THE READMISSION AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE REPUBLIC OF ALBANIA
Manual for Application

Combating Irregular Migration in Albania and the Wider Region
Targeted support to capacity building
within the framework of readmission support to Albania
THE READMISSION AGREEMENT
BETWEEN THE EUROPEAN COMMUNITY
AND THE REPUBLIC OF ALBANIA
Manual for Application

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TERMS AND DEFINITIONS

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**Border Area:** Article 20 and 23

**British Citizen:** Article 1(b)

**British Dependant Territories Citizen:** Article 5

**British National (Overseas) Citizen:** Article 5

**British Overseas Citizen:** Article 5

**British Overseas Territories Citizen:** Article 5

**British Protected Person:** Article 5

**British Subject:** Article 5

**Citizenship:** See **Nationality** and Article 2, points 1 and 2

**Citizenship Certificates (or “Certificates of Citizenship or Nationality”):**
   Article 2, points 1 and 2

**Consular Registration Card:** Article 2, point 2

**Crew member Certificate(s) / Crew Member Licence(s):** Article 2, point 1

**Dual Citizenship:** Article 1(e)

**EEA:** European Economic Area.
   Consists of: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland (Republic of), Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, The Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom.

**EFTA:** European Free Trade Association. De facto EEA + Switzerland.

**EU Member State(s):** Article 1(a)

**ILO:** International Labour Organization.
   It is the United Nations specialized organisation which seeks the promotion of social justice and internationally recognised human and labour rights. It was founded in 1919 and is as such the only remaining (major) creation of the Treaty of Versailles and the “League of Nations” (1919). It became the very first specialised agency established by the UN in 1946.

ILO formulates international labour standards in the form of **Conventions** and **Recommendations** setting minimum standards of basic labour rights: freedom of association, the right to organise, collective bargaining, abolition of forced labour, equality of opportunity and treatment, and other standards regulating conditions across the entire spectrum of work related issues. It provides technical assistance
in a wide variety of fields. The Member States (and Albania is a Member State) ratifying ILO Conventions Nos. 22 and 108 (which Albania has not ratified) have agreed upon the adoption of Seafarer's National Identity Document(s) and Seaman’s Book(s) (see further in Terms and Definitions) and further proposals with regard to reciprocal international recognition thereof.

ILO Convention No. 108 applies not only to nationals of these states, but also to stateless persons (de facto also to individuals of undetermined or unknown citizenship) who hold identity documents issued under and in accordance with the Convention.

**Note:** Notwithstanding the fact that Albania has not yet ratified these Conventions, it appears that it has de facto recognized the Seaman's Book as a travel document for seafarers travelling “on duty” (if accompanied by a Letter of Guarantee from the shipping company).

**Member State of the E.U.:** Article 1(a)
**Muster Card(s) or Book(s):** Article 2, point 2

**Nationality of a (EU) Member State:** Article 1(b)
**National of Albania:** Article 1(b) and (e)

**Passport:** An official document issued by a competent government / public authority to its own nationals (“national passport”) or to alien (legal) residents (usually stateless persons or individuals of undetermined citizenship, since other nationals have – in principle – access to nationals passports of their own country) which allows the bearer to travel internationally.

A person’s nationality or citizenship is established or ascertained by checking the specific information under “nationality” or “national status” in the passport (or travel document).

(In general, permission to enter a country with or without a visa is based on the individual’s nationality/citizenship **and not** on the country which issued his/her travel document/passport).

Types of passport(s):

1. Alien’s Passport: issued to alien residents of the issuing country (terminology can differ, according to the issuing state: Fremdenpass for Germany, for instance).
2. Children’s Identity Card: often issued to minors in lieu of a “normal” passport (German Kinderausweis, for instance).
3. Diplomatic, Consular (rare), Service, Official, or Special Passports.
4. Several types of “international passports”, issued by international organisations, such as Red Cross, United Nations, etc.
Note: World Service Authority (WSA) “Passports” and “Identity Cards” are not considered as having any official value as travel documents, or as proof of the bearer’s identity. They are not issued by an official authority, but by a private (commercial) organisation.

5. Joint Passports (or family passports): persons travelling together may/can hold joint passports. In practice, they have been issued less frequently in recent years, largely due to migration abuses.

6. Temporary/emergency passports issued for emergency cases by a country’s government (or representation abroad). These passports (for which there is an infinite variation of names) have the same legal status with regard to “nationality” and “identity” as normal passports which they in fact replace, unless otherwise stated. They are usually only valid for a single return journey to the issuing state, hence the often-used term of “one-way travel documents”.

Permission to remain on a territory in connection with the processing of an asylum application for a residence authorisation: Article 5
Prima facie evidence: Article 2.1 (also “valid assumption of nationality”)
Promise of Naturalisation: Article 1.1
Proof (of nationality/citizenship or residence): Article 2.1

Residence authorisation: Article 1(f)

Seaman’s Registration Book, Seaman’s Book: (see ILO)
Seaman’s National Identity Document: (see ILO)
Skippers Service Card: Article 2
Stateless Persons: Article 1(e)

Temporary Permission to remain: Article 1(f)
Third-country National: Article 1(b) and (d)
Travel Document 1951 Geneva Convention (Refugees): Article 5

Valid assumption (of nationality/citizenship and residence): see “prima facie evidence”.
Visa: general, EU Visa, Schengen Visa & types, national visa: Article 1(g)
INTRODUCTION

The Readmission Agreement between the European Community and the Republic of Albania (RA) came into force on 1 May 2006, as the result of a mandate given by the EU Member States to the European Commission to negotiate and conclude Readmission Agreements binding the Member States (except Denmark) with eleven third countries including Albania. The EC/Albania Readmission Agreement is also part of the Stabilisation and Association (SAA) process, and hence part of Albania's future accession requirements into the European Union.

In the Readmission Agreement, the Parties (i.e. the EU Member States on one hand and Albania on the other) mutually agree to readmit to their territories: a) own nationals (under all circumstances) and b) third-country nationals (under certain conditions). It outlines the procedures and mechanisms that facilitate these returns. The own nationals clause will come into force with the agreement, while there is a two-year derogation for the third country clause, which will not come into force until 2008, at the request of the Albanian Government. In 2008, therefore, EU Member States will be able to send to Albania irregular third country nationals who transited Albania before entering the territory of the European Union.

EU Member States have a long tradition and history of concluding readmission agreements with each other and with third countries. In practice, however, the procedures contained in these agreements are rarely applied as specified in the text and in the implementation protocols. In fact, there is limited experience in the application of readmission agreements and this will have practical implications for the readmission of third-country nationals in the future. “Informal” application of a readmission agreement is perfectly practicable, and even recommendable, for the readmission of own nationals, but nearly impossible for third country nationals.

The RA contains provisions, which are not very clearly defined, owing to the fact that they are part of an overall framework agreement. As a result, the Albanian authorities will have to negotiate a series of implementation protocols

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3 Albania, Algeria, China, Hong Kong, Macau, Morocco, Pakistan, Russia, Sri Lanka, Turkey and Ukraine.
4 This is the author’s personal opinion, and does not represent the formal position of any Government, the EC or IOM.
to clarify the numerous obligations, definitions and concepts.

This manual is intended as an “operator’s manual” for Albanian government authorities which will be responsible for the return and readmission procedures. In this context, the current responsible entity is the Directorate of Border and Migration within the Ministry of Interior.\textsuperscript{5} This manual also provides reference material for other interested government authorities, which will be involved in the negotiation of implementation protocols and future readmission agreements between Albania and third countries.

The manual reviews the final text of the European Community/Albania Readmission Agreement, which came into force in 2005, and provides a case study of the Implementation Protocol between Albania and the Benelux countries.

As such, it is a reference guide, which will help to prevent contradictory understanding of readmission practices. It interprets the RA’s text article by article, to be read alongside the relevant sections of the agreement, and gives careful consideration to readmission procedures and their application.

Because the Manual aims to serve practitioners, its structure deviates slightly from the Readmission Agreement itself, in that analysis of the separate articles includes references to the RA’s annexes, where appropriate. For the same reason, analysis of appropriate sections of the Benelux/Albanian Implementation Protocol will be directly linked with the relevant articles of the Readmission Agreement.\textsuperscript{6}

The manual is divided in two main sections:

• an analysis, article by article, of the European Community/Albania RA;
• a review of the Benelux/Albania Implementation Protocol, based on the structure of the original document.

Two EC documents are included in the Appendices as useful source materials for officials responsible for negotiating Readmission Agreements and Implementation Protocol:

• Appendix 1) Council Recommendation of 30 November 1994

\textsuperscript{5} The responsible entity may be subject to change over time owing to restructuring within the Albanian Ministry of Interior.
\textsuperscript{6} This Implementation Protocol covers the situation between the Benelux States and Albania and, as such, differs from the EU recommended implementation Protocol (see Appendix 2). However, for practical purposes, it has very similar to other implementation protocols.
concerning a specimen bilateral readmission agreement between a Member State and a third country;

• Appendix 2) Council Recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements.

In short, a Readmission Agreement does not serve merely as a technical instrument which describes in detail how to apply readmissions procedures for returnees, whether nationals from the signing parties or from third countries. It also represents a firm promise by each party to readmit a) its own nationals (on basis of proven or accepted nationality) and b) nationals from third countries under certain conditions and where proof of residence or transit can be provided. This review underscores the importance that all parties must give to the careful drafting of implementation protocols.

Nevertheless, this manual can only describe the practices to be followed in implementing a readmission request, and each case will have its own specificities. As a result, the material presented here must be read in conjunction with the international norms to which Albania is party and to the relevant national legislation.

The preparation of this manual was carried out within the framework of the IOM Project “Combating Irregular Migration in Albania and the wider region. Targeted Support to Capacity building within the framework of Readmission Support to Albania”, co-funded by the EU High Level Working Group (funding line B7- 667) and the Ministry of Interior, Public Administration and Decentralization of the Hellenic Republic.
Article 1 - Definitions

For the purpose of this Agreement:

(a) “Member State” shall mean any Member State of the European Union, with the exception of the Kingdom of Denmark;

(b) “National of a Member State” shall mean any person who holds the nationality, as defined for Community purposes, of a Member State;

(c) “National of Albania” shall mean any person who holds the nationality of Albania;

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

(e) “Stateless person” shall mean any person who does not hold a nationality;

(f) “Residence authorisation” shall mean a permit of any type issued by Albania or one of the Member States entitling a person to reside on its territory. This shall not include temporary permissions to remain on its territory in connection with the processing of an asylum application or an application for a residence authorisation;

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

Commentary:

(a) “Member State (of the EU)”:

This refers to both actual and future Member States of the EU. As at April 2006:
“Old” Member States: Austria, Belgium, Finland, France, Germany, Greece, Irish Republic, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden, United Kingdom;7

“New” Member States: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia.

N.B. Denmark decided to opt out of the European Community / Third Countries Readmission Agreement system. It is encouraged to conclude similar, “parallel” agreements with third countries.8

(b) “Nationality of a Member State”
For the purposes of the Readmission Agreement, the words “nationality” and “citizenship” are considered to have the same meaning. No difference or discrimination may be made on the grounds of ethnic origin or legal basis for the acquisition of nationality or citizenship, nor between de facto “classes”9 or “ranks” of nationality.

“Note on “British” “Nationality” or “Citizenship”
British Citizen: Individuals closely connected with the United Kingdom. One can assume that these individuals are “own” citizens of the UK in the sense of the Readmission Agreement. Not all of them are EU Citizens though. Indeed, the Channel Islands and the Isle of Man are not part of the EU, although their citizens have British citizenship. Only holders of British Passports endorsed “British Citizen” have the automatic right to live permanently in the United Kingdom (whence the endorsement “holder has the right of abode” on page 5 of the old-style British Passports) and are free to leave and re-enter at any time. The Passports of “British Citizen” does not contain a reference to this automatic right.10

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7 In the United Kingdom, only the mainland is considered part of the European Union. The Channel Islands (12 islands including Jersey, Guernsey, Grand Sark, Little Sark) and the Isle of Man are not part of the EU.
8 “Opting out” is permitted, for certain matters, under the terms of the Amsterdam Treaty (Treaty of Amsterdam amending the Treaty on European Union and the Treaties establishing the European Communities, signed in Amsterdam 02.10.1997, coming into force on 01.05.1999). OJ C 340, 10.11.1997.
9 Certain countries have defined various categories of nationality based on ethnicity, birth or method of obtaining nationality, to which are allocated different rights as citizens (e.g. election to public office, military service, etc.).
10 Only this category (i.e. individuals whose passport is endorsed “British Citizen”) are considered to be “nationals of a Member State” in the sense of the Readmission Agreement.
Other categories of British Citizenship will be clarified in more detail under the comments on RA Article 5 below.

(c) “National of Albania”
For the purposes of the Readmission Agreement, this means “citizen of Albania” as defined by the Albanian Law on Citizenship.

(d) “Third-country national”
For the purposes of the Readmission Agreement, this indicates an individual who is neither a citizen of a Member State nor a citizen of Albania.

(e) “Stateless person”
For the purposes of the Readmission Agreement, “statelessness” means that the person’s nationality or citizenship is “uncertain”, “unknown”, “undefined”, “undetermined”;12

“Double” (“dual”) or even “multiple” citizenship: Numerous people hold more than one citizenship, for a variety of reasons or causes. By international custom (and local regulations), dual citizenship is governed by three principles:

- nationality or citizenship the individual chooses or prefers;
- consular assistance of which State he seeks (and obtains);
- “most advantageous” nationality (i.e. most advantageous for the individual).

(f) “Residence authorisation”
This refers to a residence permit (i.e. the documentary evidence of the “authorisation”), but does not infer that the individual has acquired the right to reside permanently on the territory of a State.

All individual EU countries have a multitude of different residence

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11 It is highly recommended that the issues relating to British citizenship be specifically addressed in negotiations on the bilateral implementation protocol with the United Kingdom.

12 The terms “undetermined” (being the most frequently used), “unknown” or “undefined” used in reference to nationality and citizenship are not internationally defined or properly described. A reference to “undetermined” nationality exists in Recommendation R (83) 1 of 22.02.1983 of the Council of Europe Committee of Ministers (which deals with Roma’s). “Undetermined Citizenship” is known and described in the Estonian Citizenship legislation and mentioned as such in Estonian residence permits and Travel Documents for aliens. The term “undetermined citizenship or nationality” is widely used by courts and administrations.
permits.\textsuperscript{13}

The exclusion of “temporary permissions (...) to remain (...) in connection with the processing of an asylum application or an application for a residence authorisation” needs to be read, interpreted and applied with care, delicacy and common sense, in particular when the “temporary permission” was granted in connection with an asylum request. These cases should be dealt individually, as should cases where “temporary permission” is connected to an application for a residence authorisation on grounds other than asylum.

In both scenarios, there can be only one rule of thumb: always request for readmission in these cases.

(g) “Visa”
Contrary to what is usually believed, a visa is not a preliminary permission or authorisation to enter or to stay in a State. A visa gives the holder the right to present him or herself to the Border Control Authorities.

The existence of the visa is sufficient basis for a readmission request. It is not stated that the individual must, in fact, have used the visa to enter the Schengen area or the EU (or Schengen) State that issued the visa. However, this problem is covered by the declaration in the Readmission Agreement on Article 3, which clearly states that, the visa must have been used to gain entry to Albania, if it is included as supporting evidence for a request for readmission to Albania. There is no such declaration on visas issued by EU Member States.

It is important to distinguish the types of visas issued by the United Kingdom and the Irish Republic, by “new” Member States, and by the Schengen Partnering States:

- **UK and the Irish Republic** use the same type, model and categories of visa as the Schengen Partnering States (known as the “EU Model”) but, since neither country is a Schengen Partnering State, their visas

\textsuperscript{13} A usable list (including samples in most cases) of types of residence permits used by Schengen Partnering States can be found on the website of the Belgian Immigration Service (“Office des Etrangers”): www.dofi.fgov.be. However there are a few considerations: 1) The list only includes permits which confer the right to stay more than three months on the territory of the granting Partnering State, therefore other types of permits exist and can used to support a readmission request; 2) Schengen Partnering States are supposed to exchange updated samples of these documents (which replace the visa when third country nationals travel within the Schengen area).
are only valid for the UK or the Irish Republic respectively.  

- **“New” EU Member States** are now moving away from “national” visas to the EU model. Some States are already using the EU model under the same terms as the UK and the Irish Republic, i.e. the visa is only valid for the country concerned.

- **Schengen Partnering Countries** use a Schengen visa “common” to all Partnering States which is valid for all Partnering States: it allows individual to present themselves to Border Control Authorities in any Partnering State for access to the Schengen Area. In exceptional circumstances, the visa will be limited to a specific “territory”, i.e. to one or more (but not all) Partnering States (these limitations are clearly indicated on the visa).

Basically there are 4 types or categories of Schengen visas:

- **Type A:** This type of visa is excluded from the application of the Readmission Agreement. It is only valid for transit through one airport arriving by air from outside the Schengen area prior to onward travel to a destination also situated outside the Schengen Area. The holder of a Type A visa is not allowed to leave the airport and is confined to the “secure” area in the airport. The most commonly used term in English is “airside visa”.

- **Type B:** This is a transit visa authorizing the passenger to leave the airport and enter the Schengen territory for a short period during which he or she will take an ongoing flight or other means of transport. Maximum validity: 5 days.

- **Type C:** This is the most frequently encountered type of visa, with a maximum stay of 90 days in one visit, and comes in several forms: single entry, multiple entry, etc.

- **Type D:** Although corresponding to the EU Model, this is a national or “long stay” visa. It usually authorizes a “long stay” in a specified

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14 See below “Type C” visa.
15 Refer to paragraph (a) above.
16 Austria, Belgium, Finland, France, Germany, Greece, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden, plus Denmark (opted out of the Readmission Agreement), Norway and Iceland (which are not a EU Member States and therefore not partners of the Readmission Agreement).
17 For a full list with examples and explanations (in Dutch or French): www.dofi.fgov.be.
18 “Airside” refers the “transit” or “secure” area to where the passenger is confined.
Schengen Partnering State, but allows the holder to travel to that State via the territory of other Partnering States.

I.1: Albania’s Readmission Obligations: Readmission of own nationals

Article 2 - Readmission of own nationals (and corresponding Annexes 1 and 2)

Paragraph 1:
Albania shall readmit, upon application by a Member State and without further formalities other than those provided for in this Agreement, all persons who do not, or who no longer, fulfil the conditions in force for entry into, presence in, or residence on, the territory of the requesting Member State provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that they are nationals of Albania.

Commentary:
The RA only covers people apprehended in-country, and not people detained at the borders.¹⁹

The wording “... all persons who do not, or who no longer, fulfil the conditions in force for entry into, presence in, or residence on, the territory of...” covers all individuals apprehended as illegals²⁰ on the territory of the requesting Member State, “illegality” being defined according to national immigration regulations in the requesting Member State.

In order to establish the legal basis for readmission of Albanian citizens to Albania, Article 2 introduces the following concepts:

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²⁰ This terminology is used in the national legislation of most Member States. IOM suggests the use of “irregular” rather than “illegal” migrants.
• proof
• valid assumption on the basis of *prima facie evidence*

There are distinct differences between these two terms, as can be seen from the following analysis: 21

• **Proof (as defined in RA Annex 1):** 22

Forms, attestations, certificates, documents or elements which are considered to be “solid”, “evident, “irrefutable”, “undisputable”, “undeniable” are accepted as “proof”. However, according to Annex 1, it appears that these are in fact documents issued by official bodies, whether national or local, acting in the name of the State. In cases where an apprehended individual presents one or more original23 documents listed in Annex 1, the Albanian authorities are obliged to readmit the individual without further discussion. Each of these documents will provide irrefutable proof of the individual’s Albanian citizenship and, under international law and custom, a State cannot refuse access to its territory to its own nationals and citizens.24

False, forged, or fraudulently obtained official documents are not considered legal documents and therefore cannot provide proof of citizenship.

With regard to *third country nationals*, RA Article 3 (discussed below) indicates that readmission obligations do not apply when documents presented by, or found in the possession of, the individual have been forged or falsified. It is surprising that Article 2 does not provide a similar “escape” clause.

If the Albanian authorities conclude that an Albanian Passport is a fraudulent document, it is clear that such document is not “proof” of citizenship. In most cases, the apprehending State can detect “technical” falsifications, but errors do occur and the situation can become more complicated when stolen blank passports and documents are used to make forgeries, as these documents are technically genuine.25

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21 This distinction between proof and prima facie evidence recurs in the discussion on RA Article 4 below, in relation to “third country nationals”.
22 See commentary on RA Article 2, paragraph 2 below.
23 Copies of original documents are categorised as “prima facie evidence”, see below.
24 See box on seamen’s documents, below.
25 This type of fraud is often referred to as “intellectual fraud” or “intellectual forgery”.
On the other hand, documents listed in Annex 1 can be partially altered, falsified or tampered with, without losing their value as proof of nationality or as travel documents. For example, a person holding a genuine Albanian passport from which pages have been removed can still be considered an Albanian citizen; the passport remains valid as proof under RA Article 2 and Annex 1.26 This is also true if there is a change in the date of birth on an Identity Card; it remains valid as proof of citizenship.27

RA Article 2 and Annex 1 cover only national28 passports, while so-called “Passports for Aliens” are covered by RA Article 3 and Annex 3, though they are not specifically mentioned.29

Documentation specific to Seamen

Merchant Seamen can be holders of three separate types of documents:
-(a) document(s) adopted by the ILO Member States; or
-(b) the “Seafarer’s national identity document” (ILO Convention No. 108); or
-(c) the “Seaman’s Book” (ILO Convention No. 22).30

The name of these documents depends on the language of the national issuing body. They confirm that the holder is a seafarer engaged on a ship carrying the national flag of the administration or agency that issued the document. For example, an officer or sailor serving on a merchant ship under the Italian flag can (though it is not obligatory) holds an Italian “Seaman’s Book”, regardless of his or her citizenship.

It is generally accepted (more by custom than by law) that the holder has the nationality stated on the document (until proven otherwise), even if this is different, as in numerous cases, from the “nationality” of the document. An Albanian Seaman’s Book is only acceptable a “proof”, for the purposes of readmission to Albania, if it clearly states that the holder is an Albanian national.31

26 Whether false or forged, a visa has no value, whereas a falsified passport can still provide proof of citizenship and be used for travel.
27 Typical and frequently encountered “alterations” include: removed or added (i.e. fraudulent) entry and/or exit stamps, entry refusal stamps, “added” altered visa, etc.
28 There is no international text or treaty to define “national passport”, but the term is generally used to indicate a passport given to “own” nationals.
29 Each country has its own terminology for travel documents issued to legally residing non-nationals. A list of all travel documents, to be effective, must contain references to all documents issued by a State.
30 Albania is an ILO member but has not ratified ILO Convention Nos. 22 or 108.
31 These are work permits which allow the holder to enrol on ships sailing under the flag of the issuing country.
“Citizenship certificates and other official documents that mention or indicate citizenship”\footnote{32}{The use of term “citizenship” in RA Annex 1 indicates that, in the context of Readmission Agreement, “nationality” and “citizenship” have the same connotations.} these documents are rarely seen in practice. In fact, they cannot be considered as “proof” since they rarely include a photograph and thus do not establish an undeniable link between the document and the bearer.\footnote{33}{There is no fixed “model” or “sample” of this document: issuing authorities (usually the local town administration) create their own.} This means that there is no proof that the holder is the individual whose citizenship is confirmed by the document. Citizenship documents are in fact prima facie evidence, as defined in RA Annex 2, unless a stamped photograph accompanies the document.

“Proof” must therefore be \textit{indisputable}. Documents submitted by the requesting state, if they appear in RA Annex 1, must be accepted unconditionally and cannot be challenged by the Requested State, except in cases where the submitted documents are totally fraudulent.

- \textbf{Prima facie evidence of nationality (as defined in RA Annex 2)}\footnote{34}{See Article 2, paragraph 2 of RA in this document.}

The situation is different with documents, certificates, attestations and even statements defined or qualified as “prima facie evidence”. For these documents, the evidence submitted can and must be interpreted, i.e. they are open to challenge, discussion, and scrutiny. They do not automatically constitute or create the obligation to readmit the individual concerned.

The list of elements of prima facie evidence in Annex 2 gives practical examples:

- \textbf{Photocopies} of documents listed in Annex 1: these may be copies of altered, forged, manipulated documents. The Requested State can take whatever steps it deems appropriate to establish whether the copies or scans correspond with reality.
- \textbf{Driving licences} are not proof of citizenship, since not all driving licences bear a photograph.
- \textbf{Birth certificates}: there is no proof that the birth certificate found on an individual is his/her own, unless it bears an officially stamped photograph.
- \textbf{Company Identity Cards}: these documents, issued by “private” companies, are not official proof of nationality or of identity, even if they mention the citizenship of the holder.
- \textbf{Documents issued by State or local authorities to civil servants},
including policemen’s warrant cards, are not official proof of nationality or of identity, since they do not mention the nationality of the bearer.35

• **Statements by witnesses**: these statements are obviously open to challenge, as they are notoriously unreliable due to their subjective nature.

• **Statements by the individual, language used by individual**:36 considering that most people being returned by Immigration Services are recalcitrant, it is obvious that their statements and declarations are subject to caution. The language used by the individual is one element to be taken into account for determining37 nationality, but the fact that an individual speaks fluent Turkish is not proof of Turkish nationality or citizenship.

• **Any other document**: there are many other kinds of documents that may provide prima facie evidence, such as police warrant cards (policemen are usually citizens of the State where they serve), certificates of civil status (marriage certificate, affidavits, etc.).

Prima facie evidence can also be qualified as “circumstantial evidence”, or “beginning of proof”.38 Prima facie evidence indicates where to look for additional information and to focus further enquiries.

The phrase “… unless such persons have at least been promised naturalisation by that Member State” is somewhat obscure. Interpretation of this phrase is problematic, since, amongst other difficulties, it is not clear what naturalization means. It could refer either to the acquisition of citizenship by means of naturalization or to the acquisition of citizenship by any other means. Other procedures for acquiring citizenship exist, such as “option” or “registration”, and each involve a variety of procedures depending of national regulations. Naturalization is often considered to be a catch-all term for any procedure to acquire or obtain citizenship or nationality.

This phrase can probably be interpreted as meaning “unless such persons are in the procedure of acquiring citizenship of that Member State”.

Member States will strictly apply the basic principle of this phrase and Albania will be obliged to readmit “ex” Albanian citizens who have renounced or were deprived of their citizenship after entering a Member State (even if

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35 Since EU Member States recruit citizens of other Member States as civil servants, a civil servant of an EU Member State is not necessarily a citizen of that country.

36 Immigration Services sometimes use the services of professional linguists to determine an individual’s origin as they can pinpoint local variations in the language. However, the professional’s conclusions can be challenged.

37 “Determining” does not mean “proving”.

38 This concept can be assimilated to a “début de preuve”, used in legal systems based on the French Civil Code.
that particular Member State is not the Member State which requests the readmission).

The EU Council Recommendation of 24.07.1995 on the guiding principles to be followed in drawing up protocols on the implementation of Readmission Agreements makes a more precise distinction between “proof” and “prima facie evidence”.39

**Article 2 - Readmission of own nationals (and corresponding Annexes 1 and 2) (continued)**

Paragraph 2:
Albania shall, as necessary and without delay, issue the person whose readmission has been accepted with the travel document required for his or her return with a period of validity of at least 6 months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, Albania shall, within 14 calendar days, extend the validity of the travel document or, where necessary, issue a new travel document with the same period of validity. If Albania has not, within 14 calendar days, issued the travel document, extended its validity or, where necessary, renewed it, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes.40

**Commentary:**
Technically this point does not need further clarification but it is the crucial clause of the Readmission Agreement.

Conceptually, a Readmission Agreement is seen as a firm intent to readmit a) the State’s citizens (if their citizenship is proven or accepted) and b) third country citizens under certain conditions and on the basis of proof of residence, stay, passage, transit, visa, etc. rather than as a technical instrument which explains and determines the practical arrangements for mutual readmissions of each other’s and third country citizens.

39 See Appendix 2 in this Handbook: proof of nationality is clarified in Recommendation II.2.
This intent is *de facto* realised in several ways, which do not necessarily follow the procedures set out in the Readmission Agreement or its Protocols. Often a RA enables the removing state to obtain “one-way travel documents” from the Embassy or Consulate of the country of origin, whereas, before the RA came into effect, this was difficult or even impossible.

A number of Member States remove or return individuals directly to Albania without first obtaining a one-way travel document from the Albanian consular or diplomatic representations or without undertaking the complicated, painstaking and time-consuming readmission procedures. In this context, it is obvious that, if the removing Member State returns a non-Albanian citizen by mistake, the Albanian authorities are entitled to send him or her back immediately to that State, at that State’s expense.

EU Member States wish to continue this practice for several reasons. The most relevant are the following:

- it reflects the RA’s “spirit”, its meaning and intent, in line with existing bilateral Readmission Agreements;
- it avoids long detention of Albanian citizens in “immigration custody”, i.e. detention for the sole purpose of removal to their own country;
- it avoids the recruitment of a large number of Albanian staff to deal with the labour intensive tasks relating to the readmission of Albanian citizens according the meticulous procedures described in the Readmission Agreement, though it is difficult to estimate the exact number of persons required.41

The way in which RAs are executed in daily practice demonstrate that a RA is in fact a “facilitator”, as it facilitates procedures that were difficult before it came into force, or it constitutes a legal (and formal) basis for a practice that has been in use for a long time.

The vagueness of the list of elements of proof (Annex 1) or prima facie evidence (Annex 2) can be explained by the historic Standard EU Readmission Agreement, which was drawn up to meet the needs of Member States and contracting third countries. As a result, individual bilateral agreements had to be adapted to specific situations through the use of implementation protocols.

41 For example, Belgium, a small Member State, forcibly returned 105 undocumented Albanian citizens using this informal system in 2005. A conservative estimate for larger Member States is as high as 1,500 individuals per year. An administrative unit dealing with readmission requests in Albania would need at least 10 extra staff to cope with such a workload.
A good guideline for these bilateral negotiations is the (EU) Council Recommendation of 24.07.1995 on the Guiding Principles to be followed in drawing up protocols on the implementation of readmission agreements (included in this Handbook as Appendix 2). It also provides a better understanding of the differences between elements of proof and elements of prima facie evidence. The Benelux/Albania Implementation Protocol, on the other hand, is less pragmatic.

Proof of nationality identified in the Council Recommendation:

- attestations or certificates which can be irrefutably attributed to a person (i.e. because they bear a photograph for instance, or there is supporting evidence, such as a driving licence with a photograph);
- various types of national passports: standard passports, diplomatic passports, service or official passports, passports replacing documents with a photograph (e.g. one-way-travel documents), or any other travel document with a reference to nationality;
- consular registration, or consular identity, cards (proving registration with the appropriate Consulate);
- certificates of identity: although these may be thought to be identity cards, they do not necessarily establish the “undeniable link” required to confirm nationality;
- certificates of identity for minors (replacement passports);
- temporary or preliminary identity papers (again, these can be considered as identity cards);
- military passes, passports, or identity cards.

Prima facie evidence of nationality identified in the Council Recommendation:

- information originating from official authorities with a clear assertion of nationality;
- civil servants’ service cards or badges;
- company passes;
- driving licence;
- extracts from registry offices (birth certificates, marriage certificates), since these documents mention the nationality of the individual.

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44 An “undeniable link” is established by a photograph of the individual, stamped by the issuing authority.
45 According to the Council Recommendation, a driving license is prima facie evidence, not proof.
concerned;
• seafarers’ muster card or book:46 this category appears to include crew members licence and aircrew certificates, especially for countries which have not signed ILO Conventions Nos. 22 and 108 (as is the case with Albania);
• certificates for ship crew members on internal waterways;47
• photocopies or scanned copies of the aforementioned documents;
• statements by witnesses;
• statements by the individual concerned;
• language used and/or spoken by the individual concerned.

It is clear that also the above recommendations need to be adapted to the appropriate bilateral protocol. The situation for third country nationals will be discussed in below.

I.2: Albania’s Readmission Obligations: Readmission of Third Country Nationals and Stateless Persons

Article 3 - Readmission of third country nationals and stateless persons

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

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

46 The Council Recommendation includes the Muster Card or Book in the list of prima facie evidence.
47 Documents given to skippers working the internal and international waterways of Europe (Rhine, Donau, Meuse, Escaut rivers) in Germany, France, Austria, Switzerland and the Benelux countries, based on several Treaties on international trade, traffic and commerce. Due to the heavy amount of international traffic, there are tens of thousands of skippers working on river boats in Europe. Although these documents are not mentioned in the RA, they remain appropriate and necessary.
(b) entered the territory of the Member States after having stayed on, or transited through, the territory of Albania.

2. The readmission obligation in paragraph 1 shall not apply if

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

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

– that person is in possession of a visa or residence permit, issued by Albania, which has a longer period of validity; or
– the visa or residence authorisation issued by the requesting Member State has been obtained by using forged or falsified documents.

3. Albania shall, as necessary and without delay, issue the person whose readmission has been accepted with the travel document required for his or her return with a period of validity of at least 6 months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, Albania shall, within 14 calendar days, extend the validity of the travel document or, where necessary, issue a new travel document with the same period of validity. If Albania has not, within 14 calendar days, issued the travel document, extended its validity or, where necessary, renewed it, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes.

Commentary:
For the definition of “third country national” and “Stateless person”, “visa” and “residence authorisation”, see information on Article 1 above. For further information on the definition of an illegal person (RA Article 3.1), see Article 2 above.

Paragraph 1(a): for a definition of “visa”, see Article 1 above. Note that it is not necessary to prove that the visa has been used for entry. However, the
declaration by Albania added to the agreement is more precise: the visa must have been used to gain access to Albania to qualify the third country national for return to Albania.

**Paragraph 1(b):** this paragraph is very clear: transit by means of the airside part of the airport (see paragraph 2(a)) cannot provide justification for a readmission request (since a visa is not needed for airside transit). Generally, for the difference between the different forms of visas, see Article 1.

**Paragraph 2(a):** see also above (paragraph 1) and Article 1, Schengen visa and Type A visa. For **paragraph 2(b)**, see definitions of “third-country national”, “stateless person”, “visa” and “residence authorisation” in Article 1.

**Paragraph 3:** in general, but not necessarily, the travel document for return is quite different from the travel document issued to “own” citizens for the same purpose. This is a pure technicality.

In the commentary on Article 2, it was stated that “informal” ways of applying a Readmission Agreement were to be preferred to a literal approach to the procedures contained in RAs. This does not apply to cases involving own nationals (whether documented or not), as they always have the right of return to their country of origin, even if they are returned by force. In this respect, it is interesting to note that Instruction No. 553 of 19.11.2003 (issued by the Albanian Ministry of Foreign Affairs) covers this “unwillingness” of the returnee (point 2.4(a)) which refers to the delivery of a one-way travel document on the sole request of the immigration service of a State intending to return an undocumented Albanian citizen.

There are grounds here (i.e. in case or readmission of third-country citizen) to use the procedures set out in the Readmission Agreement, but with caution. In evident cases where individuals hold an original valid resident permit of long duration, for instance, it would be impractical to apply a laborious readmission procedure.

The situation is quite different for third country nationals, since there are no established practices for the readmission of third-country nationals between individual EU Member States and third countries with which they have
readmission agreements.48

As a rule, Immigration Services in most countries prefer to return an illegal alien to his/her country of origin. When individual illegal aliens choose to be returned to a third country (i.e. not the country of origin), they must provide proof, usually based on documents in their possession, that they have the right of obtain legal access to that third country.

Annex 3 of the Readmission Agreement defines the following documents as “proof“:

- **Entry and/or exit stamps on passports or on travel documents** are considered irrefutable proof. However, it is not stated whether the travel document or passport must be authentic and belong to the physical holder. Although this would be the logical conclusion, it is possible that an individual has travelled – and obtained the necessary stamps to prove this – on a fraudulent document. Indeed, readmission can be based on a fraudulent document, depending on the document and the nature of the fraud.

- It is not the travel document's authenticity (or lack of it) that is the determining factor, but the fact that the holder used the document to cross borders. No further qualification is given for “other evidence”, and the mention of photographs does not provide further clarification.

- **Documents, certificates and bills of any kind**. It is not stated whether these documents should be in the possession of, or submitted by the person mentioned therein. In practice, it is not difficult for such “documents” to fall into the hands of persons for whom they were not issued. However, the phrase “which clearly show” implies that documents should refer to the individual for whom readmission is sought. For example, it must be clear that a hotel bill issued to an individual refers to his or her stay in that particular hotel and he or she really is the person mentioned on that bill.

- **Tickets and passenger lists**. Train, bus and coach tickets do not usually mention the identity of the traveller. For travel by ship, however,

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48 The Schengen Partnering States have had a Readmission Agreement with provisions for third-country nationals with Poland for more than 15 years, which is applied “informally” to thousands of Polish citizens per year. Not a single case is known of a third-country national being sent to Poland under the Readmission Agreement (Dublin cases are quite frequent, but that is a totally different issue). It is difficult to derive guidelines, clarifications, explanations, or rules for a practice that, in theory, does not exist. In fact, this RA is often mentioned but does not exist. It was signed on 29 March 1991 but was not approved by the Executive Committee, the final Schengen deciding authority.
IMO regulations require the name of the passenger. This is also true for international air travel since passengers are issued with a ticket in their name. The term “which show” is less stringent than “which clearly show” in the former point. As it is easy to obtain another person’s tickets, this information seems to fall under the category of prima facie evidence.

- **“Information showing ... the person... has used the services...”**.
  
  It is not clear what this means. It must be obvious that there is a clear or “undeniable” link between the documents submitted and the person mentioned on them.

- **Official statements.** “Official statements” are not necessarily statements made by an official but those made to an official. These can include local, regional or national civil servants, police, magistrates, courts. Basically, a declaration is official, in the sense of the RA, when it is signed by the individual who gives the statement and especially when the signature has been “legalised” or “notarised” by a competent official.

It is recommended that these problems be addressed as soon as possible and clarified in future implementation protocols.\(^{49}\)

It is clear that all these elements, with the exception of entry and exit stamps, cannot constitute clear, irrefutable evidence for the purposes of readmission procedures, without further clarification in bilateral protocols. They will be considered as prima facie evidence unless supporting evidence is also provided.

**Annex 3** does not refer to the possession of Albanian Residence Permits by a person liable to be readmitted to Albania, although Annex 1 (proof of nationality by passports and ID Cards) states that possession of residence permits is considered solid proof of “stay”, “presence”, “residence”, in the same way that a passport or ID card is considered solid proof of citizenship or nationality. The RA is unclear on this point. See further discussion on Article 5 below.

**Annex 4** establishes the list of elements considered to be prima facie evidence for third country nationals and stateless persons. In fact, these elements are much easier to understand and more logical as elements considered to be proof. It is clear that these elements are only beginnings of proof or circumstantial evidence and must be supported by other evidence. Their validity can therefore be challenged. It is odd, however, that information

\(^{49}\) These recommendations should be submitted to the Joint Readmission Committee.
provided by an international organisation is considered to be of lesser value than elements listed in Annex 3.

Here again, it is interesting to note the list of “proof” and “prima facie evidence” contained in the Council Recommendation\textsuperscript{50} on the contents of implementation protocols.\textsuperscript{51}

**List of Proof**

- Entry stamp or similar endorsement in the travel document (including passports, aliens’ passports etc.);
- Exit stamp of a State bordering a Member State, taking into account the logical travel route and the date of border crossing. This aims to cover the situation where border control officers forget to stamp a passport (or the individual avoided a border control). So, for example, if a German border control officer does not stamp in a Japanese passport entering Germany, an exit stamp from a Polish Border Control (at the German/Polish border) would constitute proof of entry in Germany;
- Entry stamp in a false or forged passport (see comments about fraudulent document, Article 2 above);
- Ticket for transportation which establishes entry via the outer border, if possible with a clear link between the ticket and the individual concerned;
- Fingerprints, if these were taken at the crossing of an external border.

**Prima facie evidence**

- Statements from the individual concerned;
- Statements from competent civil servants, officers, or other persons;
- Fingerprints, except when taken at the crossing of the external border of the requested State (in which case they are considered as proof). However, the question remains: should fingerprints taken by the authorities during the individual’s stay in the country be considered prima facie evidence or, even better, proof;
- Transportation tickets;
- Hotel bills;
- Documents of any kind that give access to public or private

\textsuperscript{51} See Recommendation, II.2.
institutions/buildings;
• Documents relating to appointments with doctors, dentists, etc.;
• Information which may provide evidence that the individual’s entry was organized by smugglers, traffickers, or fraudulent travel agencies.

As discussed in the commentary on Article 1, these lists are still open to improvement, but they are more complete than those provided in the RA’s Annexes 1 and 2.

I.3: European Community’s Readmission Obligations

Article 4 - Readmission of own nationals

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

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

2. A Member State shall, as necessary and without delay, issue the person whose readmission has been accepted with the travel document required for his or her return with a period of validity of at least 6 months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the Member State concerned

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52 In fact, the individual Member States that have obligations under the RA, not the Community.
shall, within 14 calendar days, extend the validity of the travel document or, where necessary, issue a new travel document with the same period of validity. If the Member State concerned has not, within 14 calendar days, issued the travel document, extended its validity or, where necessary, renewed it, it shall be deemed to accept the use of the Albanian certificate for expulsion purposes. ⁵³

Commentary:
All definitions and terms have already been clarified above (see Articles 1 and 2). For remarks on “… been promised naturalisation by Albania”, see Article 2.

• Identity Cards

It should be noted that citizens of EU Member States holding valid national identity cards, which irrefutably confirm their nationality, can always be returned or travel back on their own volition to their country. The following Member States issue identity cards: Austria, Belgium, Cyprus, ⁵⁴ Estonia, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Malta, The Netherlands, Portugal, Slovakia, Slovenia, Spain, and Sweden.

In several Member States, ⁵⁵ identify cards exist in several different forms (new and old models). Even if old-style identity cards’ validity dates have not expired, they continue to be accepted for travel within the EU and for the return to the holder’s home country. There is, therefore, no need to request readmission for individuals holding these identity cards, if they are authentic, as they can be sent back without further delay.

N.B. A “Certificate of Identity” is not necessarily an Identity Card.

*Note concerning Estonia identity cards:
Estonian identity cards also serve as residence permits for legal aliens. Care must therefore be taken to check the reference to the holder’s nationality. Estonian citizens’ cards are marked “EST”. Cards not using this term are therefore a residence permit. ⁵⁶

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⁵³ Instruction No. 553 of the 19 November 2003 of Acting Minister of Foreign Affairs on the issue of “Laissez-passer” by the Albanian representations for returns to Albania.
⁵⁴ Not to be confused with a “certificate of identity”.
⁵⁵ For example, Belgium, France, Germany, Italy and Spain.
⁵⁶ 30% of the Estonian population is considered to be of “undetermined” nationality.
Four Member States do not issue national identity cards to their citizens: Denmark and Latvia, the Irish Republic and the United Kingdom (the latter two States do not maintain population registers).

At least three Member States (Spain, Portugal and Italy) give legal aliens two documents: a residence permit and an identity card, thus indicating that they are registered on the national registers. The old models of identity cards were the same as those used for own citizens, a situation which created a certain amount of confusion for immigration services in other Member States. It is advisable to check the nationality marked on the identity card.

*Example:* on an old-style Italian identity card, the word “algerina” (Algerian) under “Cittadinanza” (citizenship) indicates that the holder is a “non-own” or “third country” nationals and a legal resident in Italy as confirmed by the residence permit, though this document will not always be available.

- **Passports**

It is obvious that citizens of an EU Member State holding valid national passports are allowed to return freely to their own country. It is therefore not necessary to request readmission for these persons, as they can be returned to the issuing Member States without further delay.

The EU Member States of Austria, Belgium, France, Luxembourg, Portugal, and Spain accept the travel of persons with passports, which expired during the last five years, while German passports that expired less than 12 months prior to presentation will also be accepted. All other expired passports issued by EU Member States are not accepted for travel. For persons with expired passports, it is advised to apply to the appropriate Embassy for a renewal or a new passport or for a one-way travel document. As it is unlikely that an EU citizen has lost his or her nationality since the expiry of the passport, this is the easiest way to return that person without further delay.57

*Note concerning British Nationality or Citizenship:*

Under Article 1, it is important to remember that holders of British Passports are considered to be EU citizens only if their passports are endorsed with the mention “British Citizen” on the identity page of the passport. As mentioned earlier, British Citizens residing in the Channel Islands are not necessarily EU Citizens, although they are “Citizens of a Member State” in the sense

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57 It is possible to submit a request for a new passport or a one-way travel document with a readmission request.
of the Readmission Agreement. For other categories of British Nationals, holders of different types of British Passports, see the commentary on Article 5 below.

*Note concerning Danish Citizen:
Greenland is part of Denmark but not part of the European Union. Greenlanders are Danish citizens and EU Citizens.

*Note concerning EU citizens:
EU Citizens in possession of:
• Valid national ID Cards of the Member State of which they are a citizen,
• Valid national Passports ("national" Passports confirm the Citizenship of the issuing State, even it is NOT specifically mentioned on he Passport);
fall under the principles of free movement/circulation within the EU (in theory, if they so wish, they can be sent to any other Member States).

* Note regarding EU citizens residing in a different EU Member State than their home country:
Mobility between Member States is high. Millions of EU citizens reside in another Member State. It is possible that an EU citizen to be removed from Albania may prefer to return to the EU Member State where he or she is a legal resident (as an immigrant) than to the Member State of origin. If the residence permit is still valid, the returnee will be able to choose to which of the two Member States he or she can be returned. In either case, there is little point in requesting readmission since he or she has valid papers (passport or identity card for automatic access to his or her own country or valid residence permit for another Member State).

Article 5 - Readmission of third-country nationals and stateless persons

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

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58 People with "close ties" to the Channel Islands or the Isle of Man are "British Citizens".
59 Denmark, as mentioned earlier, is not party to the EC/Albania Readmission Agreement.
60 For example: in December 2005, there were 578,111 EU citizens from the 15 old Member States living permanently in Belgium, and a further 26,897 citizens from the new Member States; according to the Registre National/Rijksregister.
do not, or who no longer, fulfil the conditions in force for entry into, presence in, or residence on, the territory of Albania provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that such persons

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

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

2. The readmission obligation in paragraph 1 shall not apply if

(a) the third-country national or stateless person has only been in airside transit via an international airport of the requested Member State; or

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

– that person is in possession of a visa or residence permit, issued by the requested Member State, which has a longer period of validity; or
– the visa or residence authorisation issued by Albania has been obtained by using forged or falsified documents.

3. The readmission obligation in paragraph 1 is for the Member State that issued a visa or residence authorisation. If two or more Member States issued a visa or residence authorisation, the readmission obligation in paragraph 1 is for the Member State that issued the document with a longer period of validity or, if one or several of them have already expired, the document that is still valid. If all of the documents have already expired, the readmission obligation in paragraph 1 is for the Member State that issued the document with the most recent expiry date. If no such documents can be presented, the readmission obligation in paragraph 1 is for the Member State of last exit.
4. A Member State shall, as necessary and without delay, issue the person whose readmission has been accepted with the travel document required for his or her return with a period of validity of at least six months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the Member State concerned shall, within 14 calendar days, extend the validity of the travel document or, where necessary, issue a new travel document with the same period of validity. If the Member State concerned has not within 14 calendar days issued the travel document, extended its validity or, where necessary, renewed it, it shall be deemed to accept the use of the Albanian certificate for expulsion purposes.

Commentary:
Here there is no mention of the large variety of “aliens’ passports”\(^{61}\) issued to aliens with residence status, usually when they are unable to acquire a national passport in time to travel, or because their nationality is difficult to determine.

The “travel documents” under the 1951 Geneva Convention, the 1946 London Convention, and the New York 1954 Convention\(^{62}\) are actually two well-defined types of “aliens’ passports”. By definition, travel documents do not constitute proof that the holder is a citizen of the issuing State. He is therefore a “third-country national”.

Under international custom, though not necessarily according to existing regulations, the issuing Member State will readmit the holder of such a document, if it has not expired, even when the holder can not produce a residence permit. On the other hand, most national immigration regulations state that an absence of more as one year entails the loss of residence status: thus an individual may have lost his or her right of residence, even if the residence permit is still valid.

In principle, a travel document should have the same validity as the accompanying residence permit, yet in practice, this is often not the case.

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\(^{61}\) For which there are a variety of terms: “Fremdenpass” in Germany, “titre de voyage” or “Reistitel” in Belgium.

\(^{62}\) The conventions refer to “travel document” or “titre de voyage”, in the national language of the issuing State.
It is recommended that this problem be addressed as soon as possible\textsuperscript{63} and be clarified in future implementation protocols.

This is important for Albania, as well as for EU Member States but not in the same degree, as EU Member States will face fewer cases of third-country nationals with Albanian residence permits than Albania’s cases of the opposite situation.

With regard to the statement “… persons who do not, or who no longer, fulfil the conditions in force for entry into, presence in, or residence on…” (RA Articles 2 and 5), the list of documents to be produced in order to prove that individuals do in fact comply with these conditions needs to be established.

Member States have a variety of residence permits\textsuperscript{64} and it is not easy, for instance, to know whether the document submitted by an individual does in fact give “permission to remain on its territory in connection with the processing of an asylum application or an application for a residence authorisation”. Residence permits that do give temporary permission for this purpose would allow the requested State to refuse readmission.

**Seaman’s Books/Seaman’s National Identity Document:**
Contrary to popular belief, as stated earlier (Article 2 and Annex 1), these documents do not confirm that the holder has the nationality of the issuing country. EU Member States will in practice readmit and/or reaccept holders of valid documents issued by their competent maritime authorities.

\*Note regarding specific categories of British Passport holders who are not “citizens of an EU Member State” (see RA Article 1):

1. **British Overseas Territories Citizen** (BOTCs) known as British Dependant Territories Citizen (BDTCs) until 2002: as of 21 May 2002, most BOTCs and BDTCs were automatically given British citizen status. However, the last BDTC passports, issued in 2002, will not expire until 2012, as they are valid for 10 years. British overseas territories are: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands and Dependencies, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena and Dependencies,

\textsuperscript{63} For example, by the Joint Readmission Committee.

\textsuperscript{64} For example: Belgium has 16 different types of cards (all of which exist in three languages: Flemish, French and German); Germany has 31 different cards and stickers (some in two different formats, and in several languages); France has 17 cards and stickers; Greece as many as 32; while The Netherlands has ‘only’ 9.
The Sovereign Base Areas of Akrotiri and Dhekelia, Turks and Caicos Islands, Virgin Islands.

2. **British National (Overseas)** (BNO): These passports replaced BDTC passports for Hong Kong Special Administrative Region (SAR) residents and ceased to be valid after 30 June 1997. Holders of BNO passports had the “right of abode” in Hong Kong SAR and the passports were endorsed with a reference to the holder’s Hong Kong Permanent Identity Card establishing right of abode.

3. **British Overseas Citizen** (BOC): This category refers to people connected to a former British colony but who did not take the nationality of the ex-colony after independence and did not take up British nationality either.

4. **British Overseas Citizen** (BOC): This category refers to people connected to a former British colony but who did not take the nationality of the ex-colony after independence and did not take up British nationality either.

5. **British Subject**: This category applies to people who were born prior to 1 January 1949 and who had a connection with either British India or the Irish Republic.

None of these 5 categories have the automatic right of abode in the UK. All these passports (with the exception of BNOs) will be endorsed with one or other of the following statements:

- “the holder is subject to control under the Immigration Act 1971”;
- “the holder is entitled to re-admission to the United Kingdom”. The second endorsement allows the holder to enter the UK without a visa and to have the right to live in the UK. These persons can therefore be returned to the UK without a request for readmission.

I.4: Readmission Procedures

**Article 6 - Principle**

1. Subject to paragraph 2, any transfer of a person to be readmitted on the basis of one of the obligations contained in Articles 2 to 5 shall require the submission of a readmission application to the competent authority of the requested State.
2. The readmission application may be replaced by a written communication to the competent authority of the requested State within a reasonable time period prior to the return of the person concerned provided that the person to be readmitted is in possession of a valid travel document and, where applicable, a valid visa or residence authorisation of the requested State.

Commentary:
The text does not need further clarification. There is no need to request readmission for individuals holding valid passports or identity cards, since holders will be automatically readmitted to their home country. Member States will in principle admit, without any further formalities, holders of valid alien passports, seaman’s books or identity cards, or residence permits (with the exception of temporary residence permits pending investigation of refugee status or other temporary residence status).

Paragraph 2 describes, in a sense, the informal or “formless” procedure. If the RA’s contracting parties so wish, they can establish a precise time period for the purposes of this Article. However, in actual practice, no such time period has been set. The travel document mentioned here will probably be the EU laissez-passer, which is a one-way travel document.

Article 7 – Readmission application

1. To the extent possible, the readmission application shall contain the following information:

(a) the particulars of the person to be readmitted (e.g. given names, surnames, date of birth, and – where possible – place of birth, father’s name, mother’s name, and the last place of residence);

(b) indication of the means with which proof or prima facie evidence of nationality, transit, the conditions for the readmission of third-country nationals and stateless persons and unlawful entry and residence will be provided.
2. To the extent possible, the readmission application shall also contain the following information:

(a) a statement indicating that the person to be transferred may need help or care, provided that the person concerned has explicitly consented to the statement;

(b) any other protection or security measure which may be necessary in the individual transfer case.

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

Commentary:
This does not need any clarification, since for undocumented third-country nationals, it is always important to give as much detailed information as possible. For third country nationals with good or solid documentation (such as valid residence permits), the informal procedure (i.e. not using the common form) is to be preferred.

The reference to “explicit consent” in paragraph (2)(a) refers to protection of privacy. Since the individuals involved will nearly always travel by plane, the airline needs to be informed if they need special assistance.65

Commentary on Annex 5:
The “requesting” and “receiving” authorities are designated in the individual bilateral protocols. They are usually the national immigration services, though the official title may vary.

A.1: Full name – this includes both the “first” or “given” name (e.g. John), and the surname (e.g. Smith), which must be underlined. In this example, “Smith” is underlined as the surname. It is also recommended that the surname be written in capitals.

A.2: Maiden name – this is the “family” or “surname” of a woman before

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65 Airlines are usually very efficient in these matters.
marriage,\textsuperscript{66} and is therefore an important piece of information.

\textbf{A.4: Father’s name, mother’s name} – here the first name and surname of both parents are required, and the surnames should be underlined. If possible, the mother’s maiden name should also be provided. In some countries, names are dependant of national legislation, personal status, tradition, religion, etc. African “name giving” can be very confusing.

\textbf{A.8: Civil status} – in recent years, several Member States have recognized same sex or homosexual marriages. In addition, we have seen the emergence of giving legal status to people having a durable relationship\textsuperscript{67} (same sex or otherwise). This “durable relationship” will often have an influence on residence status of the individual aliens.\textsuperscript{68} For children, it is appropriate to give their full names, underlining the surname(s), taking into account the different regulations and traditions.

\textbf{A.9: Last address in the requesting State} – this refers to the last address (and, if possible, previous addresses) in the Requested State. The reference to the RequestING State is an error: if the address is part of the evidence on which the readmission request is based, it is obviously the address in the requestED state that is needed. This information will give the Requested State an opportunity to check whether the individual was in fact present on this address (for example, by interviewing neighbours). If confirmed, the given address can provide the basis (in part or wholly) for the readmission request.

\textbf{B.1: State of health} – inclusion of the Latin name is useful since medical practitioners, regardless of their mother tongue, will recognize the Latin name.

\textbf{C. Means of evidence} – this refers to the proof or prima facie evidence (see above RA Article 2) that the Requesting State offers for return of the individual.

\textsuperscript{66} In UK, there are no regulations on the use of names. It is customary for married women to use their husband’s surname for official and daily use. Thus, a woman born as Jane JONES becomes Jane SMITH when she marries John SMITH. After her marriage, her passport will give her full name as Jane SMITH. Sometimes the maiden name is barred and replaced by the married name, though new passports will generally mention only the married name. In some cases, “aka - also known as” JONES will also be mentioned.


\textsuperscript{68} On 1 May 2006, EU Directive 2004/38/EC came into force and established de facto and de jure stable or “registered” relationships as the basis of free circulation of EU citizens and assimilated individuals.
Article 8 - Means of evidence regarding nationality

1. Proof of nationality pursuant to Article 2(1) and Article 4(1) can be particularly furnished through any of the documents listed in Annex 1 to this Agreement, even if their period of validity has expired. If such documents are presented, the Member States and Albania shall mutually recognise the nationality without further investigation being required. Proof of nationality cannot be furnished through false documents.

2. Prima facie evidence of nationality pursuant to Article 2(1) and Article 4(1) can be particularly furnished through any of the documents listed in Annex 2 to this Agreement, even if their period of validity has expired. If such documents are presented, the Member States and Albania shall deem the nationality to be established, unless they can prove otherwise. Prima facie evidence of nationality cannot be furnished through false documents.

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

Commentary: The above is amply explained under RA Article 2 above.

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

1. Proof of the conditions for the readmission of third-country nationals and stateless persons laid down in Article 3(1) and Article 5(1) shall be particularly furnished through any of the means of evidence listed in Annex 3 to this Agreement; it cannot be furnished through false documents. Any such proof shall be mutually recognised by the Member States and Albania without any further investigation being required.

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

3. The unlawfulness of entry, presence or residence shall be established by means of the travel documents of the person concerned in which the necessary visa or other residence authorisation for the territory of the requesting State is missing. A statement by the requesting state that the person concerned has been found not having the necessary travel documents, visa or residence authorisation shall likewise provide prima facie evidence of the unlawful entry, presence or residence.

Commentary: The above is amply explained under Articles 2 and 3 above.69

Article 10 - Time limits

1. The application for readmission must be submitted to the competent authority of the requested State within a maximum of one year after the requesting State’s competent authority has gained knowledge that a third-country national or a stateless person does not, or does no longer, fulfil the conditions in force for entry, presence or residence. Where there are legal or factual obstacles to the application being submitted in time, the time limit shall, upon request by the requesting State, be extended but only until the obstacles have ceased to exist.

2. A readmission application must be replied to without undue delay, and in any event within a maximum of 14 calendar days; reasons shall be given for refusal of a readmission request. This time limit

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69 Paragraph 3: it appears that only the lack of documents is proof or prima facie evidence that a person does not (or no longer) fulfil the conditions of entry, stay or residence. It is the national legislation of the Requesting State that determines whether an alien does not comply with conditions of entry, stay or residence. “Overstaying” is definitely grounds for removal, but does not appear to be covered by Article 9. Behaviour contrary to public order, tranquillity or peace is a common reason for removal and thus a reason to seek readmission in another state.
begins to run with the date of receipt of the readmission request. If there was no reply within this time limit, the transfer shall be deemed to have been agreed to.

3. After agreement has been given or, where appropriate, after expiry of the 14 calendar day time limit, the person concerned shall be transferred without undue delay and, at the most, within three months. Upon application by the requesting State, this time limit may be extended by the time taken to deal with legal or practical obstacles.

Commentary:
Paragraph 2 refers to calendar days and not working days, weekends are therefore included in the 14 days. The “date of receipt” becomes important when there is a dispute over the procedure.

Paragraph 3: legal proceedings started by the individual to prevent his forced removal and medical conditions are typical obstacles that may be encountered. It is considered good practice for the Requesting State to mention the existence of such obstacles to the Requested State.

Article 11 - Transfer modalities and modes of transportation

1. Before returning a person, the competent authorities of Albania and the Member State concerned shall make arrangements in writing in advance regarding the transfer date, the point of entry, possible escorts and other information relevant to the transfer.

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

Paragraph 2: Airplanes are the means of transport of choice (with the possible exception of Greece) and no individual carrier or carrier type is excluded. Most national carriers are privately operated nowadays.\(^7\)

Charter flights are more and more frequently used by Member States (including flights to Albania). It appears logical that the escorting officers come from the Member State involved. In general, when using escorts on chartered planes, it is clearly stated that a national escort in a mutually organized chartered operation shall not interfere with the partner’s operation.\(^1\)

Article 12 - Readmission in error

*Albania shall take back without delay any person readmitted by a Member State, and a Member State shall take back without delay any person readmitted by Albania, if it is established, within a period of 3 months after the transfer of the person concerned, that the requirements laid down in Articles 2 to 5 of this Agreement were not met. In such cases, the competent authorities of Albania and the Member State concerned shall also exchange all available information relating to the actual identity, nationality or transit route of the person to be taken back.*

Commentary:

This may be seen as the key to informal application of readmission agreements, when individuals are sent without any further formality to their country of origin (in this case, Albania), usually with the EU one-way travel document, if apprehended undocumented. If an error is found on arrival, all EU Member States accept that the country “receiving in error” (i.e. the country of presumed national origin of the returned individual) simply returns the individual to the sending country without further procedure at the expense of the sending country.

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\(^{70}\) National carriers are also called flag carriers.

\(^{71}\) It is logical that escorting officers cannot exercise any authority over persons being returned by another state, since they can only execute decisions made by their own authorities. Thus, in “joint return operations” (joint charter flights) a number of third country nationals are being transferred by several Member States, the escorting officers of one Member State should not interfere with the returnees of another Member State involved in the operation.
I.5: Transit Operations

Article 13 - Principles

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

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

3. Transit can be refused by Albania or a Member State

   (a) if the third-country national or the stateless person runs the real risk of being subjected to torture or to inhuman or degrading treatment or punishment or the death penalty or of persecution because of his race, religion, nationality, membership of a particular social group or political conviction in the State of destination or another State of transit; or

   (b) if the third-country national or the stateless person is subject to criminal prosecution or sanctions in the requested State or in another State of transit; or

   (c) on grounds of public health, domestic security, public order or other national interests of the requested State.

4. Albania or a Member State may revoke any authorisation issued if circumstances referred to in paragraph 3 subsequently arise or come to light which stand in the way of the transit operation, or if the onward journey in possible States of transit or the readmission by the State of destination is no longer assured. In this case, the requesting State shall take back the third-country national or the stateless person, as necessary and without delay.
Commentary:
EU Member States always prefer, and feel obliged,\textsuperscript{72} to return illegal aliens to their country of origin whenever possible. National legislations in most EU Member States state that aliens to be removed can choose their destination. This only applies when they fulfil the conditions for entry in the country of choice. An illegal alien will only be returned to a country of transit, as a last resort, since such an operation is only possible with the agreement of that country under the terms of an existing readmission, because, in most cases, the individual concerned does not fulfil the normal conditions of entry to the transit country.

The term “State of Destination” can be misleading: it normally means the person’s country of origin and thus the country of destination in an operation for removal. This clearly means that the Requested State (Albania or an EU Member State) is only obliged to allow the transit if the onward journey to the returnee’s destination country has already been organized and access to that state has been confirmed. A request for transit will rarely be made to Albania, and only if a direct journey from the removing state (i.e. the Requesting State) to the returnee’s country of destination is not possible or practical. Thus, if the onward journey is not possible for objective or material\textsuperscript{73} reasons, Albania can refuse the transit. The returnee’s recalcitrance is not considered an objective or material reason. This article cannot be read in any other way, but it is recommended that it be clarified in bilateral protocols.

Paragraph 3 mentions other reasons to refuse transit; sub-paragraphs (a) and (b) obviously refer to Article 17:

\begin{itemize}
\item Paragraph 3(a) ensures that readmission is not used as a disguised extradition: if a country (including a transit state) wants a person extradited (i.e. for judicial reasons), it should take the appropriate action, and not make use of a removal operation by a third country to lay hands on a person wanted for other reasons. Extradition procedures include measures for protection and appeal for the person to be extradited.
\item Paragraph 3(b) refers to possible refusals to returnees facing criminal prosecution and needs to be explained properly. A statement of “refusal for domestic security” is insufficient.
\end{itemize}

\textsuperscript{72} There is no EU regulation obliging Member States to return third country nationals, but it is “preferable” to remove illegal persons from the EU, rather than keeping them on EU territory. Council Directive of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (2001/40/EC) facilitates this move.

\textsuperscript{73} This does not appear in the Readmission Agreement, but is logical and obvious.
Article 14 - Transit procedure

1. An application for transit operations shall be submitted to the competent authority of the requested State in writing and shall contain the following information:

(a) type of transit (by air, land or sea), possible other States of transit and intended final destination;

(b) the particulars of the person concerned (e.g. given name, surname, maiden name, other names used/by which known or aliases, date of birth, sex and – where possible – place of birth, nationality, language, type and number of travel document);

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

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

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

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

3. If the transit operation takes place by air, the person to be readmitted and possible escorts shall be exempted from having to obtain an airport transit visa.

4. The competent authorities of the requested State shall, subject to mutual consultations, assist in the transit operations, in particular through the surveillance of the persons in question and the provision of suitable amenities for that purpose.
Commentary:
Paragraph 1: as mentioned earlier, “competent authorities” are to be determined in the bilateral protocols. For Paragraph 1(a), however, see the comments on RA Annex 5. In accordance with the rules on co-operation between EU Member States on transit operations, it is recommended that the identities of the escorts be included.

Paragraph 3: an “airport transit visa” is more generally known as an “airside visa” (see also comments on Article 1 above). With regard to Paragraph 4, it is recommended that, if necessary, a more detailed arrangement for “surveillance” and “suitable amenities” (for returnee and escorts) be negotiated and included in bilateral protocols. The EU Directive on co-operation in transit operations could provide useful guidance on this point.

Commentary on Annex 6:
In general, the most important clarifications are the same as those made above on Annex 5. The only specific point for comment is:

B.2: “State of final destination” usually means the country of origin of the returnee or a country that will allow the returnee to enter and stay.

I.6: 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.

Commentary:
This article is basically self-explanatory, since it is obvious that the returning state bears the expenses until arrival at the “final destination”. Responsibility and liability, in terms of costs, end when the returnee crosses the border into the country of destination. This article also implies that other travel costs (such as hotels, etc.) incurred during transit will be borne by the requesting state.
I.7: Data Protection and Non-Affection Clause

Article 16 - Data protection

The communication of personal data shall only take place if such communication is necessary for the implementation of this Agreement by the competent authorities of Albania or a Member State as the case may be. The processing and treatment of personal data in a particular case shall be subject to the domestic laws of Albania and, where the controller is a competent authority of a Member State, to the provisions of Directive 95/46/EC 74 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 - Non-affection clause

1. This Agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Albania arising from International Law and, in particular, from the European Convention of 4 November 1950 for the Protection of

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

Commentary:
Articles 16 and 17 do not relate specifically to the procedures under the Readmission Agreement, except for the comments made on Article 13 above.

I.8: Implementation and Application

Article 18 - Joint readmission committee

1. The Contracting Parties shall provide each other with mutual assistance in the application and interpretation of this Agreement. To this end, they shall set up a joint readmission committee (hereinafter referred to as “the committee”) which will, in particular, have the task

(a) to monitor the application of this Agreement;

(b) to decide on implementing arrangements necessary for the uniform application of this Agreement;

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

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

(e) to recommend amendments to this Agreement.

2. The decisions of the committee shall be binding on the Contracting Parties.
3. The committee shall be composed of representatives of the Community and Albania; the Community shall be represented by the Commission, assisted by experts from Member States.

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

5. The committee shall establish its rules of procedure.

Commentary:
The Committee mentioned here, as well as the “competent authorities” (see Article 19), was set up under the terms of the bilateral implementation protocols. Usually the members of Joint Readmission Committees (JRC) are the heads of the agencies responsible for removals, returns and repatriation in the national immigration services. Since RAs reflect, in practice, “intentions” and “facilitators” of existing informal arrangements, these committees exist only on paper. Their responsibilities are clearly described, however.

With regard to the JRC set up by the European Community / Albania RA, consultations with EC officials indicated the way in which it would operate in practice.

- The Committee will be chaired by the Commission’s representative, who is a senior official (director level).
- EC Member States will be invited to participate, and, based on current experience, only member states with an interest in the country concerned attend. Member States participate on an ad hoc basis and are not obliged to attend all JRC meetings.
- The EC expects that the first meeting with Albania will take place approximately one year after the agreement comes into force, i.e. early 2007.
- Either party can request a meeting of the JRC, as specified in the RA. Meetings take place in Brussels and in the country concerned.
- As outlined in Article 19 of the European Community / Albania RA, the committee meets to discuss monitoring and implementation of the RA.
- The first meeting will probably be held in Brussels and will establish the rules of procedure, as foreseen in the RA.
- The JRC will be informed of all bilateral protocols negotiated between Albania and individual Member States. The protocols will come into
force at the same time as the RA. At present a number of implementing protocols have already been negotiated.

The first set of JRC meetings has been held between the EC and Sri Lanka, while further meetings will take place with Hong Kong SAR and Macao. It is not expected that there will be significant issues to be discussed.

**Article 19 - Implementing Protocols**

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

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

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

   (c) *means and documents additional to those listed in the Annexes 1 to 4 to this Agreement.*

2. *The implementing Protocols referred to in paragraph 1 shall enter into force only after the readmission committee, referred to in Article 18, has been notified.*

3. *Albania agrees to apply any provision of an implementing Protocol drawn up with one Member State also in its relations with any other Member State upon request of the latter.*

**Commentary:**

This article has no bearing in itself on the practice of the RA, but it represents the manual on how to create the implementation protocols.

**Paragraph 1(b)** can find usable information and sensible guidelines in the EU Directive on common removal operations (escorts, use of force, etc.).

**Paragraph 1(c)** is the occasion to redress (or at least try to) a few of the glaring errors in the Annexes.
I.9: Final Provisions

Articles 20 to 23

These are the articles that appear in every international Treaty, Convention or agreement and have no bearing on the day-to-day application of the agreement itself.
II. IMPLEMENTATION PROTOCOLS

While the European Community / Albania RA was negotiated and signed by the Commission on behalf of the Member States (except Denmark) and by Albania, the RA’s implementation protocols are a matter between individual Member States and Albania.

With respect to the three Benelux countries (Belgium, The Netherlands and Luxembourg) the situation is slightly different. The Benelux treaty abolished visa and border controls between the signatories 45 years ago. Even though, an implementation protocol between these countries and Albania was established after the Council Recommendation of 1995 on readmission implementation procedures, based on the previously negotiated readmission agreements and implementation protocols between Benelux and 24 other countries. It is discussed in the next chapter.

The reason for this individual approach to implementation protocols is that the Readmission Treaty, containing the basic principles and rules of the readmission procedure, needs to be adapted to the local and individual settings of each individual Member State, such as:

- The competent Ministry for Immigration and/or border control differs from one Member State to another; in Belgium, it is the Federal Office for Home Affairs, while in the Netherlands, it is the Ministry for Justice.
- The agencies dealing with immigration and/or border control also differ. It can be the Civil Service (Belgium and the Netherlands, for instance), National Police (Spain and Portugal), or the Armed Forces (Border Control in Estonia, for instance), so there is no common competent authority.
- Nature and typology of documents and/or elements of proof and prima facie evidence wildly differ, as Member States issue different types of documents.
- Technical circumstances may differ (i.e. availability and number of airports, seaports can influence procedures and operations). While planning for the transfer of individuals to be readmitted by ship from Greece to Albania is relatively straightforward, the same process from transfers between Albania and Austria or Luxembourg are more difficult.

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75 The Treaty establishing the Benelux Economic Union was signed on 3 February 1958, and came into force on 1 November 1960. The treaty on abolishing the interior borders between the Benelux States was signed on 11 April 1960 and came into force on 1 July 1960. The numerous Benelux Conventions can be consulted on the website: www.benelux.be. Only the 1958 Treaty text can be consulted in English, all other texts can be consulted in French or Dutch.
II.1: Types of Procedures

The Council Recommendation of 24 July 1995 provides guidelines for the contents of protocols for the implementation of readmission agreements and serves as a good starting point for the individual implementation protocols. It provides three procedures (simplified procedure, readmission, and transit), recommends the use of three standard forms, and contains sample documents which can be adapted to circumstances (Recommendation I.1).

- **The simplified procedure** is to be recommended if the parties of the protocol are bordering States (for example, Greece and Albania) (Recommendation I.2). Countries already applying RAs with their neighbouring states, such as Belgium, The Netherlands, Luxembourg, France, Germany and Austria, can offer help with implementation.

It is important to define the border area, usually with reference to geographical delineation or description, the density of local population, its level of urban, rural or industrial activity. The EU External Borders Working Group has adopted the following definition for border areas:

*An area that (as the crow flies) does not extend more than 30 kilometres from the border. Within this area the local administration districts, which are to be considered as the border area, shall be specified by the concerned States in their bilateral agreements. If such district is situated at more than 30 kilometres from the border area, but no more than 50, it shall nevertheless be considered as part of the border area.*

This definition clearly shows the possibility of adaptation to local circumstances: border areas should take into account administrative and economic “units”, rather than divide districts arbitrarily.76

- For the **“normal” readmission procedure**, the Council Recommendation gives a more useful list of proof and prima facie evidence for nationality (own nationals) and for presence (third-country nationals) than the Benelux/Albania implementation protocol. These

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76 A border area can take in the ports of towns with ferry connections.
elements are analysed in the clarifications of RA Article 2 and 3. This is a good illustration of a protocol: an adaptation of the RA to the individual situations, national settings and needs of individual Member States and Albania. The Recommendation provides guidelines to be followed and used for seeking solutions, rather than a set of rules to be copied. However, as suggested earlier in the analysis of Articles 2 and 3, these guidelines could be improved.77

In particular, where proof of nationality/citizenship relies on “attestations/proofs of nationality which can be linked irrefutably to the individual concerned”, as in the implementation protocol between Albania and Belgium, this should be rephrased so that both parties are required to specify which documents are issued to their citizens as proof of citizenship.

For Belgium this could be:
documentary evidence of citizenship which can be irrefutably linked to the individual concerned.

a) For Belgium:
   • Identiteitskaart, Carte d’identité, Personalausweis, Identity Card issued by Belgian local authorities or Belgian Embassies and Consulates;
   • Voorlopige Identiteitskaart voor Belgie, Carte d’identité provisoire de Belge, Vorläufiger Personalausweis für Belgie;
   • Bewijs van Identiteit voor een kind van minder dan 12 jaar, Certificat d’identité pour enfant âgé de moins de 12 ans, Ausweis für ein Kind unter 12 Jahren;
   • Bewijs van Nationaliteit, Attestation de Nationalité, Staatsangehörigkeitsbescheinigung or Nationalitätsbescheinigung.

b) For Albania: to be completed by Albanian counterpart.

By proceeding in this way for all points mentioned in the Recommendation’s point II.2, the protocol will become a working instrument adapted to the specific relationship between the Member State and Albania. It is good practice to establish and exchange a specified list of elements or documents, which constitute proof or prima facie evidence, together with samples. This list should be drafted by both parties before the start of negotiations for a bilateral implementation protocol and should be up-dated regularly by both parties.

No list is ever complete or exhaustive, since over the long-term basic documents

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77 Elements of proof should be individualised and specific, with the exact names, titles, and samples of documents to be produced.
and elements change, disappear or are redrafted. Being too specific can also lead to problems, but this depends on the legal status that individual states accord to the protocol. It will also define the degree of difficulty in modifying, changing or adapting the list at a later date.

- For the transit procedure, the Recommendation makes reference to a number of general conditions, rather than identifying standard procedures, even though procedures are probably followed for standard readmissions.

It is a good idea to establish a “simplified” procedure for direct transit of individuals readmitted using air transport. Such a procedure will cover their stay in the airport during which they will not be admitted to the national territory of the transited State. European Directive No. 2003/110/EC on the mutual support to be rendered by Member States provides an excellent standard form for this situation. Depending on the situation in each country, a different competent authority could be identified for this specific type of readmission. In Albania, this could be the Border Control’s Readmission (Dublin) Unit, mentioned earlier.

II.2: Status of the Implementation Protocol

If, for legal and constitutional reasons, the implementation protocol is given the status of “international treaty”, it must undergo the long and drawn-out process of parliamentary ratification. In countries with a federal structure, this extends the ratification process even further. Changing the protocol will require confirmation through the parliamentary process also. In this situation, it is preferable that pragmatic aspects, which may be modified over time in order to meet changing circumstances, should be dealt with through an exchange of letters between the two parties to ensure a more efficient operational structure. Specific examples include the definition of documents constituting proof and prima facie evidence (as discussed earlier) and the identification of competent authorities.

Competent authorities

In accordance with the RA, final responsibility lies with the Minister responsible for border control. The obvious candidate to become the competent authority is the service or agency which handles immigration matters. In Belgium, for example, this is the Federal Office for Home Affairs’ “Office des Étrangers” and within that Office, the Removals Directorate’s Identification Section. In
Albania, the competent authority could be the Border Inspection Directorate.

The clause relating to **Data Protection** does not need to be clarified further.

**Validity and application of the Protocol**

It is obvious that the implementation protocol depends of the “destiny” of the Readmission Agreement it implements. Especially if the States attribute the status of international treaty to the implementation protocol, it is indeed highly recommended to state that the implementation protocol would be suspended when the Readmission Agreement is suspended and its implementation will end at the same time as the Readmission Agreement.

The Annexes do not need any further clarification.

**II.3: Review of the Benelux / Albania Implementation Protocol**

This implementation protocol does not follow the Council Recommendation on the contents of implementation protocols for RAs. There are two reasons for this. First, being only a recommendation, it does not bind EU Member States. Second, the Benelux Partners have worked in close cooperation for nearly 50 years in all matters involving border control, visa control and immigration. In addition, Benelux already negotiated some 24 Readmission Agreements. It is understandable that the Partners preferred the form of implementation protocol it has established through its prior negotiations. However, this does not mean that the Benelux model is better than the EU Recommended model, as the latter takes a more pragmatic approach.

One striking feature of the Benelux protocol is that there is no definition or indication of “competent authorities”. This is due to the fact that the legal and constitutional situation in the three Benelux States requires that the implementation protocol, as a legal instrument, be considered an “international treaty”. Thus, if the Parties had indicated the competent authorities in the protocol, any change or modification of the designated competent authorities would necessitate a modification of an international treaty and have to be submitted for ratification.78

The parties therefore decided to deal with the definition and specification of

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78 In Belgium, for example, the ratification procedure involves seven parliamentary bodies.
the “competent authorities” by means of the technique of “exchange of letters”. Though this was a sensible solution, considering the circumstances, it would have been more appropriate to include a statement in the implementation protocol that the competent authorities would be determined by an exchange of letters. As a result, even though the competent authorities are frequently mentioned in the implementation protocol, the protocol does not indicate what the term “competent authority” means.

**Article 1 - Definitions**

*For the application of this implementation Protocol, the following terms shall be understood to have the following meanings:*

- **Diplomatic mission:** the diplomatic mission of the requested Party on the territory of the requesting party;
- **Escort(s):** the person (or persons) assigned by the requesting Party to accompany the person to be readmitted, or who is in travel.

**Commentary:**
The text itself is clear enough. Contrary to earlier Benelux implementation protocols, we see reference to the “diplomatic mission”. All earlier implementation protocols simply (and logically) stated that the “competent” authority of the requesting State dealt directly with the requested State.

This seems to imply that the Embassy of the Requested State is the competent authority (if read in combination with Article 2), even though this is not – and cannot be – the case. It is also interesting to note that the Council Recommendation does not provide any role for the Embassy or Ministry of Foreign Affairs.

Article 1 should have clarified the nature of the “competent authority” and the way in which that authority would be established through “exchange of letters”. Some specification of the “competent authority” is given in Article 9 (see below).

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79 The Dutch and French texts accessible to the author do not contain subtitles referring to Articles in the Readmission Agreement itself (as the English text does).
Article 2 - Submission of the request for readmission (RA Art. 6)

1. A request for readmission shall be submitted by fax or electronically and by post via the diplomatic mission to the competent authority of the requested country.

2. A request for readmission shall be made using the form attached as annex 5 to the Agreement.

3. If the conditions set forth in article 6, paragraph (2) of the Agreement have been met, a written communication using the form attached, as annex 1 to this Implementation Protocol will suffice.

4. To provide or obtain more detailed information on a particular request for readmission the requesting Party shall apply to the diplomatic mission.

Commentary:

Paragraph 1: we see here the notion of “competent” authority, although it is not defined. There is however a glaring hole in the text, which should read: “A request for readmission shall be submitted by the competent authority of the requesting party...to the competent authority of the requested country”.

Paragraph 2 does not need further clarification, apart from the fact that “Annex 5” is actually a misprint, it should read “Annex 1”80. The Annex itself is well drafted, based on the solid experience of Benelux in this field. The English text mentions “readmission or reconduction” (explained below). The Annex should only refer to “readmission”.

Paragraph 3 has been wrongly translated into English. It has to read in English: “the person ...has agreed to his return...” (or: “has declared/stated to agree to his return”).

Paragraph 4: no further clarification is necessary.

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80 This misprint does not occur in the Dutch and French texts. The Albanian text was not available to the author at the time of writing, and it is possible that the misprint also occurs in the Albanian version, since it was translated from the English version.
Paragraph 5: the “official” in the first frame is obviously the official of the competent authority of the Requesting State. In the second frame the “official” is the official of the competent party of the Requested Party (at least that one exists).

1. This paragraph is in actual a kind of highly simplified procedure in case an individual to be readmitted is in possession of the right documents to return to the Requested State, as its’ own citizen or as an alien.

2. It would be useful to also state that the Requested Party can obtain (an pass on) more information through its Embassy too.

Article 3 - Response to the request

1. A response to a request for readmission shall be sent by fax or electronically and by post via the diplomatic mission to the competent authority of the requesting part.

2. The said response shall be made using the form attached as Annex 2 to this implementation protocol.

Commentary:
Paragraph 1: a “competent authority” of the Requesting Party is mentioned. The contents of point 1 and 2 do not need any further clarification.

Annex 2 is clear enough. It would be handy to mention the file number of the case, which is also mentioned in Annex 1.

Article 4 - Travel Documents

1. In the event of a positive response to the request for readmission, the travel documents necessary for the return journey in accordance with articles 2, paragraph (2), 3, paragraph (3), 4, paragraph (2) and 5, paragraph (4) of the Agreement shall, without delay, be issued in the name of the person to be transferred and delivered by the diplomatic mission to the competent authorities of the requesting Party.
2. **On the basis of article 2, paragraph (2), article 3, paragraph (3), article 4, paragraph (2) and article 5, paragraph (4) of the Agreement, if the diplomatic mission is unable to provide the requested travel document within 14 calendar days after the date of receipt of the request for it, the requested Party shall be deemed to have consented to the use of a travel document provided by the requesting Party. The documents that the Parties will use for this purpose are attached as annexes 3 and 4 to this Implementation Protocol.**

**Commentary:**

**Paragraph 1**: if the RA – and its implementation protocol - is to be applied formally, the Embassy/Consulate of the Requested State is obliged to deliver the appropriate one-way travel document.

**Paragraph 2**: if the diplomatic mission does not respond within 14 days (counting from the first calendar day after receipt), the Requesting State can give a travel document on its own accord.

In actual effect, there is no real difference between **Annexes 3 and 4**, except the fact that Albania cannot put the EU logo on the document it gives to an individual to be returned to the EU, since it is not an EU Member State.

**Annex 3**, although apparently the EU Model is in fact slightly different, should mention (in the same languages used in the document) that the Member State that is returning the alien followed by the blue EU Logo. For technical reasons this is missing in the Annex, though of course it must appear in the original signed protocol. Moreover, in the EU model, the terminology is “Name” instead of “Surname”, though this has no practical consequences.

**Article 5 - Transfer**

1. **The competent authority of the requesting Party shall inform the competent authority of the requested Party of the intended transfer via the diplomatic mission, by fax or electronically, at least three working days ahead of time. For this purpose it shall use the form attached as annex 1 to this Implementation Protocol.**

2. **If the requesting Party finds it impossible to transfer the person**
to be readmitted within the tree-month period referred to in article 10, paragraph (3) of the Agreement, it shall immediately inform the competent authority of the requested Party thereof, via the diplomatic mission. As soon as the actual transfer of the person concerned can take place, the competent authority of the requesting Party shall inform the requested Party, in accordance with the procedure and time limits set forth in paragraph 1 of this article.

3. However no means of transportation shall be excluded, as referred to in article 11, paragraph (2), of the Agreement, transfer, as a rule will take place by air. If medical reasons justify transport by road or sea, the competent authorities of the requesting Party shall make separate mention of this fact on the form attached as mentioned in paragraph 1 of this article.

Commentary:
No further clarification is necessary on any of the points. Obviously, air transport will be used from transfer from countries other than Greece, as it has a land border with Albania. However, other Member States can also foresee other means of transport, such as direct ferry transfers, which can also be arranged under the implementation protocol.

Article 6 - Transit

1. A transit request shall be submitted at least five days before the planned transit by fax or electronically to the competent authority of the requested Party. This request shall be made using the form attached as annex 5 of this Implementation Protocol.

2. The competent authority of the requested party shall respond within five days, by fax or electronically, stating whether it consents to the transit and the time for which it has been scheduled, the designated border crossing, the transport method and the use of escorts. This reply shall be made using the form as mentioned in paragraph 1 of this article.

3. In principle, transit shall take place by air.
Commentary:
This Article does not need any further clarification. It should be noted that the English version of Annex 5 avoids using the term “reconduction” which meant “transit” (see Annex 1 in the English text).

Article 7 - Support for transit

1. If the requesting Party deems it necessary to have support of the authorities of the requested Party for a particular transit, it shall send a request for such support to the competent authorities of the requested Party. In its reply to the transit request, the requested Party shall state whether it can provide the requested support. For this purpose, the parties shall use the form attached as annex 5 to this Implementation Protocol, and shall enter into more detailed consultation with one another if necessary.

2. If the person concerned travels under escort, guarding and embarkation shall be effected under the authority of the requested Party, and in so far as possible with this Party’s support.

Commentary:
The term “support” (or perhaps better “assistance”) basically means that normally the Requested Party will only be asked to “keep an eye” on the individual which has to transit in/through its’ territory (so that he/she will actually take the onward flight, due to the fact that using air-transport is the manner of choice). Normally, a real request will not be necessary, because usually the individual concerned has no interest to try to get into the territory of the requested State. Only if there is reason to believe that the returnee would try to miss his / her onward flight, some extra precaution would be necessary (taking the form to actually stay with the individual during transit and eventually escorting him unto the onward flight). When the individual is “too difficult” to manage, the Requesting State will normally provide an escort to the final destination anyway (which brings us to Article 8).

Article 8 - The use of escorts in readmission or transit

1. The authority of escorts accompanying a person in transit is limited to self—defence. In addition, the absence of any officials of the
requested Party who are authorised to take the necessary action or in order to support such officials, the escorts may respond to an immediate and serious threat in a reasonable and proportionate manner in order to prevent the person concerned from fleeing, injuring himself or third parties or causing damage to property.

2. Escorts must adhere to the law of the requested Party in all circumstances.

Commentary:
Due to the scope of this manual, and the complexity of the issue, it is considered irrelevant to elaborate on the work and authority of the escorts.

Article 9 - Designation of competent authorities

The Parties shall exchange lists of the authorities competent to implement the Agreement ultimately 30 days after the conclusion of this Implementation Protocol. They shall inform on another immediately of any change in the list.

Commentary:
This article explains that the competent authorities will be determined by exchange of letters for the legal and constitutional reasons discussed above. Later changes in details such as telephone/fax numbers, e-mail addresses will be dealt with in the same way.

Article 10 - Designation of border crossings

The Parties shall inform one another in writing of the border crossings at which persons will be actually transferred and admitted pursuant to the Agreement, ultimately 30 days after the conclusion of this Implementation Protocol. They shall inform one another immediately of any changes in this connection.
Commentary:
The same legal and constitutional reasons apply for the designation of border posts to be used for the transfer of returnees. These will probably be Brussels International Airport for Belgium, Schiphol (Amsterdam) International Airport for The Netherlands and Luxembourg Airport, for Luxembourg. Changes to these arrangements can be made as foreseen in Article 9.

Articles 11 and 12 - Costs

Costs incurred by the requested Party in connection with readmission and transit that are to be borne by the requesting Party pursuant to Article 15 of the Agreement shall be compensated by the requesting Party upon submission of an invoice.

Language
Parties shall communicate with one another in the English language.
APPENDIX I

Council Recommendation of 30 November 1994 concerning a specimen bilateral readmission agreement between a Member State and a third country

Official Journal C 274, 19/09/1996 P. 0020 - 0024
ANNEX II.2

COUNCIL RECOMMENDATION of 30 November 1994 concerning a specimen bilateral readmission agreement between a Member State and a third country

THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on European Union, and in particular Article K.1 (3) thereof,
Recalling that these policies are regarded as matters of common interest under the Treaty,
Determined to combat unauthorized immigration to the Member States,
Noting that the laying down of principles which must appear in bilateral and multilateral readmission agreements appears in the action plan in the field of justice and home affairs which was approved by the Council and endorsed by the European Council in December 1993,
Recalling that these principles were approved by the Council in May 1994 and that it was agreed to devise a specimen readmission agreement on the basis of these principles at a later date,
Whereas the specimen readmission agreement is to be used flexibly by the Member States and that it may be adapted to the particular needs of the Contracting Parties;

Hereby RECOMMENDS
that with effect from 1 January 1995 the specimen agreement attached should be used by the Member States as a basis for negotiation with third countries on the conclusion of readmission agreements.
Annex to Annex II.2
SPECIMEN AGREEMENT
between the Government of (... Member State ...) and
the Government of (... third country ...)
on the readmission of persons residing without authorization
(Readmission Agreement)
THE GOVERNMENT OF (... MEMBER STATE ...)

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THE GOVERNMENT OF (... MEMBER STATE ...)
and
THE GOVERNMENT OF (... THIRD COUNTRY ...),
hereinafter referred to as the ‘Contracting Parties’, desirous of facilitating the
readmission of persons staying illegally on the territory of the other Contracting
Party, i.e. persons who do not, or who no longer, fulfil the conditions in force
for entry or residence, and of facilitating the transit of persons in a spirit of
cooperation and on the basis of reciprocity,
HAVE AGREED AS FOLLOWS:

Article 1
Readmission of own nationals 1. Each Contracting Party shall readmit at the
request of the other Contracting Party and without any formality persons who
do not, or who no longer, fulfil the conditions in force for entry or residence
on the territory of the requesting Contracting Party provided that it is proved
or may be validly assumed that they possess the nationality of the requested
Contracting Party. The same shall apply to persons who have been deprived
of the nationality of the requested Contracting Party since entering the territory
of the requesting Contracting Party without at least having been promised
naturalization by the requesting Contracting Party.
2. Upon application by the requesting Contracting Party, the requested
Contracting Party shall without delay issue the persons to be readmitted with
the travel documents required for their repatriation.
3. The requesting Contracting Party shall readmit such persons again under
the same conditions if checks reveal that they were not in possession of
the nationality of the requested Contracting Party when they departed from
the territory of the requesting Contracting Party. This shall not apply if the
readmission obligation is based on the fact that the requested Contracting
Party deprived the person in question of its nationality after that person had
entered the territory of the requesting Contracting Party without that person
at least having been promised naturalization by the requesting Contracting
Party.

Article 2
Readmission in the case of third-country nationals who entered via the
external frontier
1. The Contracting Party via whose external frontier a person can be proved,
or validly assumed, to have entered who does not meet, or who no longer
meets, the conditions in force for entry or residence on the territory of the
requesting Contracting Party shall readmit the person at the request of that
Contracting Party and without any formality.
2. For the purposes of this Article, the external frontier shall be deemed to be
the first frontier to have been crossed which is not a frontier common to the
Contracting Parties.
3. The readmission obligation pursuant to paragraph 1 shall not apply in
respect of a person who was in possession of a valid residence permit issued by the requesting Contracting Party when the person entered the territory of that Contracting Party or who was issued with a residence permit by that Contracting Party after entering its territory.

4. The Contracting Parties shall make every effort to give priority to deporting nationals of an adjacent State to their country of origin.

Article 3
Readmission of nationals of third countries by the Contracting Party responsible for the entry

1. If a person who has arrived in the territory of the requesting Contracting Party does not fulfil the conditions in force for entry or residence and if that person is in possession of a valid visa issued by the other Contracting Party or a valid residence permit issued by the requested party, that Contracting Party shall readmit the person without any formality upon application by the requesting Contracting Party.

2. If both Contracting Parties issued a visa or a residence permit, responsibility shall reside with the Contracting Party whose visa or residence permit expires last.

3. Paragraphs 1 and 2 shall not apply where a transit visa was issued.

Article 4
Residence permits

A residence permit pursuant to Article 2 (3) and Article 3 means an authorization of any Contracting Party. This shall not include temporary permission to reside on the territory of one of the Contracting Parties in connection with the processing of an asylum application.

Article 5
Time limits

1. The requested Contracting Party shall reply to readmission requests addressed to it without delay, and in any event within a maximum of 15 days.

2. The requested Contracting Party shall take charge of persons whose readmission has been agreed to without delay, and in any event, within a maximum of one month. Upon application by the requesting Contracting Party, this time limit may be extended by the time taken to deal with legal or practical obstacles.

Article 6
Time limit after which the readmission obligation will lapse

The application for readmission must be submitted within a maximum of one year of the Contracting Party noting the illegal entry and presence of the said national of a third country on its territory.

Article 7
Transit
1. Without prejudice to Article 11, the Contracting Parties shall allow third-country nationals to pass through their territory in transit if the other Contracting Party so requests and if admission to other possible States of transit and to the State of destination is assured.
2. It shall not be essential for the requested Contracting Party to issue a transit visa.
3. Notwithstanding any authorization issued, persons taken in charge for transit purposes may be returned to the other Contracting Party if circumstances within the meaning of Article 11 subsequently arise or come to light which stand in the way of a transit operation or if the onward journey or admission by the State of destination is no longer assured.
4. The Contracting Parties shall endeavour to restrict transit operations to aliens who cannot be returned to their States of origin directly.

Article 8
Data protection
In so far as personal data have to be communicated in order to implement this Agreement, such information may concern only the following:
1. the particulars of the person to be transferred and, where necessary, of the members of the person's family (surname, forename, any previous names, nicknames or pseudonyms, aliases, date and place of birth, sex, current and any previous nationality);
2. passport, identity card and other identity and travel documents and laissez-passer (number, period of validity, date of issue, issuing authority, place of issue, etc.);
3. other details needed to identify the persons to be transferred;
4. stopping places and itineraries;
5. residence permits or visas issued by one of the Contracting Parties;
6. in the cases covered by Article 7, the place where the asylum application was submitted and the date of submission of any previous asylum application, the date of submission of the present asylum application, the present stage of the procedure and the content of any decision taken.

Article 9
Costs
1. The costs of transporting persons taken in charge pursuant to Articles 1, 2 and 3 shall be borne by the requesting Contracting Party as far as the border of the requested party.
2. The costs of transit as far as the border of the State of destination, and, where necessary, the costs arising from return transport, shall be borne by the requesting Contracting Party in accordance with Article 7.

Article 10
Committee of Experts
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 Committee of Experts to:
   (a) monitor application of this Agreement;
   (b) submit proposals for resolving problems associated with the application of this Agreement;
   (c) propose amendments and additions to this Agreement;
   (d) prepare and recommend appropriate measures for combating illegal immigration.
2. The Contracting Parties shall reserve the right to agree to the proposals and measures or not to do so.
3. The Committee shall be composed of three representatives of each Contracting Party. The Contracting Parties shall appoint the chairman and his deputies from among them, and shall also appoint alternate members. Additional experts may be associated with the consultations.
4. The Committee shall meet at the initiative of one of the chairmen and at least once a year.

Article 11
Clause stipulating that international agreements/conventions shall not be affected: these agreements shall not affect the Contracting Parties’ obligations arising from:
2. international conventions on extradition and transit;
4. international conventions on asylum, in particular under the Dublin Convention of 15 June 1990 determining the State responsible for examining applications for asylum lodged in a Member State of the European Community;
5. international conventions and agreements on the readmission of foreign nationals.

Article 12
Entry into force
This Agreement shall enter into force on the first day of the second month following its signature. It shall not be applied until the date agreed upon by the Contracting Parties in an exchange of notes.

Article 13
Suspension, termination
1. This Agreement is concluded for an indefinite period.
2. After informing the other Contracting Party each Contracting Party may
suspend this Agreement by giving notification on important grounds, in particular on the grounds of the protection of State security, public order or public health. The Contracting Parties shall notify each other of the cancellation of any such measure without delay via diplomatic channels.

3. After informing the other Contracting Party, each Contracting Party may terminate this Agreement on important grounds by giving notification.

4. The suspension or termination of this Agreement shall become effective on the first day of the month following the month in which notification was received by the other Contracting Party.

Done at . . . this . . . day of . . . 19. .
in two originals, one in the . . . language and one in the . . . language, each text being equally authentic.

On behalf of the Government of
(. . . Member State . . .)

On behalf of the Government of
(. . . third country . . .)
COUNCIL RECOMMENDATION of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements

THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on European Union, and in particular Article K.1 (3) thereof,
Recalling that the Council has adopted a recommendation concerning a specimen bilateral readmission agreement between a Member State and a third Country (1);
Whereas such readmission agreements are often accompanied by protocols laying down certain technical details for their implementation; whereas a series of guiding principles should therefore be adopted for Member States to use as a basis when negotiating such protocols;
RECOMMENDS
that, as from 1 July 1995, the Member States should use the following guiding principles as a basis for negotiations with third countries when drawing up protocols on implementing readmission agreements.

I. Readmission procedures
1. Common forms
For the return/readmission of persons residing without authorization, it is recommended that provision be made for the Contracting Parties to use common forms. The forms concerned are as follows:
- record of the return/readmission of a person under the simplified procedure,
- request for the readmission/transit of a person,
- record of the return/readmission of a person.
Member States could use the three documents annexed hereto as a basis for drawing up such forms, incorporating the relevant headings from them according to the specific nature of relations with the third country party to the agreement and the resulting information requirements.
The need for simplicity and speed should be the prime concern.
2. Return/readmission under the simplified procedure
Persons apprehended in a border area are to be returned/readmitted under the simplified procedure.
A provision allowing this should therefore be included in the protocol.
The Contracting Parties will determine the total time taken by the simplified readmission procedure (comprising the submission and answering of all requests), which should in any event be very short. Member States may take as a basis agreements already signed by some of them in which that time does not exceed 48 hours.
Formalities for the return of a person should be simplified in the case of this procedure. Notification of the return would be given in any form (by telephone, fax, telex or orally) and it would be carried out directly by the local border authorities.
If necessary, a record (see I.1) may be drawn up.

3. Return/readmission under the normal procedure
This procedure is applicable where a person cannot be returned or readmitted under the simplified procedure.
The readmission request should be made and the answer given in writing. The Parties could take as a basis the document annexed hereto.
Answers should be compulsory and be given within a short time determined by the Parties. In accordance with the specimen draft bilateral agreement, the time in question must not exceed 15 days. However, it would be desirable for Member States to take as a basis agreements already signed in which this time is shorter.

II. Means of identifying persons to be readmitted
1. Effect of proof or a presumption
Proof produced of nationality and entry should have to be accepted by the Parties without further investigation.
A presumption established of nationality and entry should be deemed accepted by the Parties unless the requested party proves otherwise.

2. Proof or a presumption of nationality or of entry via an external frontier
The protocol should clearly lay down the means of proving or establishing a presumption of nationality.
Nationality may be proved by means of:
- nationality papers which can be definitely ascribed to a particular person,
- any type of passport (national, diplomatic or official duty passport or officially issued passport substitutes with a photograph) or any other travel document indicating nationality,
- consular registration cards,
- identity cards (even if provisional or temporary),
- a minor’s travel document in lieu of passport,
- provisional identity papers,
- service record books and military passes.

A presumption of nationality may be established in particular by means of:
- specific information from the official authorities,
- an official service pass,
- a company pass,
- a driving licence,
- an extract from register office records,
- a seaman’s book,
- a bargeman’s identity document,
- photocopies of any of the above documents,
- statements by witnesses,
- particulars supplied by the person concerned,
- the language of the person concerned.

The protocol should also clearly lay down the means of proving or establishing a presumption of entry via an external frontier, under Article 2 of the specimen readmission agreement.

Entry via an external frontier may be proved by means of:
- an entry stamp or equivalent entry in a travel document,
- an exit stamp of a State adjacent to a Member State, taking into account the travel route and the date of the frontier crossing,
- an entry stamp in a false or falsified passport,
- travel tickets which can formally establish entry across an external frontier,
- fingerprints taken by authorities at the time of crossing an external frontier.

A presumption of entry via an external frontier may be established in particular by means of:
- statements by the person to be transferred,
- statements by officials and other persons,
- fingerprints other than those taken by the authorities at the time of crossing an external frontier,
- travel tickets,
- hotel bills,
- cards for access to public or private amenities in the Member States,
- appointment cards for doctors, dentists etc.,
- data showing that the person to be transferred has used the services of a facilitator or travel agency.

III. Designation of the competent authorities. The protocol should stipulate that Ministers with responsibility for border controls are to designate the border posts which may be used for aliens’ readmission and entry in transit and the central or local authorities competent to deal with readmission and transit requests.
The choice should be geared to efficiency and speed.

IV. Conditions for transit of third-country nationals under escort

In their relations with third-country Contracting Parties, Member States could make provision for the use of a readmission/transit form for requests for transit under escort in accordance with Article 7 of the specimen readmission agreement. They could use the appropriate form annexed hereto as a basis.

However, the parties could dispense with such formalities for the transit of a third-country national being repatriated by one of the Contracting Parties via an airport in the other Contracting Party. In that event, the competent authority of the requesting party would notify the competent authority of the other party in good time of the intended repatriation, informing it of the identity of the person concerned, the flight details and the particulars of any official escorts.

V. Data protection

An article on data protection could be inserted; its content will largely depend on the legislation in force within Member States.

It should in any event be stipulated that information must be supplied only for the purposes for which the agreement has been concluded.

VI. Conditions of applicability of the protocol

It should be stipulated that the protocol is to enter into force at the same time as the readmission agreement, that its application is to be suspended upon suspension of the agreement’s application and that it will cease to be applicable once the agreement is no longer applicable.

Annex 1 to Annex II.3 (*)

RECORD of the return/readmission of a person under the simplified procedure

>START OF GRAPHIC>

1. On ......................... (date) at .................... (time) in .
   (place) the following person was transferred to .
   (Name of readmitting country) Forename and surname: .
   Date and place of birth: .
   Place of residence (. . .): .
   Nationality: .
   Identity established on the basis of: .
   .
   .
   (Designation, series and number of document; when, where and by whom issued; other means of establishing identity if any)

2. Time, place, manner and motive of illegal entry .
   .
   .
   (Brief description of the act)

3. Other reasons for transfer (applies to nationals of the Contracting Parties) .
   .
4. Evidence or circumstances substantiating presumption of illegal entry.

5. Documents, money and other items to be transferred with the transferee.

6. Minors ( . . . ) to be transferred together with the person referred to in point 1 (Forename, surname, date of birth).

(*) Where space is insufficient write on separate sheets and list them in point 7.

7. Annexes:
(a).
(b).
(c).
(d).
(e).

This record was drafted in .
copies in the .
language(s).

Forename, surname and position of the transferring official Forename, surname and position of the receiving official.

(Signature) (Signature)
1.8. Residence in country of departure:
1.9. Designation and number of international travel document, by whom issued, expiry date:

2. Circumstances of entry into the transferring State 2.1. Date and time of entry:
2.2. Place:
2.3. Circumstances of entry (in detail):

3. Stay in receiving State:
3.1. Date and time of entry:
3.2. Place of entry:
3.3. Duration of stay:
3.4. Place of stay:
3.5. Route to frontier:

3.6. Proof or grounds for presumption that a person not meeting or no longer meeting entry or residence requirements (illegal entry) entered via the external frontier:

4. Special circumstances relating to the transferee:
4.1. Interpreter required for (indicate language):
4.2. Accompanying items (documents, cash, etc.):

4.3. Indication of particularly dangerous person: (e. g. suspected of a serious offence, aggressive behaviour):

4.4. State of health: (possible reference to special medical care):

4.5. Minors ( . . .) being transferred together with the person referred to in point 1 (forenames, surname and date of birth):
4.6. Applications submitted to the competent authorities of the requesting State by the transferee and position of the competent authority, including any applications for recognition of refugee status or right of asylum:

5. Transit: (1) 5.1. Is the person to be admitted in transit?
5.2. State of destination:
5.3. Possible additional transit States.

5.4. Admission guaranteed in any transit States and the States of destination: Yes/No (Underline whichever applies) 5.5. Is direct repatriation of the person to the country of origin possible? Yes/No (Underline whichever applies) 6. Proposed place, date and time of transfer.

7. Annexes.

8. Confirmation of receipt of request (place, date, signature).

(Signature) >END OF GRAPHIC>

ANNEX 3 TO ANNEX II.3

RECORD OF THE RETURN/READMISSION OF A PERSON

Place of transfer.
Time and date of transfer:
Returning authority:
Readmitting authority:
In response to the request submitted on: (Date) by the person(s) listed below was/were readmitted by (Returning State).
(Readmitting State) 1.
(Surname, forename(s)) (Date of birth) 2.
(Surname, forename(s)) (Date of birth) 3.
(Surname, forename(s)) (Date of birth) 4.
(Surname, forename(s)) (Date of birth) 5.
(Surname, forename(s)) (Date of birth) The following Annexes were handed over:
1.
2.
3.
4.
5.
Remarks:

(Forename(s), surname and position of returning official) (Forename(s), surname and position of readmitting official).
(Signature)
(Signature)

>END OF GRAPHIC>

(1) See page 20 of this Official Journal.
(1) In matters of transit, particular attention must be paid to the recommendation regarding transit for the purposes of expulsion adopted by Ministers in 1992 (OJ No C 5, 10. 1. 1996, p. 5), above all with respect to the protection of human rights.
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