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2013/0359 (NLE)

Proposal for a

COUNCIL DECISION

concerning the signature of the Agreement between the European Union and the Republic of Azerbaijan on the readmission of persons residing without authorisation

EXPLANATORY MEMORANDUM

I. POLITICAL AND LEGAL FRAMEWORK

The EU and Azerbaijan have agreed to move forward with the deepening and broadening of EU - Azerbaijan relations within the Eastern Partnership (EaP) framework. In this framework, the EU has recognized the importance of enhanced people-to-people contacts. During the Prague Eastern Partnership Summit in May 2009, the EU reaffirmed its political support towards full liberalization of the visa regime in a secure environment, and towards promoting mobility by concluding visa facilitation and readmission agreements with EaP countries. According to the common approach for the development of EU policy on visa facilitation agreed at the level of COREPER by the Member States in December 2005, a visa facilitation agreement would not be concluded without a readmission agreement being in place.

On 19 December 2011, the Council formally authorised the Commission to negotiate a readmission agreement between the European Union and Azerbaijan.

In February 2012 the Commission transmitted a draft text to the authorities of Azerbaijan following which the first round of formal negotiations was held in Baku on 1-2 March 2012. Three further formal rounds of negotiations took place, lastly in Brussels on 12-13 March 2013. The agreed text was subsequently initialled on 29 July 2013 in Brussels.

Member States have been regularly informed and consulted at all (informal and formal) stages of the readmission negotiations.

On the part of the Union, the legal basis for the Agreement is Article 79(3), in conjunction with Article 218 of TFEU.

The attached proposal constitutes the legal instrument for the signature of the readmission agreement. The Council will decide by qualified majority. The European Parliament's consent will be required for the conclusion of the Agreement, in accordance with Art. 218(6)(a) of TFEU.

II. OUTCOME OF THE NEGOTIATIONS

The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft Readmission Agreement is acceptable to the Union.

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

– The Agreement is divided into 8 sections with 25 articles altogether. The Agreement also contains 8 annexes, which form an integral part of it, and 6 joint declarations.

– The agreement contains an opening clause, reaffirming that the agreement shall be applied so as to ensure respect for human rights, and for the obligations and responsibilities of the Requested State and Requesting State under relevant international instruments applicable to them, and reiterating that the Requested State shall in particular ensure the protection of the rights of persons readmitted to its territory in compliance with those international instruments. The same clause confirms that the Requesting State should give preference to voluntary return over forced return.

– The readmission obligations set out in the Agreement (Articles 3 - 6) are drawn up in a fully reciprocal manner, comprising own nationals (Articles 3 and 5) as well as third country nationals and stateless persons (Articles 4 and 6).

– The obligation to readmit own nationals includes also former own nationals who have renounced their nationality without acquiring the nationality of another State.

– The readmission obligation with regard to own nationals covers also family members (i.e. spouses and minor unmarried children) regardless of their nationality and who do not have an independent right of residence in the Requesting State.

– The obligation to readmit third country nationals and stateless persons (Articles 4 and 6) is linked to the following prerequisites: (a) the person concerned holds, at the time of submission of the readmission application, a valid visa or residence permit issued by the Requested State or (b) the person concerned illegally and directly entered the territory of the Requesting State after having stayed on, or transited through, the territory of the Requested State. Exempted from these obligations are persons in airside transit and persons who enjoy visafree access to the territory of the Member State.

– For own nationals, in case of expiry of the specified delay, and for third country nationals or stateless persons Azerbaijan accepts the use of the EU's standard travel document for expulsion purposes (Articles 3(5) and 4(3)). The equivalent standard document of the Republic of Azerbaijan is included in Annex 8.

– Section III of the Agreement (Articles 7 to 13 in conj. with annexes 1 to 5) contains the necessary technical provisions regarding the readmission procedure (readmission application, means of evidence, time limits, transfer modalities and modes of transportation) and 'readmission in error' (Article 13). Procedural flexibility is provided by the fact that no readmission application will be needed in cases where the person to be readmitted is in possession of a valid travel document (Article 7(2)).

– In Article 7(3), the Agreement sets out the so-called accelerated procedure, which has been agreed upon for persons apprehended in an area which extends up to 15 kilometres from and including the territories of seaports and international airports, including custom zones, of the Member States or Azerbaijan. Under the accelerated procedure, readmission applications have to be submitted within 2 days and replies have to be given within 2 working days, whereas under the normal procedure the time limit for replies is 15 calendar days (Article 11(2)).

– The Agreement contains a section on transit operations (Articles 14 and 15 in conj. with annex 6).

– Articles 16, 17 and 18 contain the necessary rules on costs, data protection and the relation to other international obligations.

– The Joint Readmission Committee will be composed, and have the tasks and powers, as set out in Article 19.

– In order to facilitate the implementation of this Agreement, Article 20 creates the possibility for Azerbaijan and individual Member States to conclude bilateral

implementing Protocols. The relation between the bilateral implementing Protocols and this Agreement is clarified by Article 21.

– The final provisions (Art. 22 to 25) contain the necessary rules on entry into force, duration, possible amendments, suspension, termination and the legal status of the annexes to the agreement.

– The specific situation of Denmark is reflected in the preamble, Article 1(c) and Article 22(2), and in a relevant joint declaration. The close association of Iceland, Norway, Switzerland and Liechtenstein with the implementation, application and development of the Schengen Acquis has been taken into account, and is reflected in relevant joint declarations to the Agreement.

III. CONCLUSIONS

In the light of the above-mentioned results, the Commission proposes that the Council

– decide that the Agreement be signed on behalf of the Union and authorise the President of the Council to appoint the person(s) duly empowered to sign on behalf of the Union.

2013/0359 (NLE)

Proposal for a

COUNCIL DECISION

concerning the signature of the Agreement between the European Union and the Republic of Azerbaijan on the readmission of persons residing without authorisation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79(3), in conjunction with Article 218 (5), thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 19 December 2011 the Council authorised the Commission to open negotiations with Azerbaijan on readmission of persons residing without authorisation. The negotiations were successfully concluded by the initialling of the Agreement on 29 July 2013.

(2) The Agreement should be signed by the negotiator on behalf of the European Union, subject to its conclusion at a later date.

(3) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty on the functioning of the European Union, the United Kingdom [*is not taking part in the adoption of this Decision and will not be bound by this Agreement or subject to its application unless it notifies its wish to that effect in accordance with that Protocol / has notified its wish to take part in the adoption and application of this Decision*].

(4) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty on the functioning of the European Union, and without prejudice to Article 4 of the said Protocol, Ireland *[is not taking part in the adoption of this Decision and will not be bound by this Agreement or subject to its application unless it notifies its wish to that effect in accordance with that Protocol / has notified its wish to take part in the adoption and application of this Decision*].

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

HAS ADOPTED THIS DECISION:

Article 1

The Commission is authorised to sign, on behalf of the European Union, the Agreement between the European Union and the Republic of Azerbaijan on readmission of persons residing without authorisation, and to designate the persons empowered to proceed to the signature.

The text of the Agreement to be signed is attached to this Decision.

Article 2

This Decision shall enter into force on the day of its adoption

Done at Brussels,

For the Council
The President

ANNEX

AGREEMENT

between the European Union and the Republic of Azerbaijan on the readmission of persons residing without authorisation

THE HIGH CONTRACTING PARTIES,

THE EUROPEAN UNION, hereinafter referred to as "the Union",

and

THE REPUBLIC OF AZERBAIJAN, hereinafter referred to as 'Azerbaijan'

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

DESIRING to establish, by means of this Agreement and on the basis of reciprocity, rapid and effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territory of Azerbaijan or one of the Member States of the European Union, and to facilitate the transit of such persons in a spirit of co-operation,

EMPHASISING that this Agreement shall be without prejudice to the rights, obligations and responsibilities of the Union, its Member States and Azerbaijan arising from International Law and, in particular, from the Convention of 28 July 1951 on the Status of Refugees and its Protocol of 31 January 1967,

CONSIDERING that in accordance with Protocol No 21 on the position of the United Kingdom of Great Britain and Northern Ireland and of Ireland in respect of the area of Freedom, Security and Justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom of Great Britain and Northern Ireland and Ireland will not take part in this Agreement unless they notify their wish to that effect in accordance with that Protocol,

CONSIDERING that the provisions of this Agreement, which falls within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union, do not apply to the Kingdom of Denmark, in accordance with the Protocol on the position of the Kingdom of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union,

HAVE AGREED AS FOLLOWS:

Article 1
Definitions

For the purpose of this Agreement:

(a) ‘Readmission’ shall mean the transfer by the Requesting State and admission by the Requested State of persons (own nationals of the Requested State, third-country nationals or stateless persons) who have been found illegally entering to, present in or residing in the Requesting State, in accordance with the provisions of this Agreement;

(b) 'Contracting Parties' shall mean Azerbaijan and the Union;

(c) 'Member State' shall mean any Member State of the European Union bound by this Agreement;

(d) 'National of Azerbaijan' shall mean any person who holds the citizenship of Azerbaijan in accordance with its legislation;

(e) 'National of a Member State' shall mean any person who holds the nationality, as defined for Union purposes, of a Member State;

(f) 'Third-country national' shall mean any person who holds a nationality other than that of Azerbaijan or one of the Member States;

(g) 'Stateless person' shall mean any person who does not hold a nationality of any State;

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

(i) 'Visa' shall mean an authorisation issued or a decision taken by Azerbaijan or one of the Member States which is required with a view to entry in, stay in or transit through, its territory. This shall not include airport transit visa;

(j) 'Requesting State' shall mean the State (Azerbaijan or one of the Member States) submitting a readmission application pursuant to Article 8 or a transit application pursuant to Article 15 of this Agreement;

(k) 'Requested State' shall mean the State (Azerbaijan or one of the Member States) to which a readmission application pursuant to Article 8 or a transit application pursuant to Article 15 of this Agreement is addressed;

(l) 'Competent Authority' shall mean any national authority of Azerbaijan or one of the Member States entrusted with the implementation of this Agreement in accordance with Article 20 (1) (a) thereof;

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

Article 2

Fundamental Principles

While strengthening cooperation on preventing and combating irregular migration, the Requested and Requesting State shall, in the application of this Agreement to persons falling within its scope, ensure respect for human rights and for the obligations and responsibilities following from relevant international instruments applicable to the parties, in particular from:

– the 1948 Universal Declaration of the Human Rights

– the 1950 European Convention on Human Rights and Fundamental Freedoms and its protocols

– the 1966 International Covenant on Civil and Political Rights

– the 1984 UN Convention Against Torture

– the 1951 Geneva Convention relating to the Status of Refugees and its Protocol of 1967.

The Requested State shall in particular ensure, in compliance with its obligations under the international instruments listed above, the protection of the rights of persons readmitted to its territory.

The Requesting State should give preference to voluntary return over forced return where there are no reasons to believe that this would undermine the return of a person to the Requested State.

SECTION I
Readmission obligations by Azerbaijan

Article 3

Readmission of own nationals

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

2. Azerbaijan shall also readmit:

– minor unmarried children of the persons mentioned in paragraph 1, regardless of their place of birth or their nationality, unless they have an independent right of residence in the Requesting Member State or hold a valid residence permit issued by another Member State,

– spouses, holding another nationality or being stateless, of the persons mentioned in paragraph 1, provided they have the right to enter and stay or receive the right to enter and stay in the territory of Azerbaijan, unless they have an independent right of residence in the Requesting Member State or hold a valid residence permit issued by another Member State.

3. Azerbaijan shall also readmit persons, illegally present or residing in the Requesting Member State who have renounced the nationality of Azerbaijan in accordance with the national laws of the latter since entering the territory of a Member State, unless such persons have at least been promised naturalisation by any Member State.

4. After Azerbaijan has given a positive reply to the readmission application, the competent diplomatic or consular representation of Azerbaijan shall, irrespective of the will of

the person to be readmitted, free of charge and not later than within five working days, issue the travel document required for the return of the person to be readmitted with a period of validity of 150 days. If Azerbaijan has not, within five working days, issued the travel document, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes (Annex 7)[1].

5. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the competent diplomatic or consular representation of Azerbaijan shall, within five working days and free of charge, issue a new travel document with a period of validity of the same duration. If Azerbaijan has not, within five working days, issued the new travel document, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes (Annex 7)[2].

Article 4

Readmission of third-country nationals and stateless persons

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

(a) hold at the time of submission of the readmission application a valid visa or residence permit issued by Azerbaijan; or

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

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 Azerbaijan;

(b) the third-country national or stateless person enjoyed visafree access to the territory of the Requesting Member State.

3. Without prejudice to Article 7(2), after Azerbaijan has given a positive reply to the readmission application, the Requesting Member State issues the person whose readmission has been accepted the EU standard travel document for expulsion purposes (Annex 7)[3].

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

2 Ibid.

3 Ibid.

SECTION II
Readmission obligations by the Union

Article 5
Readmission of own nationals

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

2. A Member State shall also readmit:

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

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

3. A Member State shall also readmit persons, illegally present or residing in Azerbaijan who have been deprived of, or who have renounced, the nationality of a Member State in accordance with the national laws of the latter since entering the territory of Azerbaijan, unless such persons have at least been promised naturalisation by Azerbaijan.

4. After the Requested Member State has given a positive reply to the readmission application, the competent diplomatic or consular representation of that Member State shall, irrespective of the will of the person to be readmitted, free of charge and not later than within five working days, issue the travel document required for the return of the person to be readmitted with a period of validity of 150 days. If the Requested Member State has not, within five working days, issued the travel document, it shall be deemed to accept the use of the standard travel document for expulsion purposes of Azerbaijan (Annex 8).

5. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the competent diplomatic or consular representation of that Member State shall, within five working days and free of charge, issue a new travel document with a period of validity of the same duration. If that Member State has not, within five working days, issued the travel document, it shall be deemed to accept the use of the standard travel document for expulsion purposes of Azerbaijan (Annex 8).

Article 6
Readmission of third-country nationals and stateless persons

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

stateless persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of Azerbaijan provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that such persons:

(a) hold at the time of submission of the readmission application a valid visa or residence permit issued by the Requested Member State; or

(b) illegally and directly entered the territory of Azerbaijan 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) the third-country national or stateless person enjoyed visafree access to the territory of Azerbaijan.

3. The readmission obligation in paragraph 1 is for the Member State that issued a visa or residence permit. If two or more Member States issued a visa or residence permit, the readmission obligation in paragraph 1 is for the Member State that issued the document with a longer period of validity or, if one or several of them have already expired, the document that is still valid. If all of the documents have already expired, the readmission obligation in paragraph 1 is for the Member State that issued the document with the most recent expiry date. If no such documents can be presented, the readmission obligation in paragraph 1 is for the Member State of last exit.

4. Without prejudice to Article 7(2), after the Member State has given a positive reply to the readmission application, Azerbaijan issues the person whose readmission has been accepted the travel document required for his or her return (Annex 8).

SECTION III
READMISSION PROCEDURE

Article 7

Principles

1. Subject to paragraph 2, any transfer of a person to be readmitted on the basis of one of the obligations contained in Articles 3 to 6 shall require the submission of a readmission application to the competent authority of the Requested State.

2. If the person to be readmitted is in possession of a valid travel document and, in the case of third country nationals or stateless persons, also a valid visa or residence permit of the Requested State, the transfer of such person can take place without the Requesting State having to submit a readmission application and, in the case of a national of the Requested State, without having to submit a written notification referred to in Article 12(1) to the competent authority of the Requested State.

3. Without prejudice to paragraph 2, if a person has been apprehended in an area which extends up to 15 kilometres from and including the territories of seaports and international airports, including custom zones, of the Requesting State after illegally crossing the border

coming directly from the territory of the Requested State, the Requesting State may submit a readmission application within two working days following this person's apprehension (accelerated procedure).

Article 8

Readmission application

1. To the extent possible, the readmission application is to 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, and the last place of residence) and, where applicable, the particulars of minor unmarried children and/or spouses;

(b) in case of own nationals, indication of the means of proof or *prima facie* evidence of nationality as set out by Annexes 1 and 2 respectively;

(c) in case of third country nationals and stateless persons, indication of the means of proof or *prima facie* evidence of the conditions for the readmission of third-country nationals and stateless persons as set out by Annexes 3 and 4 respectively;

(d) photograph of the person to be readmitted.

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

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

(b) any other protection, security measure or information concerning the health of the person, which may be necessary in the individual transfer case.

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

4. A readmission application may be submitted by any means of communication including electronic ones e.g. fax, e-mails etc.

Article 9

Means of evidence regarding nationality

1. Proof of nationality pursuant to Article 3 (1) and Article 5 (1) can be particularly furnished through the documents listed in Annex 1 to this Agreement, even if their period of validity has expired by up to 6 months. If such documents are presented, the Member States and Azerbaijan 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 3 (1) and Article 5 (1) can be particularly furnished through the documents listed in Annex 2 to this Agreement, even if their period of validity has expired. If such documents are presented, the Member States and Azerbaijan 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, or if they are insufficient giving duly motivated reasons, the competent diplomatic or consular representation of the Requested State concerned shall, upon a request from the Requesting State which is to be included in the readmission application, interview the person to be readmitted without undue delay at the latest within five working days from the requesting day, in order to establish his or her nationality.

4. The procedure for such interviews may be established in the implementing Protocols provided for in Article 20 of this Agreement.

Article 10

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 4 (1) and Article 6 (1) shall be particularly furnished through the means of evidence listed in Annex 3 to this Agreement; it cannot be furnished through false documents. Any such proof shall be mutually recognised by the Member States and Azerbaijan 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 4 (1) and Article 6 (1) shall be particularly furnished through the means of evidence listed in Annex 4 to this Agreement; it cannot be furnished through false documents. Where such *prima facie* evidence is presented, the Member States and Azerbaijan shall deem the conditions to be established, unless they can prove otherwise.

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

Article 11

Time limits

1. The application for readmission must be submitted to the competent authority of the Requested State within a maximum of 6 months after the Requesting State's competent authority has gained knowledge that a third-country national or a stateless person does not, or does no longer, fulfil the conditions in force for entry, presence or residence. Where there are legal or factual obstacles to the application being submitted in time, the time limit shall, upon request by the Requesting State, be extended but only until the obstacles have ceased to exist.

2. A readmission application must be replied to in writing

– within two working days if the application has been made under the accelerated procedure (Article 7(3));

– within fifteen calendar days in all other cases.

This time limit begins to run with the date of confirmed receipt of the readmission request. If there is no reply within this time limit, the transfer shall be deemed to have been agreed to.

Reply to a readmission application may be submitted by any means of communication including electronic ones e.g. fax, e-mails etc.

3. Reasons for the refusal of a readmission request shall be given in writing.

4. After Agreement has been given or, where appropriate, after expiry of the time limits laid down in paragraph 2, the person concerned shall be transferred within three months. On request of the Requesting State, this time limit may be extended by the time taken to deal with legal or practical obstacles.

Article 12

Transfer modalities and modes of transportation

1. Without prejudice to Article 7(2), before returning a person, the competent authorities of the Requesting State shall notify in writing at least three working days in advance the competent authorities of the Requested State regarding the transfer date, the point of entry, possible escorts and other information relevant to the transfer.

2. Transportation may take place by any means including by air or sea. Return by air shall not be restricted to the use of the national carriers of Azerbaijan 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 by Azerbaijan or any Member State.

3. If the transfer takes place by air, possible escorts shall be exempted from having to obtain necessary visas.

Article 13

Readmission in error

The Requesting State shall take back any person readmitted by the Requested State if it is established, within a period of six months, and in case of third-country nationals or stateless persons 12 months, after the transfer of the person concerned, that the requirements laid down in Articles 3 to 6 of this Agreement are not met.

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

SECTION IV
Transit operations

Article 14
Principles

1. The Member States and Azerbaijan 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. Azerbaijan 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 Azerbaijan 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 Azerbaijan or a Member State:

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

(b) if the third-country national or the stateless person shall be subject to criminal sanctions in the Requested State or in another State of transit; or

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

4. Azerbaijan or a Member State may revoke any authorisation issued if circumstances referred to in paragraph 3 subsequently arise or come to light which stand in the way of the transit operation, or if the onward journey in possible States of transit or the readmission by the State of destination is no longer assured. In this case, the Requesting State shall take back the third-country national or the stateless person, as necessary and without delay.

Article 15
Transit procedure

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

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

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

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

(d) a declaration that in the view of the Requesting State the conditions pursuant to Article 14 (2) are met, and that no reasons for a refusal pursuant to Article 14 (3) are known of.

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

A transit application may be submitted by any means of communication including electronic ones e.g. fax, e-mails etc.

2. The Requested State shall, within five working days after receipt of the application 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. If there was no reply within five working days the transit shall be deemed to have been agreed to.

Reply to a transit application may be submitted by any means of communication including electronic ones e.g. fax, e-mails etc.

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.

5. Transit of the persons shall be carried out within 30 days of receipt of consent to the request, unless otherwise agreed.

SECTION V
Costs

Article 16
Transport and transit costs

Without prejudice to the right of the competent authorities to recover the costs associated with the readmission from the person to be readmitted or third parties, all transport costs incurred in connection with readmission and transit operations pursuant to this Agreement as far as the border of the State of final destination shall be borne by the Requesting State.

SECTION VI
Data protection and Relation to other international obligations

Article 17
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 Azerbaijan 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 Azerbaijan and, where the controller is a competent authority of a Member State, to the provisions of Directive 95/46/EC 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 there from;

(h) personal data may only be communicated to the competent authorities. Further communication to other bodies requires the prior consent of the communicating authority;

(i) the communicating and the receiving authorities are under an obligation to make a written record of the communication and receipt of personal data.

Article 18

Relation to other international obligations

1. This Agreement shall be without prejudice to the rights, obligations and responsibilities of the Union, its Member States and Azerbaijan arising from International Law

including from international conventions to which they are party, in particular from the international instruments listed in Article 2, and:

– the international conventions determining the State responsible for examining applications for asylum lodged,

– international conventions on extradition and transit,

– multilateral international conventions and agreements on the readmission of foreign nationals such as the Convention on International Civil Aviation.

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

SECTION VII
Implementation and application

Article 19
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 address issues arising out of the interpretation or application of the provisions in this Agreement;

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

(d) to have regular exchanges of information on the implementing Protocols drawn up by individual Member States and Azerbaijan pursuant to Article 20;

(e) to recommend amendments to this Agreement and its Annexes.

2. The decisions of the committee shall be binding on the Contracting Parties.

3. The committee shall be composed of representatives of the Union and Azerbaijan.

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

5. The committee shall establish its rules of procedures.

Article 20
Implementing Protocols

1. Without prejudice to the direct applicability of the present Agreement, on request of a Member State or Azerbaijan, Azerbaijan and a Member State shall draw up an implementing Protocol which shall, inter alia, 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;

(d) the modalities for readmission under the accelerated procedure;

(e) the procedure for interviews.

2. The implementing Protocols referred to in paragraph 1 shall enter into force only after the readmission committee, referred to in Article 19, has been notified.

3. Azerbaijan 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. The Member States agree to apply any provision of an implementing Protocol drawn up by one of them with the Republic of Azerbaijan also in their relations with the latter, upon request of the latter and subject to the practical feasibility of its application to other Member States.

Article 21
Relation to bilateral readmission agreements or arrangements of Member States

The provisions of this Agreement shall take precedence over the provisions of any bilateral agreement or arrangement on the readmission of persons residing without authorisation which have been or may, under Article 20, be concluded between individual Member States and Azerbaijan, in so far as the provisions of the latter are incompatible with those of this Agreement.

SECTION VIII
FINAL PROVISIONS

Article 22
Territorial application

1. Subject to paragraph 2, this Agreement shall apply to the territory in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applicable and to the territory of Azerbaijan.

2. This Agreement shall apply to the territory of the United Kingdom of Great Britain and Northern Ireland and of Ireland only pursuant to a notification by the European Union to Azerbaijan to that effect. This Agreement shall not apply to the territory of the Kingdom of Denmark.

Article 23

Entry into force, duration and termination

1. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their respective procedures.

2. This Agreement shall enter into force on the first day of the second month following the date on which the last Contracting Party has notified the other that the procedures referred to in the first paragraph have been completed.

3. This Agreement shall apply to the United Kingdom of Great Britain and Northern Ireland and to Ireland on the first day of the second month following the date of the notification referred to in Article 22(2).

4. The Agreement is concluded for an unlimited period.

5. Each Contracting Party may, by officially notifying the other Contracting Party and after prior consultation of the committee referred to in Article 19, completely or partly, temporarily suspend the implementation of this Agreement. The suspension shall enter into force on the second day following the day of such notification.

6. Each Contracting Party may denounce this Agreement by officially notifying the other Contracting Party. This Agreement shall cease to apply six months after the date of such notification.

Article 24

Amendments to the Agreement

This Agreement may be amended and supplemented by mutual consent of the Contracting Parties. Amendments and supplements shall be drawn up in the form of separate protocols, which shall form an integral part of this Agreement, and enter into force in accordance with the procedure laid down in Article 23 of this Agreement.

Article 25

Annexes

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

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

For the European Union	For the Republic of Azerbaijan
(…)	(…)

ANNEX 1

COMMON LIST OF DOCUMENTS THE PRESENTATION OF WHICH IS CONSIDERED AS PROOF OF NATIONALITY
(ARTICLES 3 (1), 5 (1) AND 9 (1))

- passports of any kind (national passports, ordinary passports, diplomatic passports, service passports, official passports, collective passports and surrogate passports including children's passports),
- laissez-passer issued by the Requested State,
- identity cards of any kind (including temporary and provisional ones), with the exception of seaman's identity cards.

ANNEX 2

COMMON LIST OF DOCUMENTS THE PRESENTATION OF WHICH IS CONSIDERED AS *PRIMA FACIE* EVIDENCE OF NATIONALITY

(ARTICLES 3 (1), 5 (1) AND 9 (2))

- documents listed in Annex 1, the validity of which has expired by more than 6 months,
- photocopies of any of the documents listed in Annex 1 to this Agreement,
- citizenship certificates and other official documents that mention or clearly indicate citizenship,
- driving licenses or photocopies thereof,
- birth certificates or photocopies thereof,
- company identity cards or photocopies thereof,
- service books and military identity cards,
- seaman's registration books and skippers' service cards, and seaman's identity cards,
- statements by witnesses,
- statements made by the person concerned and language spoken by him or her, including by means of an official test result,
- any other document which may help to establish the nationality of the person concerned,
- fingerprints,
- confirmation of identity as a result of a search carried out in the Visa Information System,
- in the case of Member States not using the Visa Information System, positive identification established from visa application records of those Member States.
- confirmation of identity as a result of a search carried out in IAMAS (Entry-Exit and Registration Automated Information Search System of the Republic of Azerbaijan).

ANNEX 3

COMMON LIST OF DOCUMENTS WHICH ARE CONSIDERED AS PROOF OF THE CONDITIONS FOR THE READMISSION OF THIRD COUNTRY NATIONALS AND STATELESS PERSONS

(ARTICLES 4 (1), 6 (1) AND 10 (1))

- visa and/or residence permit issued by the Requested State,
- entry/departure stamps or similar endorsement in the travel document of the person concerned or other evidence of entry/departure (e.g. photographic),
- identity cards issued to stateless persons permanently residing in the Requested State,
- laissez-passer issued to stateless persons permanently residing in the Requested State.

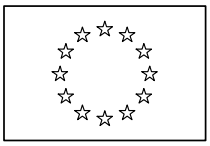
ANNEX 4

COMMON LIST OF DOCUMENTS WHICH ARE CONSIDERED AS *PRIMA FACIE* EVIDENCE OF THE CONDITIONS FOR THE READMISSION OF THIRD COUNTRY NATIONALS AND STATELESS PERSONS

(ARTICLES 4 (1), 6 (1) AND 10 (2))

- description issued by the relevant authorities of the Requesting State, of place and circumstances under which the person concerned has been intercepted after entering the territory of that State;
- information related to the identity and/or stay of a person which has been provided by an international organisation (e.g. UNHCR);
- reports/confirmation of information by family members, travelling companions, etc.;
- documents, certificates and bills of any kind (e.g. hotel bills, appointment cards for doctors/dentists, entry cards for public/private institutions, car rental agreements, credit card receipts etc.) which clearly show that the person concerned stayed on the territory of the requested State;
- named tickets and/or passenger lists of air, train, coach or boat passages which show the presence and the itinerary of the person concerned on the territory of the requested State;
- information showing that the person concerned has used the services of a courier or travel agency;
- official statements made, in particular, by border authority staff and other witnesses who can testify to the person concerned crossing the border;
- official statement by the person concerned in judicial or administrative proceedings;
- statement by the person concerned;
- fingerprints.

ANNEX 5



[Emblem of the Republic of Azerbaijan]

.....…… .....……..

.....…… (Place and date)

(Designation of requesting authority)

Reference: .....……

To

.....

.....……

.....……

(Designation of requested authority)

- ❑ ACCELERATED PROCEDURE (Article 7(3))
- ❑ INTERVIEW REQUEST (Article 9(3))

READMISSION APPLICATION
pursuant to Article 8 of the Agreement of ..... between
the European Union and the Republic of Azerbaijan
on the readmission of persons residing without authorisation

A. PERSONAL DETAILS

Photograph

1. Full name (underline surname):
   .....……
2. Maiden name:
   .....……
3. Date and place of birth:
   .....……
4. Sex and physical description (height, colour of eyes, distinguishing marks etc.):
   ……..…….
5. Also known as (earlier names, other names used/by which known or aliases):
   .....…….....…….

6. Nationality and language:

.....

7. Civil status: ❑ married ❑ single ❑ divorced ❑ widowed

If married : Name of spouse .....

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

.....

.....

.....

8. Last address in the requested State:

.....

B. PERSONAL DETAILS OF SPOUSE (IF APPROPRIATE)

1. Full name (underline surname): .....
2. Maiden name: .....
3. Date and place of birth: .....
4. Sex and physical description (height, color of eyes, distinguishing marks etc.):

.....

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

.....

6. Nationality and language:

.....

C. PERSONAL DETAILS OF CHILDREN (IF APPROPRIATE)

1. Full name (underline surname): .....
2. Date and place of birth: .....
3. Sex and physical description (height, colour of eyes, distinguishing marks etc.):

.....

4. Nationality and language:

.....

D. SPECIAL CIRCUMSTANCES RELATING TO THE TRANSFEREE

1. State of health
(e.g. possible reference to special medical care; Latin name of contagious disease):

.....

2. Indication of particularly dangerous person
(e.g. suspected of serious offence; aggressive behaviour):

.....

E. MEANS OF EVIDENCE ATTACHED

1. ....
(Passport No.) (date and place of issue)

....
(issuing authority) (expiry date)

2.	.....	.....
	(Identity card No.)	(date and place of issue)
.....	.....	.....
	(issuing authority)	(expiry date)
3.	.....	.....
	(Driving licence No.)	(date and place of issue)
.....	.....	.....
	(issuing authority)	(expiry date)
4.	.....	.....
	(Other official document No.)	(date and place of issue)
.....	.....	.....
	(issuing authority)	(expiry date)

F. OBSERVATIONS

.....

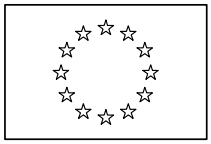
.....

.....

.....

(Signature) (Seal/stamp)

ANNEX 6



[Emblem of the Republic of Azerbaijan]

.....…… .....……..

..... (Place and date)

(Designation of requesting authority)

Reference: .....……

To

.....

.....……

.....……

(Designation of requested authority)

- ☐ ACCELERATED PROCEDURE (Article 7(3))
- ☐ INTERVIEW REQUEST (Article 9(3))

TRANSIT APPLICATION
pursuant to Article 15 of the Agreement of ..... between the European Union and the Republic of Azerbaijan on the readmission of persons residing without authorisation

A. PERSONAL DETAILS

Photograph

1. Full name (underline surname):
   .....……
2. Maiden name:
   .....……
3. Date and place of birth:
   .....……
4. Sex and physical description (height, colour of eyes, distinguishing marks etc.):
   …….....…….
5. Also known as (earlier names, other names used/by which known or aliases):
   .....…….....……

6. Nationality and language:

.....

7. Type and number of travel document:

.....

B. TRANSIT OPERATION

1. Type of transit

❑ by air ❑ by land ❑ by sea

2. State of final destination

……..

3. Possible other States of transit

……

4. Proposed border crossing point, date, time of transfer and possible escorts

……
……
……

5. Admission guaranteed in any other transit State and in the State of final destination (Article 14 paragraph 2)

❑ yes ❑ no

6. Knowledge of any reason for a refusal of transit (Article 14 paragraph 3)

❑ yes ❑ no

C. OBSERVATIONS

.....
.....
……...

.....

(Signature) (Seal/stamp)

ANNEX 7

EU STANDARD TRAVEL DOCUMENT FOR EXPULSION PURPOSES

(In line with the form set out in EU Council Recommendation of 30 November 1994)[1]

[1] *OJ* C 247, 19 September 1996, p. 18.

ANNEX 8



AZƏRBAYCAN RESPUBLIKASINDAN SƏYAHƏT SƏNƏDİ
TRAVEL DOCUMENT FROM THE REPUBLIC OF AZERBAIJAN

№ _____

Hansı ölkəyə: .....
For a journey to

Adı: ..... Soyadı: .....
First name Surname

Doğum tarixi: .....
Date of birth

Doğulduğu yer: .....
Place of birth

Cinsi: ..... Boyu: ..... Gözlərinin rəngi: .....
Sex Height Colour of eyes

Xüsusi əlamətləri: .....
Distinguishing marks

Vətəndaşlığı: .....
Nationality

FOTO

Ölkəsindəki yaşayış ünvanı (əgər bilinirsə):

.....
Address in home country (if known)

Sənədi verən orqanın adı**:** **.....**
İssuing authority

Sənədin verilmə tarixi: .....
İssued at

MÖHÜR

YERİ

Etibarlıdır: .....
Valid through

İmza: .....
Signature

Əlavə qeydlər: .....
Remarks / Observations

.....

.....

Bir səfər üçün nəzərdə tutulub.
Valid for one journey only

Joint Declaration concerning Article 3(3)

The Contracting Parties take note that, according to the nationality laws of the Republic of Azerbaijan, it is not possible for a citizen of the Republic of Azerbaijan to be deprived of his or her nationality.

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

Joint Declaration concerning Articles 4 and 6

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

Joint Declaration concerning the Kingdom of Denmark

The Contracting Parties take note that this Agreement does not apply to the territory of the Kingdom of Denmark, nor to nationals of the Kingdom of Denmark. In such circumstances it is appropriate that Azerbaijan and the Kingdom of Denmark conclude a readmission agreement in the same terms as this Agreement.

Joint Declaration concerning the Republic of Iceland and the Kingdom of Norway

The Contracting Parties take note of the close relationship between the European Union and the Republic of Iceland and the Kingdom of Norway, particularly by virtue of the Agreement of 18 May 1999 concerning the association of these countries with the implementation, application and development of the Schengen *acquis*. In such circumstances it is appropriate that Azerbaijan concludes a readmission agreement with the Republic of Iceland and the Kingdom of Norway in the same terms as this Agreement.

Joint Declaration concerning the Swiss Confederation

The Contracting Parties take note of the close relationship between the European Union and the Swiss Confederation, particularly by virtue of the Agreement concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen acquis, which entered into force on 1 March 2008. In such circumstances it is appropriate that Azerbaijan concludes a readmission agreement with the Swiss Confederation in the same terms as this Agreement.

Joint Declaration concerning the Principality of Liechtenstein

The Contracting Parties take note of the close relationship between the European Union and the Principality of Liechtenstein, particularly by virtue of the Agreement concerning the association of the Principality of Liechtenstein with the implementation, application and development of the Schengen acquis, which entered into force on 19 December 2011. In such circumstances it is appropriate that Azerbaijan concludes a readmission agreement with the Principality of Liechtenstein in the same terms as this Agreement.