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2019/0181 (NLE)

Proposal for a

COUNCIL DECISION

**on the conclusion of the Agreement between the European Union
and the Republic of Belarus on the readmission of persons residing without
authorisation**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

In the context of the Eastern Partnership Summit in May 2009, the EU reaffirmed its political support towards full liberalization of the visa regime in a secure environment, and towards promoting mobility by concluding visa facilitation and readmission agreements with Eastern Partnership countries. According to the common approach for the development of EU policy on visa facilitation agreed at the level of COREPER by the Member States in December 2005, a visa facilitation agreement would not be concluded without a readmission agreement being in place.

On that basis, the Commission presented on 12 November 2010, a recommendation to the Council with a view to obtaining directives to negotiate Agreements with the Republic of Belarus on, respectively, the facilitation of the issuance of short-stay visas, and readmission of persons residing without authorisation.

On 28 February 2011, the Council formally authorised the Commission to negotiate a readmission agreement between the European Union and Belarus.

The negotiations were formally launched on 30 January 2014 and the first round of formal negotiations was held in Minsk on 13 June 2014. It was followed by a three rounds of negotiations first in Brussels on 25 November 2014 then and on 11 March 2015 and on 20 June 2017 in Minsk. The chief negotiators initialled the text of the agreement on 17 June 2019 via exchange of emails.

In the meantime, Belarus, the European Union and seven participating Member States (Bulgaria, Romania, Lithuania, Poland, Hungary, Finland and Latvia) signed a Joint Declaration on a Mobility Partnership on 13 October 2016.

Member States have been regularly informed and consulted in the relevant Council's Working Parties at all stages of the negotiations. The final draft of the Agreement text was shared with the Justice and Home Affairs Counsellors (Migration, Integration, and Expulsion) and endorsed, via silence procedure, on 12 April 2019.

On 17 April 2019, the European Parliament was informed about the conclusion of negotiations on both the Visa Facilitation and Readmission Agreements, by means of a letter sent by the Director General of DG Migration and Home Affairs to the Chair of the Committee on Civil Liberties, Justice and Home Affairs. The draft texts of both Agreements were annexed.

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 Union within the Joint Readmission Committee set up by Article 19 of the Agreement.

The attached proposal constitutes the legal instrument for the conclusion of the Agreement. The Council will decide by qualified majority.

2. AIM AND CONTENT OF THE AGREEMENT

The Agreement between the European Union and the Republic of Belarus on the readmission of persons residing without authorisation (hereinafter: 'the Agreement') aims to establish 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

territory of Belarus or one of the Member States of the European Union, and to facilitate the transit of such persons in a spirit of co-operation.

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 Union.

The final content of this Agreement can be summarised as follows:

- The Agreement is divided into 8 sections with 24 articles altogether. The Agreement also contains 7 annexes, which form an integral part of it, and 5 joint declarations.
- The Agreement contains an opening clause, reaffirming that the Agreement shall be applied so as to ensure respect for human rights, and for the obligations and responsibilities of the Requested State and Requesting State under relevant international instruments applicable to them, and reiterating that the Requested State shall in particular ensure the protection of the rights of persons readmitted to its territory in compliance with those international instruments.
- The readmission obligations set out in the Agreement (Articles 3 - 6) are drawn up in a fully reciprocal manner, comprising own nationals (Articles 3 and 5) as well as third country nationals and stateless persons (Articles 4 and 6).
- The obligation to readmit own nationals includes also former own nationals who have been deprived of, or who have renounced 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) regardless of their nationality and who do not have an independent right of residence in the Requesting State.
- The obligation to readmit third country nationals and stateless persons (Articles 4 and 6) is linked to the following prerequisites: (a) the person concerned holds, at the time of entry, either a residence permit issued by the Requested State or a valid visa issued by the Requested State accompanied by a proof of entry to the territory of 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. Such readmission obligation does not apply in relation to persons who have only been in airside transit or who have been issued a visa or a residence permit by the Requesting State unless i) the visa or residence permit, issued by the Requested State has a longer period of validity, ii) the visa or residence permit issued by the Requesting State has been obtained fraudulently or iii) that person fails to observe any condition attached to the visa.
- For own nationals, in case of expiry of the specified delay, and for third country nationals or stateless persons Belarus accepts the use of the European travel document for return (Articles 3(5) and 4(3)). The equivalent standard document of the Republic of Belarus is included in Annex 7.
- Section III of the Agreement (Articles 7 to 13 in conjunction 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) and 'readmission in error' (Article 13). Procedural flexibility is provided by the fact that no readmission application will be needed in cases where the person to be readmitted is in possession of a valid travel document (Article 7(2)).
- In Article 7(3), the Agreement sets out the so-called accelerated procedure which has been agreed upon for persons apprehended in an area which extends up to 30

kilometres from the common land border between a Member State and Belarus, as well as within the territory of the international airports of the Member States and Belarus. Under the accelerated procedure, readmission applications have to be submitted within 2 working days and replies have to be given within 2 working days, whereas under the normal procedure the time limit for replies is 10 calendar days (Article 11(2)).

- The Agreement contains a section on transit operations (Articles 14 and 15 in conjunction with annex 6).
- Articles 16, 17 and 18 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 19.
- In order to facilitate the implementation of this Agreement, Article 20 creates the possibility for Belarus and individual Member States to conclude bilateral implementing Protocols. The relation between bilateral agreements or arrangements and this Agreement is clarified by Article 21.
- The final provisions (Articles 22 to 24) contain the necessary rules on territorial application, entry into force, duration, possible amendments, suspension, termination and the legal status of the annexes to the agreement.
- The specific situation of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland is reflected in the preamble, Article 1(d), Article 22(2) and, regarding Denmark, in a relevant joint declaration. The close association of Iceland, Norway, Switzerland and Liechtenstein with the implementation, application and development of the Schengen acquis has been taken into account, and is reflected in relevant joint declarations to the Agreement.

3. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

This proposal is submitted to the Council in order to conclude the Agreement.

The legal basis for this proposal is Article 79(3) of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 218(6)(a) thereof.

• Subsidiarity (for non-exclusive competence)

Not applicable.

• Proportionality

The present proposal does not go beyond what is necessary to achieve the objective pursued, namely the conclusion of an international agreement on the readmission of persons residing without authorisation.

4. BUDGETARY IMPLICATIONS

This proposal does not entail additional costs for the EU budget.

5. CONCLUSIONS

In light of the above-mentioned results, the Commission proposes that the Council, after having received consent from the European Parliament, approves the conclusion of the attached Agreement between the European Union and the Republic of Belarus on readmission of persons residing without authorisation.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79(3), in conjunction with Article 218(6)(a), thereof

Having regard to the proposal from the Commission,

Having regard to the consent of the European Parliament¹,

Whereas:

- (1) In accordance with Council Decision XXXX/XXX², the Agreement between the European Union and the Republic of Belarus on readmission of persons residing without authorisation ('the Agreement') was signed by the Commission on [], subject to its conclusion at a later date.
- (2) In the context of the Eastern Partnership Summit in May 2009, the Union and the partner countries reaffirmed their political support towards full liberalization of the visa regime in a secure environment, and towards promoting mobility by concluding visa facilitation and readmission agreements with Eastern Partnership countries.
- (3) The purpose of the Agreement is to establish 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 territory of Belarus or one of the Member States of the European Union, and to facilitate the transit of such persons in a spirit of co-operation.
- (4) The Commission should represent the Union in the Joint Readmission Committee established by Article 19 of the Agreement.
- (5) In accordance with [Articles 1 and 2] Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, [*and without prejudice to Article 4 of that Protocol,*] the United Kingdom [*is not taking part in the adoption of this Decision and will not be bound by it or subject to its application [unless it notifies its wish to that effect in accordance with that Protocol]* / has notified [, by letter of ...,] its wish to take part in the adoption and application of this Decision].

¹ OJ C , , p. .

² Council Decision, of . 2019, on the signing, on behalf of the European Union, of the Agreement between the European Union and the Republic of Belarus on the readmission of persons residing without authorisation (OJ L , , p.).

- (6) In accordance with [Articles 1 and 2] Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, [*and without prejudice to Article 4 of the said Protocol,*] Ireland [*is not taking part in the adoption of this Decision and will not be bound by it or subject to its application [unless it notifies its wish to that effect in accordance with that Protocol]* / has notified [, by letter of ...] its wish to take part in the adoption and application of this Decision].
- (7) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,
- (8) Therefore, the Agreement should be approved on behalf of the European Union,
- HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Republic of Belarus on readmission of persons residing without authorisation ('the Agreement') is hereby approved on behalf of the Union.

The text of the Agreement and of the Joint Declarations are attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to the notification provided for in Article 23(2) of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Article 3

The Commission, assisted by experts from Member States, shall represent the Union in the Joint Readmission Committee established by Article 19 of the Agreement.

Article 4

This Decision shall enter into force on the day of its adoption³.

Done at Brussels,

For the Council
The President

³ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.