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## **REPORT**

on the proposal for a Council Decision concerning the signing of the Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation  
(10667/1/2003 – C5-0490/2003 – 2003/0054(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Sérgio Sousa Pinto

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### ***Symbols for procedures***

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

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

### ***Amendments to a legislative text***

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

## CONTENTS

	<b>Page</b>
PROCEDURAL PAGE.....	4
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT .....	6
MINORITY OPINION .....	9

## PROCEDURAL PAGE

By letter of 17 October 2003 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the proposal for a Council decision concerning the signing of the Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation (10667/1/2003 - 2003/0054(CNS)).

At the sitting of 20 October 2003 the President of Parliament announced that he had referred the proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy for its opinion (C5-0490/2003).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Sérgio Sousa Pinto rapporteur at its meeting of 23 April 2003.

It considered the Commission proposal and the draft report at its meetings of 26 November 2003 and 19 February 2004.

At the latter meeting it adopted the draft legislative resolution by 24 votes to 3.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Johanna L.A. Boogerd-Quaak (vice-chairwoman), Giacomo Santini (vice-chairman), Sérgio Sousa Pinto (rapporteur), Mary Elizabeth Banotti, Kathalijne Maria Buitenweg (for Patsy Sørensen), Michael Cashman, Carmen Cerdeira Morterero, Gérard M.J. Deprez, Adeline Hazan, Marie-Thérèse Hermange (for Thierry Cornillet), Margot Keßler, Timothy Kirkhope, Eva Klamt, Lucio Manisco (for Giuseppe Di Lello Finuoli), Luís Marinho (for Ozan Ceyhun), Marjo Matikainen-Kallström (for Charlotte Cederschiöld), Erik Meijer (for Ilka Schröder pursuant to Rule 153(2)), Elena Ornella Paciotti, Paolo Pastorelli (for Giuseppe Brienza), Hubert Pirker, Bernd Posselt, Olle Schmidt (for Baroness Ludford), Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco and Christian Ulrik von Boetticher.

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy decided on 28 April 2003 not to deliver an opinion.

The report was tabled on 24 February 2004.

## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council decision concerning the signing of the Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation (10667/1/2003 – C5-0490/2003 – 2003/0054(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the Council proposal (10667/1/2003)<sup>1</sup>,
  - having regard to the Commission proposal to the Council (COM(2003) 151)<sup>2</sup>,
  - having regard to Article 63(3)(b) and the second sentence of the first paragraph of Article 300(2) of the EC Treaty,
  - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0490/2003),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0096/2004),
1. Approves the Council proposal;
  2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  3. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
  4. Instructs its President to forward its position to the Council and Commission and the governments of the Member States and of the Macao Special Administrative Region of the People's Republic of China.

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<sup>1</sup> Not yet published in OJ.

<sup>2</sup> Not yet published in OJ.

## EXPLANATORY STATEMENT

Political and legal context of the readmission agreement with Macao

The readmission agreement between the European Community and the government of Macao is the second readmission agreement negotiated and concluded by the European Community with a non-Member State.

Agreements of this type form part of the wider strategy of combating illegal immigration, agreed upon by the Summits held in Tampere (15-16 October 1999), Laeken (14-15 December 2001), Seville (21-22 June 2002) and Thessaloniki (19-20 June 2003) and set out in the Council's action plan of 28 February 2002.

Based on the Community's new powers under Article 63(3)(b) TEC, the Council has so far authorised the Commission to negotiate Community readmission agreements with 11 third countries/entities: Morocco, Sri Lanka, Russia, Pakistan (September 2000), Hong Kong, Macao (May 2001), Ukraine (June 2002) and Albania, Algeria, China, Turkey (November 2002).

To date, negotiations have been completed with Hong Kong (November 2001), Macao (October 2002), Sri Lanka (May 2002) and Albania (November 2003). The agreement with Hong Kong was formally signed in November 2002.

The agreement concluded with Albania on 5 November 2003 still has to be initialled and signed. This is a highly significant agreement, given the flows of people originating from Albania in recent years. Commissioner Vitorino has described it as a 'major advance'.

Negotiations with Morocco are at last moving forward. Although the mandate for negotiation dated from September 2000, it was only in February 2003 that Morocco agreed to launch discussions. Two rounds of negotiations have already taken place.

With Turkey, the situation is much more difficult. At the JHA Council of 6 November 2003, several delegations criticised Turkey for its lack of cooperation. Negotiations have not yet begun, despite the fact that a draft text was sent in March 2003.

The European Commission recently pointed out that an agreement was initialled, during the latest EU-China Summit, on the readmission of tourists who had entered from China legitimately in a group of tourists but who had illegally remained afterwards. The Commission now hopes to begin negotiations on a wider scale, to cover all Chinese nationals or persons coming from China.

Negotiations with Pakistan are due to start in January. Discussions are taking place with Russia, which wishes to tie the readmission agreement to the elimination of visas. A third round of negotiations is due to be held with Ukraine at the beginning of December. Negotiations with Algeria have not yet started.

Three years ago, the European Commission received 11 negotiation mandates for readmission agreements with non-Member States and to date only four are at the completion stage. Discussions are moving forward with difficulty, in particular because of the problems the European Union has in offering anything in exchange for the agreements.

The Member States are critical of this situation. At their meeting in La Baule on 20 October 2003, the French, German, UK, Italian and Spanish Home Affairs Ministers attempted to place pressure on the Commission by threatening to conclude their own agreements, if the Commission did not progress faster.

The European Commission regularly emphasises that in order to obtain the agreement of non-Member States to readmit nationals from other countries, they need to be offered something in exchange. At the informal Council meeting in Rome in mid-September, it welcomed the Italian proposal for a European quota system for legal immigration, considering that this would be a convincing bargaining tool. However, at the European Council of 16 and 17 October, several Member States, including France and Germany, rejected the proposal. The Commission is to present a report on the issue next spring.

Alongside the readmission agreements, the standard readmission clauses were approved for inclusion in association or cooperation agreements entered into by the EU. The most significant is the Cotonou agreement, signed in 2000 with 77 ACP countries; its Article 13 provides for readmission to the ACP countries, and to the EU countries, of citizens illegally present in one of the countries of the other 'region'.

As requested by the Council at the end of 1999, the Commission intends to continue to include standard readmission clauses in all future association and cooperation agreements (see Council document 13409/99 of 25 November 1999).

These clauses are not actual readmission agreements, but are designed solely to impose an obligation on the contracting parties to readmit their own citizens, third country nationals and stateless persons. In these cases, the operational provisions are left to implementing agreements, which are concluded bilaterally by the Community or individual Member States.

The Council, in agreeing to the clauses, made it clear that they must be included in all future Community agreements.

Since 1996 readmission clauses have been included, *inter alia*, in the agreements with Algeria, Croatia, Egypt, Jordan, Lebanon, Macedonia and some ex-Soviet republics.

### **The agreement with Macao**

As for Hong Kong, the conclusion of the readmission agreement with Macao is part of the political agreement reached in December 2000 when Justice and Home Affairs Ministers decided to exempt Macao SAR passport holders from the visa requirement.

The Commission received a negotiating mandate in April 2001; the draft text was officially transmitted to the Macanese in July 2001.

Following one round of formal negotiations in Macao in October 2001 and the exchange of several written notes, the agreement was initialled in Brussels on 18 October 2002.

In early April 2003, the proposal for signature and approval of the agreement was transmitted to the Council (COM (2003) 151 final of 31 March 2003 = Council document 8211/03 of 7 April 2003) and finally adopted by the JHA Council on 2 and 3 October 2003.

## **The European Parliament's position**

The European Parliament expressed its regret in the Watson report (A5-0381/2002, adopted on 19 December 2002) at having been neither consulted nor kept informed during negotiation of the agreement with Hong Kong.

In addition, the Watson report also included some criticisms of the agreement's text, particularly with regard to the text of the so-called 'non-affection clause' (Article 16 of the agreement). The report considered that the clause was too weak and did not refer explicitly to respect for human rights on the basis of the Universal Declaration of Human Rights and the 1951 Geneva Convention on the status of refugees.

The Commission was therefore called on 'to reconsider the wording of the clause or to make provision for the definition of a joint declaration, annexed to the Agreement itself, making the obligation deriving from international treaties in the sphere of respect for human dignity, rights and fundamental freedoms more explicit'.

The rapporteur notes with regret that Parliament's opinion has not been taken into proper consideration, either in terms of the provision of information and involvement or in terms of content.

The rapporteur hopes that the Commission and the Council will keep Parliament regularly and thoroughly informed of progress on the readmission agreements which are currently being negotiated, on the basis of Article 300 TEC and Rule 97 of the Rules of Procedure.

Under the treaties in force, the European Parliament is only involved via the consultation procedure as far as readmission agreements are concerned and, since the agreement has already been concluded, it is not possible to table amendments to it, nor to any possible protocols attached to it. Parliament may only express its opinion by accepting or rejecting the agreement. The rapporteur considers this situation to be politically unacceptable.

The rapporteur welcomes the fact that in the draft constitution, produced by the European Convention, the European Parliament acquires, under Article III-227, the right to consent for those agreements 'covering fields to which the legislative procedure applies' i.e. codecision, and therefore also readmission agreements.

The rapporteur thus calls on Parliament's representatives at the intergovernmental conference, and the Commission, to ensure that the proposed procedure is maintained.

The rapporteur reserves the right to table an oral question to the European Commission and the Council, in order to obtain an update on progress in readmission agreements and clarifications on the points listed above.



19 February 2004

## **MINORITY OPINION**

pursuant to Rule 161(3) of the Rules of Procedure

Erik Meijer, Ilka Schröder, Giuseppe Di Lello Finuoli

The policy of expulsion agreements stands in the repressive tradition of the Laeken, Seville and Thessaloniki Council meetings, which have focused on the so-called 'fight against illegal immigration'. In this perspective, refugees and migrants are an economic resource to be exploited at best and simply people to be deported at worst.

The proposed return policy agreement is an extension of a failed asylum and immigration policy of the EU, which is focused on increased border controls, repression and expulsions, but which continues to ignore the underlying causes of migration such as poverty, exploitation, war and patriarchal violence. Since hardly any channels for legal migration to the EU do exist, migration is first being criminalised in order to deport people more easily later.

Apart from this, there is a neo-colonial strain in the fact that the EU is pressurising former colonies to take back refugees while it continues to ignore its own responsibilities for the sometimes miserable conditions in large parts of the world.

We do not support this type of migration policy since it is giving priority to profit interests over people. Whoever wants to support the rights of migrants cannot vote for an agreement whose main goal is the most efficient expulsion of migrants.