

Statewatch Briefing

Readmission agreements with Pakistan

The readmission agreements with Pakistan have been negotiated over nine years by the European Community. The Agreement was signed, on behalf of the European Community, on 26 October 2009 subject to its adoption.

Following the entry into force of the Treaty of Lisbon, the procedures to be followed by the Union in order to conclude the Agreement are governed by Article 218(6) (a) of the Treaty on the Functioning of the European Union (TFEU) which states that the Council shall adopt a decision concluding the agreement after receiving the consent of the European Parliament.

In the case of the proposal for a Council Decision concerning the conclusion of the Agreement between the European Community and Pakistan on readmission, the entry into force of the Lisbon Treaty had the following impact:

- modified the legal basis which became Art 79(3), Art 218 (6)(a) of the TFEU.
- modified the classification of the proposal from the old consultation procedure to the new inter-institutional non-legislative procedure .

The Commission initial legislative proposal's main provisions entail:

Principle of reciprocity and scope: the readmission obligations are drawn up in a fully reciprocal way, comprising own nationals as well as third country nationals and stateless persons.

Conditions for readmission: the obligation to readmit third country nationals and stateless persons is linked to the following prerequisites:

(a) the person concerned holds, at the time of submission of the readmission application, a valid visa or residence authorisation issued by the requested State; or

(b) the person concerned unlawfully entered the territory of the requesting State coming directly from the territory of the requested State. Exempted from these obligations are persons in airside transit 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.

Technical provisions regarding the readmission procedure: the draft Agreement contains the necessary technical provisions regarding the readmission procedure: readmission application; means of evidence; time limits; transfer modalities; modes of transportation.

Readmission in error: No readmission application 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.

Other provisions: the Agreement contains a section on transit operations. It also contains the necessary rules on costs, data protection and the relation to other international obligations. Moreover, it sets out the composition and the tasks and powers of the Joint Readmission Committee.

Territorial application: in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom has notified its wish to take part in the adoption and application of this Decision. Ireland, in accordance with the same Protocol, has decided not to participate in the adoption of this Decision. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

Final provisions: 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.

The text of the proposal is currently under parliamentary review and saw a second exchange of view taking place in the LIBE Committee on 28 April 2010.

In this occasion the Rapporteur, Mr Sógor Csaba (PPE) admitted that there are human rights questions to be raised in relation to this proposal. However, he put forward two arguments in support of the approval of the agreement by the European Parliament:

- 1) Pakistan has not signed the 1951 Geneva Convention but there are on going negotiations to set up a new Minister for Human Rights and
- 2) By not accepting the agreement there is a risk of breaking an healthy process.

These argumentations have not been considered convincing for a series of MEPs, including Sylvie Guillaume (S&D), Nathalie Griesbeck (ALDE), Hélène Flautre (Group of the Greens/European Free Alliance).

Indeed there are several reasons against the adoption of such an international agreement, both general and specific in nature.

Risk of breach of human rights

The fact that Pakistan has not acceded to fundamental international instruments aimed at reinforcing the human rights regime in the country makes the establishment of a Ministry for human rights not effective.

Furthermore, no assessment of the impact of such agreements has been provided yet, despite several requests made by entities including the European Parliament.

Readmission of third country nationals

Concluding a Community readmission agreement with Pakistan was one of the measures recommended in the EU Action Plan on Afghanistan Council doc (11424/99). Therefore, the Agreement concerns Pakistani nationals and individuals who have transited through Pakistan, particularly Afghan nationals, who would be irregular on the territory of the European Union.

Processing of personal data

The agreement foresees the possibility to process personal data by the competent authorities of Pakistan and the Member States. Processing of personal data collected in order to justify and implement readmission.

This analysis has touched upon only few of the many reasons why readmission agreements with third countries should not be concluded, Nonetheless, they represent a sufficient reason for the European Parliament, as promoter of human rights, to refuse to give its consent to such a proposal. As Sylvie Guillaume MEP observed: “this agreement is technically doubtful and politically dishonest”.

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