COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.03.2003
COM(2003) 151 final

2003/0054 (CNS)

Proposal for a

COUNCIL DECISION

concerning the signing of the Agreement between the European Community and the Government of the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation

Proposal for a

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concerning the conclusion of the Agreement between the European Community and the Government of the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. POLITICAL AND LEGAL FRAMEWORK

The Justice and Home Affairs (JHA) Council authorised the Commission to negotiate a readmission agreement between the European Community and the Macao Special Administrative Region (SAR) of the People's Republic of China, by its decision of 28 May 2001. This negotiating mandate formed part of a political agreement reached on the Community's new visa regulation during the Council meeting of 1 December 2000, when JHA Ministers agreed on the list of countries whose citizens must be in possession of visas when crossing the EU's external borders and of those whose citizens are exempt from this requirement. As far as Macao was concerned, JHA Ministers agreed that holders of the "Macao Special Administrative Region" passport would be exempted from the visa requirement, as from the entry into force of the new regulation. In addition, in a statement entered in the Council minutes, the Commission was asked to submit, as soon as possible, a recommendation for a Council decision authorising it to negotiate a readmission agreement between the European Community and Macao. At the beginning of March 2001, the Commission submitted this recommendation and, on 15 March 2001, the Council formally adopted the new visa regulation (Council Regulation (EC) N° 539/2001) which entered into force on 10 April 2001.

At the beginning of July 2001, the Commission transmitted a draft Readmission Agreement text to the Macao authorities. Following written replies from Macao, and an informal meeting of technical experts in Brussels on 2 October 2001, a round of formal negotiations took place in Macao on 22 October 2001. The Agreement was initialled in Brussels on 18 October 2002, on the occasion of the 9th meeting of the EC-Macao Joint Committee.

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

For the Community, the legal basis for the Agreement is Article 63(3)(b), in conjunction with Article 300 of the TEC. As far as Macao is concerned, it is important to note that, after reunification in 1999, it is now part of the People's Republic of China but enjoys, according to its Basic Law, a high degree of autonomy over its internal affairs, including immigration controls on entry, stay and departure from the region (as a separate travel area and immigration territory).

The attached proposals constitute the legal instrument for the signature and conclusion of the Agreement. The Council will decide by unanimity (Article 300(2)(1) in conjunction with Article 67 of the EC Treaty). The European Parliament will have to be formally consulted on the conclusion of the Agreement, in accordance with Article 300(3) of the EC Treaty.

The proposed decision concerning the conclusion of the Agreement sets out the necessary internal arrangements for its practical application. In particular**,** it specifies that the Commission, assisted by experts from Member States, represents the Community within the Readmission Committee set up by Article 17 of the Agreement. Further, the Agreement establishes a Readmission Committee which has powers to take decisions having legal effect on certain technical matters. Given the technical character of these decisions, it appears appropriate to provide for a simplified procedure for the establishment of the Community position in such cases. These procedures are identical with the ones that have been adopted by

the Council in the decision concerning the conclusion of the readmission agreement with Hong Kong.

In this respect the decision provides that, as regards the adoption of the rules of procedure of the Readmission Committee, this will be done by the Commission in consultation with a special committee designated by the Council. As regards other decisions to be taken by the Readmission Committee, it is proposed that the Community position will be adopted by the Council, acting by qualified majority, on a proposal by the Commission.

2. OUTCOME OF THE NEGOTIATIONS

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

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

– The Agreement is divided into 8 sections with 21 articles altogether. It also contains 6 annexes, which form an integral part of it, and five joint declarations.

– The readmission obligations set out in the Agreement (Articles 2 to 5) are drawn up in a fully reciprocal manner, concerning own nationals and permanent residents respectively (Articles 2 and 4) as well as persons subject to another jurisdiction (Articles 3 and 5). They all contain a formulation clarifying that readmission shall take place without any formalities other than those specified in this Agreement. Although the definition of "persons subject to another jurisdiction" in Article 1(d) does not explicitly state that this term includes stateless persons, their inclusion has been ensured through a joint declaration.

– The obligation to readmit persons subject to another jurisdiction (Articles 3 and 5) is linked to the following prerequisites: (a) the person to be readmitted held, at the time of entry, a valid residence authorisation of the requested Party, or (b) the person to be readmitted after having entered (lawfully or unlawfully) the territory of the requested Party proceeds to enter the territory of the requesting Party unlawfully directly from the territory of the requested Party. Exempted from these obligations are persons in airside transit and all persons to whom the requesting Party has issued a residence authorisation with a longer period of validity. The specific situation of persons merely transiting through Macao is also reflected in a joint declaration to the agreement.

– Under certain circumstances, the Macao SAR accepts the use of the EU's standard travel document for expulsion purposes (Article 2 para. 2 and Article 3 para. 3).

– The Agreement contains a section on transit operations (Articles 12 and 13).

– Section III of the Agreement (Articles 6 to 11 in conjunction with annexes 1 to 6) contains the necessary technical provisions regarding the readmission procedure (readmission application, means of evidence, time limits, transfer details and modes of transport). Some procedural flexibility is provided by the fact that in cases where the person to be readmitted is in possession of valid travel documents and willing to return voluntarily, a written communication only and no formal submission of a readmission application will be needed (Article 6).

– Articles 14 to 16 contain the necessary rules on costs, data protection and the non-affection of other International rights and obligations applicable to the Parties.

– The composition of the Readmission Committee and its tasks and powers are set out in Article 17.

– In order to execute this Agreement in practice, Article 18 empowers Member States to conclude bilateral implementing Protocols with the Macao SAR. The relation between such implementing Protocols and this Agreement is clarified by Article 19.

– The final provisions (Articles 20 and 21) contain the necessary rules on entry into force, duration, termination and legal status of the annexes to the agreement.

– The specific situation of Denmark is reflected in the preamble, Article 1(a), Article 20 and in a joint declaration attached to the Agreement. The close association of Norway and Iceland with the implementation, application and development of the Schengen Acquis is likewise reflected in a joint declaration to the Agreement.

3. CONCLUSIONS

In the light of the above, the Commission proposes the Council to:

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

– approve, after consultation of the European Parliament, the attached Agreement between the European Community and the Macao SAR on the readmission of persons residing without authorisation.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(b), in conjunction with the second sentence of the first subparagraph of Article 300 (2) thereof,

Having regard to the proposal from the Commission[1],

WHEREAS:

(1) By its decision of 28 May 2001, the Council authorised the Commission to negotiate an agreement between the European Community and the Government of the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation.

(2) Negotiations for the Agreement took place in Macao in October 2001.

(3) Subject to its possible conclusion at a later date, the Agreement initialled in Brussels on 18th October 2002 should be signed.

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to a possible conclusion at a later date, the President of the Council is hereby authorised to designate the person(s) empowered to sign, on behalf of the European Community, the Agreement between the European Community and the Government of the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation.

Done at Brussels,

For the Council
The President

[1] OJ C […] of […], p. […]

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concerning the conclusion of the Agreement between the European Community and the Government of the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(b), in conjunction with the second sentence of the first subparagraph of Article 300 (2) and the first subparagraph of Article 300 (3) thereof,

Having regard to the proposal from the Commission[2],

Having regard to the opinion of the European Parliament[3],

WHEREAS:

(1) The Commission, acting on behalf of the European Community, has negotiated an Agreement with the Government of the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation.

(2) This Agreement has been signed, on behalf of the European Community, on …….2003 subject to its possible conclusion at a later date, in accordance with Decision……../……/EC of the Council of [……].

(3) This Agreement should be approved.

(4) The Agreement establishes a Readmission Committee which may take decisions having legal effect, And it is thus necessary to specify who represents the Community within this Committee and to provide for a procedure laying down how a Community position is adopted.

HAS DECIDED AS FOLLOWS:

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2 OJ C […] of […], p. […]

3 OJ C […] of […], p. […]

Article 1

The Agreement between the European Community and the Government of the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation is hereby approved on behalf of the Community.

The text of the agreement is attached to this Decision.

Article 2

The President of the Council shall give the notification provided for in Article 20 paragraph 2 of the Agreement[4].

Article 3

The Commission, assisted by experts from Member States, shall represent the Community in the Readmission Committee established by Article 17 of the Agreement.

Article 4

The position of the Community within the Readmission Committee with regard to the adoption of its rules of procedure as required under Article 17 (5) of the Agreement shall be adopted by the Commission after consultation with a special committee designated by the Council.

For all other Readmission Committee's decisions, the position of the Community shall be adopted by the Council, acting by qualified majority, on a proposal by the Commission.

Article 5

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, the……of……2003.

For the Council
The President

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

AGREEMENT
between
the Macao Special Administrative Region of the People's Republic of China
and
the European Community
on the readmission of persons residing without authorization

THE CONTRACTING PARTIES,

THE MACAO SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA, hereinafter referred to as "the Macao SAR", duly authorized to conclude this Agreement by the Central People's Government of the People's Republic of China,

and

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

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

Referring to Council Regulation (EC) No 539/2001 of 15 March 2001[5], and in particular Article 1 (2) in conjunction with annex II thereof, exempting holders of a "Regiao Administrativa Especial de Macau" Passport from the requirement, for stays of no more than three months in all, to be in possession of a visa when crossing the external borders of the Member States of the European Union,

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

Considering that the provisions of this agreement, which falls within the scope of Title IV of the Treaty establishing the European Community, do not apply to the Kingdom of Denmark, in accordance with the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community,

HAVE AGREED AS FOLLOWS:

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[5] Council Regulation (EC) n° 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81 of 23.3.2001, p.1)

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) "Permanent resident of the Macao SAR " shall mean any person who has the right to reside permanently in the Macao SAR.

(d) "Person of another jurisdiction " shall mean any person who is neither a permanent resident of the Macao SAR, nor a national of a Member State.

(e) "Residence authorisation" shall mean a permit of any type issued by the Macao SAR 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.

(f) "Visa" shall mean an authorisation issued or a decision taken by the Macao SAR or one of the Member States which is required for entry in, or transit through, its territory. This shall not include airport transit visa.

SECTION I. READMISSION OBLIGATIONS BY THE MACAO SAR

Article 2
Readmission of permanent residents and former permanent residents

1) The Macao SAR shall readmit, upon application by a Member State and without any formalities other than those specified 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 presumed that they are permanent residents of the Macao SAR. The same shall apply to persons who, since entering the territory of a Member State, have lost their right to permanent residence in the Macao SAR, unless such persons have been naturalised by that Member State.

2) At the request of a Member State, the Macao SAR shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least 6 (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 Macao SAR shall issue a new travel document with the same period of validity within 14 (fourteen) days. If the Macao SAR has not replied to the request by a Member State within 15 (fifteen) days, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes.

Article 3
Readmission of persons of another jurisdiction

1) The Macao SAR shall readmit, upon application by a Member State and without any formalities other than those specified in this Agreement, all persons of another jurisdiction 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 presumed, that such persons:

   a) at the time of entry in the Member State concerned held a valid residence authorisation issued by the Macao SAR; or

   b) after having entered the territory of the Macao SAR, proceed to enter unlawfully the territory of the Member States, coming directly from the territory of the Macao SAR.

2) The readmission obligation in paragraph 1 shall not apply if:

   (a) the person of another jurisdiction merely transited without entering the territory of the Macao SAR; or

   (b) the requesting Member State has issued to the person of another jurisdiction a residence authorisation before or after entering its territory unless that person is in possession of a residence permit, issued by the Macao SAR, which has a longer period of validity.

3) At the request of a Member State, the Macao SAR shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least 6 (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 Macao SAR shall issue a new travel document with the same period of validity within 14 (fourteen) days. If the Macao SAR has not replied to the request by a Member State within 15 (fifteen) days, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes.

SECTION II. READMISSION OBLIGATIONS BY THE COMMUNITY

Article 4
Readmission of own and former own nationals

1) A Member State shall readmit, upon application by the Macao SAR and without any formalities other than those specified 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 Macao SAR provided that it is proved, or may be validly presumed, 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 the Macao SAR unless such persons are permanent residents of the latter.

2) At the request of the Macao SAR, a Member State shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least 6 (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 issue a new travel document with the same period of validity within 14 (fourteen) days. If the Member State has not replied to the

request by the Macao SAR within 15 (fifteen) days, it shall be deemed to accept the use of the "Travel Permit of Exceptional Use" of the Macao SAR.

Article 5
Readmission of persons of another jurisdiction

1) A Member State shall readmit, upon application by the Macao SAR and without any formalities other than those specified in this Agreement, all persons of another jurisdiction who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the Macao SAR provided that it is proved, or may be validly presumed, that such persons:

   a) at the time of entry in the Macao SAR held a valid residence authorisation issued by the requested Member State; or

   b) after having entered the territory of the requested Member State, proceeded to enter unlawfully the territory of the Macao SAR, coming directly from the territory of the requested Member State.

2) The readmission obligation in paragraph 1 shall not apply if:

   (a) the person of another jurisdiction has been in airside transit via an International airport of the requested Member State; or

   (b) the Macao SAR has issued to the person of another jurisdiction a residence authorisation before or after entering its territory unless that person is in possession of a residence permit, issued by the requested Member State, which has a longer period of validity.

3) If two or more Member States issued a 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.

4) At the request of the Macao SAR, a Member State shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least 6 (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 issue a new travel document with the same period of validity within 14 (fourteen) days. If the Member State has not replied to the request by the Macao SAR within 15 (fifteen) days, it shall be deemed to accept the use of the "Travel Permit of Exceptional Use" of the Macao SAR.

SECTION III. READMISSION PROCEDURE

Article 6
Principle

1) Subject to paragraph 2, a 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 Contracting Party.

2) The readmission application may be replaced by a written communication to the requested Contracting Party within a reasonable time period prior to the return of the person concerned provided that

(a) the person to be readmitted is in possession of a valid travel document and, where applicable, a valid residence authorisation of the requested Contracting Party; and

(b) the person to be readmitted is willing to return to the requested Contracting Party.

Article 7
Readmission application

1) Any 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);

b) indication of the means which provide proof or valid presumption of nationality or permanent residence and, where possible, copies of documents.

2) To the extent possible, the readmission application should 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 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.

Article 8
Means of evidence regarding nationality and permanent residence

1) Proof of nationality or permanent residence pursuant to Article 2 (1) and Article 4 (1) can be furnished through the documents listed in annex 1 to this Agreement, even if their period of validity has expired. If such documents are presented, the Member States shall recognise the nationality, and the Macao SAR shall recognise the permanent residence, without further formalities. Proof of nationality or permanent residence cannot be furnished through false documents.

2) Valid presumption of nationality or permanent residence pursuant to Article 2 (1) and Article 4 (1) can be 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 shall deem the nationality, and the Macao SAR shall deem the permanent residence, to be established unless they can prove otherwise.

3) If none of the documents listed in annexes 1 or 2 can be presented, the competent authorities of the Macao SAR or the Member State concerned shall, upon request, make arrangements to interview by any means the person to be readmitted without undue delay in order to establish his or her nationality or permanent residence.

Article 9
Means of evidence regarding persons of another jurisdiction

1) Proof of the conditions for the readmission of persons of another jurisdiction laid down in Article 3 (1) and Article 5 (1) can be 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 Contracting Parties without further formalities.

2) Prima facie evidence of the conditions for the readmission of persons of another jurisdiction laid down in Article 3 (1) and Article 5 (1) can be furnished through the means of evidence listed in annex 4 to this Agreement. Where such prima facie evidence is presented, the Contracting Parties shall deem the conditions to be established unless they can prove otherwise.

3) The unlawfulness of entry, presence or residence may be established by means of the travel documents of the person concerned being missing, or in which the necessary visa or other residence authorisation for the territory of the requesting Member State or the Macao SAR are missing. A statement by the competent authority of the requesting Contracting Party that the person concerned has been found not having the necessary travel documents, visa or residence authorisation shall likewise provide valid presumption of the unlawful entry, presence or residence.

Article 10
Time limits

1) The application for readmission must be submitted to the competent authority of the requested Contracting Party within a maximum of one year after the requesting authority has gained knowledge that a person of another jurisdiction 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, 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 one month; reasons shall be given for refusal of a readmission request. This time limit begins to run with the date of receipt of the readmission request. Upon expiry of this time limit the transfer shall be deemed to have been agreed to.

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

Article 11
Transfer modalities and modes of transportation

1) Before returning a person, the competent authorities of the Macao SAR and the Member State concerned shall make arrangements in writing and in advance regarding the transfer date, the border crossing point and possible escorts.

2) No means of transportation, whether by air, land or sea, shall be prohibited but, as a rule, return shall take place by air. Return by air is not restricted to the use of national carriers or security staff of the requesting Contracting Party, and may take place by using scheduled flights as well as charter flights.

SECTION IV. TRANSIT OPERATIONS

Article 12
Principles

1) The Macao SAR shall allow the transit of persons of another jurisdiction through its territory if a Member State so requests, and a Member State shall authorise the transit of persons of another jurisdiction through its territory if the Macao SAR so requests, if the onward journey in possible other States of transit and the readmission by the State of destination is assured.

2) The Member States and the Macao SAR should restrict the transit of persons of another jurisdiction to cases where such persons cannot be returned to the State of destination directly.

3) Transit can be refused by the Macao SAR or a Member State (a) if the person of another jurisdiction runs the risk of persecution, or could be subjected to criminal prosecution or sanctions in another State of transit or in the State of destination, or could be threatened by criminal prosecution on the territory of the requested Member State or the Macao SAR; (b) on grounds of public health, domestic security or other fundamental interests of the legal order.

4) The Macao SAR 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.

Article 13
Transit procedure

1) An application for transit must be submitted to the competent authorities in writing and is to 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, date of birth, and where possible place of birth, nationality, type and number of travel document);

   c) envisaged border crossing point, time of transfer and possible use of escorts;

   d) a declaration that from the viewpoint of the requesting Contracting Party the conditions pursuant to Article 12 (2) are met, and that no reasons for a refusal pursuant to Article 12 (3) are known of.

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

2) The competent authority of the requested Contracting Party shall, without undue delay and in writing, inform the requesting competent authority of the admission, confirming the border crossing point and the envisaged time of admission, or inform it of the admission refusal and of the reasons for such refusal.

3) If the transit is effected 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 Contracting Party shall, subject to mutual consultations, support the transit, in particular through the surveillance of the persons in question and the provision of suitable amenities for that purpose.

SECTION V. COSTS

Article 14
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 pursuant to this Agreement as far as the border of the State of final destination shall be borne by the requesting Contracting Party.

SECTION VI. DATA PROTECTION AND NON AFFECTION CLAUSE

Article 15
Data Protection

1) 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 the Macao SAR or the Member States.

2) The processing and treatment of personal data in a particular case shall be subject to the Macao SAR law and, where the controller is a competent authority of a Member State, to the provisions of Directive 95/46/EC[6]and of national legislation adopted pursuant to this Directive.

3) 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 or by the recipient 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. surname, given name, any previous names, nicknames or pseudonyms, date and place of birth, sex, current and any previous nationality);

      – identity card or passport (number, period of validity, date of issue, issuing authority, place of issue); stopping places and itineraries;

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[6] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281 of23.11.1995, p. 31).

– 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 recipient 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 the 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 recipient 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 the obligation to make a written record of the communication and receipt of personal data.

Article 16
Non affection clause

1) This Agreement shall be without prejudice to the rights, obligations and responsibilities arising from International Law applicable to the Community, the Member States and the Macao SAR.

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

SECTION VII. IMPLEMENTATION AND APPLICATION

Article 17
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 Readmission 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 execution of it;

(c) to have a regular exchange of information on the implementing Protocols drawn up by individual Member States and the Macao SAR pursuant to Article 18;

(d) to recommend amendments to this Agreement.

2) Recommendations of the Readmission Committee for amendment of the annexes to this Agreement may be approved by the Parties through a simplified procedure.

3) The Readmission Committee shall be composed by representatives of the Community and the Macao SAR; the Community shall be represented by the European Commission, assisted by experts from Member States.

4) The Readmission Committee shall meet where necessary at the request of one of the Contracting Parties.

5) The Readmission Committee shall establish its rules of procedures.

Article 18
Implementing Protocols

1) The Macao SAR and a Member State may draw up implementing Protocols which shall cover rules on:

a) the designation of the competent authorities, the border crossing points, the exchange of contact points and the languages in communication;

b) the conditions for transit of persons of another jurisdiction 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 will enter into force only after the Readmission Committee, established by Article 17, has been notified.

3) The Macao SAR 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.

Article 19
Relation to bilateral readmission agreements Article
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 18, be concluded between individual Member States and the Macao SAR, in so far as the provisions of the latter are incompatible with those of this Agreement.

SECTION VIII. FINAL PROVISIONS

Article 20
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 after the date on which the Contracting Parties notify each other that the procedures referred to in the first paragraph have been completed.

3) This Agreement shall remain in force indefinitely, unless terminated in accordance with paragraph 4 of this Article.

4) Each Contracting Party may terminate this Agreement by giving written notice to the other Contracting Party. This Agreement shall cease to apply six months after the date of such notification.

Article 21
Annexes

Annexes 1 to 6 shall form an integral part of this Agreement.

Done at……on the day of…… in the year…… in…….duplicate, in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, and Swedish languages, each of these texts being equally authentic.

For the European Community For the Macao Special Administrative Region.

Annex 1

COMMON LIST OF DOCUMENTS THE PRESENTATION OF WHICH IS CONSIDERED AS PROOF OF NATIONALITY OR PERMANENT RESIDENCE (ARTICLES 2 (1); 3 (1); 4 (1) AND 5 (1))

MEMBER STATES:

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

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

– service books and military identity cards;

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

– official documents indicating the nationality of the person concerned.

MACAO:

– Macao Special Administrative Region Passports (Passaporte da Regiao Administrativa Especial de Macau);

– Permanent Resident Identity Card of the Macao Special Administrative Region (Bilhete de Identidade de Residente Permanente da Regiao Administrativa Especial de Macau);

– Official documents indicating the permanent residence status of the person concerned.

Annex 2

COMMON LIST OF DOCUMENTS THE PRESENTATION OF WHICH IS CONSIDERED AS VALID PRESUMPTION OF NATIONALITY OR PERMANENT RESIDENCE (ARTICLES 2 (1); 3 (1); 4 (1) AND 5 (1))

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

– Macao Resident Identity Card carrying date of first issue less than seven years ago;

– birth certificates and photocopies thereof; 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 or the permanent residence status of the person concerned, such as driving licences and company identity cards.

Annex 3

COMMON LIST OF DOCUMENTS WHICH ARE CONSIDERED AS PROOF OF THE CONDITIONS FOR THE READMISSION OF PERSONS OF ANOTHER JURISDICTION (ARTICLE 3 (1); ARTICLE 5(1))

- visa, entry/departure stamps or similar endorsement in the travel document of the person concerned;
- tickets as well as certificates and bills of any kind (e.g. hotel bills, appointment cards for doctors/dentists, entry cards for public/private institutions, etc.) which clearly show that the person concerned stayed on the territory of the requested Member State or the Macao SAR;
- railway tickets and tickets and/or passenger lists of air or boat passages which show the itinerary on the territory of the requested state;
- information showing that the person concerned has used the services of a courier or travel agency.

Annex 4

COMMON LIST OF DOCUMENTS WHICH ARE CONSIDERED AS PRIMA FACIE EVIDENCE OF THE CONDITIONS FOR THE READMISSION OF PERSONS OF ANOTHER JURISDICTION (ARTICLE 3 (1); ARTICLE 5(1))

- official statements made, in particular, by border authority staff and other witnesses who can testify to the person concerned crossing the border;
- description of place and circumstances under which the person concerned has been intercepted after entering the territory of the requesting Member State or the Macao SAR;
- information related to the identity and/or stay of a person which has been provided by an International organisation;
- reports/confirmation of information by family members, travelling companions, etc; statement by the person concerned.

Annex 5

[Emblem of the Macao SARI]

……..……..

……..(Place and date)
(Designation of requesting authority)

Reference

……

To

..……..

..……..

..……..

(Designation of receiving authority)

READMISSION APPLICATION

pursuant to Article 7 of the Agreement of between the European Community and the Macao SAR 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, color of eyes, distinguishing marks etc.):
   ……
5. Father's and mother's name:
   ……
6. Also known as (earlier names, nicknames or pseudonyms):
   ……
7. Nationality and language:
   ……
8. Last residence in the requesting State:
   ……
9. Address in the requested State:
   ……

B. 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):

C. MEANS OF EVIDENCE ATTACHED

1……
(type of document) (serial number, date and place of issue)

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

2……
(type of document)(serial number, date and place of issue)

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

3.....……
(type of document)(serial number, date and place of issue)

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

4.....……
(type of document)(serial number, date and place of issue)

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

5……
(type of document)(serial number, date and place of issue)

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

D. OBSERVATIONS

……
……
……

…….
(Signature) (Seal/stamp)

Annex 6

[Emblem of the Macao SAR]

……..
(Place and date)

……
(Designation of requesting authority)

Reference

……

To

……
……
……
(Designation of receiving authority).

TRANSIT APPLICATION

pursuant to Article 13 of the Agreement of between
the European Community and the Macao SAR
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, color of eyes, distinguishing marks etc.):
   ……
5. Father's and mother's name:
   ……
6. Also known as (earlier names, nicknames or pseudonyms):
   ……
7. Nationality and language:
   ……
8. Last residence in the requesting State:
   ……
9. Address in the requested State:
   ……

B.TRANSIT OPERATION

1. Type of transit

O by airO by seao by land

2. State of final destination

3. Possible other States of transit

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

5. Admission guaranteed in any other transit State and in the State of final destination (Article 12 paragraph 2)

O yes O no

6. Knowledge of any reason for a refusal of transit

(Article 12 paragraph 3)

O yes O no

C. OBSERVATIONS

……
……
……

…….
(Signature) (Seal/stamp)

Joint declaration on stateless persons

"The Parties take note that, at present, no International Convention or agreement dealing with stateless persons is applicable to the Macao SAR. They therefore agree that this category of persons shall be covered by the definition of "person of another jurisdiction" in Article 1 (d)."

Joint declaration on visa

"The Parties take note that, under Macao's current Laws, visa are issued upon arrival only, and expire upon departure from Macao. Consequently, it is legally impossible for a third

country national to enter an EU Member State while holding a valid visa for Macao.

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

Joint declaration on Article 3 paragraph 2 a)

"The Parties agree that persons of another jurisdiction who are "merely transiting without entering" in the meaning of Article 3 (2) (a) are persons whose transit is taking place under the knowledge or escort of the competent authorities of the Macao SAR."

Joint Declaration concerning Denmark

"The Contracting Parties take note that this Agreement does not apply to the territory or to the nationals of the Kingdom of Denmark. In such circumstances it is appropriate that the Macao SAR and Denmark conclude a readmission agreement in the same terms as this Agreement."

Joint Declaration concerning Iceland and Norway

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