel document required for the return of the person to be readmitted with a period of validity of 30 days. If the person concerned cannot be transferred within that period, the competent diplomatic mission or consular office must, without delay, issue a new travel document with the same period of validity.

(b) Readmission of third-country nationals and stateless persons

The requested State must readmit in its territory, upon application by the requesting State, any third-country national or stateless person who does not fulfil, or no longer fulfils, the conditions in force for entry to or residence in the territory of the requesting State, provided that it is proved, or can be validly presumed from *prima facie* evidence, that such person:

(i) has unlawfully entered the territory of the requesting Party directly from the territory of the requested Party; or
(ii) held, at the time of entry, a valid residence authorisation issued by the requested State; or
(iii) held, at the time of entry, a valid visa issued by the requested State.

The conditions set in the agreement with Russia seem more stringent, for it provides that the person concerned must, *at the time of submission of a readmission application,* hold a valid visa or residence authorisation issued by the requested State.

The readmission obligation does not apply if:

(i) the third-country national or stateless person has only been in air transit via an international airport of the requested Party; or
(ii) the requesting State has issued to the third-country national or stateless person a visa or residence authorisation unless that person is in possession of a visa or residence authorisation issued by the other Contracting Party with a longer period of validity; or
(iii) the third-country national or stateless person enjoys visa-free access to the territory of the requesting State.

In the event of readmission, and upon application by the requesting State, the other Contracting Party must without delay issue the travel document necessary for the return of the

[20] That is a standard travel document for the expulsion of third-country nationals adopted by a Council recommendation of 30 November 1994, OJ C 274, 19 September 1996, p. 18

person to be readmitted, with a period of validity of not less than six months. If, for legal or factual reasons, the person concerned cannot be transferred within that period, the requested State must issue, within a period of 14 days, a new travel document with the same period of validity. If the set time limit has expired, the requested Party is deemed to have agreed to the use of the European Union's standard travel document.

(2) The non-affection clause

The first three readmission agreements signed by the Community include a rather summary non-affection clause, according to which the agreement shall be '*without prejudice to the rights, obligations and responsibilities of the Community, the Member States and* [the third country]*, arising from international law and, in particular, from any applicable international convention or agreement to which they are parties.'*. Not until the agreement signed with Albania was explicit reference made to a number of international texts, relating in particular to human rights, such as the Council of Europe's European Convention on Human Rights, the 1951 Geneva Convention on the Status of Refugees and its 1967 Additional Protocol, and the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(3) Territorial application of the agreements

Readmission agreements apply in the territory of the Member States and the third country concerned. They do not apply to the territory of Denmark, pursuant to the protocol relating to that country annexed to the Treaty on European Union (TEU) and the Treaty establishing the European Community (TEC). Yet all the agreements include a joint declaration inviting the third country to conclude a bilateral readmission agreement with Denmark on the same terms as the Community agreement. An identical joint declaration concerns Iceland and Norway, taking note of the close relationship between the European Community and those two countries.

It should also be noted that the United Kingdom (unlike Ireland) notified that it wished, in every case, to participate in the adoption of those agreements.

2.3.2 Specific clauses

Analysis of the various agreements shows that there are two types of clause that are specific to certain agreements:

(1) readmission 'in error'
(2) readmission under the 'accelerated procedure'

(1) readmission 'in error'

The requesting States must take back any person readmitted by the requested State if it is established, within a period of three months after the transfer of the person concerned, that the readmission requirements were not met. In such cases, the competent authorities of the Parties must exchange all available information on the identity, nationality and actual transit route of the person to be taken back. This clause is included only in the agreements with Albania and Ukraine.

(2) readmission under the 'accelerated procedure'

The agreements with the Russian Federation and with Ukraine[21] provide that if a person has been apprehended in the border region[22] of the requesting State after illegally crossing the border coming directly from the territory of the requested State, the requesting State may submit a readmission application within two working days following the person's apprehension. In that event, a reply is also required within a period of two working days from the date the application was received. The person concerned must be transferred within two working days from the date of reply.

Finally, it should be noted that Albania, Russia and Ukraine secured a delay in the applicability of the obligation to readmit third-country nationals and stateless persons. In the case of Albania and Ukraine the obligation does not become applicable for two years, in the case of the Federation of Russia for three years, after the entry into force of the respective agreements. During that transitional period, the readmission obligation applies only to stateless persons and nationals of third countries with which Russia or Ukraine (there is no mention of this in the agreement with Albania) has concluded bilateral readmission agreements.

2.4 Readmission clauses incorporated in the agreements between the Community and third countries

Several association or cooperation agreements concluded between the European Community and third countries contain a readmission clause. The clause establishes the principle of the readmission of nationals once identification procedures have been completed and the necessary documents have been issued.

Those agreements are as follows:
- Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part, signed in Valencia on 22 April 2002, OJ L 265, 10.10.2005;

- Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the Arab Republic of Egypt, of the other part, signed in Luxembourg on 25 June 2001, OJ L 304, 30.9.2004;

- Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part, signed in Luxembourg on 17 June 2002, OJ L 143, 30.5.2006;

[21] As a result, they constitute quite an important precedent in current and future negotiations of readmission agreements with other third countries.

[22] A 'border region' is defined as an area that extends up to 30 kilometres from the common land border between a Member State and another Contracting Party, or within the territories of sea ports, including customs areas, and international airports of the Contracting Parties.

- Partnership and cooperation agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part, signed in Luxembourg on 22 April 1996, OJ L 239, 9.9.1999;

- Partnership and cooperation agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part, signed in Luxembourg on 22 April 1996, OJ L 246, 17.9.1999;

- Partnership and cooperation agreement between the European Communities and their Member States, of the one part, and Georgia, of the other part, signed in Luxembourg on 22 April 1996, OJ L 205, 4.8.1999;

- Partnership and cooperation agreement between the European Communities and their Member States, of the one part, and the Republic of Uzbekistan, of the other part, signed in Florence on 21 June 1996, OJ L 229, 31.8.1999;

- Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, signed in Brussels on 18 November 2002, OJ L 352, 30.12.2002;

- Stabilisation and association agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, signed in Luxembourg on 9 April 2001, OJ L 84, 20.3.2004;

- Stabilisation and Association agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, signed in Luxembourg on 29 October 2001, OJ L 26, 28.1.2005;

- Partnership Agreement between the members of the African, Caribbean and Pacific (ACP) group of States, of the one part, and the European Community and its Member States, of the other, known as the Cotonou Agreement, signed in Cotonou on 23 June 2000, OJ L 209, 11.8. 2005.

Furthermore, other ‘mixed’ agreements between the European Community and third countries contain provisions on ‘regular dialogue’ or ‘cooperation’ on matters relating to immigration and, in particular, the conditions for the return of persons in breach of the legislation. That applies to the following agreements:

- Euro-Mediterranean Agreement establishing an association between the European Community and its Members States, of the one part, and the Republic of Tunisia, of the other part, signed in Brussels on 17 July 1995, OJ L 97, 30.3.1998;

- Euro-Mediterranean Agreement establishing an association between the European Communities and their Members States, of the one part, and the State of Israel, of the other part, signed in Brussels on 20 November 1995, OJ L 147, 21.6.2000;

- Partnership and cooperation agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Federation of Russia, of the other part, signed in Corfu on 24 June 1994, OJ L 327, 28.11.1997;

- Partnership and cooperation agreement establishing a partnership between the European Communities and their Member States, of the one part, and Ukraine, of the other part, signed in Luxembourg on 14 June 1994, OJ L 49, 19.2.1998;

- Partnership and cooperation agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Moldova, of the other part, signed in Brussels on 28 November 1994, OJ L 181, 24.6.1998;

- Partnership and cooperation agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Kazakhstan, of the other part, signed in Brussels on 23 January 1995, OJ L 196, 28.7.1999;

- Partnership and cooperation agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Kirghiz Republic, of the other part, signed in Brussels on 9 February 1995, OJ L 196, 28.7.1999.

3 ISSUES

Consideration and analysis of the development of European readmission policy and also of the negotiation and implementation of the relevant agreements raise a number of questions relating, in particular, to respect for fundamental rights, the implications and consequences of the process of negotiating the readmission agreements and, lastly, issues relating to institutional aspects, in particular the European Parliament's role in formulating that policy.

3.1 Respect for fundamental rights

3.1.1 Infringement of the 'non-refoulement' principle set out in the 1951 Geneva Convention on the Status of Refugees

Pursuant to Article 33 of that convention, '*No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*'

Most of the agreements refer explicitly, in what is called the 'non-affection clause' (see above, II-4), to a number of international texts on fundamental rights, such as the Geneva Convention on Refugees and its Additional Protocol of 1967, the 1950 European Convention on Human Rights, or the 1984 International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Yet that reference is not accompanied by any specific or precise guarantee with regard to the Contracting Parties' obligation to respect the non-expulsion principle, which considerably reduces the scope of that clause and makes it look rather 'artificial'.[23] Furthermore, the agreements contain no provision that expressly precludes expulsion (and therefore the readmission obligation of the other Contracting Party) of persons seeking protection.

That is particular cause for concern in the case of persons who are the subject of readmission under the accelerated procedure or a transit operation, where the extremely short deadlines do not enable them to exercise their rights in the appropriate manner, especially since the decisions adopted in this context do not provide for any means of legal redress. There appear to be no guarantees to ensure that both in the Member States and in the Contracting third country the person to be readmitted or in transit is not exposed to risks to life or dignity in the country of return.

It may also be noted that the situation of asylum seekers in some countries that have already signed a readmission agreement with the Community is far from compatible with the international texts. For example, the NGO Human Rights Watch (HRW) reported[24] that police at the Polish and Slovak borders who intercepted persons entering from Ukraine returned

[23] 'The European Association for the protection of Human Rights (FIDH-AE) calls on the European Union to renounce to the conclusion of Readmission Agreements and to commit its Future Cooperation to the creation of equitable asylum and immigration policies', FIDH-AE, 29 March 2004.

[24] Human Rights Watch , 'On the Margins – Ukraine: rights violations against migrants and asylum seekers at the new Eastern border of the European Union', 30 November 2005

them there within 48 hours, without making any real effort to discover or identify their legal situation or their possible need for international protection. For its part, UNHCR said it had received worrying reports that some Chechens who entered EU territory, by crossing from Zakarpattia irregularly into Slovakia, were unlawfully denied access to asylum procedures there. Instead of being protected, those groups had been returned and readmitted to Ukraine and then deported back to the Russian Federation.[25] In fact, there has been frequent criticism of the situation of asylum seekers and refugees, and foreign nationals in general, in that country. HRW describes maltreatment, prolonged detention under extremely difficult conditions and sometimes even forcible return to the country of origin, at the risk of disregarding the provisions of Article 3 of the European Convention on Human Rights. The HRW report devotes particular attention to Chechen asylum seekers, who are '*particularly vulnerable, both to abuse at the hands of the Ukrainian police and to forced return to Russia, despite the risk of persecution they face in that country. Although Russian citizens do not require visas to enter Ukraine, Chechens are routinely denied access at the border unless they pay bribes. Chechens detained in Ukraine trying to enter the European Union are denied access to asylum. In fact, no Chechen has been recognised as a refugee in Ukraine.*'[26] Chechen refugees are not, however, the only victims of that situation. For example, on 14 February 2006 Ukraine returned nine Uzbek asylum seekers on the basis of an extradition notice issued by the authorities of their country of origin.

At the very moment the European Commission was announcing the conclusion of the readmission agreement with Ukraine, in June 2007, UNHCR was publicly condemning the racist attacks repeatedly suffered by asylum seekers in Ukraine, quoting in particular the recent case of an Iraqi refugee killed in Kiev.[27]

3.1.2 Infringement of the ban on torture or other inhuman or degrading treatment (Article 3 of the European Convention on Human Rights)

Article 3 provides that '*No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*'

That implies that the Contracting State may not subject a person present in its territory to such treatment, but also that it may not return or extradite such a person to a country where he or she is at risk of becoming a victim. That is the doctrine of 'protection by ricochet', enshrined in the Strasbourg European Court of Justice's case law.[28]

Let us suppose that a third country with which the Community and its Member States have concluded a readmission agreement offers every guarantee of respecting the ban in question (which is far from demonstrated at present in the case, for instance, of Ukraine, or even of countries for which the EU has a negotiating mandate, such as Morocco, Pakistan, Turkey, China or Algeria). Regarding Algeria, according to the Algerian press, on 4 December 2005, 700 persons from sub-Saharan Africa were arrested and flown to southern Algeria to a prison camp (Ksar Tililane camp in Adrar) and then expelled to their country of origin. They

[25] UNHCR: 'Fortress Europe: the wall is getting higher', 20 April 2007.
[26] Human Rights Watch, *op cit.*
[27] HCR expresses concern at the increasing trend of racist attacks against asylum seekers in Ukraine, 10 June 2007.
[28] ECHR, 7 July 1989, *Soering*, Series A, No 161; ECHR, 29 April 1997, No 24573/94, *H.L.R. c/ France*, Rec. 1997-III ; ECHR, 2 May 1997, *D. c/ United Kingdom*, No°30240/96, Rec. 1997-III

included 59 Ivorian and 20 Congolese asylum seekers.[29] What about other countries to which such persons may be returned on a definitive basis? That is precisely the issue at the heart of what are called 'cascade' agreements. In effect, the obligation on a third country to readmit stateless persons and nationals of other third countries encourages it, in turn, to conclude bilateral readmission agreements with those countries.[30] In that case, what means do the Community and its Member States have to ensure full respect for Article 3 of the ECHR and, in particular, what about the situation of stateless persons?[31] There has been some anxiety in this respect as a result of the remark the EU Council has addressed to third countries on several occasions, namely that it '*encourages these third countries to conclude readmission agreements with each other and with other countries in their respective regions. The Council is determined to make further use of this tool and to intensify all efforts to pursue such agreements by fully supporting the Commission throughout the negotiating process.*'[32]

This anxiety is not unjustified, as shown by the various reports and eyewitness accounts of the many infringements by the Moroccan authorities of the fundamental rights of asylum seekers and migrants, and unfortunately it is only one example among many.[33]

Libya is not one of the countries with which the EU plans to conclude an agreement. Nonetheless, that country, regularly condemned by international organisations and the UNHCR for the maltreatment inflicted on foreign nationals and refugees, provides a good example of the risks arising from the cooperation between it and certain Member States, in particular Italy, in the area of the management of migration flows. In April 2005 the European Parliament adopted a resolution strongly condemning the repeated collective expulsions of migrants by Italy to Libya on the basis of a 2004 bilateral agreement, the terms of which were never made public. The EP considered that Libya was practising '*arbitrary arrest, detention and expulsion*' and was '*concerned at the treatment and deplorable living conditions of people held in camps in Libya, as well as by the recent massive repatriations of foreigners from Libya to their countries of origin in conditions guaranteeing neither their dignity nor their survival'*.[34]

3.1.3 Determining nationality

In the view of the Council of the European Union, third countries must not only readmit their own nationals to their territory if they are subject to an expulsion decision, but must also assist in determining the nationality of persons who are presumed to be nationals or whose nationality is in doubt. The Council has, therefore, invited the Commission to draw up

[29] cf. '*Maghreb: banlieue de l'Europe. Etat d'urgence pour les Sub-sahariens'*, press release of the Association des travailleurs maghrébins de France (ATMF), 7 December 2005.
[30] For a brief look at some 'cascade' agreements, see Annex II of this study.
[31] Will their country of final destination be a 'blank space'? Those were the words of Maria da Assunção Esteves, rapporteur for the EP's Committee on Civil Liberties, Justice and Home Affairs, regarding the readmission agreement with the Russian Federation, report A6-0028/2007 final, 5 February 2007.
[32] Council of the European Union, General Affairs and External Relations, Brussels, 2 November 2004, press release, 13588/1/04 REV 1 (Press 295).
[33] V. Migreurop, '*Guerre aux migrants. Le livre noir de Ceuta et Melilla'*, Editions Syllepse, 2007; Amnesty International, '*Spain and Morocco: failure to protect the rights of migrants – one year on'*, AI index: EUR 41/009/2006, '*Morts par balle à Laayoune pour avoir voulu tenter de quitter le Maroc. Maltraitances et refoulement massifs à Ouj'*, by the follow-up committee of the non-governmental Euro-African Conference, August 2007; Le Monde, '*La traque des clandestins est ouverte au Maroc*', Claire Rodier, 13 January 2007.
[34] EP resolution on Lampedusa, 14 April 2005.

proposals for the '*extension of the standard clauses so as to establish Contracting Parties' duty to assist in determining the nationality of persons to be returned who are believed to be nationals or whose nationality is uncertain and in issuing return travel documents.*'[35] It seems to us that the existing agreements contain clauses and annexes that make it fairly easy to overcome the obstacles to determining nationality and issuing travel documents (see above). More extensive negotiations in this area could result in the requesting Party (in particular the third country) being forced to recognise more rapidly as 'own nationals' persons who are not nationals, precisely by disregarding the obligation under international law to which the Council is referring. In this respect, the report to the European Parliament on '*the immigration situation in the Canary Islands*' by the mission led by Hélène Flautre, Chairman of the Subcommittee on Human Rights, from 16 to 19 October 2006, is most enlightening. It tells of a delegation of representatives of the Senegalese authorities sent to the Canary Islands soon after the signing, in early September 2006, of an agreement between Spain and Senegal. Of the 6 000 immigrants who had arrived by sea over the preceding months, in the space of a few days that delegation apparently identified 5 000 Senegalese, who were, therefore, returned without delay. Such a performance is bound to raise a few eyebrows when one remembers that the key reason for their expulsion, which was impatiently awaited by the Spanish authorities, was recognition of the migrants' Senegalese nationality.

3.1.4 The case of the Balkans

Although the issues raised by the application of the readmission agreements mainly concern nationals of third countries in relation to the two Contracting Parties, or persons in need of international protection, we should also mention the specific case of agreements that provide for the return of nationals, but where that can have serious implications if the country concerned is at risk of large flows of returnees at a time when it is facing difficulties in housing, employment, etc. A 2005 European Parliament report underlined these difficulties in regard to Albania: *'Albania will face considerable difficulties in implementing the EC/Albania Readmission Agreement when it comes into force in 2005. In particular it faces a shortage of human and material resources, which are necessary to process requests from EC Member States. Furthermore, the newly created entity responsible for the implementation of Readmission Agreements lacks experience in implementing existing bilateral agreements and in implementing forced return in general. Regarding the coming into force of the third country clause in 2007, the Albanian authorities have already expressed their concern that removal is simply not possible due to the high costs this incurs.'*[36]

What is true of Albania is equally true of the entire Balkan region, faced with the resolve of western European states to repatriate those who, after 1992 and again in 1999, fled the region and found temporary protection in the EU. The Council of Europe estimates that some 100 000 people could be sent back to Serbia from Germany, the Netherlands, Belgium, Switzerland, etc. Serbia, however, is faced with high unemployment and is unable to absorb and adequately house the occupants of the hundred or so collective centres the authorities set up in 1999 to take in refugees and internally displaced persons fleeing from Kosovo or

[35] Conclusions of the Council on the evaluation of the progress and outcome of negotiations for Community readmission agreements with third countries, Luxembourg, 12 and 13 June 2007.

[36] Committee on Civil Liberties, Justice and Home Affairs. Report on the proposal for a Council decision concerning the conclusion of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authority. Rapporteur, Ewa Klamt. A6-0214/2005, 22 June 2005.

Croatia. If an additional burden of that kind were inflicted, it might act as a long-term obstacle to Serbia's development prospects and journey towards EU membership.[37]

3.2 The negotiating process

Little information is available on the negotiating process the European Commission is conducting with the countries for which it has received a mandate. It is worth noting, however, the statement made by Franco Frattini, the Commissioner responsible for Justice and Home Affairs, in 2006: '*It was not easy to negotiate the readmission agreements. Although we have now completed the talks with five countries, including Russia, negotiations have not made the same progress in all cases. What slows them down most is the fact that although in theory these are reciprocal agreements, it is clear that in practice they mainly serve the Community's interests. That is very much the case of the provisions on the readmission of third-country nationals and stateless persons – a* sine qua non *of all our readmission agreements that, however, third countries find very difficult to accept. The success of the negotiations depends very much, therefore, on the "levers" or should I say "carrots" the Commission can offer, i.e. incentives that are strong enough to ensure the cooperation of the third country concerned.'* (March 2006, address to the French Senate). His meaning is plain: the readmission agreements mainly benefit the EU, and the third countries know it, so the conclusion of the agreements depends on those countries' degree of dependence on the European negotiator. The more dependent a country is, the fewer 'carrots', to use Commissioner Frattini's term, will be needed to tip the scales.

There is no doubt that the scales were very imbalanced in the case of Sri Lanka, a country with which one of the first Community agreements was concluded. Sources among members of the Sri Lankan delegation state that during the negotiation of the readmission agreement, discussions and decisions relating to Justice and Home Affairs (JHA) were conducted entirely by the European side.[38] It would seem that Russia brought a very different geopolitical and economic weight to bear, judging by the major concessions made by the EU in the EU-Russia readmission agreement. In its report, the LIBE Committee feared that a 'summary approach to return' takes precedence over guaranteed respect for human rights.[39]

The example of Morocco illustrates the difficulties to which Commissioner Frattini referred. Several years later, it is hard to count the number of rounds of negotiation following which the European side has announced the imminent conclusion of a readmission agreement, but the Moroccan side was probably trying to 'raise the stakes' to obtain counter-concessions in face of the EU's requirements. One of the stumbling blocks in the discussions is that the Moroccan authorities are very reluctant to agree to readmit third-country nationals into their territory.

[37] Group 484, *Human Rights report for 2005*
[38] OXFAM, *Foreign Territory:the internationalisation of the EU's asylum policy*, London, 2005.
[39] European Parliament Committee on Civil Liberties, Justice and Home Affairs. Report on the proposal for a Council decision concerning the conclusion of the Agreement between the European Community and the Russian Federation on readmission. Rapporteur, Maria da Assunção Esteves. A6-0028/2007 final, 5 February 2007.

3.3 Institutional issues

Article 300(3) of the Treaty establishing the European Community provides that: '*The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 133(3), including cases where the agreement covers a field for which the procedure referred to in Article 251 or that referred to in Article 252 is required for the adoption of internal rules. The European Parliament shall deliver its opinion within a time limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time limit, the Council may act.*' No provision is made, therefore, for Parliament to be consulted at the negotiating stage of the agreement, or at the time the Council mandates the Commission.

Yet, as the European Parliament has pointed out on several occasions, readmission agreements are an area involving issues that are of fundamental importance both to the persons concerned and to the Contracting Parties. Nevertheless, the agreements are negotiated in an opaque framework in which no information is provided to Members of the European Parliament and even less to the national parliaments. That 'democratic deficit' does not just affect the negotiation process. It applies equally to monitoring the implementation of the agreements, given that this is assigned mainly to the 'joint readmission committee' made up of representatives of the European Commission, assisted by national experts from the Member States (for the Community) and the third countries. To date, five Community readmission agreements have entered into force, two of them three years ago and two of them two years ago. Yet, so far as we know, the European Parliament has not been informed of their results, the difficulties encountered, the number of applications made pursuant to those agreements or the number of readmissions accepted and actually effected.

It does not seem likely to us that Parliament's repeated requests for an end to this situation will receive a favourable response from the Council in the near future. In fact, judging by the priorities the Council has set for ongoing or future negotiations of such agreements, it takes very little account of those demands. In its recent 'evaluation of the progress and outcome of negotiations for Community readmission agreements,'[40] it calls on '*Member States and the Commission to further improve cooperation by allowing for more frequent direct feedback between the Commission, its Special Representative for Readmission and Member States, in the framework of the competent Council bodies responsible for migration, led by the Working Party on Migration and Expulsion, which is the committee appointed under Article 300 of the EC Treaty, with the involvement of the relevant External Relations Council bodies. The consultation of the Council bodies is relevant before and after individual rounds of negotiations, and, in any case, necessary at each important step of the negotiations, in particular before envisaging to initial a text.*'

[40] *Idem*.

There is, however, a glimmer of hope: the draft treaty that the 2007 Intergovernmental Conference will begin to debate. It provides for the introduction of a new Article 188n (replacing existing Article 300). Article 188n(6) is worded as follows:

'*Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision concluding the agreements:*

(a) after obtaining the consent of the European Parliament in the following cases:
(…)
(v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required'.

Meanwhile, Members of the European Parliament must not hesitate to take on board what Benita Ferrero-Waldner said during the debate on the draft report presented by the MEP Maria da Assunção Esteves on the readmission agreement concluded with Russia: '*At the same time, however, I can also reiterate that of course we are at your disposal to provide any relevant information, even during the ongoing negotiations'* on those agreements.

We have endeavoured, in this third part, to identify the risks that may in some cases arise from the readmission agreements concluded by the EU or the Member States in regard to respect for people's fundamental rights. We feel, however, that it is important to take a broader view in two areas. The first concerns the implications of readmission procedures for relations between third countries that are EU partners and their neighbours; the second concerns, over and above the readmission agreements themselves, the more general framework within which they fall, namely the EU's return policy.

3.4 Impact on regional balances

In 2000, when negotiations began on the first Community readmission agreements, the Euro-Mediterranean Human Rights Network (EMHRN) expressed fears that the readmission principle might force '*third countries to strengthen border controls and tighten visa requirements and thus become buffer zones for Europe in relation to migrants and asylum seekers.*' Those fears proved justified: as instruments of the 'externalisation' of EU immigration policy,[41] readmission agreements may not only cause direct risks to returned persons (cf. above, III-1), but may also have an impact on the relations between countries with which the Commission or the Member States are negotiating the agreements and their neighbours; they may, therefore, contribute to the long-term destabilisation of areas where people were previously able to cross borders freely.

It is often rumoured that Libya or the Maghreb countries may impose visas on the nationals of their Sub-Saharan African neighbours. Over and above the immediate advantages the EU might be able to gain from that kind of 'filtering' system, we must consider that impact in all its aspects, which are, in particular, economic, commercial and environmental. We must also consider the potential consequences of an increasing number of readmission agreements, in the sense of creating divisions between peoples. Just as the EU is seeking to promote shared common values with its new neighbours, in the context of its neighbourhood policy, in order

[41] On the concept of externalisation, see the activities of the Migreurop network: www.migreurop.org

to prevent too many disparities arising from the 2004 enlargement, similarly it must not, in the name of protecting its own borders, give rise to any doubts about balances that are rooted in history.

3.5 Return policy

Readmission agreements, presented as necessary to the EU's strategy in the fight against illegal immigration, are linked to the implementation of its return policy and count as one of its main instruments, given that they are regarded as ensuring its effectiveness. With regard to the dysfunctional aspects identified in this study, in the light of the many activities and reports by international organisations and NGOs, and the many questions raised by the European Parliament, we may wonder whether the readmission provisions can be improved without in-depth consideration of the issues of that return policy. Even supposing that the soluble problems connected with the opaque nature of the negotiations were resolved, the readmission mechanism seems to harbour inherent risks that the objectives pursued are not compatible with the principles of fundamental rights to which the EU is committed.

4 RECOMMENDATIONS TO THE EUROPEAN PARLIAMENT

The European Parliament has on numerous occasions expressed reservations about the negotiation procedures and implementing terms of the readmission agreements, and also the implications of those agreements for respect for human rights and the right of asylum. On the basis of those reservations, we can put forward several types of recommendation.

Priority to be given to respect for fundamental rights

Priority must be given to respect for fundamental rights as a condition of the agreements. Readmission agreements may not be concluded unless they ensure full respect for fundamental rights, whether in regard to migrants, asylum seekers or refugees. The principle of non-expulsion must be guaranteed. Unless it is to remain a dead letter, that principle must be enshrined at several levels.

4.1 Negotiation procedures: keeping the EP informed

Although the institutional framework for the negotiation of readmission agreements makes it difficult for the European Parliament to intervene directly at the negotiating stage, the importance of the issues at stake, which concern fundamental rights, justifies the need for Parliament to be kept better informed.

Improvements should be made, as Benita Ferrero-Waldner suggests, in order to enable MEPs to be kept informed on a regular basis, throughout the discussions with the third country, of the progress of the negotiations and any obstacles encountered.

4.2 Implementation of the agreements

- by the Member States

The objectives and formal framework of the Community readmission agreements justify and allow a precise account to be given of the 'results' of their implementation by the Member States, i.e. the number of returned persons, their nationality, their status (reason for unlawful stay, rejected asylum seeker, etc.) and the average time elapsing between questioning, application for readmission and transfer. The Commission should compile national data and draw up an annual report to be submitted to Parliament for debate.

- by the States of return

If the non-affection clauses and references to respect for fundamental rights contained in the readmission agreements are to have any real meaning, the follow-up of the implementation of those agreements must extend to the conditions under which foreign nationals are readmitted into third countries. The negotiations must include the principle that third-country authorities must draw up an annual report giving at the very least statistical indications of the fate of

readmitted persons (detention, release, expulsion in the case of third-country nationals and, in that case, breakdown of statistics by country of return).

4.3 Respect for guarantees

Effective means of redress must be available to foreign nationals to ensure that, in the event that their rights are infringed, either the readmission procedure is suspended, or the measure, if executed, is cancelled and the person concerned is returned to the country that has requested the return, and also, in all cases, given access to compensation.

5 ANNEXES

5.1 Community agreements with third countries

1. Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation, signed in Brussels on 27 November 2002, OJ L 17, 24.1.2004, pp. 25-38.

2. Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China concerning the readmission of persons residing without authorisation, signed in Luxembourg on 13 October 2003, OJ L 143, 30.4.2004, pp. 97-115.

3. Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation, signed in Colombo on 4 June 2004, OJ L 124, 17.5.2005, pp. 41-60.

4. Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation, signed in Luxembourg on 14 April 2005, OJ L 124,17.5.2005, pp. 21-40.

5. Agreement between the European Community and the Russian Federation on readmission, signed in Sochi on 25 May 2006, OJ L 129, 17.5.2007, pp. 38-60.

6. Agreement between the European Community and Ukraine on the readmission of persons, signed in Brussels on 18 June 2007, not yet published in the Official Journal.

5.2 Technical clauses in the Community readmission agreements

(1) readmission procedure

Any transfer of a person requires the submission of a readmission application to the competent authority of the requested State. The application may be replaced by a written statement if the person to be readmitted holds a valid passport (in the case of a national of the requested State) or, in the case of a third-country national or stateless person, also holds a valid visa or residence authorisation issued by the requested State.

Any readmission application is to contain the following information:
(a) the particulars of the person concerned (e.g. given names, surnames, date and place of birth, sex, last place of residence, etc.);
(b) indication (or, in the case of the agreements with the Macao and Hong Kong Special Administrative Regions, a photocopy) of the means with which proof or *prima facie* evidence will be provided regarding nationality, transit, unlawful entry and residence, and the grounds for the readmission of third-country nationals and stateless persons.
A common form to be used for readmission applications is attached to all the agreements.

The proof of nationality to which the readmission application refers may be provided by means of the documents listed in the annexes to the agreements. They include, for example, passports of any kind, national identity cards, service books and military identity cards, citizenship certificates or other official documents that mention or indicate citizenship. *Prima facie* evidence of nationality may be provided by official photocopies of any of the above documents, driving licences or photocopies thereof, photocopies of birth certificates, any other official document issued by the authorities of the requested State, written witness statements or statements made by the person concerned and language spoken by him or her. Provided those documents are presented, the requested State will recognise the person's nationality without any other formalities. The agreement with Russia specifies that in the case of documents that only furnish indirect evidence of nationality, such as driving licences, company identity cards and written statements by witnesses or by the person concerned, the Contracting Parties shall mutually deem it as grounds for starting an appropriate verification.

If none of those documents can be presented, the competent authorities of both Parties (generally the diplomatic representations or consular offices) will interview the person to be readmitted in order to establish his or her nationality.

The annexes also set out the conditions for readmitting third-country nationals or stateless persons. The required documents include a valid visa or residence authorisation issued by the requested State and entry/departure stamps in the travel document, official statements made by border authority staff and witnesses who can testify to the person concerned crossing the frontiers, tickets or passenger lists of air, train, coach or boat passages that show the presence of the person concerned in the territory of the requested State or (in the case of some agreements these are regarded merely as *prima facie* evidence) non-official documents such as hotel bills, car-hire agreements or credit card payment counterfoils that clearly show the person's name and passport number.

The unlawfulness of entry, presence or residence in the territory of the other Contracting Party may be established by means of the travel documents of the person concerned in which the necessary visa or other authorisation required by the Parties is missing. A statement by the competent authority of the requesting State that the person concerned has been found not having the necessary travel documents, visa or residence authorisation likewise provides *prima facie* evidence of unlawful entry, presence or residence.

The readmission application must be submitted to the competent authority of the requested State within a maximum period of one year (or 180 calendar days in the agreement with the Russian Federation) from the date when the requesting State gains knowledge that a third-country national or a stateless person does not, or no longer, fulfils the conditions in force for entry, presence or residence. That time limit may be extended upon request. Most of the agreements do not specify the duration of that extension. An exception is the agreement with Ukraine, which expressly provides that the extension may not exceed 30 days.

A readmission application must be replied to within a reasonable time, which varies according to agreement. .In general it is one month, but sometimes between 15 days and a maximum of one month (agreement with Sri Lanka); 14 days (agreement with Albania) and 25 days (agreement with Russia).[42] The agreement with Russia provides that if the application cannot

[42] That is one aspect that caused problems during the negotiations, because some Member States considered the time limit too short (the original version provided for a 60-day time limit for Russia to reply to applications) in

be replied to in time, the time limit shall, upon duly motivated request, be extended up to 60 calendar days. Reasons must be given for refusal of a readmission application.

On acceptance of the readmission application or upon expiry of a one-month time limit (14 days in the case of the agreement with Albania), the person concerned is transferred within 90 calendar days. That time limit may be extended upon duly motivated request..

(2) transit operations

The Contracting Parties restrict the transit of third-country nationals or stateless persons to cases where such persons cannot be returned to the State of destination directly. The requested State authorises that transit if the onward journey through other States of transit and the admission by the State of destination is assured. It may, however, refuse transit:

(a) if the third-country national or the stateless person runs a real risk of being subjected to torture or to inhuman or degrading treatment or punishment or the death penalty, or of persecution because of his race, religion, nationality, membership of a particular social group or political conviction in the State of destination or another State of transit;[43] or
(b) if the third-country national or the stateless person is subject to criminal persecution or sanctions in the requested State or in another State of transit; or
(c) on grounds of public health, domestic security, public order or other national interests of the requested State.

The requested State may also revoke any authorisation issued if circumstances subsequently arise or come to light which stand in the way of the transit operation, or if the onward journey in possible States of transit or the readmission by the State of destination is no longer assured.

Any application for transit operations must be submitted to the competent authorities in writing and is to contain the following information:

(a) type of transit (by air, land or sea), possible other States of transit and intended final destination;
(b) the particulars of the person concerned (e.g. given name, surname, date of birth and – where possible – place of birth, nationality, type and number of travel document);
(c) envisaged border crossing point, time of transfer and possible use of escorts;
(d) a declaration that from the viewpoint of the requesting State the conditions of transit are met and that no reasons for a refusal are known of.

A common form to be used for transit applications is attached to the agreements.

The competent authority of the requested State must, in writing, inform, within a reasonable time limit (the agreement with Albania specifies a time limit of five days, that with Ukraine 10 days) the competent authority of the requesting State of the consent to admission, confirming the border crossing point and the envisaged time of admission, or inform it of the admission refusal and of the reasons for such refusal.

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the light of their national laws on expulsion. Hence that compromise and the negotiation of bilateral protocols between Russia on the one hand and Spain, France and Portugal on the other, on that issue.

[43] Explicit reference to those international texts is found only in the agreements with Albania, the Russian federation and Ukraine. Include in the body of the text? [sic]

(3) protection of personal data

Personal data may be communicated only if it is necessary for the implementation of the agreement. The processing of such data is governed by the national legislation of the third countries to which the readmission agreements refer and, in the case of a Member State of the European Union, by the provisions of Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data,[44] and by the national legislation that Member State has adopted pursuant to the directive.

The following principles apply to the communication and processing of personal data:

(a) personal data must be processed fairly and lawfully;

(b) personal data must be collected for the specified, explicit and legitimate purpose of implementing the agreement and not further processed in any way incompatible with that purpose by the communicating or receiving authority;

(c) personal data must be adequate, relevant and non-excessive in relation to the purpose for which they are collected. They may concern only the following:

1. the particulars of the person to be transferred (e.g. surname, given name, any previous names, other names used, date and place of birth, sex, current and any previous nationality; where appropriate, name of spouse, passport or identity card number, names of children or close relatives, schools attended…),

2. identity card or passport (number, period of validity, date of issue, issuing authority, place of issue,

3. stop-overs and itineraries.

(d) personal data must be accurate and, where necessary, kept up to date;

(e) personal data must be kept in a form which permits identification of data subjects for no longer that it is necessary for the purposes for which the data were collected or for which they are further processed;

(f) both the competent authority communicating personal data and the competent receiving authority must take every reasonable step to ensure as appropriate the rectification, erasure or blocking of personal data because that data are not adequate, relevant, accurate, or they are excessive in relation to the purpose of processing. This includes the notification of any rectification, erasure or blocking to the other Party;

(g) upon request, the competent authority receiving personal data must inform the competent authority communicating it of the use of the communicated data and of the results obtained therefrom;

(h) the communicating authority and the receiving authority must make a written record of the communication and receipt of personal data.

(4) implementation of the agreements

There are two provisions on the application and implementation of the agreements: (a) on the creation of a 'joint readmission committee' and (b) on the conclusion of implementing protocols.

[44] OJ L 281, 23.11.1995, pp. 31-50.

(a) joint readmission committee
The contracting parties must set up a joint readmission committee, which has the task:
(i) to monitor the application of the agreement and to have a regular exchange of information on any implementing protocols concluded by the Contracting Parties;
(ii) to propose amendments and recommendations with a view to amending the agreement;
(iii) to decide on arrangements necessary for the uniform application of the agreement.

The committee is composed of representatives of the Community (represented by the European Commission, assisted by Member State experts) and the third country concerned. Its decisions are binding on the Parties.

(b) implementing protocols
The Contracting Parties may conclude implementing protocols covering rules on:
(i) designating the competent authorities;
(ii) the border crossing points for the transfer of persons;
(iii) the arrangements for communication between the competent authorities;
(iv) the conditions for escorted repatriation, including the transit of third-country nationals and stateless persons under escort;
(v) other means and documents required for the implementation of the agreements.

The implementing protocols enter into force only after the joint readmission committee has been notified.

5.3 Readmission agreements concluded by certain third countries with other third countries[45]

1. Albania:
- Agreement on the Readmission of Persons with Croatia, 15 June 2005;
- Agreement on the Readmission of Persons with the former Yugoslav Republic of Macedonia, 15 July 2005.

2. Bosnia:
- Agreement on the Readmission of Persons with Croatia, 11 December 2001.

3. Croatia:
- Agreement on the Readmission of Persons with Albania, 15 June 2005;
- Agreement on the Readmission of Persons with Bosnia, 11 December 2001;
- Agreement on the Readmission of Persons with the former Yugoslav Republic of Macedonia, 1 February 2003;
- Agreement on the Readmission of Persons with Serbia, 17 June 2004;

Agreements are under negotiation with Ukraine and Turkey.

4. Former Yugoslav Republic of Macedonia:
- Agreement on the Readmission of Persons with Albania, 15 July 2005;
- Agreement on the Readmission of Persons with Croatia, 1 February 2003;

[45] Source of information: MIREM: 'Collective Action to Support the Reintegration of Return Migrants in their Country of Origin', http://www.mirem.eu/datasets/agreements

Agreements are under negotiation with Ukraine and Turkey.

5. Moldova:

- Agreement on the Readmission of Persons with Ukraine, 11 September 1998.

6. Russia:

- Agreement on the Readmission of Persons with Ukraine, 8 February 2006;
- Agreement on the Readmission of Persons with Uzbekistan, 4 July 2007;

Agreements are under negotiation with Turkey.

7. Turkey:

- Agreement on the Readmission of Persons with Belarus, 28 July 2004;
- Agreement on the Readmission of Persons with Georgia, 29 July 2005;
- Agreement on the Readmission of Persons with Ukraine, 7 July 2005;
- Agreement on the Readmission of Persons with Syria, 24 June 2003;
- Agreement on the Readmission of Persons with the Kirghiz Republic, 17 February 2004.

Agreements are under negotiation with Croatia, the former Yugoslav Republic of Macedonia, Moldova, Russia and Pakistan.

8. Ukraine:

- Agreement on the Readmission of Persons with Georgia, 17 March 2004;
- Agreement on the Readmission of Persons with Moldova, 11 September 1998;
- Agreement on the Readmission of Persons with Russia, 8 February 2006;
- Agreement on the Readmission of Persons with Turkey, 7 July 2005;
- Agreement on the Readmission of Persons with Turkmenistan, 10 January 2002;
- Agreement on the Readmission of Persons with Vietnam, 16 June 2005.

Agreements are under negotiations with Armenia, Azerbaijan, Belarus, Croatia, the former Yugoslav Republic of Macedonia, Libya, Tunisia, Nigeria, China, Kazakhstan, the Kirghiz Republic and Tajikistan.

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