COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.2.2004
COM(2004) 92 final

2004/0033 (CNS)

Proposal for a

COUNCIL DECISION

concerning the signing of the Agreement between the European Community and the Republic of Albania 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 Republic of Albania 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 Albania, by its decision of 28 November 2002. At the end of March 2003, the Commission transmitted a draft Readmission Agreement text to the Albanian authorities. The first negotiating round took place in Tirana on 15/16 May 2003. A second round took place in Brussels on 18 September, and a final one was held in Tirana on 5 November 2003. The Agreement was initialled in Brussels on 18 December 2003.

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.

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 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 18 of the Agreement. Further, the Agreement establishes a Readmission Committee which has powers to take decisions having legal effect on certain technical matters. Given the technical character of these decisions, it appears appropriate to provide for a simplified procedure for the establishment of the Community position in such cases. These procedures are identical with the ones that have been adopted by the Council in the decision concerning the conclusion of the readmission agreement with Hong Kong.

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 23 articles altogether. It also contains 6 annexes, which form an integral part of it, and five 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 (Articles 2 and 4) as well as third

country nationals and stateless persons (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.

- The obligation to readmit third country nationals and stateless persons (Articles 3 and 5) is linked to the following prerequisites: (a) the person to be readmitted holds or at the time of entry held a valid residence authorisation or a valid visa of the requested Party, or (b) the person to be readmitted entered the territory of the requesting Party after having stayed on, or transited through (lawfully or unlawfully) 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 issued a visa or residence authorisation with a longer period of validity or where the visa or residence authorisation was obtained by using forged or falsified documents.

- In return for the Republic of Albania agreeing to such broad obligations regarding the readmission of third-country nationals and stateless persons (Articles 3 and 5), the European Community accepted the Albanian requests (1) to delay for two years the entry into force of these obligations (Article 22 para.2 and 3) and (2) to insert a "re-readmission clause" for cases of readmission in error (Article 12).

- Under certain circumstances, the Republic of Albania 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 13 and 14);

- Section III of the Agreement (Articles 6 to 12 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 , only a written communication - but no formal submission of a readmission application - will be needed (Article 6);

- Articles 15 to 17 contain the necessary rules on costs, data protection and the non-affection 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 18;

- In order to execute this Agreement in practice, Article 19 empowers Member States to conclude bilateral implementing Protocols with the Republic of Albania. The relation between such implementing Protocols and this Agreement is clarified by Article 20;

- The final provisions (Art. 21 to 23) contain the necessary rules on entry into force, duration, termination and the legal status of the annexes to the agreement. As provided by Article 22, the Agreement shall enter into force on the first day of the second month following the notification by the parties that the respective legal procedures have been completed. However, Articles 3 and 5 relating to the readmission of third country nationals and stateless persons will only enter into effect two years after the entry into force of the Agreement.

- The specific situation of Denmark is reflected in the preamble, Article 1 lit. a), Article 21 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 Republic of Albania on the readmission of persons residing without authorisation.

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concerning the signing of the Agreement between the European Community and the Republic of Albania 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 Commission[1],

WHEREAS:

(1) By its decision of 28 November 2002, the Council authorised the Commission to negotiate an agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation.

(2) Negotiations for the Agreement took place on 15 and 16 May, 18 September and 5 November 2003.

(3) Subject to its possible conclusion at a later date, the Agreement initialled in Brussels on 18 December 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 Republic of Albania on the readmission of persons residing without authorisation.

Done in Brussels, the……..of……2004.

For the Council
The President

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[1] OJ C…

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concerning the conclusion of the Agreement between the European Community and the Republic of Albania 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 Commission[2],

Having regard to the opinion of the European Parliament[3]

WHEREAS:

(1) The Commission has negotiated on behalf of the European Community an Agreement with the Republic of Albania on the readmission of persons residing without authorisation;

(2) This Agreement has been signed, on behalf of the European Community, on …….2004 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 establishes a Joint Committee which may take decisions having legal effect on certain technical matters. It is therefore appropriate to provide for simplified procedures for the establishment of the Community position in such cases.

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Republic of Albania 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.

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2 OJ C…

3 OJ C…

Article 2

The President of the Council shall give the notification provided for in Article 22 paragraph 2 of the Agreement[4].

Article 3

The Commission, assisted by experts from Member States, shall represent the Community in the Committee of experts established by Article 18 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 18 (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 Union*.

Done in Brussels, the……of……2004

For the Council
The President

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

Annex

AGREEMENT

Between
the Republic of Albania

And
the European Community

on the readmission of persons residing without authorisation

THE HIGH CONTRACTING PARTIES,

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

and

THE REPUBLIC OF ALBANIA, hereinafter referred to as "Albania",

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

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

Emphasising that this Agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States of the European Union and Albania arising from International Law and, in particular, from the European Convention of 4 November 1950 for the Protection of Human Rights, the Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees, and International instruments on extradition;

Considering that the provisions of this Agreement, which 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) *"National of Albania"* shall mean any person who holds the nationality of Albania.

(d) *"Third-country national"* shall mean any person who holds a nationality other than that of Albania or one of the Member States.

(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 Albania or one of the Member States entitling a person to reside on its territory. This shall not include temporary permissions to remain on its territory in connection with the processing of an asylum application or an application for a residence authorisation.

(g) *"Visa"* shall mean an authorisation issued or a decision taken by Albania or one of the Member States which is required with a view to entry in, or transit through, its territory. This shall not include airport transit visa.

Section I
Readmission obligations by Albania

Article 2
Readmission of own nationals

(1) Albania shall readmit, upon application by a Member State and without further formalities other than those provided for 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 nationals of Albania.

The same shall apply to persons who have been deprived of, or who have renounced, the nationality of Albania since entering the territory of a Member State, unless such persons have at least been promised naturalisation by that Member State.

(2) Albania shall, as necessary and without delay, issue the person whose readmission has been accepted with the travel document required for his or her return with 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, Albania shall, within 14 calendar days extend the validity of the travel document or, where necessary, issue a new travel document with the same period of validity. If Albania has not, within 14 calendar days issued the travel document, extended its validity or, where necessary, renewed it, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes[5].

Article 3
Readmission of third-country nationals and stateless persons

(1) Albania shall readmit, upon application by a Member State and without further formalities other than those provided for in this Agreement, all third-country nationals or stateless 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 such persons

a) hold or at the time of entry held a valid visa or residence authorisation issued by Albania; or

b) entered the territory of the Member States after having stayed on, or transited through, the territory of Albania.

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

a) the third country national or stateless person has only been in airside transit via an International airport of Albania; or

b) the requesting Member State has issued to the third country national or stateless person a visa or residence authorisation before or after entering its territory unless

- that person is in possession of a visa or residence permit, issued by Albania, which has a longer period of validity; or

- the visa or residence authorisation issued by the requesting Member State has been obtained by using forged or falsified documents.

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[5] Council recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third-country nationals (OJ C 274 of 19.9.1996, p.18).

(3) Albania shall, as necessary and without delay, issue the person whose readmission has been accepted with the travel document required for his or her return with 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, Albania shall within 14 calendar days extend the validity of the travel document or, where necessary, issue a new travel document with the same period of validity. If Albania has not within 14 calendar days issued the travel document, extended its validity or, where necessary, renewed it, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes.

Section II
Readmission obligations by the Community

Article 4
Readmission of own nationals

(1) A Member State shall readmit, upon application by Albania and without further formalities other than those provided for 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 Albania 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 Albania unless such persons have at least been promised naturalisation by Albania.

(2) A Member State shall, as necessary and without delay, issue the person whose readmission has been accepted with the travel document required for his or her return with 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 Member State concerned shall within 14 calendar days extend the validity of the travel document or, where necessary, issue a new travel document with the same period of validity. If the Member State concerned has not within 14 calendar days issued the travel document, extended its validity or, where necessary, renewed it, it shall be deemed to accept the use of the Albanian certificate for expulsion purposes[6].

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[6] Endorsed by Instruction N° 553 of 19 November 2003 of the acting Minister of Foreign Affairs on the issuing of laissez-passer by the Albanian representations for returns to Albania.

Article 5
Readmission of third-country nationals and stateless persons

(1) A Member State shall readmit, upon application by Albania and without further formalities other than those provided for in this Agreement, all third-country nationals or stateless persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of Albania provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that such persons

a) hold or at the time of entry held a valid visa or residence authorisation issued by the requested Member State; or

b) entered the territory of Albania after having stayed on, or transited through, the territory of the requested Member State.

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

a) the third country national or stateless person has only been in airside transit via an International Airport of the requested Member State; or

b) Albania has issued to the third country national or stateless person a visa or residence authorisation before or after entering its territory unless

- that person is in possession of a visa or residence permit, issued by the requested Member State, which has a longer period of validity; or

- the visa or residence authorisation issued by Albania has been obtained by using forged or falsified documents.

(3) The readmission obligation in paragraph 1 is for the Member State that issued a visa or residence authorisation. 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. If no such documents can be presented, the readmission obligation in paragraph 1 is for the Member State of last exit.

(4) A Member State shall, as necessary and without delay, issue the person whose readmission has been accepted with the travel document required for his or her return with 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 within 14 calendar days extend the validity of the travel document or, where necessary, issue a new travel document with the same period of validity. If the Member State concerned has not within 14 calendar days issued the travel

document, extended its validity or, where necessary, renewed it, it shall be deemed to accept the use of the Albanian certificate for expulsion purposes.

SECTION III
READMISSION PROCEDURE

Article 6
Principle

(1) Subject to paragraph 2, any 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 State.

(2) The readmission application may be replaced by a written communication to the competent authority of the requested State within a reasonable time period prior to the return of the person concerned provided that the person to be readmitted is in possession of a valid travel document and, where applicable, a valid visa or residence authorisation of the requested State.

Article 7
Readmission application

(1) To the extent possible, the 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, father's name, mother's name, and the last place of residence);

(b) indication of the means with which proof or prima facie evidence of nationality, transit, the conditions for the readmission of third-country nationals and stateless persons and unlawful entry and residence will be provided.

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

a) a statement indicating that the person to be transferred may need help or care, provided that 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

(1) Proof of nationality pursuant to Article 2 (1) and Article 4 (1) can be particularly furnished through any of 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 and Albania shall mutually recognise the nationality without further investigation being required. Proof of nationality cannot be furnished through false documents.

(2) Prima facie evidence of nationality pursuant to Article 2 (1) and Article 4 (1) can be particularly furnished through any of 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 and Albania shall deem the nationality to be established, unless they can prove otherwise. Prima facie evidence of nationality cannot be furnished through false documents.

(3) If none of the documents listed in annexes 1 or 2 can be presented, the competent diplomatic and consular representations of Albania or the Member State concerned shall, upon request, make arrangements to interview the person to be readmitted without undue delay in order to establish his or her nationality.

Article 9
Means of evidence regarding third-country nationals and stateless persons

(1) Proof of the conditions for the readmission of third-country nationals and stateless persons laid down in Article 3 (1) and Article 5 (1) shall be particularly furnished through any of 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 Member States and Albania without any further investigation being required.

(2) Prima facie evidence of the conditions for the readmission of third-country nationals and stateless persons laid down in Article 3 (1) and Article 5 (1) shall be particularly furnished through any of the means of evidence listed in annex 4 to this Agreement; it cannot be furnished through false documents. Where such prima facie evidence is presented, the Member States and Albania shall deem the conditions to be established, unless they can prove otherwise.

(3) The unlawfulness of entry, presence or residence shall 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 State are missing. A statement by the requesting state 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 State within a maximum of one year after the requesting State's competent authority has gained knowledge that a third-country national or a stateless person 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 by the requesting State, 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 14 calendar days; 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. If there was no reply within this time limit, the transfer shall be deemed to have been agreed to.

(3) After agreement has been given or, where appropriate, after expiry of the 14 calendar day time limit, the person concerned shall be transferred without undue delay and, at the most, within three months. Upon application by the requesting State, 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 Albania and the Member State concerned shall make arrangements in writing in advance regarding the transfer date, the point of entry, possible escorts and other information relevant to the transfer.

(2) No means of transportation, whether by air, land or sea, shall be prohibited. Return by air shall not be restricted to the use of the national carriers of Albania or the Member States and may take place by using scheduled or charter flights. In the event of escorted returns, such escorts shall not be restricted to authorised persons of the requesting State, provided that they are authorised persons from Albania or any Member State.

Article 12
Readmission in error

Albania shall take back without delay any person readmitted by a Member State, and a Member State shall take back without delay any person readmitted by Albania, if it is established, within a period of 3 months after the transfer of the person concerned, that the requirements laid down in Articles 2 to 5 of this Agreement were not met. In such cases, the competent authorities of Albania and the Member State concerned shall also

exchange all available information relating to the actual identity, nationality or transit route of the person to be taken back.

SECTION IV
TRANSIT OPERATIONS

Article 13
Principles

(1) The Member States and Albania should restrict the transit of third-country nationals or stateless persons to cases where such persons cannot be returned to the State of destination directly.

(2) Albania shall allow the transit of third-country nationals or stateless persons if a Member State so requests, and a Member State shall authorise the transit of third-country nationals or stateless persons if Albania so requests, if the onward journey in possible other States of transit and the readmission by the State of destination is assured.

(3) Transit can be refused by Albania or a Member State

(a) if the third-country national or the stateless person runs the 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; or

(b) if the third-country national or the stateless person shall be subject to criminal prosecution 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.

(4) Albania 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. In this case, the requesting State shall take back the third-country national or the stateless person, as necessary and without delay.

Article 14
Transit procedure

(1) An application for transit operations must be submitted to the competent authority of the requested State 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, maiden name, other names used/by which known or aliases, date of birth, sex and – where possible – place of birth, nationality, language, type and number of travel document);

c) envisaged point of entry, time of transfer and possible use of escorts;

d) a declaration that in the view of the requesting State the conditions pursuant to Article 13 (2) are met, and that no reasons for a refusal pursuant to Article 13 (3) are known of.

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

(2) The requested State shall, within 5 calendar days and in writing, inform the requesting State of the admission, confirming the point of entry and the envisaged time of admission, or inform it of the admission refusal and of the reasons for such refusal.

(3) If the transit operation takes place 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 State shall, subject to mutual consultations, assist in the transit operations, in particular through the surveillance of the persons in question and the provision of suitable amenities for that purpose.

SECTION V
COSTS

Article 15
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 operations pursuant to this

Agreement as far as the border of the State of final destination shall be borne by the requesting State.

SECTION VI
DATA PROTECTION AND NON-AFFECTION CLAUSE

Article 16
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 Albania 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 Albania and, where the controller is a competent authority of a Member State, to the provisions of Directive 95/46/EC[7] 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 authority nor by the receiving authority 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. given names, surnames, any previous names, other names used/by which known or aliases, sex, civil status, date and place of birth, current and any previous nationality);
- passport, identity card or driving licence (number, period of validity, date of issue, issuing authority, place of issue);
- stop-overs 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.

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[7] Directive 95/46/EC of the European Parliament and of 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 (OJ L 281 of 23.11.1995, p. 31).

(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 receiving authority 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 those 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 receiving authority 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 an obligation to make a written record of the communication and receipt of personal data.

Article 17
Non-affection clause

(1) This agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Albania arising from International Law and, in particular, from the European Convention of 4 November 1950 for the Protection of Human Rights, the Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees, and International instruments on extradition.

(2) Nothing in this Agreement shall prevent the return of a person under other formal or informal arrangements.

SECTION VII
IMPLEMENTATION AND APPLICATION

Article 18
Joint 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 joint readmission committee (hereinafter referred to as "the 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 application of this Agreement;

c) to have regular exchanges of information on the implementing Protocols drawn up by individual Member States and Albania pursuant to Article 19;

d) to decide on amendments to the annexes to this Agreement;

e) to recommend amendments to this Agreement.

(2) The decisions of the committee shall be binding on the Contracting Parties.

(3) The committee shall be composed by representatives of the Community and Albania; the Community shall be represented by the Commission, assisted by experts from Member States.

(4) The committee shall meet where necessary at the request of one of the Contracting Parties.

(5) The committee shall establish its rules of procedures.

Article 19
Implementing Protocols

(1) Albania and a Member State may draw up implementing Protocols which shall cover rules on

a) designation of the competent authorities, border crossing points and exchange of contact points;

b) conditions for escorted returns, including the transit of third-country nationals and stateless persons 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 shall enter into force only after the readmission committee, referred to in Article 18, has been notified.

(3) Albania 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 20
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 19, be concluded between individual Member States and Albania.

SECTION VIII
FINAL PROVISIONS

Article 21
Territorial application

(1) Subject to paragraph 2, this Agreement shall apply to the territory in which the Treaty establishing the European Community is applicable and to the territory of Albania.

(2) This Agreement shall not apply to the territory of the Kingdom of Denmark.

Article 22
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) Subject to paragraph 3, 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) Articles 3 and 5 of this Agreement shall enter into force 2 years after the date referred to in paragraph 2.

(4) This Agreement is concluded for an unlimited period.

(5) 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 23
Annexes

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

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

For the European Community	For the Republic of Albania
(…)	(…)

Annex 1

COMMON LIST OF DOCUMENTS
THE PRESENTATION OF WHICH IS CONSIDERED AS PROOF OF NATIONALITY
(ARTICLES 2 (1), 3 (1), 4 (1) AND 5 (1))

- 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;
- citizenship certificates and other official documents that mention or indicate citizenship.

Annex 2

COMMON LIST OF DOCUMENTS
THE PRESENTATION OF WHICH IS CONSIDERED AS
PRIMA FACIE EVIDENCE OF NATIONALITY
(ARTICLES 2 (1), 3 (1), 4 (1) AND 5 (1))

- photocopies of any of the documents listed in annex 1 to this Agreement;
- driving licenses or photocopies thereof;
- birth certificates or 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 of the person concerned.

Annex 3

Common list of documents
which are considered as proof of the conditions for the
readmission of third country nationals and stateless persons
(Article 3 (1), Article 5 (1))

- entry/departure stamps or similar endorsement in the travel document of the person concerned or other evidence of entry/departure (e.g. photographic);

- documents, certificates and bills of any kind (e.g. hotel bills, appointments for medical or hospital treatment, entry cards for public/private institutions, car rental agreements, credit card receipts etc.) which clearly show that the person concerned stayed on the territory of the requested State;

- tickets and/or passenger lists of air, train, coach or boat passages which show the presence and the itinerary of the person concerned on the territory of the requested State;

- information showing that the person concerned has used the services of a courier or travel agency;

- official statements made, in particular, by border authority staff and other witnesses who can testify to the person concerned crossing the border;

- official statement by the person concerned in judicial or administrative proceedings.

Annex 4

Common list of documents
which are considered as prima facie evidence of the conditions
for the readmission of third country nationals and stateless persons
(Article 3 (1), Article 5 (1))

- description of place and circumstances under which the person concerned has been intercepted after entering the territory of the requesting State, issued by the relevant authorities of that State;

- 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.

Annex 5

[Emblem of Albania]



.....…… ……

(Place and date)

.....
(Designation of requesting authority)

Reference:

.....……

To

.....

.....

.....
(Designation of receiving authority)

READMISSION APPLICATION

pursuant to Article 7 of the Agreement of .....between
the European Community and the Republic of Albania
on the readmission of persons residing without authorisation

Photograph

A. Personal Details

1. Full name (underline surname):
   .....
2. Maiden name:
   .....
3. Date and place of birth:
   .....
4. Father's name, mother's name:

.....

5. Sex and physical description (height, colour of eyes, distinguishing marks etc.):

.....

6. Also known as (earlier names, other names used/by which known or aliases):

.....……

7. Nationality and language:

.....…….

8. Civil status: □married □ single □ divorced □ widowed

married: name of spouse.....

Names and age of children (if any)

.....

……..……....…….....

.....

9. Last address in the requesting 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)

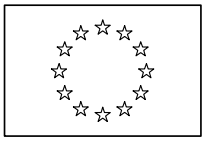
....
(issuing authority) (expiry date)

D. OBSERVATIONS

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

.....
(Signature of the requesting authority) (Seal/stamp)

Annex 6



Emblem of Albania

.....…

.....
(Designation of requesting authority)

……

(Place and date)

Reference:

.....……

To

.....

.....

.....
(Designation of receiving authority)

TRANSIT APPLICATION
pursuant to Article 14 of the Agreement of .....between
the European Community and the Republic of Albania
on the readmission of persons residing without authorisation

Photograph

A. PERSONAL DETAILS

1. Full name (underline surname):
   .....
2. Maiden name:
   .....
3. Date and place of birth:
   .....
4. Sex and physical description (height, colour 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 13 paragraph 2)

   ❑ yes ❑ no

6. Knowledge of any reason for a refusal of transit (Article 13 paragraph 3)

   ❑ yes ❑ no

C. OBSERVATIONS

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

.....
(Signature of the requesting authority) (Seal/stamp)

Joint Declaration on the relation to the future Stabilisation and Association Agreement

"The Parties take note that, on 31 January 2003, negotiations have been launched on the conclusion of a Stabilisation and Association Agreement (SAA) between Albania, on the one part, and the Community and its Member States, on the other part, which will also include provisions on the prevention and control of illegal immigration and readmission. The Parties therefore agree that this Agreement will be fully taken into account in the relevant provisions of the SAA."

Joint Declaration on Article 3

"The Parties take note that the readmission obligation vis-à-vis third-country nationals and stateless persons holding a valid visa issued by Albania (Article 3 (1) (a) of this Agreement) shall only apply if the visa has been used for entering the territory of Albania."

Joint Declaration on Article 18

"The meeting of the Joint Readmission Committee shall be held, wherever possible, in parallel with the relevant Sub-Committee set up under the future Stabilisation and Association Agreement.

It shall keep that Sub-Committee informed of its work.

The rules of procedures of the Joint Readmission Committee shall be compatible with the rules of procedure of that Sub-Committee."

Joint Declaration concerning Denmark

"The Contracting Parties take note that this Agreement does not apply to the territory of the Kingdom of Denmark, nor to nationals of the Kingdom of Denmark. In such circumstances it is appropriate that Albania 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 Albania concludes a readmission agreement with Iceland and Norway in the same terms as this Agreement. "