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from : Mr Sylvain BISARRE, Director, Secretariat-General of the European Commission

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to : Mr Javier SOLANA, Secretary-General/High Representative

Subject : – Proposal for a Council Decision concerning the signing of the Agreement between the European Community and the Government of the Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation

– Proposal for a Council Decision concerning the conclusion of the Agreement between the European Community and the Government of the Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation

Delegations will find attached Commission document SEC (2002) 412 final.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.04.2002
SEC(2002) 412 final

2002/0092 (CNS)

Proposal for a

COUNCIL DECISION

concerning the signing of the Agreement between the European Community and the Government of the Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation

Proposal for a

COUNCIL DECISION

concerning the conclusion of the Agreement between the European Community and the Government of the Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. POLITICAL AND LEGAL FRAMEWORK

The Justice and Home Affairs (JHA) Council authorised the Commission to negotiate a readmission agreement between the European Community and the Hong Kong Special Administrative Region (SAR) of the People's Republic of China, by its decision of 28 May 2001. This negotiating mandate formed part of a political agreement reached on the Community's new visa regulation during the Council meeting of 1 December 2000, when JHA Ministers agreed on the list of countries whose citizens must be in possession of visas when crossing the EU's external borders and of those whose citizens are exempt from this requirement. As far as Hong Kong was concerned, JHA Ministers agreed that holders of the "Hong Kong Special Administrative Region" passport would be exempted from the visa requirement, from the entry into force of the new regulation. In addition, in a statement entered in the Council minutes, the Commission was asked to submit, as soon as possible, a recommendation for a Council decision authorising it to negotiate a readmission agreement between the European Community and Hong Kong. At the beginning of March 2001, the Commission submitted this recommendation and, on 15 March 2001, the Council formally adopted the new visa regulation (Council Regulation (EC) N° 539/2001) which entered into force on 10 April 2001.

At the end of June 2001, the Commission transmitted a draft Readmission Agreement text to the Hong Kong authorities. Following written replies from Hong Kong, and an informal meeting of technical experts in Brussels on 21 September 2001, one round of formal negotiations took place in Hong Kong on 23 October 2001. The Agreement was initialled in Brussels on 22 November 2001.

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

On the part of the Community, the legal basis for the Agreement is Article 63 para. 3 lit. b), in conjunction with Article 300 TEC. As far as Hong Kong is concerned, it is important to note that, after reunification in 1997, it is now part of the People's Republic of China but enjoys, according to its Basic Law, a high degree of autonomy over its internal affairs, including immigration controls on entry, stay and departure from the region (separate travel area and immigration territory).

The attached proposals constitute the legal instrument for the signature and conclusion of the Agreement. The Council will decide by unanimity (Art. 300 para. 2 subpara. 1 in conj. with Art. 67 EC Treaty). The European Parliament will have to be formally consulted on the conclusion of the Agreement, in accordance with Art. 300 para. 3 EC Treaty.

The Agreement, the proposed decision concerning the conclusion sets out the necessary internal arrangements for the practical application of the Agreement. In particular, it specifies that the Commission, assisted by experts from Member States, represents the Community within the Joint Committee set up by Article 17 of the Agreement. Further, given that the Joint Committee has certain powers to take decisions having legal effect, it was necessary to provide for a derived legal base laying down a procedure for the adoption of Community positions within the Joint Committee.

In this respect the decision provides that, as regards the adoption of the rules of procedure of the Joint Committee, this will be done by the Commission in consultation with a special

committee designated by the Council. As regards other decisions to be taken by the Joint Committee, it is proposed that the Community position will be adopted by the Council, acting by qualified majority, on a proposal by the Commission.

II. OUTCOME OF THE NEGOTIATIONS

The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft Readmission Agreement is acceptable to the Community.

The final content of it can be summarised as follows:

- The Agreement is divided into 8 sections with 22 articles altogether. It also contains 6 annexes, which form an integral part of it, and three joint declarations.
- The readmission obligations set out in the Agreement (Articles 2 to 5) are drawn up in a fully reciprocal way, comprising own nationals and permanent residents respectively (Articles 2 and 4) as well as persons of another jurisdiction (Articles 3 and 5). They all contain a formulation clarifying that readmission shall take place without any formalities other than those specified in this Agreement. Moreover, the definition of "persons of another jurisdiction" in Article 1 lit. d) explicitly states that this term includes third-country nationals and stateless persons;
- The obligation to readmit persons of another jurisdiction (Articles 3 and 5) is linked to the following prerequisites: (a) the person to be readmitted held, at the time of entry, a valid residence authorisation or a valid visa of the requested Party, or (b) the person to be readmitted after having entered (lawfully or unlawfully) the territory of the requested Party proceeds to enter unlawfully the territory of the requesting Party coming directly from the territory of the requested Party. Exempted from these obligations are persons in airside transit and all persons to whom the requesting Party has either granted visa-free access or issued a visa or residence authorisation with a longer period of validity.
- Under certain circumstances, the Hong Kong SAR accepts the use of the EU's standard travel document for expulsion purposes (Article 2 para. 2 and Article 3 para. 3);
- The Agreement contains a section on transit operations (Articles 12 and 13);
- Section III of the Agreement (Articles 6 to 11 in conj. with annexes 1 to 6) contains the necessary technical provisions regarding the readmission procedure (readmission application, means of evidence, time limits, transfer modalities and modes of transportation). Some procedural flexibility is provided by the fact that in cases where the person to be readmitted is in possession of valid travel documents and willing to return voluntarily, only a written communication - but no formal submission of a readmission application - will be needed (Article 6);
- Articles 14 to 16 contain the necessary rules on costs, data protection and the non-affectation of other International rights and obligations applicable to the Parties;
- The Committee of experts will be composed, and have the tasks and powers, as set out in Article 17;

- In order to execute this Agreement in practice, Article 18 empowers Member States to conclude bilateral implementing Protocols with the Hong Kong SAR. The relation between such implementing Protocols and this Agreement is clarified by Article 19;
- The final provisions (Art. 20 to 22) contain the necessary rules on entry into force, duration, termination and the legal status of the annexes to the agreement.
- The specific situation of Denmark is reflected in the preamble, Article 1 lit. a), Article 20 and in a joint declaration attached to the Agreement. The close association of Norway and Iceland to the implementation, application and development of the Schengen Acquis is likewise reflected in a joint declaration to the Agreement.

III. CONCLUSIONS

In the light of the above-mentioned results, the Commission proposes that the Council

- decide that the Agreement be signed on behalf of the Community and authorise the President of the Council to appoint the person(s) duly empowered to sign on behalf of the Community;
- approve, after consultation of the European Parliament, the attached Agreement between the European Community and the Hong Kong SAR on the readmission of persons residing without authorisation.

Proposal for a

COUNCIL DECISION

concerning the signing of the Agreement between the European Community and the Government of the Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63, paragraph 3 lit. b), in conjunction with the second sentence of the first subparagraph of Article 300 (2) thereof,

Having regard to the proposal from the Commission¹,

Whereas:

- (1) By its decision of 28 May 2001, the Council authorised the Commission to negotiate an 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.
- (2) Negotiations for the Agreement took place in Hong Kong in October 2001,.
- (3) Subject to its possible conclusion at a later date, the Agreement initialled in Brussels on 22 November 2001 should be signed.

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to a possible conclusion at a later date, the President of the Council is hereby authorised to designate the person(s) empowered to sign, on behalf of the European Community, the 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.

Done at Brussels,

For the Council

The President

¹ OJ C

Proposal for a

COUNCIL DECISION

concerning the conclusion of the Agreement between the European Community and the Government of the Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63, paragraph 3 lit. b), in conjunction with the second sentence of the first subparagraph of Article 300 (2) and the first subparagraph of Article 300 (3) thereof,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Parliament³

Whereas:

- (1) The Commission has negotiated on behalf of the European Community an Agreement with the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation;
- (2) This Agreement has been signed, on behalf of the European Community, on2002 subject to its possible conclusion at a later date, in accordance with Decision...../...../EC of the Council of [.....]
- (3) This Agreement should be approved.
- (4) The Agreement established a Joint Committee which may take decisions having legal effect, and it is thus necessary to specify who represents the Community within this Committee and to provide for a procedure laying down how a Community position is adopted.

HAS DECIDED AS FOLLOWS:

² OJ C
³

Article 1

The 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 is hereby approved on behalf of the Community.

The text of the agreement is attached to this Decision.

Article 2

The President of the Council shall give the notification provided for in Article 20 paragraph 2 of the Agreement.

Article 3

The Commission, assisted by experts from Member States, shall represent the Community in the Committee of experts established by Article 17 of the Agreement.

Article 4

The position of the Community within the Committee of experts with regard to the adoption of its rules of procedure as required under Article 17 (5) of the Agreement shall be taken by the Commission after consultation with a special committee designated by the Council.

For all other Committee of experts' decisions, the position of the Community shall be adopted by the Council, acting by qualified majority, on a proposal by the Commission.

Article 5

This Decision shall be published in the *Official Journal of the European Communities*.

The date of entry into force of the Readmission Agreement will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

Done at Brussels,

For the Council

The President

AGREEMENT

between

the Government of the Hong Kong Special Administrative Region

of the People's Republic of China

and

the European Community

on the readmission of persons residing without authorisation

THE CONTRACTING PARTIES,

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA, hereinafter referred to as "the Hong Kong SAR",

and

THE EUROPEAN COMMUNITY, hereinafter referred to as "the Community",

Determined to strengthen their co-operation in order to combat illegal immigration more effectively,

Referring to Council Regulation (EC) No 539/2001 of 15 March 2001, and in particular Art. 1 paragraph 2 in conjunction with annex II thereof, exempting holders of a "Hong Kong Special Administrative Region" passport from the requirement, for stays of no more than three months in all, to be in possession of a visa when crossing the external borders of the Member States of the European Union,

Desiring to establish, by means of this Agreement and on the basis of reciprocity, rapid and effective procedures for the identification and return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territories of the Hong Kong SAR or one of the Member States of the European Union, and to facilitate the transit of such persons in a spirit of co-operation,

Considering that the provisions of this agreement, that falls within the scope of Title IV of the Treaty establishing the European Community, do not apply to the Kingdom of Denmark, in accordance with the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community,

HAVE AGREED AS FOLLOWS:

Article 1.
Definitions

For the purpose of this Agreement:

- (a) “*Member State*” shall mean any Member State of the European Union, with the exception of the Kingdom of Denmark.
- (b) “*National of a Member State*” shall mean any person who holds the nationality, as defined for Community purposes, of a Member State.
- (c) “*Permanent resident of the Hong Kong SAR*” shall mean any person who has the right of abode, that is the right to reside permanently, in the Hong Kong SAR.
- (d) “*Person of another jurisdiction*” shall mean any person who is neither a permanent resident of the Hong Kong SAR, nor a national of a Member State. This shall include third-country nationals and stateless persons.
- (e) “*Stateless person*” shall mean any person who does not hold a nationality.
- (f) “*Residence authorisation*” shall mean a permit of any type issued by the Hong Kong SAR or one of the Member States entitling a person to reside on its territory. This shall *not* include an application for a residence authorisation or temporary permissions to remain on its territory as a visitor or in connection with the processing of an asylum application.
- (g) “*Visa*” shall mean an authorisation issued or a decision taken by the Hong Kong SAR or one of the Member States which permits a person's entry in, or transit through, its territory and which has been issued or taken prior to the person's arrival at its border. This shall not include an airside transit visa.

SECTION I. READMISSION BY THE HONG KONG SAR

Article 2.
Readmission of permanent residents and former permanent residents

1) The Hong Kong SAR shall readmit, upon application by a Member State and without any formalities other than those specified in this Agreement, all persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the requesting Member State provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that they are permanent residents of the Hong Kong SAR.

The same shall apply to persons who, since entering the territory of a Member State, have lost their right to permanent residence in the Hong Kong SAR, unless such persons have at least been promised naturalization by that Member State.

2) At the request of a Member State, the Hong Kong SAR shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least 6 months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the Hong Kong SAR shall issue a new travel document with the same period of validity within 14 days. If the Hong Kong SAR does not issue the travel document requested within 15 days of the date of the request it shall be deemed to accept use of the EU standard travel document for the purposes of readmission.

Article 3. Readmission of persons of another jurisdiction

1) The Hong Kong SAR shall readmit, upon application by a Member State and without any formalities other than those specified in this Agreement, all persons of another jurisdiction who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the requesting Member State provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that such persons

- (a) at the time of entry held a valid visa or residence authorisation issued by the Hong Kong SAR; or
- (b) after having entered the territory of the Hong Kong SAR, proceed to enter unlawfully the territory of the Member States, coming directly from the territory of the Hong Kong SAR.

2) The readmission obligation in paragraph 1 shall not apply if

- (a) the person of another jurisdiction has been in airside transit via the Hong Kong International Airport; or
- (b) the requesting Member State has issued to the person of another jurisdiction a visa or residence authorisation before or after entering its territory, which has a longer period of validity than any visa or residence authorisation issued by the Hong Kong SAR; or
- (c) the person of another jurisdiction enjoyed visa-free access to the territory of the requesting Member State.

3) At the request of a Member State, the Hong Kong SAR shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least 6 months. If, for legal or factual reasons,

the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the Hong Kong SAR shall issue a new travel document with the same period of validity within 14 days. If the Hong Kong SAR does not issue the travel documents requested within 15 days of the date of the request it shall be deemed to accept use of the EU standard travel document for the purposes of readmission.

SECTION II. READMISSION BY THE COMMUNITY

Article 4.

Readmission of own and former own nationals

1) A Member State shall readmit, upon application by the Hong Kong SAR and without any formalities other than those specified in this Agreement, all persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the Hong Kong SAR provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that they are nationals of that Member State.

The same shall apply to persons who have been deprived of, or who have renounced, the nationality of a Member State since entering the territory of the Hong Kong SAR unless such persons have at least been promised permanent residence in the latter.

2) At the request of the Hong Kong SAR, a Member State shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least six months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the Member State concerned shall issue a new travel document with the same period of validity within 14 days.

Article 5.

Readmission of persons of another jurisdiction

1) A Member State shall readmit, upon application by the Hong Kong SAR and without any formalities other than those specified in this Agreement, all persons of another jurisdiction who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the Hong Kong SAR provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that such persons

- (a) at the time of entry held a valid visa or residence authorisation issued by the requested Member State; or
- (b) after having entered the territory of the requested Member State, proceeds to enter unlawfully the territory of the Hong Kong SAR, coming directly from the territory of the requested Member State.

2) The readmission obligation in paragraph 1 shall not apply if

- (a) the person of another jurisdiction has been in airside transit via an International airport of the requested Member State; or
- (b) the Hong Kong SAR has issued to the person of another jurisdiction a visa or residence authorisation before or after entering its territory, which has a longer

period of validity than any visa or residence authorisation issued by the requested Member State; or

- (c) the person of another jurisdiction enjoyed visa-free access to the territory of the Hong Kong SAR.

3) If two or more Member States issued a visa or residence authorisation, the readmission obligation in paragraph 1 is for the Member State that issued the document with a longer period of validity or, if one or several of them have already expired, the document that is still valid. If all of the documents have already expired, the readmission obligation in paragraph 1 is for the Member State that issued the document with the most recent expiry date.

4) At the request of the Hong Kong SAR, a Member State shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least six months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the Member State concerned shall issue a new travel document with the same period of validity within 14 days.

SECTION III. READMISSION PROCEDURE

Article 6. Principle

1) Subject to paragraph 2, a transfer of a person to be readmitted on the basis of one of the obligations contained in Articles 2 to 5 shall require the submission of a readmission application to the competent authority of the requested Contracting Party.

2) The readmission application may be replaced by a written communication to the requested Contracting Party within a reasonable time period prior to the return of the person concerned provided that

- (a) the person to be readmitted is in possession of a valid travel document and, where applicable, a valid visa or residence authorization of the requested Contracting Party; and
- (b) the person to be readmitted is willing to return to the requested Contracting Party.

Article 7. Readmission application

1) Any readmission application is to contain the following information:

- (a) the particulars of the person to be readmitted (e.g. given names, surnames, date of birth, and – where possible – place of birth, and the last place of residence);
- (b) copies of documents which provide proof or prima facie evidence of nationality or permanent residence.

2) To the extent possible, the readmission application should also contain the following information:

- (a) statement indicating that the person to be transferred may need help or care, provided the person concerned has explicitly consented to the statement;
- (b) any other protection or security measure which may be necessary in the individual transfer case.

3) A common form to be used for readmission applications is attached as annex 5 to this Agreement.

Article 8.

Means of evidence regarding nationality and permanent residence

1) Proof of nationality or permanent residence pursuant to the paragraphs 1 of Articles 2 and 4 can be furnished through the documents listed in annex 1 to this Agreement, even if their period of validity has expired. If such documents are presented, the Member States shall recognise the nationality, and the Hong Kong SAR shall recognise the permanent residence, without further formalities. Proof of nationality or permanent residence cannot be furnished through false documents.

2) Prima facie evidence of nationality or permanent residence pursuant to the paragraphs 1 of Articles 2 and 4 can be furnished through the documents listed in annex 2 to this Agreement, even if their period of validity has expired. If such documents are presented, the Member States shall deem the nationality, and the Hong Kong SAR shall deem the permanent residence, to be established unless they can prove otherwise.

3) If none of the documents listed in annexes 1 or 2 can be presented, the competent authorities of the Hong Kong SAR or the Member State concerned shall, upon request, make the necessary arrangements in order to establish his or her nationality or permanent residence.

Article 9.

Means of evidence regarding persons of another jurisdiction

1) Proof of the conditions for the readmission of persons of another jurisdiction laid down in the paragraphs 1 of Articles 3 and 5 can be furnished through the means of evidence listed in annex 3 to this Agreement; it cannot be furnished through false documents. Any such proof shall be mutually recognised by the Contracting Parties without further formalities.

2) Prima facie evidence of the conditions for the readmission of persons of another jurisdiction laid down in the paragraphs 1 of Article 3 and Article 5 can be furnished through the means of evidence listed in annex 4 to this Agreement. Where such prima facie evidence is presented, the Contracting Parties shall deem the conditions to be established unless they can prove otherwise.

3) The unlawfulness of entry, presence or residence may be established by means of the travel documents of the person concerned in which the necessary visa or other residence authorisation for the territory of the requesting Member State or the Hong Kong SAR are missing. A statement by the competent authority of the requesting Contracting Party that the person concerned has been found not having the necessary travel documents, visa or residence authorisation shall likewise provide prima facie evidence of the unlawful entry, presence or residence.

Article 10.
Time limits

1) The application for readmission must be submitted to the competent authority of the requested Contracting Party within a maximum of one year after the requesting authority has gained knowledge that a person of another jurisdiction does not, or does no longer, fulfil the conditions in force for entry, presence or residence. Where there are legal or factual obstacles to the application being submitted in time, the time limit shall, upon request, be extended but only until the obstacles have ceased to exist.

2) A readmission application must be replied to without undue delay, and in any event within a maximum of one month; reasons shall be given for refusal of a readmission request. This time limit begins to run with the date of receipt of the readmission request. Upon expiry of this time limit the transfer shall be deemed to have been agreed to.

(3) After agreement has been given or, where appropriate, upon expiry of the one month time limit, the person concerned shall be transferred without undue delay and, at the most, within three months. Upon application, this time limit may be extended by the time taken to deal with legal or practical obstacles.

Article 11.
Transfer modalities and modes of transportation

1) Before returning a person, the competent authorities of the Hong Kong SAR and the Member State concerned shall make arrangements in writing and in advance regarding the transfer date, the border crossing point and possible escorts.

2) No means of transportation, whether by air, land or sea, shall be prohibited but, as a rule, return shall take place by air. Return by air is not restricted to the use of national carriers or security staff of the requesting Contracting Party, and may take place by using scheduled flights as well as charter flights.

SECTION IV. TRANSIT OPERATIONS

Article 12. Principles

- 1) The Hong Kong SAR shall allow the transit of persons of another jurisdiction through its territory if a Member State so requests, and a Member State shall authorise the transit of persons of another jurisdiction through its territory if the Hong Kong SAR so requests, if the onward journey in possible other States of transit and the readmission by the State of destination is assured.
- 2) The Member States and the Hong Kong SAR shall endeavour to restrict the transit of persons of another jurisdiction to cases where such persons cannot be returned to the State of destination directly.
- 3) Transit can be refused by the Hong Kong SAR or a Member State
 - (a) if the person of another jurisdiction runs the risk of persecution, or could be subjected to criminal prosecution or sanctions in another State of transit or in the State of destination, or could be threatened by criminal prosecution on the territory of the requested Member State or the Hong Kong SAR;
 - (b) on grounds of public health, domestic security, public order or other national interests.
- 4) The Hong Kong SAR or a Member State may revoke any authorisation issued if circumstances referred to in paragraph 3 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.

Article 13. Transit procedure

- 1) An application for transit 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 Contracting Party the conditions pursuant to Article 12 paragraph 2 are met, and that no reasons for a refusal pursuant to Article 12 paragraph 3 are known of.

A common form to be used for transit applications is attached as annex 6 to this Agreement.

2) The competent authority of the requested Contracting Party shall, without undue delay and in writing, inform the requesting competent authority of the 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.

3) If the transit is effected by air, the person to be readmitted and possible escorts shall be exempted from having to obtain an airport transit visa.

4) The competent authorities of the requested Contracting Party shall, subject to mutual consultations, support the transit, in particular through the surveillance of the persons in question and the provision of suitable amenities for that purpose.

SECTION V. COSTS

Article 14.

Transport and transit costs

Without prejudice to the right of the competent authorities to recover the costs associated with the readmission from the person to be readmitted or third parties, all transport costs incurred in connection with readmission and transit pursuant to this Agreement as far as the border of the State of final destination shall be borne by the requesting Contracting Party.

SECTION VI. DATA PROTECTION AND NON-AFFECTION CLAUSE

Article 15.

Data Protection

The communication of personal data shall only take place if such communication is necessary for the implementation of this Agreement by the competent authorities of the Hong Kong SAR or a Member State as the case may be. The processing and treatment of personal data in a particular case shall be subject to the domestic laws of the Hong Kong SAR and, where the controller is a competent authority of a Member State, to the provisions of Directive 95/46/EC and of the national legislation of that Member State adopted pursuant to this Directive. Additionally the following principles shall apply:

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

- (b) personal data must be collected for the specified, explicit and legitimate purpose of implementing this Agreement and not further processed by the communicating or by the recipient in a way incompatible with that purpose;
- (c) personal data must be adequate, relevant and not excessive in relation to the purpose for which they are collected and/or further processed; in particular, personal data communicated may concern only the following:
 - the particulars of the person to be transferred (e.g. surname, given name, any previous names, nicknames or pseudonyms, date and place of birth, sex, current and any previous nationality),
 - identity card or passport (number, period of validity, date of issue, issuing authority, place of issue),
 - stopping places and itineraries.
 - other information needed to identify the person to be transferred or to examine the readmission requirements pursuant to this Agreement;
- (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 than is necessary for the purpose for which the data were collected or for which they are further processed;
- (f) Both the communicating authority and the recipient shall take every reasonable step to ensure as appropriate the rectification, erasure or blocking of personal data where the processing does not comply with the provisions of this article, in particular 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 recipient shall inform the communicating authority of the use of the communicated data and of the results obtained therefrom;
- (h) Personal data may only be communicated to the competent authorities. Further communication to other bodies requires the prior consent of the communicating authority;
- (i) The communicating and the receiving authorities are under the obligation to make a written record of the communication and receipt of personal data.

Article 16.
Non-affection clause

- 1) This Agreement shall be without prejudice to rights, obligations and responsibilities arising from International Law applicable to the Community, the Member States and the Hong Kong SAR.
- 2) Nothing in this Agreement shall prevent the return of a person under other formal or informal arrangements.

SECTION VII. IMPLEMENTATION AND APPLICATION

Article 17.
Readmission Committee

- 1) The Contracting Parties shall provide each other with mutual assistance in the application and interpretation of this Agreement. To this end, they shall set up a Readmission Committee which will, in particular, have the task
 - (a) to monitor the application of this Agreement;
 - (b) to decide on implementing arrangements necessary for the uniform execution of it;
 - (c) to have a regular exchange of information on any implementing Protocols drawn up by individual Member States and the Hong Kong SAR pursuant to Article 18;
 - (d) to recommend amendments to this Agreement.
- 2) Recommendations of the Readmission Committee for amendment of the annexes to this Agreement may be approved by the Parties through a simplified procedure.
- 3) The Readmission Committee shall be composed of representatives of the Community and the Hong Kong SAR; the Community shall be represented by the European Commission, assisted by experts from Member States.
- 4) The Readmission Committee shall meet where necessary at the request of one of the Contracting Parties.
- 5) The Readmission Committee shall establish its rules of procedures.

Article 18.
Implementing Protocols

- 1) The Hong Kong SAR and a Member State may draw up implementing Protocols which shall cover rules on

- (a) the designation of the competent authorities, the border crossing points and the exchange of contact points;
 - (b) the conditions for transit of persons of another jurisdiction under escort;
 - (c) means and documents additional to those listed in the annexes 1 to 4 to this agreement.
- 2) The implementing Protocols referred to in paragraph 1 will enter into force only after the Readmission Committee (Article 17) has been notified.
- 3) The Hong Kong SAR agrees to apply any provision of an implementing Protocol drawn up with one Member State also in its relations with any other Member State upon request of the latter.

Article 19.
Relation to bilateral readmission agreements
or arrangements of Member States

The provisions of this Agreement shall take precedence over the provisions of any bilateral agreement or arrangement on the readmission of persons residing without authorisation which have been or may, under Article 18, be concluded between individual Member States and the Hong Kong SAR, in so far as the provisions of the latter are incompatible with those of this Agreement.

SECTION VIII. FINAL PROVISIONS

**Article 20.
Entry into force, duration and termination**

- 1) This Agreement shall be ratified or approved by the Contracting Parties in accordance with their respective procedures.
- 2) This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties notify each other that the procedures referred to in the first paragraph have been completed.
- 3) This Agreement is concluded for an unlimited period.
- 4) Each Contracting Party may denounce this Agreement by officially notifying the other Contracting Party. This Agreement shall cease to apply six months after the date of such notification.

**Article 21.
Annexes**

Annexes 1 to 6 shall form an integral part of this Agreement.

Done at on the day of in the year in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each of these texts being equally authentic

For the European Community

For the Government of the Hong Kong
Special Administrative Region

(...)

(...)

**COMMON LIST OF DOCUMENTS
THE PRESENTATION OF WHICH IS CONSIDERED AS PROOF OF NATIONALITY
OR PERMANENT RESIDENCE
(ARTICLES 2 PARA. 1; 3 PARA. 1; 4 PARA. 1 AND 5 PARA. 1)**

Member States

- passports of any kind (national passports, diplomatic passports, service passports, collective passports and surrogate passports including children's passports);
- identity cards of any kind (including temporary and provisional ones);
- service books and military identity cards;
- seaman's registration books and skippers' service cards;
- official documents indicating the nationality of the person concerned

HONG KONG

- Hong Kong Special Administrative Region Passports;
- Hong Kong Certificate of Identity;
- Hong Kong Permanent Identity Card;
- Official documents indicating the permanent residence status of the person concerned.

**COMMON LIST OF DOCUMENTS
THE PRESENTATION OF WHICH IS CONSIDERED AS
PRIMA FACIE EVIDENCE OF NATIONALITY OR PERMANENT RESIDENCE
(ARTICLES 2 PARA. 1; 3 PARA. 1; 4 PARA. 1 AND 5 PARA. 1)**

- photocopies of any of the documents listed in annex 1 to this Agreement;
- driving licenses or photocopies thereof;
- birth certificates and photocopies thereof;
- company identity cards or photocopies thereof;
- statements by witnesses;
- statements made by the person concerned and language spoken by him or her, including by means of an official test result;
- any other document which may help to establish the nationality or the permanent residence status of the person concerned.

**COMMON LIST OF DOCUMENTS
WHICH ARE CONSIDERED AS PROOF OF THE CONDITIONS FOR THE
READMISSION OF PERSONS OF ANOTHER JURISDICTION
(ARTICLE 3 PARA. 1; ARTICLE 5 PARA. 1)**

- entry/departure stamps or similar endorsement in the travel document of the person concerned;
- tickets as well as certificates and bills of any kind (e.g. hotel bills, appointment cards for doctors/dentists, entry cards for public/private institutions, etc.) which clearly show that the person concerned stayed on the territory of the requested Member State or the Hong Kong SAR;
- railway tickets and tickets and/or passenger lists of air or boat passages which show the itinerary on the territory of the requested state;
- information showing that the person concerned has used the services of a courier or travel agency.

**COMMON LIST OF DOCUMENTS
WHICH ARE CONSIDERED AS PRIMA FACIE EVIDENCE OF THE CONDITIONS
FOR THE READMISSION OF PERSONS OF ANOTHER JURISDICTION
(ARTICLE 3 PARA. 1; ARTICLE 5 PARA. 1)**

- official statements made, in particular, by border authority staff and other witnesses who can testify to the person concerned crossing the border;
- description of place and circumstances under which the person concerned has been intercepted after entering the territory of the requesting Member State or the Hong Kong SAR;
- information related to the identity and/or stay of a person which has been provided by an International organisation;
- reports/confirmation of information by family members, travelling companions, etc;
- statement by the person concerned.



[Emblem of the Hong Kong SAR]

.....
.....
.....
(Designation of requesting authority)

.....
(Place and date)

Reference

.....

To

.....
.....
.....
(Designation of receiving authority)

READMISSION APPLICATION

pursuant to Article 7 of the Agreement of between
the European Community and the Hong Kong SAR
on the readmission of persons residing without authorisation

A. PERSONAL DETAILS

1. Full name (underline surname):

.....

2. Maiden name:

.....

3. Date and place of birth:

.....

4. Sex and physical description (height, color of eyes, distinguishing marks etc.):

.....

5. Father's and mother's name:

.....

6. Also known as (earlier names, nicknames or pseudonyms):

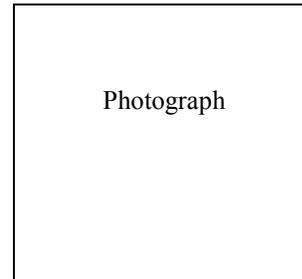
.....

7. Nationality and language:

.....

8. Last residence in the requesting State:

.....



9. Address in the requested State:

.....

B. SPECIAL CIRCUMSTANCES RELATING TO THE TRANSFEREE

1. State of health

(e.g. possible reference to special medical care; latin name of contagious disease):

.....

2. Indication of particularly dangerous person

(e.g. suspected of serious offence; aggressive behaviour

.....

C. MEANS OF EVIDENCE ATTACHED

1.....
(type of document)

.....
(serial number, date and place of issue)

.....
(issuing authority)

.....
(expiry date)

2.....
(type of document)

.....
(serial number, date and place of issue)

.....
(issuing authority)

.....
(expiry date)

3.....
(type of document)

.....
(serial number, date and place of issue)

.....
(issuing authority)

.....
(expiry date)

4.....
(type of document)

.....
(serial number, date and place of issue)

.....
(issuing authority)

.....
(expiry date)

5.....
(type of document)

.....
(serial number, date and place of issue)

.....
(issuing authority)

.....
(expiry date)

D. OBSERVATIONS

.....
.....
.....
.....

.....
(Signature) (Seal/stamp)

Annex 6



[Emblem of the Hong Kong SAR]

.....
.....
(Place and date)

.....
.....
(Designation of requesting authority)

Reference

.....

To

.....
.....
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.....
(Designation of receiving authority)

TRANSIT APPLICATION

pursuant to Article 13 of the Agreement of between
the European Community and the Hong Kong SAR
on the readmission of persons residing without authorisation

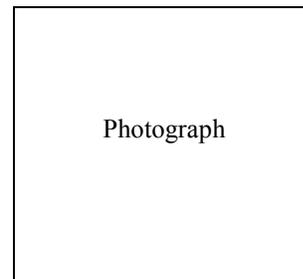
A. PERSONAL DETAILS

1. Full name (underline surname):
.....

2. Maiden name:
.....

3. Date and place of birth:
.....

4. Sex and physical description (height, color of eyes, distinguishing marks etc.):
.....



5. Also known as (earlier names, nicknames or pseudonyms):
.....

6. Nationality and language:
.....

7. Type and number of travel document:
.....

B. TRANSIT OPERATION

- 1. Type of transit
 by air by sea by land
- 2. State of final destination
.....
- 3. Possible other States of transit
.....
- 4. Proposed border crossing point, date, time of transfer and possible escorts
.....
.....
.....
- 5. Admission guaranteed in any other transit State and in the State of final destination
(Article 12 paragraph 2)
 yes no
- 6. Knowledge of any reason for a refusal of transit
(Article 12 paragraph 3)
 yes no

C. OBSERVATIONS

.....
.....
.....
.....

.....
(Signature) (Seal/stamp)

Joint declaration on Article 1 lit. f

"The Contracting Parties take note that, under the Hong Kong SAR's current immigration laws, a "residence authorisation" in the meaning of Article 1 lit. f) is, in particular, issued in all cases where a person is given permission to land in Hong Kong

- as a student at a specified and officially approved school, university or other educational institution; or
- for paid employment and self-employed economic activities (professionals, investors, talents, imported workers, domestic helpers etc.); or
- for the purpose of joining residents in Hong Kong as dependants (family reunion)."

Joint Declaration concerning Denmark

“The Contracting Parties take note that this Agreement does not apply to the territory of the Kingdom of Denmark. In such circumstances it is appropriate that the Hong Kong SAR and Denmark conclude a readmission agreement in the same terms as this Agreement.”

Joint Declaration concerning Iceland and Norway

“The Contracting Parties take note of the close relationship between the European Community and Iceland and Norway, particularly by virtue of the Agreement of 18 May 1999 concerning the association of these countries with the implementation, application and development of the Schengen acquis. In such circumstances it is appropriate that the Hong Kong SAR concludes a readmission agreement with Iceland and Norway in the same terms as this Agreement.”