ITEM I/A NOTE

from: the K.4 Committee

to: Permanent Representatives Committee (Part 2)/Council (JAI)

No. prev. doc.: 10337/94 ASIM 204

Subject: Draft Council Recommendation concerning a specimen bilateral readmission agreement between a Member State of the European Union and a third country

1. At the meeting of the K.4 Committee held on 11 November 1994 agreement was reached on the text of the above mentioned draft recommendation annexed to this note.

2. It is suggested that this Recommendation is adopted by the Council (JAI) at its session on 30 November/1 December 1994 and that it is thereafter transmitted to the European Parliament.
DRAFT COUNCIL RECOMMENDATION
concerning a specimen bilateral readmission agreement
between a Member State of the European Union
and a third country

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the European Union and in particular Article K.1 (3) concerning immigration policy and policy regarding nationals of third countries;

Recalling these policies are regarded as matters of common interest under the Treaty;

Determined to combat unauthorized immigration to the Member States of the Union;

Noting that the laying down of principles which must appear in bilateral and multilateral readmission agreements figures in the action plan in the field of Justice and Home Affairs which was approved by the Council and endorsed by the European Council in December 1993;

Recalling that these principles were approved by the Council in May 1994 and that it was agreed to devise a specimen readmission agreement on the basis of these principles at a later date;

Whereas the specimen readmission agreement is to be used flexibly by the Member States and that it may be adapted to the particular needs of the contracting parties;

Hereby RECOMMENDS that with effect from 1 January 1995 the specimen agreement attached should be used by the Member States of the Union as basis for negotiation with third countries on the conclusion of readmission agreements.
Specimen Agreement between the Government of (... Member State ...) and the Government of (... third country ...) on the readmission of persons residing without authorization

(Readmission Agreement)
The Government of (... Member State ...) and the Government of (... third country ...), hereinafter referred to as the Contracting Parties, desirous of facilitating the readmission of persons staying illegally on the territory of the other Contracting Party, i.e. persons who do not, or who no longer, fulfil the conditions in force for entry or residence, and of facilitating the transit of persons in a spirit of co-operation and on the basis of reciprocity, have agreed as follows:

**Article 1**

Readmission of own nationals

1. Each Contracting Party shall readmit at the request of the other Contracting Party and without any formality persons who do not, or who no longer, fulfil the conditions in force for entry or residence on the territory of the requesting Contracting Party provided that it is proved or may be validly assumed that they possess the nationality of the requested Contracting Party. The same shall apply to persons who have been deprived of the nationality of the requested Contracting Party since entering the territory of the requesting Contracting Party without at least having been promised naturalization by the requesting Contracting Party.

2. Upon application by the requesting Contracting Party, the requested Contracting Party shall without delay issue the persons to be readmitted with the travel documents required for their repatriation.

3. The requesting Contracting Party shall readmit such persons again under the same conditions if checks reveal that they were not in possession of the nationality of the requested Contracting Party when they departed from the territory of the requesting Contracting Party. This shall not apply if the readmission obligation is based on the fact that the requested Contracting Party deprived the person in question of its nationality after that person had entered the territory of the requesting Contracting Party without that person at least having been promised naturalization by the requesting Contracting Party.
Article 2
Readmission in the case of third-country nationals who entered via the external frontier

1. The Contracting Party via whose external frontier a person can be proved, or validly assumed, to have entered who does not meet, or who no longer meets the conditions in force for entry or residence on the territory of the requesting Contracting Party shall readmit the person at the request of that Contracting Party and without any formality.

2. For the purposes of this Article the external frontier shall be deemed to be the first frontier to have been crossed which is not a frontier common to the Contracting Parties.

3. The readmission obligation pursuant to paragraph 1 shall not apply in respect of a person who was in possession of a valid residence permit issued by the requesting Contracting Party when the person entered the territory of that Contracting Party or who was issued with a residence permit by that Contracting Party after entering its territory.

4. The Contracting Parties shall make every effort to give priority to deporting nationals of an adjacent State to their country of origin.

Article 3
Readmission of nationals of third countries by the Contracting Party responsible for the entry

1. If a person who has arrived in the territory of the requesting Contracting Party does not fulfil the conditions in force for entry or residence and if that person is in possession of a valid visa issued by the other Contracting Party or a valid residence permit issued by the requested party, that Contracting Party shall readmit the person without any formality upon application by the requesting Contracting Party.

2. If both Contracting Parties issued a visa or a residence permit, responsibility shall reside with the Contracting Party whose visa or residence permit expires last.

3. Paragraphs 1 and 2 shall not apply where a transit visa was issued.
Article 4
Residence permits

A residence permit pursuant to Article 2(3) and Article 3 means an authorization of any type issued by one Contracting Party, entitling the person to reside on the territory of that Contracting Party. This shall not include temporary permission to reside on the territory of one of the Contracting Parties in connection with the processing of an asylum application.

Article 5
Time limits

1. The requested Contracting Party shall reply to readmission requests addressed to it without delay, and in any event within a maximum of fifteen days.

2. The requested Contracting Party shall take charge of persons whose readmission has been agreed to without delay, and in any event within a maximum of one month. Upon application by the requesting Contracting Party, this time limit may be extended by the time taken to deal with legal or practical obstacles.

Article 6
Time limit after which the readmission obligation will lapse

The application for readmission must be submitted within a maximum of one year of the Contracting Party noting the illegal entry and presence of the said national of a third country on its territory.
Article 7
Transit

1. Without prejudice to Article 11, the Contracting Parties shall allow third-country nationals to pass through their territory in transit if the other Contracting Party so requests and if admission to other possible States of transit and to the State of destination is assured.

2. It shall not be essential for the requested Contracting Party to issue a transit visa.

3. Notwithstanding any authorization issued, persons taken in charge for transit purposes may be returned to the other Contracting Party if circumstances within the meaning of Article 12 subsequently arise or come to light which stand in the way of a transit operation or if the onward journey or admission by the State of destination is no longer assured.

4. The Contracting Parties shall endeavour to restrict transit operations to aliens who cannot be returned to their States of origin directly.

Article 8
Data protection

Insofar as personal data have to be communicated in order to implement this Agreement, such information may concern only the following:

(1) the particulars of the person to be transferred and, where necessary, of the members of the person's family (surname, given name, any previous names, nicknames or pseudonyms, aliases, date and place of birth, sex, current and any previous nationality);

(2) passport, identity card and other identity and travel documents and laissez-passer (number, period of validity, date of issue, issuing authority, place of issue, etc.);

(3) other details needed to identify the persons to be transferred;

(4) stopping places and itineraries;
(5) residence permits or visas issued by one of the Contracting Parties;

(6) in the cases covered by Article 7, the place where the asylum application was submitted and the date of submission of any previous asylum application, the date of submission of the present asylum application, the present stage of the procedure and the content of any decision taken.

**Article 9**

**Costs**

1. The costs of transporting persons taken in charge pursuant to Articles 1, 2 and 3 shall be borne by the requesting Contracting Party as far as the border of the requested party.

2. The costs of transit as far as the border of the State of destination, and, where necessary, the costs arising from return transport, shall be borne by the requesting Contracting Party in accordance with Article 7.

**Article 10**

**Committee of Experts**

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 Committee of Experts to:

   (a) monitor application of this Agreement;

   (b) submit proposals for resolving problems associated with the application of this Agreement;

   (c) propose amendments and additions to this Agreement;

   (d) prepare and recommend appropriate measures for combating illegal immigration.

2. The Contracting Parties shall reserve the right to agree to the proposals and measures or not to do so.
3. The Committee shall be composed of three representatives of each Contracting Party. The Contracting Parties shall appoint the Chairman and his deputies from among them, and shall also appoint alternate members. Additional experts may be associated with the consultations.

4. The Committee shall meet at the initiative of one of the Chairmen and at least once a year.

**Article 11**

Clause stipulating that international agreements/Conventions shall not be affected

These agreements shall not affect the Contracting Parties' obligations arising from


2. international conventions on extradition and transit;


4. international conventions on asylum, in particular under the Dublin Convention of 15 June 1990 determining the State Responsible for Examining Applications for Asylum lodged in a Member State of the European Community;

5. international conventions and agreements on the readmission of foreign nationals.

**Article 12**

Entry into force

This Agreement shall enter into force on the first day of the second month following its signature. It shall not be applied until the date agreed upon by the Contracting Parties in an exchange of notes.
Article 13
Suspension, termination

1. This Agreement is concluded for an indefinite period.

2. After informing the other Contracting Party each Contracting Party may suspend this Agreement by giving notification on important grounds, in particular on the grounds of the protection of State security, public order or public health. The Contracting Parties shall notify each other of the cancellation of any such measure without delay via diplomatic channels.

3. After informing the other Contracting Party, each Contracting Party may terminate this Agreement on important grounds by giving notification.

4. The suspension or termination of this Agreement shall become effective on the first day of the month following the month in which notification was received by the other Contracting Party.

Done at ............ this ........ day of ............ 19.. in two originals, one in the ............... language and one in the ............... language, each text being equally authentic.

On behalf of the Government of (...Member State...)

On behalf of the Government of (...third country...)

10880/94 (Annex to the ANNEX)