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DRAFT REPORT

on the proposal for a Council decision concerning the conclusion of the Agreement between the European Community and the Russian Federation on readmission
(COM(2006)0191 – C6-0168/2006 – 2006/0064(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Maria da Assunção Esteves

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

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

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council decision concerning the conclusion of the Agreement between the European Community and the Russian Federation on readmission (COM(2006)0191 – C6-0168/2006 – 2006/0064(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the proposal for a Council decision (COM(2006)0191)[1],

– having regard to Articles 63(3)(b) and 300(2), first subparagraph, first sentence, of the EC Treaty,

– having regard to Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0168/2006),

– having regard to Rules 51 and 83(7) of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Foreign Affairs (A6-0000/2006),

1. Approves conclusion of the agreement;

2. Instructs its President to forward its position to the Council and Commission, and the governments and parliaments of the Member States and of the Russian Federation.

[1] Not yet published in OJ.

EXPLANATORY STATEMENT

1. The agreement: history and reasons

1.1 History

The readmission agreement between the European Community and the Russian Federation is the fifth of its kind to have been negotiated and concluded by the Community with a non-member country. Conclusion of a readmission agreement with Russia was already included among the measures proposed in the EU joint strategy adopted on 4 June 1999. The first round of negotiations was held in Moscow on 23 January 2003. From October 2004, the negotiations proceeded in parallel with the negotiations on the EU-Russia visa facilitation agreement. The two agreements were formally initialled in Moscow on 4 April 2006. Because the visa facilitation agreement and the readmission agreement are linked, they should both be signed and concluded and enter into force at the same time. The thinking behind the agreements is reciprocal political compensation.

The final substance of the readmission agreement with Russia can be summarised as follows: the readmission obligations set out in the agreement (Articles 2 to 5) are based on a reciprocity rule and cover nationals of the contracting parties (Articles 2 and 4), along with third-country nationals and stateless persons (Articles 3 and 5). The agreement also contains provisions relating to conditions for readmission (Articles 3 and 5); transit operations (Articles 14 and 15, in conjunction with Annex 6); technical aspects of the readmission procedure (Articles 6 to 13, in conjunction with Annexes 1 to 5); rules on costs, data protection, and the relationship to other international obligations (Articles 16 to 18); and the membership, tasks, and powers of the Joint Readmission Committee (Article 19). To enable the agreement to be translated into practice, Article 20 requires Russia to conclude bilateral implementing protocols with all the Member States.

1.2. Reasons

Readmission agreements fit into the Union's wider migration management strategy, which is intended to be primarily preventive and based on cooperation with countries of origin and transit. Readmission constitutes the last resort. Voluntary return is to be preferred to forced return. However, the strategy laid down by the Union along these lines does not always find the proper practical expression. Given the difficulty of organising effective cooperation with countries of origin, the Union has been seeking above all to find ways to send immigrants back more quickly. One thing that is often overlooked is what the immigrants have to face when in transit and on arrival in their countries of origin.

A policy to regulate illegal immigration has to be linked indissolubly to a human rights policy. In order to be legitimate, readmission agreements must rule out a summarily or simplistically technical, as opposed to humanitarian, approach to the phenomenon of illegal immigration. The question of readmission is not as cut and dried as it seems at first sight. A fair readmission procedure implies that the contracting parties have to have an unequivocally democratic state structure and the organisation of their institutions and their political practice must be certain to guarantee human rights.

Relations between the EU and Russia are going through a critical phase. The advent of a new partnership and cooperation agreement after 2007 depends on the perception of the human rights situation in Russia.

2. Parliament's role

When international agreements are being concluded, it makes no sense for Parliament to act solely as an observer. In fact, Parliament is not consulted until the stage at which it is no longer possible to alter the substance of an agreement or prevent it being concluded. It is true that Article 300 of the EC Treaty provides merely for Parliament to be consulted in cases of this kind. On the other hand, the Council and Commission should keep Parliament regularly informed once negotiations have opened: the duty to cooperate in good faith (Article 10 of the Treaty) applies not only to relations between the Member States and the Community institutions, but also to relations between the institutions themselves. Parliament will continue to call on the Council and Commission to fulfil this information obligation whenever the EU concludes agreements in the future with non-member countries.

Parliament welcomes the fact that a *directive of the European Parliament and of the Council on common standards and procedures for returning illegally staying third-country nationals* (COM(2005)0391 – 2005/0167(COD)) is shortly to come into being; this directive is subject to codecision and its essential principles must be observed in every specific readmission agreement.

The question of international agreements and the complex subject of migration which they involve demand that European decisions be taken on a democratic footing. Furthermore, the Constitutional Treaty will bring the necessary unity, coherence, and parliamentary decision-making power to the Union's external policy.

3. Return policy and human rights: background and procedural conditions

Human rights must have pride of place in the readmission agreement. This implies a need to create conditions enabling the dignity of illegal immigrants to be respected. Readmission agreements are fundamentally a human and not a technical matter. The Union must not fail to make the effort needed for the agreement to succeed.

Background conditions

3.1.1. With a view to establishing a common area of freedom, security, and justice, the Union has declared that it will support reform of the judicial system in Russia and management of the country's borders. Parliament urges the Council and Commission to make every effort to that end and also to promote training courses for border and immigration officials.

3.1.2. Parliament maintains that Russia's ability to manage migration must be improved so as to enable the Russian authorities to assume the responsibilities that will fall to them under the readmission agreement as soon as it enters into force.

3.1.3. Parliament is worried that there is no regulatory framework for implementing the agreement.

3.1.4. Parliament urges the Commission to provide the Russian authorities with the expertise needed if Russia is to fulfil its obligations in accordance with international standards.

3.1.5. Parliament is calling for an increasingly more intensive dialogue with Russia on human rights. Russia has not yet ratified Protocol No 6 to the European Convention on Human Rights concerning the abolition of the death penalty in peacetime; it has not signed the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; it has not ratified the Hague Convention on the Civil Aspects of International Child Abduction; it is not cooperating fully with the Council of Europe and United Nations committees for the prevention of torture; it has not completed the procedure for ratifying the European Social Charter; and it has not reformed its public prosecution service in keeping with the undertakings that it gave in the Council of Europe.

3.1.6. Although the text of the agreement refers specifically to the international treaties signed by the parties (Article 18), it is legitimate to insist that searching scrutiny be brought to bear with a view to ascertaining that the readmission of immigrants by the Russian authorities is compatible with the highest standards of human rights. The increasingly frequent reports that Russia is drifting towards authoritarianism are causing extreme disquiet in Parliament (cf., among others, the *European Parliament resolution on EU-Russia relations*, OJ C 117E, 18.5.2006, p. 235, and the *European Parliament resolution on human rights in Russia and the new NGO legislation*, P6_TA(2005)0534).

3.1.7. A return policy consistent with Union values cannot be based on a purely repressive law-and-order approach, but must be encompassed instead within the wider scope of other policies. What is in fact needed is an *action plan* aimed at

i) intensifying development cooperation with countries of origin;

ii) gauging the actual extent of the repatriations carried out by Member States;

iii) devising joint supervision arrangements to be set up with the countries with which readmission agreements or clauses have been negotiated;

iv) actively promoting coherence between the Union and the Member States where training and the implementation of bilateral agreements are concerned;

v) fostering more intensive and structured dialogue with the Office of the United Nations High Commissioner for Refugees and with the Council of Europe.

3.1.8. It can truly be said that there is a huge challenge facing the Union's external policy, immigration being one of the most important and sensitive aspects of that policy. Immigration requires the Union's responsibilities for entry and return to be brought into balance, and this has not yet been achieved. It requires an integrated approach encompassing migration in both directions. The challenge is to create a new institutional order within the Union allowing a joint strategy to be laid down and Parliament's decision-making power to extend to the subject as a whole. The only possible option is democratic rationality, in other words a

codecision procedure.

3.1.9. The conditions described above would form the ideal background for a joint strategy for the return of illegal immigrants. The Foreign Ministers and the Ministers responsible for immigration will need to hold frequent meetings with Parliament and the Commission in order to determine the broad lines of such a strategy and also scrutinise its implementation.

Immigration matters and cooperation in external border management are an acid test of the success of the EU's relations with its neighbours. An unsoundly based return policy in a situation in which the European political establishment is failing to assume its full responsibilities cannot be justified in the light of Union values.

3.2. Procedural conditions

It is manifestly obvious that returning entails an acute crisis.

The Union must ensure that in the return procedure the Member States and Russia respect the basic rights of the persons involved, especially the rights most to the fore in the walks of life in which migration occurs, namely non-discrimination, physical and psychological inviolability, protection of families, decent conditions when people are held in detention or going through the transit procedure, and essential safeguards regarding the right to be defended. These must form the mandatory basis on which to assess whether the contracting parties are complying with the agreement and acting in good faith.

i) How will the Commission and Council ensure that the above rights are respected in the event of repatriation and especially repatriation on a mass scale?

ii) What joint supervisory arrangements do they intend to set up with Russia?

iii) What criteria will be applied in order to ascertain that the country to which immigrants are returning offers guarantees of justice in its judicial system and of democracy in its political system?

iv) What arrangements will be made for sharing information about countries of destination for stateless persons? Or are such countries, for the purposes of the agreement, a blank space?

3.2.1. Rights must thus be guaranteed throughout the entire procedure. The text of the agreement prompts several questions.

3.2.1.1. <u>As regards asylum-seekers</u>

The text of the agreement does not explicitly exclude asylum-seekers. It could consequently lead to the readmission of asylum-seekers whose applications had not yet been considered on their merits or had been rejected or deemed inadmissible as a result of applying the 'safe third country' concept.

Parliament is asking the Commission to raise this matter in the Joint Readmission Committee and call for safeguards to enable asylum-seekers to benefit from an asylum procedure respecting their status in international law, extending also to the principle of non-return (*'non-*

refoulement').

What needs to be guaranteed is that the specific international protection accorded to persons granted asylum and refugees will not be eroded.

3.2.1.2. As regards third-country nationals and stateless persons

i) How will information be obtained about the state of human rights in the countries of destination for third-country nationals and stateless persons?

ii) The status of stateless persons as defined in the 1954 United Nations Convention should be expressly mentioned in the list in Article 18. Admittedly, the list is not exhaustive. But an explicit reference to stateless person status would serve to educate the administrative authorities.

3.2.2. Because they do not extend to monitoring human rights, the powers of the Joint Readmission Committee (Article 19) are visibly wanting and intrinsically skewed. An agreement relating to persons cannot, by definition, be treated as a purely technical agreement.

Parliament is thus recommending that the powers of the Joint Readmission Committee include a power to monitor human rights at every stage of readmission.

3.2.3. The accelerated procedure (Article 6(3)) suggests a disturbing irreversible presumption regarding the irregular status of the persons covered. What provision is made here for the safeguards afforded by the right to be defended? How can the procedure be reconciled in practice with the specific status of asylum-seekers in international law?

3.2.4. As regards transit authorisation: safeguards to protect children, family unity, and the physical and psychological inviolability of illegal immigrants, and the essential safeguards regarding the right to be defended, are not included in the list of safeguards in Article 14. The above safeguards, however, constitute the indispensable core of a principle of humanity that has to be observed if the agreement is to be valid in the light not only of Union values, but also of the unwritten principles of international law.

3.2.5. The possibility of establishing a complementary relationship to the principle of voluntary return does not exist in the readmission agreement. According to this possibility, an illegal immigrant must be allowed a set period in which to leave voluntarily, as a first alternative to his forced return.

3.2.6. Need for a human rights clause: contrary to the views expressed most recently by Parliament on the negotiation and conclusion of international agreements with non-member countries, the readmission agreement with Russia does not contain a reciprocal 'human rights and democracy clause', which, if breached, could lead to suspension or even termination of the agreement.

In paragraph 8 of its *resolution on the human rights and democracy clause in European Union agreements* (2005/2057(INI)) Parliament called for 'the human rights and democracy clause to be extended to all new agreements between the European Union and third countries,

both industrialised and developing, and including sectoral agreements, trade and technical or financial aid, along the lines of what has been done with the ACP States'.

Parliament is calling now on the Commission and Council to bring thorough assessment to bear on the implementation of the agreements being concluded with a view to the readmission of illegal immigrants, basing such assessment on human rights.

4. Final remarks

The real problem with the EU-Russia readmission agreement lies in the question whether protection of human rights is to occupy a central place or be relegated to second place by a summary approach to return in which the security aspect takes precedence over the humanitarian aspect.

Readmission agreements must resist the impulse to confuse illegal immigration with crime. They must not lead to the temptation of placing return at the centre of immigration policy. They must not allow the preoccupation with figures to water down the focus on individual human rights. Even one human rights violation is enough to give us cause for anxiety. In the agreement, the pragmatic dimension must not eclipse the moral dimension.

Relations between the Union and Russia are expanding constantly. If they are to be considered a genuine success, they must move beyond the purely technical sphere into the sphere of values. Only in that way shall we achieve the aim of a wider Europe, conscious of fundamental values and able to make its mark on the world.

It is on the basis of these considerations that Parliament is giving its assent to the agreement. There is only one yardstick for gauging the legitimacy of the agreement: sublime human dignity, the starting point and the ultimate goal of Union policies.