COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.4.2007
COM(2007) 197 final

2007/0071 (CNS)

Proposal for a

COUNCIL DECISION

concerning the signing of the Agreement between the European Community and Ukraine on readmission

Proposal for a

COUNCIL DECISION

concerning the conclusion of the Agreement between the European Community and Ukraine on readmission

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. Political and legal framework

In the common EU strategy of 11 December 1999 on Ukraine, the conclusion of a readmission agreement with this country was one of the measures proposed. On 13 June 2002, the General Affairs Council formally authorised the Commission to negotiate a readmission agreement between the European Community and Ukraine. In August 2002, the Commission transmitted a draft text to the Ukrainian authorities and the first formal negotiation round took place on 18 November 2002 in Kiev. Twelve further sessions were held alternately in Kiev and Brussels and, since November 2005, in parallel ("back-to-back") with negotiations on a EC-Ukraine visa facilitation agreement. Moreover, formal negotiations were occasionally prepared by informal expert meetings.

At the last formal round on 10 October 2006, the Commission presented Ukrainian side with a "package deal" on both agreements, which included, as far as the readmission agreement was concerned, a proposal for a 2 year transitional period for the entry into force of the provisions in the agreement dealing with the readmission of third country nationals and stateless persons. On 25 October the Ukrainian Ambassador to the EU informed the Commission that Ukraine could accept the "package deal", including the transitional period of 2 years. The final texts of the readmission and visa facilitation agreements were initialled at the occasion of the EU-Ukraine Summit in Helsinki on 27 October 2006.

Member States have been regularly informed and consulted at all (informal and formal) stages of the readmission 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 readmission agreement. The Council will decide by qualified majority. 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 Readmission Committee set up by Article 15 of the Agreement. Under Article 15 (5), the readmission committee shall adopt its own rules of procedure. As in the case for the other readmission agreements so far concluded by the Community, the Community position in this regard shall be established by the Commission in consultation with a special committee designated by the Council. As regards other decisions to be taken by the Joint Committee, the Community position shall be established in accordance with the applicable provisions of the Treaty.

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 7 sections with 21 articles altogether. It also contains 8 annexes, which form an integral part of it, 4 joint declarations and 1 unilateral declaration by Ukraine.

- The readmission obligations set out in the Agreement (Articles 2 to 4) are drawn up in a fully reciprocal way, comprising own nationals (Article 2) as well as third country nationals and stateless persons (Article 3) and 'readmission in error' (Article 4).

- The obligation to readmit own nationals (Article 2) includes also former own nationals who have renounced their nationality without acquiring the nationality or a residence authorisation of another State. In addition, Articles 2 is supplemented by a joint declaration concerning the deprivation of nationality.

- The obligation to readmit third country nationals and stateless persons (Article 3) is linked to the following prerequisites: (a) the person concerned held at the time of entry a valid visa issued by the requested State and has entered directly from this State's territory, or (b) the person concerned held at the time of entry a valid residence authorisation issued by the requested State, or (c) the person concerned illegally entered the territory of the requesting State directly from the territory of the requested State. Exempted from these obligations are persons in airside transit and all persons to whom the requesting State has either granted visa-free access or issued a visa or residence authorisation with a longer period of validity.

- In return for Ukraine agreeing to the aforementioned obligation regarding the readmission of third-country nationals and stateless persons (Article 3), the European Community agreed to delay for 2 years after the entry into force of the Agreement the applicability of these obligations (Article 20 para. 3). During that two-year transitional period, Article 3 of the Agreement shall only become applicable to stateless persons and nationals from third-countries with which Ukraine has concluded bilateral treaties or arrangements on readmission. Moreover, during that two-year transitional period, the provisions in existing bilateral agreements or arrangements concluded between individual Member States and Ukraine concerning readmission of stateless persons and third country nationals shall continue to apply (Article 17 para. 2).

- With regard to third-country nationals and stateless persons for whom it has given a positive reply to the readmission application, Ukraine accepts the use of the EU's standard travel document for expulsion purposes (Article 3 para. 4).

- The Agreement contains a section on transit operations (Articles 10 and 11 in conj. with annex 6).

- Section III of the Agreement (Articles 6 to 9 in conj. with annexes 1 to 5) 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 no readmission will be needed in cases where the person to be readmitted is in possession of a valid

national passport and, if he or she is a third-country national, also holds a valid visa or residence authorisation of the State which has to readmit him or her (Article 5 para. 2). In its paragraph 3, Article 5 contains another important procedural element, the so-called accelerated procedure, which has been agreed upon for persons apprehended in the "border region", i.e. within an area which extends up to 30 kilometres from the common land border between a Member State and Ukraine or within the territories of seaports and International airports of Member States or Ukraine. Under the accelerated procedure, readmission applications have to be submitted, and replies have to be given, within 2 working days whereas under the normal procedure, the time limit for replies is 14 calendar days with the right to an extension of up to 30 calendar days in duly motivated cases.

- Articles 12 to 14 contain the necessary rules on costs, data protection and the relation to other International obligations.

- The Joint Readmission Committee will be composed, and have the tasks and powers, as set out in Article 15.

- In order to execute this Agreement in practice, Article 16 creates the possibility for Ukraine and individual Member States to conclude bilateral implementing Protocols. The relation between the bilateral implementing Protocols and this Agreement is clarified by Article 17 para. 1.

- The final provisions (Art. 18 to 21) contain the necessary rules on entry into force, duration, possible amendments, termination and the legal status of the annexes to the agreement.

- The specific situation of Denmark is reflected in the preamble, Article 1 lit. b), Article 18 para. 2 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 Ukraine on readmission.

Proposal for a

COUNCIL DECISION

concerning the signing of the Agreement between the European Community and Ukraine on readmission

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 first 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 13 June 2002, the Council authorised the Commission to negotiate an agreement between the European Community and Ukraine on readmission.

(2) Negotiations for the Agreement took place between 18 November 2002 and 10 October 2006.

(3) Subject to its possible conclusion at a later date, the Agreement initialled in Helsinki on 27 October 2006 should be signed.

(4) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom has notified its wish to take part in the adoption and application of this Decision.

(5) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified its wish to take part in the adoption and application of this Decision.

(6) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Decision and is not bound by it or subject to its application,

HAS DECIDED AS FOLLOWS:

Sole Article

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[1] OJ C

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 Ukraine on readmission.

Done in Brussels, the……..of……2007.

For the Council
The President

2007/0071 (CNS)

Proposal for a

COUNCIL DECISION

concerning the conclusion of the Agreement between the European Community and Ukraine on readmission

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 first 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 Ukraine on readmission;

(2) This Agreement has been signed, on behalf of the European Community, on …….2007 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 Readmission Committee which may adopt its rules of procedure. It is appropriate to provide for a simplified procedure for the establishment of the Community position in this case.

(5) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom has notified its wish to take part in the adoption and application of this Decision.

(6) In accordance with Article 3 of the Protocol on the position of the United Kingdom

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2 OJ C

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and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified its wish to take part in the adoption and application of this Decision.

(7) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Decision and is not bound by it or subject to its application,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and Ukraine on readmission 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[4].

Article 3

The Commission, assisted by experts from Member States, shall represent the Community in the Joint Readmission Committee established by Article 15 of the Agreement.

Article 4

The position of the Community within the Joint Readmission Committee with regard to the adoption of its rules of procedure as required under Article 15 (5) of the Agreement shall be taken by the Commission after consultation with a special committee designated by the Council.

Article 5

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

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[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.

Done in Brussels, the……of……2007

For the Council
The President

Annex

AGREEMENT
BETWEEN THE EUROPEAN COMMUNITY AND UKRAINE ON THE READMISSION OF PERSONS

THE HIGH CONTRACTING PARTIES,

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

and

UKRAINE,

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

Concerned at the significant increase in the activities of organized criminal groups in the smuggling of migrants,

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 who do no longer, fulfil the conditions for entry to and stay on the territories of Ukraine 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, in appropriate cases, Ukraine and the Member States of the European Union should make best efforts to send third-country nationals and stateless persons who illegally entered their respective territories, back to the States of origin or permanent residence,

Acknowledging the necessity of observing human rights and freedoms, and *emphasizing* that this Agreement shall be without prejudice to the rights and obligations of the Community, the Member States of the European Union and Ukraine arising from the Universal Declaration of Human Rights of 10 December 1948 and from international law, in particular, from the European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms, the Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees, the international Covenant on Civil and Political Rights of 19 December 1966 and international instruments on extradition**,**

Taking into account that cooperation between Ukraine and the Community in the fields of readmission and facilitation of mutual travel is of common interest**,**

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) "*Contracting Parties*" shall mean Ukraine and the Community.

(b) "*Member State*" shall mean any Member State of the European Union, with the exception of the Kingdom of Denmark.

(c) "*National of a Member State*" shall mean any person who holds the nationality, as defined for Community purposes, of a Member State.

(d) "*National of Ukraine*" shall mean any person who holds the nationality of Ukraine.

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

(f) "*Stateless person*" shall mean any person who does not hold a nationality**.**

(g) "*Residence authorization*" shall mean a certificate of any type issued by Ukraine or one of the Member States entitling a person to reside in its territory. This shall not include temporary permissions to stay in its territory in connection with the processing of an asylum application, an application for refugee status or an application for a residence authorization.

(h) "*Visa*" shall mean an authorization issued or a decision taken by Ukraine 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.

(i) "*Requesting State*" shall mean the State (Ukraine or one of the Member States) submitting the readmission application pursuant to Article 5 or a transit application pursuant to Article 11 of this Agreement.

(j) "*Requested State*" shall mean the State (Ukraine or one of the Member States) to which a readmission application pursuant to Article 5 or a transit application pursuant to Article 11 of this Agreement is addressed.

(k) "*Competent Authority*" shall mean any national authority of Ukraine or one of the Member States entrusted with the implementation of this agreement in accordance with

Article 16 thereof.

(l) "*Border region*" shall mean an area which extends up to 30 kilometres from the common land border between a Member State and Ukraine, as well as the territories of seaports including custom zones, and International airports of the Member States and Ukraine.

Section I. Readmission obligations

Article 2

Readmission of own nationals

(1) The Requested State shall, upon application by the Requesting State and without further formalities other than those provided for by this Agreement, readmit to its territory all persons who do not, or who no longer, fulfil the conditions in force for entry to or stay on the territory of the Requesting State provided that evidence is furnished, in accordance with Article 6 of this Agreement, that they are nationals of the Requested State.

The same shall apply to persons who, after entering the territory of the Requesting State, have renounced the nationality of the Requested State without acquiring the nationality of the Requesting State.

(2) The Requested State shall, as necessary and without delay, issue the person whose readmission has been accepted with the travel document with a period of validity of at least 6 months; this is irrespective of the will of the person to be readmitted. 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 Requested State 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 Requested State has not, within 14 calendar days, issued the travel document, extended its validity or, where necessary, renewed it, the Requested State shall be deemed to accept the expired document.

Article 3

Readmission of third-country nationals and stateless persons

(1) The Requested State, upon application by the Requesting State and without further formalities other than those provided for by this Agreement, shall readmit to its territory third-country nationals or stateless persons which do not, or no longer, fulfill the conditions in force for entry to or stay on the territory of the Requesting State provided that evidence is furnished, in accordance with Article 7 of this Agreement, that such persons

(a) illegally entered the territory of the Member States coming directly from the territory of Ukraine or illegally entered the territory of Ukraine coming directly from the territory of the Member States;

or

(b) at the time of entry held a valid residence authorisation issued by the Requested State;

or

(c) at the time of entry held a valid visa issued by the Requested State and entered the territory of the Requesting State coming directly from the territory of the Requested 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 State; or

b) the Requesting 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 authorisation, issued by the Requested State, which has a longer period of validity; or

- the visa or residence authorization issued by the Requesting State has been obtained by using forged or falsified documents.

c) the third country national or stateless person does not need a visa for entering the territory of the Requesting State.

(3) As far as Member States are concerned, the readmission obligation in paragraph 1 lit. b) and/or c) 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 lit. b) and/or c) 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 lit. b) and/or c) 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) After the Requested State has given a positive reply to the readmission application, the Requesting State issues the person whose readmission has been accepted a travel document recognized by the Requested State. If the Requesting State is an EU Member State this travel document is the EU standard travel document for expulsion purposes in line with the form set out in EU Council recommendation of 30 November 1994 (Annex 7). If the Requesting State is Ukraine this travel document is the Ukrainian return certificate (Annex 8).

Article 4

Readmission in error

The Requesting State shall take back any person readmitted by the Requested State 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 or 3 of this Agreement are not met.

In such cases the procedural provisions of this Agreement shall apply mutatis mutandis and the Requested State shall also communicate all available information relating to the actual identity and nationality of the person to be taken back.

Section II. Readmission procedure

Article 5

Readmission application

(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 and 3 shall require the submission of a readmission application to the competent authority of the Requested State.

(2) If the person to be readmitted is in possession of a valid travel document or identity card and, in the case of third country nationals or stateless persons, a valid visa or residence authorization of the Requested State, the transfer of such person can take place without the Requesting State having to submit a readmission application or written communication to the competent authority of the Requested State.

(3) Without prejudice to paragraph 2**,** if a person has been apprehended in the border region of the Requesting State within 48 hours from the moment of illegal crossing of the state border of that person (including seaports and airports) coming directly from the territory of the Requested State, the Requesting State may submit a readmission application within 2 days following this persons apprehension (accelerated procedure).

(4) The readmission application shall contain the following information:

a) all available particulars of the person to be readmitted (e.g. given names, surnames, date and place of birth**,** sex and the last place of residence);

b) means of evidence regarding nationality, the conditions for the readmission of third-country nationals and stateless persons.

(5) Where necessary, 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 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.

(6) A common form to be used for readmission applications is attached as Annex 5 to this Agreement.

Article 6

Means of evidence regarding nationality

(1) Nationality of the Requested State pursuant to Article 2 (1) of this Agreement may be:

a) proven by 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 Requested State shall recognize the nationality without further investigation being required. Proof of nationality cannot be furnished through forged or falsified documents.

b) established on the basis of 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 Requested State shall deem the nationality to be established, unless it can prove otherwise on the basic of an investigation with participation of the competent authorities of the Requesting State. Nationality cannot be established through forged or falsified documents.

(2) If none of the documents listed in annexes 1 or 2 can be presented, the competent diplomatic representation of the Requested State shall interview the person to be readmitted within a maximum of 10 calendar days, in order to establish his or her nationality. This time limit begins with the date of receipt of the readmission application.

Article 7

Means of evidence regarding third-country nationals and stateless persons

(1) The conditions for the readmission of third-country nationals and stateless persons pursuant to Article 3 (1) (a) of this Agreement may be:

a) proven by any of the documents listed in Annex 3a to this Agreement. If such documents are presented, the Requested State shall recognize the illegal entrance on the territory of the Requesting State (or Member States if the Requested State is Ukraine) from its territory.

b) established on the basis of any of the documents listed in Annex 3b to the present Agreement. If such documents are presented, the Requested State shall carry out an investigation and shall give an answer within a maximum of 20 calendar days. In the event of a positive answer, or if no answer is given when the time limit has expired, the Requested State shall recognize the illegal entrance on the territory of the Requesting State (or Member States if the Requested State is Ukraine) from its territory.

(2) The unlawfulness of the entry to the territory of the Requesting State pursuant to Article 3 (1) (a) of this Agreement shall be established by means of the travel documents of the person concerned in which the necessary visa or other residence authorization for the territory of the Requesting State are missing**.** A duly motivated statement by the Requesting State that the person concerned has been found not having the necessary travel documents, visa or residence authorization shall likewise provide prima facie evidence of the unlawful entry, presence or residence.

(3) The conditions for the readmission of third-country nationals and stateless persons pursuant to Article 3 (1) (b) and (c) of this Agreement may be:

a) proven by any of the documents listed in Annex 4a to this Agreement. If such documents are presented, the Requested State shall recognize the residence of such persons in its territory without further investigation being required.

b) established on the basis of any of the documents listed in Annex 4b to the present Agreement. If such documents are presented, the Requested State shall carry out an investigation and shall give an answer within a maximum of 20 calendar days. In the event of a positive answer, or if not proven otherwise, or if no answer is given when the time limit has expired, the Requested State shall recognize the stay of such persons in its territory.

(4) Proof of the conditions for readmission of third-country nationals and stateless persons cannot be furnished through forged or falsified documents.

Article 8

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.

Readmission obligation shall not arise in case if the readmission application regarding such persons is submitted after the expiry of the mentioned term. Where there are legal or factual obstacles to the application being submitted in time, the time limit shall, upon request, be extended up to 30 calendar days.

(2) With the exception of the time limits mentioned in Articles 7(1) b) and 7(3) b)], a readmission application shall be replied to by the Requested State without undue delay, and in any event within 14 calendar days after the date of receipt of such application. Where there are legal or factual obstacles to the application being replied to in time, the time limit shall, upon duly motivated request, be extended, in all cases**,** up to a maximum of 30 calendar days.

(3) In the case of a readmission application submitted under the accelerated procedure (Article 5(3)), a reply has to be given within 2 working days after the date of receipt of such application. If necessary, upon duly motivated request by the Requested State and after approval by the Requesting State, the time limit for a reply to the application may be extended by 1 working day.

(4) If there was no reply within the time limits referred to in paragraphs 2 and 3 of this Article, the transfer shall be deemed to have been agreed to.

(5) Reasons for refusal of a readmission request shall be given to the Requesting State.

(6) After agreement has been given or, where applicable after expiry of the time limits laid down in paragraph 2, the person concerned shall be transferred without delay in the terms agreed upon by the competent authorities in accordance with Article 9 (1) of this Agreement. Upon request of the Requesting State, this time limit may be extended by the time taken to deal with legal or practical obstacles to the transfer.

Article 9

Transfer modalities and modes of transportation

(1) Before the transfer of a person, the competent authorities of the Requesting State and the Requested State 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) All means of transportation, whether by air, land or sea, shall be allowed. Transfer by air shall not be restricted to the use of the national carriers of the Requesting State or the Requested State and may take place by using scheduled flights as well as charter flights. In case of need for escorts, such escorts shall not be restricted to authorized persons of the Requesting State, provided that they are authorized persons from Ukraine or any Member State.

Section III.

Transit operations

Article 10

Principles

(1) The Member States and Ukraine 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) The Requested State shall allow the transit of third-country nationals or stateless

persons, if the further transportation of such persons in possible other States of transit and the readmission by the State of destination is guaranteed**.**

(3) Transit of third-country nationals or stateless persons shall be carried out under escorts, if so requested by the Requested State. The procedural details for escorted transit operations shall be laid down in the implementing protocols in accordance with Article 16.

(4) Transit can be refused by the Requested 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.

(5) The Requested State may revoke any authorisation issued if circumstances referred to in paragraph 4 of this Article 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 guaranteed.

Article 11

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), route of transit, other States of transit, if any, and the State of final destination;

b) the particulars of the person concerned (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 10 (2) are met, and that no reasons for a refusal pursuant to Article 10 (4) 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 10 calendar days after receiving the application and in writing, inform the Requesting State of its consent to the transit operation, confirming the point of entry and the envisaged time of admission, or inform it of the transit 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 IV

Costs

Article 12

Transport and transit costs

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, as well as the transport and maintenance costs of the Requested State relating to the return of persons in accordance with Article 4 of this Agreement. This shall be without prejudice to the right of the competent authorities of the Member States and Ukraine to recover such costs from the person concerned or third parties.

Section V

Data protection and non-affection clause

Article 13

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 Ukraine or a Member State as the case may be. When communicating, processing or treating personal data in a particular case, the competent authorities of Ukraine shall abide by the relevant legislation of Ukraine, and the competent authorities of a Member State shall abide by the provisions of Directive 95/46/EC and by 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 (given names, surnames, 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 license and other identification or travel documents (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;

(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 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 receiving authority shall inform the communicating authority of the use of the communicated data and of the results obtained there from;

(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 14

Non-affection clause

(1) This Agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Ukraine arising from International Law and, in particular, from any applicable International Convention or agreement to which they are Parties, including those referred to in the Preamble.

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

Section VI

Implementation and application

Article 15

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 shall have the following tasks and competencies:

a) to monitor the application of this Agreement and have regular exchanges of information on the implementing Protocols drawn up by individual Member States and Ukraine pursuant to Article 16;

b) to prepare proposals and make recommendations for amendments to this Agreement;

c) to decide on implementing arrangements necessary for the uniform application of this agreement.

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

(3) The Committee shall be composed by representatives of the Community and Ukraine;

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 16

Implementing Protocols

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

a) designation of the competent authorities;

b) border crossing points for the transfer of persons;

c) mechanism of communication between the competent authorities;

d) modalities for returns under the accelerated procedure;

e) conditions for escorted returns of persons, including the transit of third-country nationals and stateless persons under escort;

f) additional means and documents necessary to implement this agreement;

g) modes and procedures for recovering costs in connection with implementation of Article 12 of this Agreement**.**

(2) The implementing Protocols referred to in paragraph 1 shall enter into force only after the readmission committee, referred to in Article 15, has been notified.

(3) Ukraine agrees to apply any provision relating to paragraph 1 lit. d), e), f) or g) 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 17

Relation to bilateral readmission agreements of Member States

(1) Subject to paragraph 2 of this article**,** the provisions of this Agreement shall take precedence over the provisions of any bilateral agreement or other legally binding instrument on the readmission of persons which have been or may, under Article 16, be concluded between individual Member States and Ukraine, in so far as the provisions of the latter are

incompatible with those of this Agreement.

(2) The provisions on readmission of stateless persons and nationals from third countries contained in bilateral agreements or other legally binding instruments which have been concluded between individual Member States and Ukraine shall continue to apply during the 2 year period referred to in Article 20 (3).

Section VII. Final provisions

Article 18

Territorial application

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

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

Article 19

Amendments to the Agreement

This Agreement may be amended and supplemented by mutual consent of the Contracting Parties. Amendments and supplements shall be drawn up in the form of separate protocols, which shall form an integral part of this Agreement, and enter into force in accordance with the procedure laid down in Article 20 of this Agreement.

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) Subject to paragraph 3 of this article, this Agreement shall enter into force on the first day of the second month following the date on which the Parties notify each other that the procedures referred to in the first paragraph have been completed.

(3) The obligations set out in Article 3 of this Agreement shall only become applicable 2 years after the date referred to in paragraph 2 of this article. During that 2 - year period, they shall only be applicable to stateless persons and nationals from third-countries with which the Ukraine has concluded bilateral treaties or arrangements on readmission. As set out in Article 17 (2), the provisions on the readmission of stateless persons and nationals from third countries contained in bilateral agreements or other legally binding instruments which have been concluded between individual Member States and Ukraine shall continue to

apply during this 2 - year period.

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

(5) Each Party may denounce this Agreement by officially notifying the other Party. This Agreement shall be terminated six months after the date of such notification.

Article 21

Annexes

Annexes 1 to 8 shall form an integral part of this Agreement.

Done at ..... on the ..... day of ..... in the year ..... in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Ukrainian languages, each of these texts being equally authentic.

For the European Community	For Ukraine
(…)	(…)

Annex 1

Common list of documents

regarding nationality

(Article 6 (1) lit. a))

– passports of any kind (national passports, diplomatic passports, service passports, collective passports and surrogate passports including children's passports);

– national identity cards (including temporary and provisional ones);

– military service books and military identity cards;

– seaman's registration books, skippers' service cards and seaman's passports;

– citizenship certificates and other official documents that mention or indicate citizenship.

Annex 2

Common list of documents
regarding nationality

(Article 6 (1) lit. b)

– 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 the results of any official test conducted to establish the person's nationality. For the purpose of this Annex, the term 'official test' is defined as a test commissioned or conducted by the authorities of the Requesting State and validated by the Requested State;

– any other document which may help to establish the nationality of the person concerned.

Annex 3

Common list of documents
regarding third country nationals and stateless persons

(Article 7 (1))

Annex 3a

– official statements made for the purpose of the accelerated procedure, in particular, by authorized border authority staff who can testify to the person concerned crossing the border from the Requested State directly to the territory of the Requesting State;

– named tickets of air, train, coach or boat passages, which testify to the presence and the itinerary of the person concerned from the territory of the Requested State directly to the territory of the Requesting State (or Member States if the Requested State is Ukraine);

– passenger lists of air, train, coach or boat passages which testify to the presence and the itinerary of the person concerned from the territory of the Requested State directly to the territory of the Requesting State (or Member States if the Requested State is Ukraine);

Annex 3b

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

– documents, certificates and bills of any kind (e.g. hotel bills, appointment cards for doctors/dentists, 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;

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

– official statement by the person concerned in judicial or administrative proceedings;

Annex 4

Common list of documents
regarding third-country nationals and stateless persons

(Article 7 (2))

Annex 4a

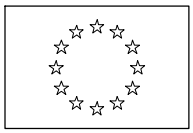
– valid visa and/or residence authorisation issued by the Requested State;

– entry/departure stamps or similar endorsement in the travel document of the person concerned or other evidence of entry/departure;

Annex 4b

Photocopies of any of the documents listed in Part A.

Annex 5



[Emblem of Ukraine]

.....……
…

.....……..…
…

(Place and date)

.....
…

(Designation of competent authority of the requesting state)

Reference: .....…

❑ ACCELERATED PROCEDURE

To

.....
…

.....……
….

.....
….

(Designation competent authority of the requested state)

READMISSION APPLICATION

pursuant to Article 5 of the Agreement of .....

between the European Community and Ukraine

on the readmission of persons authorization

A. Personal details

Photograph

1. Full name (underline surname):

.....

2. Maiden name:

.....

3. Date and place of birth:

.....

4. Address of residence in the state of origin or permanent residence (if known)

.....
...

5. Nationality and language:

.....

6. Civil status: married single divorced widowed

If married :

name of spouse.....

Names and age of children (if any).....

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

.....

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

.....
...

If married : name of spouse.....

Names and age of children (if any).....

address in the requesting State:

.....

B. Means of evidence attached

1..... .....
....

(Passport No.)

(date and place of issue)

.... ….

(issuing authority) (expiry date)

2..... ..... ….

(Identity card No.) (date and place of issue)

.... ….

(issuing authority) (expiry date)

3..... ..... ….

(Driving licence No.) (date and place of issue)

.... ….

(issuing authority) (expiry date)

4..... ..... ….

(Other official document No.) (date and place of issue)

.... ….

(issuing authority) (expiry date)

C. Special circumstances relating to the transferee

1. State of health

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

.....

2. Indication of particularly dangerous person

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

.....

D. Observations

..... …

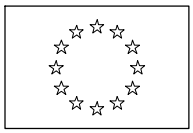
.....
…

……..

.....

(Signature of the competent authority of the requesting state)

Annex 6



[Emblem of Ukraine]

.....…… .....……..…
… …

(Place and date)

.....
…

(Designation of competent authority of the requesting state)

Reference: .....……

To

.....
…

.....……
….

.....
….

(Designation of competent authority of the requested state)

TRANSIT APPLICATION

pursuant to Article 11 of the Agreement of .....

between the European Community and Ukraine

on the readmission of persons

A. Personal details

Photograph

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, other names used/by which known or aliases):

.....……..

6. Nationality and language:

.....…….....

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 10 paragraph 2)

- ❑ yes
- ❑ no

6. Knowledge of any reason for a refusal of transit (Article 10 paragraph 4)

- ❑ yes
- ❑ no

C.Observations

.....

.....

.....

.

.....

.....

(Signature of competent authority of the requesting state) (Seal/stamp)

Annex 7

EU standard travel document for expulsion purposes

(In line with the form set out in EU Council recommendation of 30 November 1994)

Annex 8

Ukrainian Return Certificate

Declaration of Ukraine

"Travel document" shall mean a document valid for going abroad issued by Ukraine, one of the Member States or the state of citizenship or permanent residence of the person to be readmitted.

Joint Declaration concerning Article 2 (1)

The Contracting Parties take note that, according to the nationality laws of Ukraine and the Member States, it is not possible for a Ukrainian or EU citizen to be deprived of his or her nationality without acquiring another nationality.

The Contracting Parties agree to consult each other in due time, should this legal situation change.

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 the nationals of the Kingdom of Denmark. In such circumstances it is appropriate that Ukraine 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 Communities 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 Ukraine concludes with Norway and Iceland a readmission agreement in the same terms as this Agreement.

Joint Declaration on Technical and Financial Support

Both parties agree to implement this Agreement based on the principles of joint responsibility, solidarity and an equal partnership to manage the migratory flows between Ukraine and the EU.

In this context the EC is committed to make available financial resources in order to support Ukraine in the implementation of this Agreement. In doing so, special attention will be devoted to capacity building. Such support is to be provided in the context of the overall priorities for assistance in favour of Ukraine, as part of the overall funding available for Ukraine and in full respect of the relevant implementation rules and procedures of EC external assistance.