

COMMISSION OF THE EUROPEAN COMMUNITIES

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2007/0146 (CNS)

Proposal for a

COUNCIL DECISION

concerning the signing of the Agreement between the European Community and the Republic of Montenegro on readmission

Proposal for a

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(presented by the Commission)

EXPLANATORY MEMORANDUM

I. Political and legal framework

The importance for the Republic of Montenegro, as well as for all the other Western Balkan countries, of coping with illegal migration issues was reaffirmed in the conclusions of the EU-Western Balkans Summit held in Thessaloniki on 21 June 2003, which also confirmed the European perspective of the countries of the Western Balkans. According to the samedocument, the dialogue on visa issues will be dependent on combating, *inter alia*, illegal immigration. As regards readmission, the "Thessaloniki agenda" announced the commitment of the EU to conduct and conclude readmission agreements with all the countries in the region. It further invited the Republic of Montenegro and the other Western Balkan countries to take all the necessary measures to facilitate the conclusion, and ensure the implementation, of such agreements.

On 13 November 2006 the General Affairs and External Relations Council formally authorised the Commission to negotiate a readmission agreement with the Republic of Montenegro. Negotiating directives for readmission agreements with the other Western Balkan countries were adopted by the Council on the same day. In November 2006 the Commission transmitted a draft agreement between the European Community and Montenegro to the Montenegrin authorities. The negotiations were launched on 30 November 2006 and the first formal round took place in Brussels on 15 December 2006. Two further rounds were held in Brussels in parallel ("back-to-back") with the negotiations on an EC-Montenegro visa facilitation agreement. Moreover, formal negotiations were occasionally prepared by informal expert meetings. The last formal round of negotiations took place on 11 April 2007 during which all outstanding issues were agreed including the readmission of the former nationals of the Socialist Federal Republic of Yugoslavia who have acquired no other nationality. The final text of the agreement was initialled by chief negotiators of the two sides on the same day.

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(3)(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(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 represents the Community within the Joint Readmission Committee set up by Article 18 of the Agreement. Under Article 18(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 draft Readmission Agreement with the Republic of Montenegro has been to the extent possible harmonised with the draft Readmission Agreements with the other Western Balkan countries.

The final content of it can be summarised as follows:

- The Agreement is divided into 8 sections with 23 Articles altogether. It also contains 7 Annexes, which form an integral part of it and 6 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 including, for Montenegro, former nationals of the Socialist Federal Republic of Yugoslavia who have acquired no other nationality (Articles 3 and 5).

- The obligation to readmit own nationals includes also former own nationals who have renounced, or who have been deprived of, their nationality without acquiring the nationality of another State.

- The readmission obligation with regard to own nationals covers also family members (i.e. spouses and minor unmarried children) who hold another nationality than the person to be readmitted and who do not have an independent right of residence in the Requesting State.

- The obligation to readmit third country nationals and stateless persons (Article 3) is linked to the following prerequisites: (a) the person concerned holds or at the time of entry held, a valid visa or residence permit issued by the Requested State, or (b) the person concerned illegally and directly entered the territory of the Requesting State after having stayed on or transited through the territory of the Requested State. Exempted from these obligations are persons in airside transit and all persons to whom the Requesting State has issued a visa or residence authorisation before or after entry to its territory.

- The former nationals of the Socialist Federal Republic of Yugoslavia who have acquired no other nationality were treated as a separate category (Article 3(3)). Their readmission shall be accepted by Montenegro provided two conditions are met: their place of birth was on Montenegro's territory and their place of permanent residence on the date of independence of Montenegro (i.e. 27 April 1992) was on the territory of that State. The specific conditions for the readmission of this category of persons was applied horizontally in all the readmission agreements with the Western Balkan countries.

- Both for own nationals, in case of expiry of specified delay, as well as for third country nationals or stateless persons, in all cases, Montenegro accepts the use of the

EU's standard travel document for expulsion purposes (Articles 2(4) and 3(4)).

- Section III of the Agreement (Articles 6 to 9 in conjunction with Annexes 1 to 6) contains the necessary technical provisions regarding the readmission procedure (the form and content of the 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 6(2)). The time limit for replies for all readmission applications is 12 calendar days with the right to an extension with up to 6 calendar days upon request and in duly motivated cases.

- The agreement contains also a section on transit operations (Articles 13 and 14 in conjunction with Annex 7).

- Articles 15 to 17 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 18.

- In order to execute this Agreement in practice, Article 19 creates the possibility for Montenegro and individual Member States to conclude bilateral implementing Protocols. The relation between the bilateral implementing Protocols as well as other existing bilateral readmission agreements between Montenegro and individual Member States with this Agreement is clarified by Article 20.

- The final provisions (Art. 21 to 23) contain the necessary rules on entry into force, duration, possible amendments, suspension, termination and the legal status of the Annexes to the agreement.

- The specific situation of Denmark is reflected in the preamble, Articles 1(d), 21(2) and in a joint declaration attached to the Agreement. The close association of Norway, Iceland and Switzerland to the implementation, application and development of the Schengen Acquis is likewise reflected in joint declarations 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 Montenegro on readmission.

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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 November 2006, the Council authorised the Commission to negotiate an agreement between the European Community and the Republic of Montenegro on readmission.

(2) Negotiations for the Agreement took place between 30 November 2006 and 11 April 2007.

(3) Subject to its possible conclusion at a later date, the Agreement initialled in Brussels on 11 April 2007 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 the Republic of Montenegro on readmission.

Done at Brussels,

For the Council
The President

2007/0146 (CNS)

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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 the Republic of Montenegro 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 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

[2] OJ C

[3] [...]

bound by it or subject to its application,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Republic of Montenegro 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 22 paragraph 2 of the Agreement[4].

Article 3

The Commission shall represent the Community in the Joint Readmission Committee established by Article 18 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 18 (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*.

Done at Brussels,

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 European Community and the Republic of Montenegro

on the readmission of persons residing without authorization

THE HIGH CONTRACTING PARTIES,

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

and

THE REPUBLIC OF MONTENEGRO, hereinafter referred to as "Montenegro",

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 Montenegro 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 Montenegro arising from International Law and, in particular, from the European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms and the Convention of 28 July 1951 on the Status of Refugees;

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 Montenegro and the Community;

(b) *"National of Montenegro"* shall mean any person who holds the nationality of the Republic of Montenegro, in accordance with its legislation;

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

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

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

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

(g) *"Residence permit"* shall mean a permit of any type issued by Montenegro 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 permit;

(h) *"Visa"* shall mean an authorisation issued or a decision taken by Montenegro 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 (Montenegro or one of the Member States) submitting a readmission application pursuant to Article 7 or a transit application pursuant to Article 14 of this Agreement;

(j) *"Requested State"* shall mean the State (Montenegro or one of the Member States) to which a readmission application pursuant to Article 7 or a transit application pursuant to Article 14 of this Agreement is addressed;

(k) *"Competent Authority"* shall mean any national authority of Montenegro or one of the Member States entrusted with the implementation of this Agreement in accordance with Article 19 (1) lit. a) thereof;

(l) *"Transit"* shall mean the passage of a third country national or a stateless person through the territory of the Requested State while travelling from the Requesting State to the country of destination.

(m) "*Readmission"* shall mean the transfer by the Requesting State and admission by the Requested State of persons (own nationals of the Requested State, third country nationals or stateless persons) who have been found illegally entering to, being present in or residing in the Requesting State, in accordance with the provisions of this

Agreement.

Section I.

Readmission obligations by MONTENEGRO

Article 2

Readmission of own nationals

(1) Montenegro 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 Montenegro.

(2) Montenegro shall also readmit:

– minor unmarried children of the persons mentioned in paragraph 1, regardless of their place of birth or their nationality, unless they have an independent right of residence in the Requesting Member State;

– spouses, holding another nationality, of the persons mentioned in paragraph 1, provided they have the right to enter and stay or receive the right to enter and stay in the territory of Montenegro, unless they have an independent right of residence in the Requesting Member State.

(3) Montenegro shall also readmit persons who have been deprived of, or who have renounced, the nationality of Montenegro since entering the territory of a Member State, unless such persons have at least been promised naturalisation by one of the Member States.

(4) After Montenegro has given a positive reply to the readmission application, the competent Diplomatic Mission or Consular Office of Montenegro shall immediately and not later than within 3 working days, issue the travel document required for the return of the person to be readmitted, with a validity of at least 3 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 competent Diplomatic Mission or Consular Office of Montenegro shall, within 14 calendar days, issue a new travel document with a period of validity of the same duration. If Montenegro has not, within 14 calendar days, issued the new travel document, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes[5].

(5) In case the person to be readmitted possesses the nationality of a third state in addition to Montenegrin nationality, the Requesting Member State shall take into consideration the will of the person to be readmitted to the state of his/her choice.

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[5] In line with the form set out in EU Council recommendation of 30 November 1994.

Article 3

Readmission of third-country nationals and stateless persons

(1) Montenegro 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 permit issued by Montenegro; or

b) illegally and directly entered the territory of the Member States after having stayed on, or transited through, the territory of Montenegro.

(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 Montenegro; or

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

– that person is in possession of a visa or residence permit, issued by Montenegro, which has a longer period of validity than the one issued by the Requesting Member State; or

– the visa or residence permit issued by the Requesting Member State has been obtained by using forged or falsified documents, or by making false statements; or

– that person fails to observe any condition attached to the visa.

(3) Montenegro shall also readmit, upon application by a Member State, former nationals of the former Socialist Federal Republic of Yugoslavia who have acquired no other nationality and whose place of birth, and place of permanent residence on 27 April 1992, was in the territory of Montenegro, provided that the latter can be confirmed by the Montenegrin authorities at the date of the submission of the readmission application.

(4) After Montenegro has given a positive reply to the readmission application, the Requesting Member State issues the person whose readmission has been accepted the EU standard travel document for expulsion purposes[6].

Section II.

[6] In line with the form set out in EU Council recommendation of 30 November 1994.

Readmission obligations by the Community

Article 4

Readmission of own nationals

(1) A Member State shall readmit, upon application by Montenegro 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 Montenegro 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.

(2) A Member State shall also readmit:

– minor unmarried children of the persons mentioned in paragraph 1, regardless of their place of birth or their nationality, unless they have an independent right of residence in Montenegro;

– spouses, holding another nationality, of the persons mentioned in paragraph 1, provided they have the right to enter and stay or receive the right to enter and stay in the territory of the Requested Member State, unless they have an independent right of residence in Montenegro;

(3) A Member State shall also readmit persons who have been deprived of, or who have renounced, the nationality of a Member State since entering the territory of Montenegro, unless such persons have at least been promised naturalisation by Montenegro.

(4) After the Requested Member State has given a positive reply to the readmission application, the competent Diplomatic Mission or Consular Office of that Member State shall immediately and not later than within 3 working days, issue the travel document required for the return of the person to be readmitted, with a validity of at least 3 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 competent Diplomatic Mission or Consular Office of that Member State shall, within 14 calendar days, issue a new travel document with a period of validity of the same duration.

(5) In case the person to be readmitted possesses the nationality of a third state in addition to that of the Requested Member State, Montenegro shall take into consideration the will of the person to be readmitted to the state of his/her choice.

Article 5

Readmission of third-country nationals and stateless persons

(1) A Member State shall readmit, upon application by Montenegro 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 Montenegro 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 permit issued by the Requested Member State; or

b) illegally and directly entered the territory of Montenegro 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) Montenegro has issued to the third country national or stateless person a visa or residence permit 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 than the one issued by Montenegro; or

– the visa or residence permit issued by Montenegro has been obtained by using forged or falsified documents**,** or by making false statements; or

– that person fails to observe any condition attached to the visa.

(3) The readmission obligation in paragraph 1 is for the Member State that issued a visa or residence permit. If two or more Member States issued a visa or residence permit, 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) After the Member State has given a positive reply to the readmission application, Montenegro issues the person whose readmission has been accepted the travel document required for his or her return.

Section III. Readmission procedure

Article 6

Principles

(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) No readmission application shall be needed where the person to be readmitted is in possession of a valid travel document and, where applicable, a valid visa or residence

permit of the Requested State.

Article 7

Readmission application

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

a) the particulars of the person concerned (e.g. given names, surnames, date of birth, and – where possible – place of birth and last place of residence and, where appropriate, the particulars of minor unmarried children and/or spouses;

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;

c) photograph of the person to be readmitted.

(2) To the extent possible, the readmission application shall 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, security measure or information concerning the health of the person, which may be necessary in the individual transfer case.

(3) A common form to be used for readmission applications is attached as annex 6 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 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 Montenegro 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 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 Montenegro 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 the Requested State concerned shall, upon request, make arrangements to interview the person to be readmitted without undue delay, at the latest within 5 working days from the requesting day, 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 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 Montenegro 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 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 Montenegro 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 permit 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 permit shall likewise provide prima facie evidence of the unlawful entry, presence or residence.

(4) Proof of the conditions for the readmission of former nationals of the former Socialist Federal Republic of Yugoslavia laid down in Article 3 (3) shall be particularly furnished through the means of evidence listed in annex 5a to this Agreement; it cannot be furnished through false documents. Any such proof shall be recognised by Montenegro without any further investigation being required, provided that the permanent residence on 27 April 1992 can be confirmed by the Montenegrin authorities at the date of the submission of the readmission application.

(5) Prima facie evidence of the conditions for the readmission of former nationals of the former Socialist Federal Republic of Yugoslavia laid down in Article 3 (3) shall be particularly furnished through the means of evidence listed in annex 5b to this Agreement; it cannot be furnished through false documents. Where such prima facie evidence is presented, Montenegro shall deem the conditions to be established, unless they can prove otherwise.

(6) If none of the documents listed in annex 5a and annex 5b can be presented, the competent diplomatic and consular representations of Montenegro shall, upon request, make arrangements to interview the person to be readmitted without undue delay or at the latest within 3 working days from the requesting day, in order to establish his or her nationality.

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 in writing within 12 calendar days in all cases. 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) Where there are legal or factual obstacles to the application being replied to within 12 calendar days, this time limit may, upon duly motivated request, be extended with a maximum of 6 calendar days. If there was no reply within the extended time limit, the transfer shall be deemed to have been approved.

(4) Reasons shall be given for the refusal of a readmission request.

(5) After agreement has been given or, where appropriate, after expiry of the time limit laid down in paragraph 2, the person concerned shall be transferred within three months. On request of 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 Montenegro 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) Transportation may take place by air, sea or land. Return by air shall not be restricted to the use of the national carriers of Montenegro 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 Montenegro or any Member State.

Article 12

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 to 5 of this Agreement are not met.

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

Section IV. Transit operations

Article 13

Principles

(1) The Member States and Montenegro 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) Montenegro 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 Montenegro 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 Montenegro 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 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) Montenegro 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, sea or land), 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 7 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 Montenegro 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 Montenegro 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.

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

[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).

Non-affection clause

(1) This agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Montenegro arising from International Law and, in particular, from

- the Convention of 28 July 1951 on the Status of Refugees as amended by the Protocol of 31 January 1967 on the Status of Refugees;
- the international conventions determining the State responsible for examining applications for asylum lodged;
- the European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms;
- the Convention of 10 December 1984 against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- international conventions on extradition and transit;
- multilateral international conventions and agreements on the readmission of foreign nationals.

(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 Montenegro pursuant to Article 19;

d) to recommend amendments to this Agreement and its annexes.

(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 Montenegro; the Community shall be represented by the Commission.

(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) Upon request of a Member State or Montenegro, Montenegro and a Member State shall draw up an implementing Protocol 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 5 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) Montenegro 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, subject to practical feasibility of its application.

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 Montenegro, in so far as the provisions of the latter are incompatible with those of this Agreement.

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 Montenegro.

(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) This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties notify each other that the procedures referred to in the first paragraph have been completed.

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

(4) Each Contracting Party may, by officially notifying the other Contracting Party and after prior consultation of the committee referred to in Article 18, completely or partly, temporarily suspend the implementation of this Agreement with regard to third country nationals and stateless persons, for reasons of security, protection of public order or public health. The suspension shall enter into force on the second day following the day of such notification.

(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 7 shall form an integral part of this Agreement.

Done at ..... on the ..... day of ..... in the year ..... in duplicate in each of the official languages of the Parties, each of these texts being equally authentic.

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

Annex 1

list of documents

the presentation of which is considered as proof of nationality

(Articles 2 (1), 4 (1) and 8 (1))

Where the Requested State is one of the Member States:

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

– identity cards of any kind (including temporary and provisional ones);

– service books and military identity cards;

– seaman's registration books and skippers' service cards.

Where the Requested State is Montenegro:

– travel documents (national passports and collective passports) issued by the Ministry of Interior of the Republic of Montenegro after 15 June 1997 ("blue passports") and travel documents (diplomatic passports and service passports) issued by the Ministry of Foreign Affairs of the Republic of Montenegro, as well as the travel documents which will be issued in accordance with the new Law on Travel Documents;

– identity cards issued by the Ministry of Interior of the Republic of Montenegro after 1 May 1994, as well as the identity cards which will be issued in accordance with the new Law on Identity Cards.

– service books and military identity cards of the Army of Montenegro;

– seaman's registration books and skippers' service cards.

Annex 2

list of documents

the presentation of which is considered as

prima facie evidence of nationality

(Articles 2 (1), 4 (1) and 8 (2))

When the Requested State is either one of the Member States or Montenegro:

– photocopies of any of the documents listed in annex 1 to this Agreement;

– driving licenses or photocopies thereof;

– birth certificates or photocopies thereof;

– any other formal document issued by the authorities of the Requested State which may help to establish the nationality of the person concerned;

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

Where the Requested State is Montenegro:

- passports issued by the Ministry of Interior of the Republic of Montenegro before 15 June 1997 (“red passports”) and photocopies thereof;

– - identity cards issued by the Ministry of Interior of the Republic of Montenegro before 1 May 1994 and photocopies thereof.

Annex 3

Common list of documents

which are considered as proof of the conditions for the

readmission of third country nationals and stateless persons

(Articles 3 (1), 5 (1) and 9 (1))

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

– named 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;

– 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 which indicates presence or the itinerary of the concerned person on the territory of the Requested State.

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

(Articles 3 (1), 5 (1) and 9 (2))

- description issued by the relevant authorities of the Requesting State, of place and circumstances under which the person concerned has been intercepted after entering the territory of that State;
- information related to the identity and/or stay of a person which has been provided by an International Organisation (e.g. UNHCR);
- reports/confirmation of information by family members, travelling companions, etc.;
- 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;

Annex 5

list of documents which are considered as proof or as prima facie evidence of the conditions for the readmission of former nationals of the former Socialist Federal Republic of Yugoslavia
(Articles 3 (3), 9 (4) and 9 (5))

Annex 5a (Documents considered as Proof)

– birth certificates or photocopies thereof issued by the former Socialist Federal Republic of Yugoslavia;

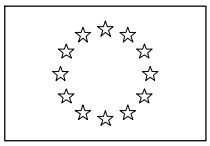
– public documents or photocopies thereof issued by Montenegro, the former Federal Republic of Yugoslavia, the former State Union of Serbia and Montenegro or the former Socialist Federal Republic of Yugoslavia stating place of birth and/or place of permanent residence as required by Article 3(3).

Annex 5b (Documents considered as prima facie evidence)

– Other documents or certificates or photocopies thereof which point to the place of birth and/or place of permanent residence in the territory of Montenegro;

– Official statement by the person concerned in judicial or administrative proceedings.

Annex 6



[Emblem of Montenegro]

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..…… ....……..

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(Place and date)

.....…
……

(Designation of requesting authority)

Reference: .....……

To

.....…
……

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……

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……

(Designation of requested authority)

READMISSION APPLICATION

pursuant to Article 7 of the Agreement of ..... between

the European Community and Montenegro

on the readmission of persons residing without authorisation

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:

.....

7. Civil status: married single divorced widowed

If married : name of spouse.....

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

.....

.....

.....

8. Last address in the requesting State:

.....

B. Personal Details of spouse (If appropriate)

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:

.....……..…….....……

C. Personal Details of Children (If appropriate)

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

2. Date and place of birth:…….....……

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

…….....……

4. Nationality and language:

.....……..…….....……

D. 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):

.....……

E.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)

F.Observations

.....……

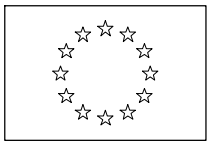
.....……

……...

.....

(Signature) (Seal/stamp)

Annex 7



[Emblem of Montenegro]

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(Place and date)

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(Designation of requesting authority)

Reference

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To

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(Designation of requested authority)

TRANSIT APPLICATION

pursuant to Article 14 of the Agreement of ..... between

the European Community and Montenegro

on the readmission of persons residing without authorisation

A. Personal details

1. Full name (underline surname):

   .....

2.Maiden name:

   .....

3.Date and place of birth:

   .....

Photograph

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:

.....……
……..

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

……
……

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……

……
……

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

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…….

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……..

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……..

.....

(Signature) (Seal/stamp)

Joint Declaration concerning Articles 2(4) and 4(4)

Until the establishment of the Diplomatic Consular Representations of the Republic of Montenegro on the territory of the EU Member States, travel documents from the Article 2(4) will be issued by the Diplomatic Mission or Consular Office of the Republic of Serbia, in accordance with the Article 6 of the Memorandum of Understanding between the Republic of Montenegro and the Republic of Serbia, or Diplomatic Missions or Consular Offices of other States representing Montenegro.

If the Requested Member State has no Diplomatic Mission or Consular Office in the Republic of Montenegro, the travel document to be issued pursuant to Article 4(4) will be issued by the Diplomatic Mission or Consular Office of the Member State representing that Requested Member State. The travel document is issued on behalf of the Requested Member State, subject to its prior authorisation.

Joint Declaration concerning Articles 3 and 5

The parties will endeavour to return any third country national who does not, or who no longer, fulfils the legal conditions in force for entry to, presence in or residence on, their respective territories, to his or her country of origin.

Joint Declaration concerning Article 3(1)

The Parties agree that a person is "*entering directly"* from the territory of Montenegro within the meaning of these provisions if such person arrived by air, land or sea on the territory of the Member States without having entered a third-country in between. Airside transit stays in a third country shall not be considered as entry.

Joint Declaration concerning Danmark

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 Montenegro 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 Montenegro concludes a readmission agreement with Iceland and Norway in the same terms as this Agreement.

Joint Declaration concerning Switzerland

The Contracting Parties take note that the European Union, the European Community and Switzerland signed an agreement on Switzerland's association with the implementation, application and development of the Schengen acquis. It is appropriate, once this association agreement enters into force, that Montenegro concludes a readmission agreement with Switzerland in the same terms as this Agreement.