



EUROPEAN PARLIAMENT

2009 - 2014

Session document

A7-0231/2010

15.7.2010

RECOMMENDATION

on the proposal for a Council decision on the conclusion of the Agreement between the European Union and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation (05942/2010 – C7-0264/2009 – 2009/0036(NLE))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Csaba Sógor

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* alerts the relevant departments to parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act which the draft act seeks to amend includes a third and fourth line identifying respectively the existing act and the provision in that act affected by the amendment. Passages in a provision of an existing act that Parliament wishes to amend, but the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council decision on the conclusion of the Agreement between the European Union and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation
(05942/2010 - C7-0264/2009 – 2009/0036(NLE))**

(Consent)

The European Parliament,

- having regard to the draft agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation (8793/2009),
 - having regard to the proposal for a Council decision (COM(2009)0106),– having regard to the draft Council decision (05942/2010),
 - having regard to Article 63, first paragraph, point 3, point (b) and Article 300(2), first subparagraph, first sentence and Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C7-0264/2009),
 - having regard to the Commission Communication to Parliament and the Council entitled 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665),
 - having regard to Article 79(3) and Article 218(6), second subparagraph, point (a), point (v) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 81 and 90(8) of its Rules of Procedure,
 - having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Foreign Affairs (A7-0231/2010),
1. Consents to conclusion of the agreement;
 2. Instructs its President to forward its position to the Council, the Commission, and the governments and parliaments of the Member States and of the Islamic Republic of Pakistan.

EXPLANATORY STATEMENT

Background

On 18 September 2000 the Council authorised the Commission to negotiate a readmission agreement between the European Community and Pakistan. Following several rounds of negotiations the agreement was initialled at the negotiators' level on 9 September 2008. The Council adopted the decision to sign the agreement on 4 June 2009 and the agreement was signed by the European Community and Pakistan in Brussels on 26 October 2009.

As consequence of the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union has replaced and succeeded the European Community. 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.

With the coming into force of the Lisbon Treaty, the European Parliament has to give its consent to the proposed agreement. The Committee on Civil Liberties, Justice and Home Affairs (LIBE) is the lead committee and the Committee on Foreign Affairs (AFET) gives an opinion.

Subject

The aim of the Agreement is to enhance the cooperation between the administrations of the requesting and requested States in order to render the readmission process swifter. To that effect, the Agreement sets out the obligation, on a fully reciprocal basis, to readmit own nationals, and, under certain conditions, third country nationals and stateless persons as well as the necessary technical provisions regarding the readmission procedure (readmission application, means of evidence, time limits, transfer modalities and modes of transportation).

The Agreement aims to be an important instrument in the fight against illegal migration into the European Union and would enhance security in its territory. Pakistan is an important country of origin or transit of migrants who do not, or who no longer fulfil the conditions in force for entry to, presence in, or residence on, the territory of an EU Member State (according to Commission data in 2008 EU-27: 13.348 apprehended, 17.016 return decisions, 4.424 removals, whereof 3.667 returned to a third country). The agreement with Pakistan is also relevant from a regional point of view and will support EU efforts to enhance cooperation with other countries in the region.

The Agreement contains a clause of non-affected in respect of other international law and data protection rules. The actual physical return of the person entirely rests in the competent authority in a Member State and Pakistan. They have to comply with relevant obligations arising from international law, such as the principle of non-refoulement and they will be held liable for expulsions before their national courts. The principle of non-refoulement also has procedural implications, since States are required to conduct an assessment of the risk of ill-treatment, including in cases of indirect removal to an intermediary country. All Member States are parties to the Convention relating to the Status of Refugees and the European Convention of Human Rights and must therefore comply with these obligations.

The Agreement establishes a Joint Readmission Committee which may adopt its rules of procedure.

Having regard to the fact that in the Joint Readmission Committee out of the European institutions only the European Commission takes part, the European Parliament should request the Commission to provide regular information on the activity of the 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.

Entry into force, duration and termination

The Agreement will enter into force on the first day of the second month following the date on which the Parties notify each other that the procedures of ratification have been completed.

Article 20 (3) contains a clause which renders the agreement non-retroactive, which means that the agreement will not apply to those Pakistani nationals which have arrived in the territory of the Members States before the entry into force of the agreement.

Other considerations

The European Union should take all due action in order to secure that the government of Pakistan ratifies the 1966 International Covenant on Civil and Political Rights and the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

MINORITY OPINION

pursuant to Rule 52(3) of the Rules of Procedure by
Sylvie Guillaume on behalf of the S&D Group,
Hélène Flautre, Franziska Keller, Jean Lambert et Judith Sargentini on behalf of the
Greens/EFA
Rui Tavarès, Cornelia Ernst et Marie-Christine Vergiat on behalf of the GUE/NGL Group

The EU-Pakistan readmission agreement is the first to be concluded under the Lisbon Treaty. Therefore, the European Parliament must ensure that it fully complies with EU Treaties, European and international law concerning fundamental rights and asylum.

We voted against the present agreement because:

- it aims at returning people to a country which does not comply with relevant human rights standards, which has not signed the 1951 Geneva Convention and where the current situation does not allow a safe return. Furthermore, Pakistan has already troubles in welcoming a huge number of displaced people.

- it does not include strict safeguards and mechanisms concerning the violation of fundamental rights.

- it contains numerous loopholes and ambiguities, particularly regarding definitions, travel documents, deadline for answering to requests for readmission, transit operations, the burden of proof and the possible retroactivity. These ambiguities might be clarified in the Joint Readmission Committee in which the EP has regrettably no say, which would be totally legitimate regarding its new competences

- it doesn't guarantee adequately the protection of personal data: data can be forwarded to "other bodies", without requiring person's consent.

- before the conclusion of new agreements, an evaluation of previous agreements is indispensable.

7.6.2010

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council decision on the conclusion of the Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation
(5942/2010 – C7-0264/2009 – 2009/0036(NLE))

Rapporteur: Gabriele Albertini

SHORT JUSTIFICATION

After 8 years of negotiations between the European Commission and Pakistan, agreement was finally reached on a re-admission procedure for persons residing without authorization, and the agreed text was signed in October 2009, subject to its conclusion. With the coming into force of the Lisbon Treaty, the European Parliament will have to give its consent to the proposed agreement; if Parliament votes to reject the agreement, it cannot come into force. The Committee on Civil Liberties, Justice and Home Affairs (LIBE) is the lead committee and, given the long-standing interest in Pakistan of the Committee on Foreign Affairs, AFET requested authorisation to draft an opinion.

The proposed decision concerning the conclusion of the agreement sets out the necessary internal arrangements for the practical application of the Agreement. In the Explanatory Memorandum attached to the proposal, the Commission points out that the readmission obligations are drawn up in a fully reciprocal way, comprising own nationals as well as third-country nationals and stateless persons. A derogation for Denmark and, latterly, Ireland, from the decision, has been agreed.

The original draft opinion had called on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to reject the proposal, pointing to the unstable internal situation and the persistent pattern of human rights violations in Pakistan, the absence by the Commission in its negotiations of attempts to ensure that the rights and safety of returnees (both Pakistanis and third country or stateless persons in transit to the final state of destination) would be respected, as hardly reassuring in the context of compulsory readmissions to Pakistan. Also cited as disturbing was the fact that no evaluation has yet been made of the 11 re-admission agreements already in force, particularly in the light of concerns about respect for human rights.

Members agreed that these were indeed significant concerns but decided that a clear

framework for co-operation on readmission with Pakistan was preferable to a situation where there is a risk that Member States proceed to return illegal immigrants on an ad hoc basis and without EU supervision regarding respect for the human rights of returnees, whether of Pakistani origin or third country or stateless people in transit through Pakistan. Article 16 of the Readmission agreement would ensure that the EU had a say in this respect. The Committee reiterated the need for an evaluation of the agreements concluded thus far by the EU but took the view that these general considerations should not lead to the rejection of this particular agreement.

The Committee on Foreign Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to propose that Parliament give its consent.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	1.6.2010
Result of final vote	+: 40 -: 10 0: 0
Members present for the final vote	Gabriele Albertini, Sir Robert Atkins, Michael Gahler, Marietta Giannakou, Andrzej Grzyb, Takis Hadjigeorgiou, Ioannis Kasoulides, Tunne Kelam, Nicole Kiil-Nielsen, Maria Eleni Koppa, Andrey Kovatchev, Wolfgang Kreissl-Dörfler, Eduard Kukan, Ryszard Antoni Legutko, Sabine Lösing, Ulrike Lunacek, Barry Madlener, Mario Mauro, Willy Meyer, Francisco José Millán Mon, Alexander Mirsky, Annemie Neyts-Uyttebroeck, Raimon Obiols, Kristiina Ojuland, Pier Antonio Panzeri, Alojz Peterle, Mirosław Piotrowski, Bernd Posselt, Cristian Dan Preda, Fiorello Provera, José Ignacio Salafranca Sánchez-Neyra, Jacek Saryusz-Wolski, Werner Schulz, Ernst Strasser, Charles Tannock, Zoran Thaler, Inese Vaidere, Kristian Vigenin, Boris Zala
Substitute(s) present for the final vote	Elena Băsescu, Nikolaos Chountis, Hélène Flautre, Kinga Gál, Roberto Gualtieri, Judith Sargentini, György Schöpflin, Alf Svensson, Renate Weber
Substitute(s) under Rule 187(2) present for the final vote	Jean-Paul Basset, Michèle Striffler

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	13.7.2010
Result of final vote	+: 29 -: 22 0: 0
Members present for the final vote	Roberta Angelilli, Rita Borsellino, Simon Busuttil, Philip Claeys, Carlos Coelho, Rosario Crocetta, Agustín Díaz de Mera García Consuegra, Cornelia Ernst, Tanja Fajon, Hélène Flautre, Kinga Gál, Nathalie Griesbeck, Sylvie Guillaume, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Baroness Sarah Ludford, Monica Luisa Macovei, Clemente Mastella, Véronique Mathieu, Louis Michel, Jan Mulder, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Csaba Sógor, Renate Sommer, Rui Tavares, Wim van de Camp, Daniël van der Stoep, Axel Voss, Renate Weber
Substitute(s) present for the final vote	Alexander Alvaro, Edit Bauer, Michael Cashman, Anna Maria Corazza Bildt, Ioan Enciu, Monika Hohlmeier, Iliana Malinova Iotova, Franziska Keller, Jean Lambert, Petru Constantin Luhan, Antonio Masip Hidalgo, Mariya Nedelcheva, Marie-Christine Vergiat, Cecilia Wikström
Substitute(s) under Rule 187(2) present for the final vote	Pervenche Berès, Emilio Menéndez del Valle, Catherine Trautmann