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Contents

I Acts whose publication is obligatory

.

II Acts whose publication is not obligatory

Council

(2005/370/EC)

- ★ **Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters** 1

Convention on access to information, public participation in decision-making and access to justice in environmental matters 4

(2005/371/EC)

- ★ **Council Decision of 3 March 2005 on the signing of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation** 21

Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation 22

(2005/372/EC)

- ★ **Council Decision of 3 March 2005 concerning the conclusion of the Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation** 41

Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation 43

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 17 February 2005

on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters

(2005/370/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1), in conjunction with the first 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,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) The UN/ECE Convention on access to information, public participation in decision making and access to justice in environmental matters (Aarhus Convention) aims at granting the public rights and imposes on Parties and public authorities obligations regarding access to information and public participation and access to justice regarding environmental matters.
- (2) Improvement of the public's access to information and a broader participation of the public in decision-making processes and access to justice are essential tools to ensure public awareness on environmental issues and to promote a better implementation and enforcement of environmental legislation. Thus, it contributes to strengthen and make more effective environmental protection policies.
- (3) The Aarhus Convention is open to ratification, acceptance, approval or accession by States and by regional economic integration organisations.

- (4) Under the terms of the Aarhus Convention, a regional economic integration organisation must declare in its instrument of ratification, acceptance, approval or accession, the extent of its competence in respect of the matters governed by the Convention.
- (5) The Community, in accordance with the Treaty, and in particular Article 175(1) thereof, is competent, together with its Member States, for entering into international agreements, and for implementing the obligations resulting therefrom, which contribute to the pursuit of the objectives listed in Article 174 of the Treaty.
- (6) The Community and most of its Member States signed the Aarhus Convention in 1998 and since then have pursued their efforts in view of their approval of the Convention. In the meantime, relevant Community legislation is being made consistent with the Convention.
- (7) The objective of the Aarhus Convention, as set forth in its Article 1 thereof, is consistent with the objectives of the Community's environmental policy, listed in Article 174 of the Treaty, pursuant to which the Community, which shares competence with its Member States, has already adopted a comprehensive set of legislation which is evolving and contributes to the achievement of the objective of the Convention, not only by its own institutions, but also by public authorities in its Member States.

⁽¹⁾ Opinion delivered on 31.3.2004.

(8) The Aarhus Convention should be approved,

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to deposit the instrument of approval with the Secretary-General of the United Nations, in accordance with Article 19 of the Aarhus Convention.

HAS DECIDED AS FOLLOWS:

At the same time, the designated person(s) shall deposit the declarations set out in the Annex to this Decision, in accordance with Article 19 of the Aarhus Convention.

Article 1

The UN/ECE Convention on access to information, public participation in decision-making and access to justice in environmental matters, (Aarhus Convention) is hereby approved on behalf of the Community.

Article 3

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

Done at Brussels, 17 February 2005.

The text of the Aarhus Convention is attached to this Decision.

For the Council

The President

J.-C. JUNCKER

ANNEX

DECLARATION BY THE EUROPEAN COMMUNITY IN ACCORDANCE WITH ARTICLE 19 OF THE CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

The European Community declares that, in accordance with the Treaty establishing the European Community, and in particular Article 175(1) thereof, it is competent for entering into international agreements, and for implementing the obligations resulting therefrom, which contribute to the pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems.

Moreover, the European Community declares that it has already adopted several legal instruments, binding on its Member States, implementing provisions of this Convention and will submit and update as appropriate a list of those legal instruments to the Depositary in accordance with Article 10(2) and Article 19(5) of the Convention. In particular, the European Community also declares that the legal instruments in force do not cover fully the implementation of the obligations resulting from Article 9(3) of the Convention as they relate to administrative and judicial procedures to challenge acts and omissions by private persons and public authorities other than the institutions of the European Community as covered by Article 2(2)(d) of the Convention, and that, consequently, its Member States are responsible for the performance of these obligations at the time of approval of the Convention by the European Community and will remain so unless and until the Community, in the exercise of its powers under the EC Treaty, adopts provisions of Community law covering the implementation of those obligations.

Finally, the Community reiterates its declaration made upon signing the Convention that the Community institutions will apply the Convention within the framework of their existing and future rules on access to documents and other relevant rules of Community law in the field covered by the Convention.

The European Community is responsible for the performance of those obligations resulting from the Convention which are covered by Community law in force.

The exercise of Community competence is, by its nature, subject to continuous development.

DECLARATION BY THE EUROPEAN COMMUNITY CONCERNING CERTAIN SPECIFIC PROVISIONS UNDER DIRECTIVE 2003/4/EC

In relation to Article 9 of the Aarhus Convention, the European Community invites Parties to the Convention to take note of Article 2(2) and Article 6 of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on Public Access to Environmental Information. These provisions give Member States of the European Community the possibility, in exceptional cases and under strictly specified conditions, to exclude certain institutions and bodies from the rules on review procedures in relation to decisions on requests for information.

Therefore the ratification by the European Community of the Aarhus Convention encompasses any reservation by a Member State of the European Community to the extent that such a reservation is compatible with Article 2(2) and Article 6 of Directive 2003/4/EC.

**CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND
ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS**

done at Aarhus, Denmark, on 25 June 1998

The Parties to this Convention,

Recalling principle 1 of the Stockholm Declaration on the Human Environment,

Recalling also principle 10 of the Rio Declaration on Environment and Development,

Recalling further General Assembly resolutions 37/7 of 28 October 1982 on the World Charter for Nature and 45/94 of 14 December 1990 on the need to ensure a healthy environment for the well-being of individuals,

Recalling the European Charter on Environment and Health adopted at the First European Conference on Environment and Health of the World Health Organization in Frankfurt-am-Main, Germany, on 8 December 1989,

Affirming the need to protect, preserve and improve the state of the environment and to ensure sustainable and environmentally sound development,

Recognising that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself,

Recognising also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations,

Considering that, to be able to assert this right and observe this duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters, and acknowledging in this regard that citizens may need assistance in order to exercise their rights,

Recognising that, in the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns,

Aiming thereby to further the accountability of and transparency in decision-making and to strengthen public support for decisions on the environment,

Recognising the desirability of transparency in all branches of government and inviting legislative bodies to implement the principles of this Convention in their proceedings,

Recognising also that the public needs to be aware of the procedures for participation in environmental decision-making, have free access to them and know how to use them,

Recognising further the importance of the respective roles that individual citizens, non-governmental organisations and the private sector can play in environmental protection,

Desiring to promote environmental education to further the understanding of the environment and sustainable development and to encourage widespread public awareness of, and participation in, decisions affecting the environment and sustainable development,

Noting, in this context, the importance of making use of the media and of electronic or other, future forms of communication,

Recognising the importance of fully integrating environmental considerations in governmental decision-making and the consequent need for public authorities to be in possession of accurate, comprehensive and up-to-date environmental information,

Acknowledging that public authorities hold environmental information in the public interest,

Concerned that effective judicial mechanisms should be accessible to the public, including organisations, so that its legitimate interests are protected and the law is enforced,

Noting the importance of adequate product information being provided to consumers to enable them to make informed environmental choices,

Recognising the concern of the public about the deliberate release of genetically modified organisms into the environment and the need for increased transparency and greater public participation in decision-making in this field,

Convinced that the implementation of this Convention will contribute to strengthening democracy in the region of the United Nations Economic Commission for Europe (ECE),

Conscious of the role played in this respect by ECE and recalling, *inter alia*, the ECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making endorsed in the Ministerial Declaration adopted at the Third Ministerial Conference 'Environment for Europe' in Sofia, Bulgaria, on 25 October 1995,

Bearing in mind the relevant provisions in the Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo, Finland, on 25 February 1991, and the Convention on the Transboundary Effects of Industrial Accidents and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, both done at Helsinki on 17 March 1992, and other regional conventions,

Conscious that the adoption of this Convention will have contributed to the further strengthening of the 'Environment for Europe' process and to the results of the Fourth Ministerial Conference in Aarhus, Denmark, in June 1998,

HAVE AGREED AS FOLLOWS:

Article 1

Objective

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

(c) any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;

(d) the institutions of any regional economic integration organisation referred to in Article 17 which is a Party to this Convention.

Article 2

Definitions

For the purposes of this Convention,

1. 'Party' means, unless the text otherwise indicates, a Contracting Party to this Convention;

2. 'Public authority' means:

(a) government at national, regional and other level;

(b) natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;

This definition does not include bodies or institutions acting in a judicial or legislative capacity;

3. 'Environmental information' means any information in written, visual, aural, electronic or any other material form on:

(a) the state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of

subparagraph(a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

- (c) the state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;

4. 'The public' means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organisations or groups;

5. 'The public concerned' means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

Article 3

General provisions

1. Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.

2. Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.

3. Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters.

4. Each Party shall provide for appropriate recognition of and support to associations, organisations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.

5. The provisions of this Convention shall not affect the right of a Party to maintain or introduce measures providing for broader access to information, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention.

6. This Convention shall not require any derogation from existing rights of access to information, public participation in

decision-making and access to justice in environmental matters.

7. Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organisations in matters relating to the environment.

8. Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalised, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.

9. Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

Article 4

Access to environmental information

1. Each Party shall ensure that, subject to the following paragraphs of this Article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

(a) without an interest having to be stated;

(b) in the form requested unless:

(i) it is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or

(ii) the information is already publicly available in another form.

2. The environmental information referred to in paragraph 1 above shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.

3. A request for environmental information may be refused if:

(a) the public authority to which the request is addressed does not hold the environmental information requested;

- (b) the request is manifestly unreasonable or formulated in too general a manner; or
- (c) the request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.

4. A request for environmental information may be refused if the disclosure would adversely affect:

- (a) the confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;
- (b) international relations, national defence or public security;
- (c) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
- (d) the confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;
- (e) intellectual property rights;
- (f) the confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;
- (g) the interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal obligation to do so, and where that party does not consent to the release of the material; or
- (h) the environment to which the information relates, such as the breeding sites of rare species.

The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.

5. Where a public authority does not hold the environmental information requested, this public authority shall, as promptly as possible, inform the applicant of the public authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.

6. Each Party shall ensure that, if information exempted from disclosure under paragraphs 3(c) and 4 above can be separated out without prejudice to the confidentiality of the

information exempted, public authorities make available the remainder of the environmental information that has been requested.

7. A refusal of a request shall be in writing if the request was in writing or the applicant so requests. A refusal shall state the reasons for the refusal and give information on access to the review procedure provided for in accordance with Article 9. The refusal shall be made as soon as possible and at the latest within one month, unless the complexity of the information justifies an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.

8. Each Party may allow its public authorities to make a charge for supplying information, but such charge shall not exceed a reasonable amount.

Public authorities intending to make such a charge for supplying information shall make available to applicants a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge.

Article 5

Collection and dissemination of environmental information

1. Each Party shall ensure that:

- (a) public authorities possess and update environmental information which is relevant to their functions;
- (b) mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment;
- (c) in the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.

2. Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible, *inter alia*, by:

- (a) providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained;

- (b) establishing and maintaining practical arrangements, such as:
- (i) publicly accessible lists, registers or files;
 - (ii) requiring officials to support the public in seeking access to information under this Convention; and
 - (iii) the identification of points of contact; and
- (c) providing access to the environmental information contained in lists, registers or files as referred to in subparagraph (b) (i) above free of charge.

3. each Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks. Information accessible in this form should include:

- (a) reports on the state of the environment, as referred to in paragraph 4 below;
- (b) texts of legislation on or relating to the environment;
- (c) as appropriate, policies, plans and programmes on or relating to the environment, and environmental agreements; and
- (d) other information, to the extent that the availability of such information in this form would facilitate the application of national law implementing this Convention, provided that such information is already available in electronic form.

4. Each Party shall, at regular intervals not exceeding three or four years, publish and disseminate a national report on the state of the environment, including information on the quality of the environment and information on pressures on the environment.

5. Each Party shall take measures within the framework of its legislation for the purpose of disseminating, *inter alia*:

- (a) legislation and policy documents such as documents on strategies, policies, programmes and action plans relating to the environment, and progress reports on their implementation, prepared at various levels of government;
- (b) international treaties, conventions and agreements on environmental issues; and
- (c) other significant international documents on environmental issues, as appropriate.

6. Each Party shall encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products, where appropriate within the framework of

voluntary eco-labelling or eco-auditing schemes or by other means.

7. Each Party shall:

- (a) publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals;
- (b) publish, or otherwise make accessible, available explanatory material on its dealings with the public in matters falling within the scope of this Convention; and
- (c) provide in an appropriate form information on the performance of public functions or the provision of public services relating to the environment by government at all levels.

8. Each Party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices.

9. Each Party shall take steps to establish progressively, taking into account international processes where appropriate, a coherent, nationwide system of pollution inventories or registers on a structured, computerised and publicly accessible database compiled through standardised reporting. Such a system may include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and off-site treatment and disposal sites.

10. Nothing in this article may prejudice the right of Parties to refuse to disclose certain environmental information in accordance with Article 4(3) and (4).

Article 6

Public participation in decisions on specific activities

1. Each Party:

- (a) shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in Annex I;
- (b) shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in Annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions; and
- (c) may decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.

2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, *inter alia*, of:

- (a) the proposed activity and the application on which a decision will be taken;
- (b) the nature of possible decisions or the draft decision;
- (c) the public authority responsible for making the decision;
- (d) the envisaged procedure, including, as and when this information can be provided:
 - (i) the commencement of the procedure;
 - (ii) the opportunities for the public to participate;
 - (iii) the time and venue of any envisaged public hearing;
 - (iv) an indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;
 - (v) an indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and
 - (vi) an indication of what environmental information relevant to the proposed activity is available; and
- (e) the fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.

6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with Article 4(3) and (4).

The relevant information shall include at least, and without prejudice to the provisions of Article 4:

- (a) a description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;
- (b) a description of the significant effects of the proposed activity on the environment;
- (c) a description of the measures envisaged to prevent and/or reduce the effects, including emissions;
- (d) a non-technical summary of the above;
- (e) an outline of the main alternatives studied by the applicant; and
- (f) in accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance with paragraph 2 above.

7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.

9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.

10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this Article are applied *mutatis mutandis*, and where appropriate.

11. Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

Article 7

Public participation concerning plans, programmes and policies relating to the environment

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, Article 6(3), (4) and (8), shall be applied. The public which

may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.

Article 8

Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments

Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.

To this end, the following steps should be taken:

- (a) time-frames sufficient for effective participation should be fixed;
- (b) draft rules should be published or otherwise made publicly available; and
- (c) the public should be given the opportunity to comment, directly or through representative consultative bodies.

The result of the public participation shall be taken into account as far as possible.

Article 9

Access to justice

1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under Article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.

In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.

Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.

2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned:

- (a) having a sufficient interest or, alternatively,
- (b) maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 2(5), shall be deemed sufficient for the purpose of subparagraph (a) above. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this Article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

5. In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

*Article 10***Meeting of the parties**

1. The first meeting of the Parties shall be convened no later than one year after the date of the entry into force of this Convention. Thereafter, an ordinary meeting of the Parties shall be held at least once every two years, unless otherwise decided by the Parties, or at the written request of any Party, provided that, within six months of the request being communicated to all Parties by the Executive Secretary of the Economic Commission for Europe, the said request is supported by at least one third of the Parties.

2. At their meetings, the Parties shall keep under continuous review the implementation of this Convention on the basis of regular reporting by the Parties, and, with this purpose in mind, shall:

- (a) review the policies for and legal and methodological approaches to access to information, public participation in decision-making and access to justice in environmental matters, with a view to further improving them;
- (b) exchange information regarding experience gained in concluding and implementing bilateral and multilateral agreements or other arrangements having relevance to the purposes of this Convention and to which one or more of the Parties are a party;
- (c) seek, where appropriate, the services of relevant ECE bodies and other competent international bodies and specific committees in all aspects pertinent to the achievement of the purposes of this Convention;
- (d) establish any subsidiary bodies as they deem necessary;
- (e) prepare, where appropriate, protocols to this Convention;
- (f) consider and adopt proposals for amendments to this Convention in accordance with the provisions of Article 14;
- (g) consider and undertake any additional action that may be required for the achievement of the purposes of this Convention;
- (h) at their first meeting, consider and by consensus adopt rules of procedure for their meetings and the meetings of subsidiary bodies;
- (i) at their first meeting, review their experience in implementing the provisions of Article 5, paragraph 9, and consider what steps are necessary to develop further the system referred to in that paragraph, taking into account international processes and developments,

including the elaboration of an appropriate instrument concerning pollution release and transfer registers or inventories which could be annexed to this Convention.

3. The Meeting of the Parties may, as necessary, consider establishing financial arrangements on a consensus basis.

4. The United Nations, its specialised agencies and the International Atomic Energy Agency, as well as any State or regional economic integration organisation entitled under Article 17 to sign this Convention but which is not a Party to this Convention, and any intergovernmental organisation qualified in the fields to which this Convention relates, shall be entitled to participate as observers in the meetings of the Parties.

5. Any non-governmental organisation, qualified in the fields to which this Convention relates, which has informed the Executive Secretary of the Economic Commission for Europe of its wish to be represented at a meeting of the Parties shall be entitled to participate as an observer unless at least one third of the Parties present in the meeting raise objections.

6. For the purposes of paragraphs 4 and 5 above, the rules of procedure referred to in paragraph 2(h) above shall provide for practical arrangements for the admittance procedure and other relevant terms.

*Article 11***Right to vote**

1. Except as provided for in paragraph 2 below, each Party to this Convention shall have one vote.

2. Regional economic integration organisations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their Member States which are Parties to this Convention. Such organisations shall not exercise their right to vote if their Member States exercise theirs, and vice versa.

*Article 12***Secretariat**

The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions:

- (a) the convening and preparing of meetings of the Parties;
- (b) the transmission to the Parties of reports and other information received in accordance with the provisions of this Convention; and
- (c) such other functions as may be determined by the Parties.

*Article 13***Annexes**

The annexes to this Convention shall constitute an integral part thereof.

*Article 14***Amendments to the Convention**

1. Any Party may propose amendments to this Convention.
2. The text of any proposed amendment to this Convention shall be submitted in writing to the Executive Secretary of the Economic Commission for Europe, who shall communicate it to all Parties at least 90 days before the meeting of the Parties at which it is proposed for adoption.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-quarter majority vote of the Parties present and voting at the meeting.
4. Amendments to this Convention adopted in accordance with paragraph 3 above shall be communicated by the Depositary to all Parties for ratification, approval or acceptance. Amendments to this Convention other than those to an annex shall enter into force for Parties having ratified, approved or accepted them on the 90th day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three fourths of these Parties. Thereafter they shall enter into force for any other Party on the 90th day after that Party deposits its instrument of ratification, approval or acceptance of the amendments.
5. Party that is unable to approve an amendment to an annex to this Convention shall so notify the Depositary in writing within 12 months from the date of the communication of the adoption. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for its previous notification and, upon deposit of an instrument of acceptance with the Depositary, the amendments to such an annex shall become effective for that Party.
6. On the expiry of 12 months from the date of its communication by the Depositary as provided for in paragraph 4 above an amendment to an annex shall become effective for those Parties which have not submitted a notification to the Depositary in accordance with the provisions of paragraph 5 above, provided that not more than one third of the Parties have submitted such a notification.
7. For the purposes of this Article, 'Parties present and voting' means Parties present and casting an affirmative or negative vote.

*Article 15***Review of compliance**

The Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention.

*Article 16***Settlement of disputes**

1. If a dispute arises between two or more Parties about the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.
2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 above, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:
 - (a) submission of the dispute to the International Court of Justice;
 - (b) arbitration in accordance with the procedure set out in Annex II.
3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 above, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

*Article 17***Signature**

This Convention shall be open for signature at Aarhus (Denmark) on 25 June 1998, and thereafter at United Nations Headquarters in New York until 21 December 1998, by States' members of the Economic Commission for Europe as well as States having consultative status with the Economic Commission for Europe pursuant to paragraphs 8 and 11 of Economic and Social Council Resolution 36 (IV) of 28 March 1947, and by regional economic integration organisations constituted by sovereign States' members of the Economic Commission for Europe to which their Member States have transferred competence over matters governed by this Convention, including the competence to enter into treaties in respect of these matters.

*Article 18***Depositary**

The Secretary-General of the United Nations shall act as the Depositary of this Convention.

*Article 19***Ratification, acceptance, approval and accession**

1. This Convention shall be subject to ratification, acceptance or approval by signatory States and regional economic integration organisations.
2. This Convention shall be open for accession as from 22 December 1998 by the States and regional economic integration organisations referred to in Article 17.
3. Any other State, not referred to in paragraph 2 above, that is a Member of the United Nations may accede to the Convention upon approval by the Meeting of the Parties.
4. Any organisation referred to in Article 17 which becomes a Party to this Convention without any of its Member States being a Party shall be bound by all the obligations under this Convention. If one or more of such an organisation's Member States is a Party to this Convention, the organisation and its Member States shall decide on their respective responsibilities for the performance of their obligations under this Convention. In such cases, the organisation and the Member States shall not be entitled to exercise rights under this Convention concurrently.
5. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organisations referred to in Article 17 shall declare the extent of their competence with respect to the matters governed by this Convention. These organisations shall also inform the Depositary of any substantial modification to the extent of their competence.

*Article 20***Entry into force**

1. This Convention shall enter into force on the 90th day after the date of deposit of the 16th instrument of ratification, acceptance, approval or accession.
2. For the purposes of paragraph 1 above, any instrument deposited by a regional economic integration organisation shall not be counted as additional to those deposited by States members of such an organisation.
3. For each State or organisation referred to in Article 17 which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the 90th day after the date of deposit by such State or organisation of its instrument of ratification, acceptance, approval or accession.

*Article 21***Withdrawal**

At any time after three years from the date on which this Convention has come into force with respect to a Party, that Party may withdraw from the Convention by giving written notification to the Depositary. Any such withdrawal shall take effect on the 90th day after the date of its receipt by the Depositary.

*Article 22***Authentic texts**

The original of this Convention, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Aarhus (Denmark), this twenty-fifth day of June, one thousand nine hundred and ninety-eight.

ANNEX I

LIST OF ACTIVITIES REFERRED TO IN ARTICLE 6(1)(a)

1. Energy sector:

- mineral oil and gas refineries,
- installations for gasification and liquefaction,
- thermal power stations and other combustion installations with a heat input of 50 megawatts (MW) or more,
- coke ovens,
- nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors ⁽¹⁾ 1/(except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kW continuous thermal load),
- installations for the reprocessing of irradiated nuclear fuel,
- installations designed,
 - for the production or enrichment of nuclear fuel,
 - for the processing of irradiated nuclear fuel or high-level radioactive waste,
 - for the final disposal of irradiated nuclear fuel,
 - solely for the final disposal of radioactive waste,
 - solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

2. Production and processing of metals:

- metal ore (including sulphide ore) roasting or sintering installations,
- installations for the production of pig-iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2,5 tonnes per hour,
- installations for the processing of ferrous metals:
 - (i) hot-rolling mills with a capacity exceeding 20 tonnes of crude steel per hour;
 - (ii) smitheries with hammers the energy of which exceeds 50 kilojoules per hammer, where the calorific power used exceeds 20 MW;
 - (iii) application of protective fused metal coats with an input exceeding 2 tonnes of crude steel per hour;

⁽¹⁾ Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

- ferrous metal foundries with a production capacity exceeding 20 tonnes per day,
- installations:
 - (i) for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes;
 - (ii) for the smelting, including the alloying, of non-ferrous metals, including recovered products (refining, foundry casting, etc.), with a melting capacity exceeding 4 tonnes per day for lead and cadmium or 20 tonnes per day for all other metals;
- installations for surface treatment of metals and plastic materials using an electrolytic or chemical process where the volume of the treatment vats exceeds 30 m³.

3. Mineral industry:

- installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or lime in rotary kilns with a production capacity exceeding 50 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day,
- installations for the production of asbestos and the manufacture of asbestos-based products,
- installations for the manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day,
- installations for melting mineral substances including the production of mineral fibres with a melting capacity exceeding 20 tonnes per day,
- installations for the manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day, and/or with a kiln capacity exceeding 4 m³ and with a setting density per kiln exceeding 300 kg/m³.

4. Chemical industry: Production within the meaning of the categories of activities contained in this paragraph means the production on an industrial scale by chemical processing of substances or groups of substances listed in subparagraphs (a) to (g):

(a) chemical installations for the production of basic organic chemicals, such as:

- (i) simple hydrocarbons (linear or cyclic, saturated or unsaturated, aliphatic or aromatic);
- (ii) oxygen-containing hydrocarbons such as alcohols, aldehydes, ketones, carboxylic acids, esters, acetates, ethers, peroxides, epoxy resins;
- (iii) sulphurous hydrocarbons;
- (iv) nitrogenous hydrocarbons such as amines, amides, nitrous compounds, nitro compounds or nitrate compounds, nitriles, cyanates, isocyanates;
- (v) phosphorus-containing hydrocarbons;
- (vi) halogenic hydrocarbons;
- (vii) organometallic compounds;
- (viii) basic plastic materials (polymers, synthetic fibres and cellulose-based fibres);
- (ix) synthetic rubbers;
- (x) dyes and pigments;
- (xi) surface-active agents and surfactants;

- (b) chemical installations for the production of basic inorganic chemicals, such as:
 - (i) gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen, sulphur dioxide, carbonyl chloride;
 - (ii) acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids;
 - (iii) bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide;
 - (iv) salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate;
 - (v) non-metals, metal oxides or other inorganic compounds such as calcium carbide, silicon, silicon carbide;
 - (c) chemical installations for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers);
 - (d) chemical installations for the production of basic plant health products and of biocides;
 - (e) installations using a chemical or biological process for the production of basic pharmaceutical products;
 - (f) chemical installations for the production of explosives;
 - (g) chemical installations in which chemical or biological processing is used for the production of protein feed additives, ferments and other protein substances.
5. Waste management:
- installations for the incineration, recovery, chemical treatment or landfill of hazardous waste,
 - installations for the incineration of municipal waste with a capacity exceeding 3 tonnes per hour,
 - installations for the disposal of non-hazardous waste with a capacity exceeding 50 tonnes per day,
 - landfills receiving more than 10 tonnes per day or with a total capacity exceeding 25 000 tonnes, excluding landfills of inert waste.
6. Waste-water treatment plants with a capacity exceeding 150 000 population equivalent.
7. Industrial plants for the:
- (a) production of pulp from timber or similar fibrous materials;
 - (b) production of paper and board with a production capacity exceeding 20 tonnes per day.

8. (a) Construction of lines for long-distance railway traffic and of airports ²/with a basic runway length of 2 100 m or more ⁽¹⁾.
(b) Construction of motorways and express roads ⁽²⁾.
(c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road, would be 10 km or more in a continuous length.
9. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes.
(b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tonnes.
10. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
11. (a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year.
(b) In all other cases, works for the transfer of water resources between river basins where the multiannual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5 % of this flow.

In both cases transfers of piped drinking water are excluded.
12. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 cubic metres/day in the case of gas.
13. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.
14. Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 mm and a length of more than 40 km.
15. Installations for the intensive rearing of poultry or pigs with more than:
(a) 40 000 places for poultry;
(b) 2 000 places for production pigs (over 30 kg); or
(c) 750 places for sows.
16. Quarries and opencast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.
17. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.
18. Installations for the storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tonnes or more.
19. Other activities:

⁽¹⁾ For the purposes of this Convention, 'airport' means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14).

⁽²⁾ For the purposes of this Convention, 'express road' means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.

- plants for the pretreatment (operations such as washing, bleaching, mercerization) or dyeing of fibres or textiles where the treatment capacity exceeds 10 tonnes per day,
 - plants for the tanning of hides and skins where the treatment capacity exceeds 12 tonnes of finished products per day,
 - (a) Slaughterhouses with a carcase production capacity greater than 50 tonnes per day.
 - (b) Treatment and processing intended for the production of food products from:
 - (i) animal raw materials (other than milk) with a finished product production capacity greater than 75 tonnes per day.
 - (ii) vegetable raw materials with a finished product production capacity greater than 300 tonnes per day (average value on a quarterly basis).
 - (c) Treatment and processing of milk, the quantity of milk received being greater than 200 tonnes per day (average value on an annual basis):
 - installations for the disposal or recycling of animal carcasses and animal waste with a treatment capacity exceeding 10 tonnes per day,
 - installations for the surface treatment of substances, objects or products using organic solvents, in particular for dressing, printing, coating, degreasing, waterproofing, sizing, painting, cleaning or impregnating, with a consumption capacity of more than 150 kg per hour or more than 200 tonnes per year,
 - installations for the production of carbon (hard-burnt coal) or electrographite by means of incineration or graphitisation.
20. Any activity not covered by paragraphs 1 to 19 above where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation.
21. The provision of Article 6, paragraph 1(a) of this Convention, does not apply to any of the above projects undertaken exclusively or mainly for research, development and testing of new methods or products for less than two years unless they would be likely to cause a significant adverse effect on environment or health.
22. Any change to or extension of activities, where such a change or extension in itself meets the criteria/thresholds set out in this annex, shall be subject to Article 6(1)(a) of this Convention. Any other change or extension of activities shall be subject to Article 6(1)(b) of this Convention.
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ANNEX II

ARBITRATION

1. In the event of a dispute being submitted for arbitration pursuant to Article 16(2), of this Convention, a Party or Parties shall notify the secretariat of the subject matter of arbitration and indicate, in particular, the articles of this Convention whose interpretation or application is at issue. The secretariat shall forward the information received to all Parties to this Convention.
2. The arbitral tribunal shall consist of three members. Both the claimant Party or Parties and the other Party or Parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the Parties to the dispute, nor have his or her usual place of residence in the territory of one of these Parties, nor be employed by any of them, nor have dealt with the case in any other capacity.
3. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Executive Secretary of the Economic Commission for Europe shall, at the request of either Party to the dispute, designate the president within a further two-month period.
4. If one of the Parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may so inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the arbitral tribunal within a further two-month period. Upon designation, the president of the arbitral tribunal shall request the Party which has not appointed an arbitrator to do so within two months. If it fails to do so within that period, the president shall so inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.
5. The arbitral tribunal shall render its decision in accordance with international law and the provisions of this Convention.
6. Any arbitral tribunal constituted under the provisions set out in this annex shall draw up its own rules of procedure.
7. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.
8. The tribunal may take all appropriate measures to establish the facts.
9. The Parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:
 - (a) provide it with all relevant documents, facilities and information;
 - (b) enable it, where necessary, to call witnesses or experts and receive their evidence.
10. The Parties and the arbitrators shall protect the confidentiality of any information that they receive in confidence during the proceedings of the arbitral tribunal.
11. The arbitral tribunal may, at the request of one of the Parties, recommend interim measures of protection.
12. If one of the Parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to render its final decision. Absence of a Party or failure of a Party to defend its case shall not constitute a bar to the proceedings.
13. The arbitral tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute.

14. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

15. Any Party to this Convention which has an interest of a legal nature in the subject matter of the dispute, and which may be affected by a decision in the case, may intervene in the proceedings with the consent of the tribunal.

16. The arbitral tribunal shall render its award within five months of the date on which it is established, unless it finds it necessary to extend the time limit for a period which should not exceed five months.

17. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon all parties to the dispute.

The award will be transmitted by the arbitral tribunal to the parties to the dispute and to the secretariat. The secretariat will forward the information received to all Parties to this Convention.

18. Any dispute which may arise between the Parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.

COUNCIL DECISION**of 3 March 2005****on the signing of the Agreement between the European Community and the Republic of Albania
on the readmission of persons residing without authorisation**

(2005/371/EC)

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,

Whereas:

- (1) By its decision of 28 November 2002, the Council authorised the Commission to negotiate an agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation.
- (2) Negotiations for the Agreement took place on 15 and 16 May, 18 September and 5 November 2003.
- (3) Subject to its possible conclusion at a later date, the Agreement initialled in Brussels on 18 December 2004 should be signed.
- (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 establishing the European Community, the United Kingdom 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 the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by or subject to its application.

- (6) 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 establishing the European Community, Denmark does not take part in the adoption of this Decision and is not bound by it or subject to its application,

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation is hereby approved on behalf of the Community, subject to the Council Decision concerning the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Community subject to its conclusion.

Done at Brussels, 3 March 2005.

For the Council
The President
F. BILTGEN

AGREEMENT**between the European Community and the Republic of Albania on the readmission of persons residing without authorisation**

THE HIGH CONTRACTING PARTIES,

THE EUROPEAN COMMUNITY, hereinafter referred to as 'the Community', and

THE REPUBLIC OF ALBANIA, hereinafter referred to as 'Albania',

DETERMINED to strengthen their cooperation 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 territories of Albania or one of the Member States of the European Union, and to facilitate the transit of such persons in a spirit of cooperation,

EMPHASISING that this Agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States of the European Union and Albania arising from International Law and, in particular, from the European Convention of 4 November 1950 for the Protection of Human Rights, the Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees, and international instruments on extradition,

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:

Article 1

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

Definitions

For the purpose of this Agreement:

- (a) 'Member State' shall mean any Member State of the European Union, with the exception of the Kingdom of Denmark;
- (b) 'National of a Member State' shall mean any person who holds the nationality, as defined for Community purposes, of a Member State;
- (c) 'National of Albania' shall mean any person who holds the nationality of Albania;
- (e) 'Stateless person' shall mean any person who does not hold a nationality;
- (f) 'Residence authorisation' shall mean a permit of any type issued by Albania or one of the Member States entitling a person to reside on its territory. This shall not include temporary permissions to remain on its territory in connection with the processing of an asylum application or an application for a residence authorisation;

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

Article 3

Readmission of third-country nationals and stateless persons

SECTION I

READMISSION OBLIGATIONS BY ALBANIA

Article 2

Readmission of own nationals

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

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

2. Albania shall, as necessary and without delay, issue the person whose readmission has been accepted with the travel document required for his or her return with a period of validity of at least 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, Albania shall, within 14 calendar days, extend the validity of the travel document or, where necessary, issue a new travel document with the same period of validity. If Albania has not, within 14 calendar days, issued the travel document, extended its validity or, where necessary, renewed it, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes⁽¹⁾.

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

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

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

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

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

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

— that person is in possession of a visa or residence permit, issued by Albania, which has a longer period of validity, or

— the visa or residence authorisation issued by the requesting Member State has been obtained by using forged or falsified documents.

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

⁽¹⁾ Council Recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third-country nationals (OJ C 274, 19.9.1996, p. 18).

SECTION II

READMISSION OBLIGATIONS BY THE COMMUNITY*Article 4***Readmission of own nationals**

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

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

2. A Member State shall, as necessary and without delay, issue the person whose readmission has been accepted with the travel document required for his or her return with a period of validity of at least six months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the Member State concerned shall, within 14 calendar days, extend the validity of the travel document or, where necessary, issue a new travel document with the same period of validity. If the Member State concerned has not, within 14 calendar days, issued the travel document, extended its validity or, where necessary, renewed it, it shall be deemed to accept the use of the Albanian certificate for expulsion purposes ⁽¹⁾.

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

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

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

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

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

— that person is in possession of a visa or residence permit, issued by the requested Member State, which has a longer period of validity, or

— the visa or residence authorisation issued by Albania has been obtained by using forged or falsified documents.

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

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

SECTION III

READMISSION PROCEDURE*Article 6***Principle**

1. Subject to paragraph 2, any transfer of a person to be readmitted on the basis of one of the obligations contained in

⁽¹⁾ Endorsed by Instruction No 553 of 19 November 2003 of the acting Minister of Foreign Affairs on the issuing of laissez-passer by the Albanian representations for returns to Albania.

Articles 2 to 5 shall require the submission of a readmission application to the competent authority of the requested State.

2. The readmission application may be replaced by a written communication to the competent authority of the requested State within a reasonable time period prior to the return of the person concerned provided that the person to be readmitted is in possession of a valid travel document and, where applicable, a valid visa or residence authorisation of the requested State.

Article 7

Readmission application

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

- (a) the particulars of the person to be readmitted (e.g. given names, surnames, date of birth, and — where possible — place of birth, father's name, mother's name, and the last place of residence);
- (b) indication of the means with which proof or prima facie evidence of nationality, transit, the conditions for the readmission of third-country nationals and stateless persons and unlawful entry and residence will be provided.

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

- (a) a statement indicating that the person to be transferred may need help or care, provided that the person concerned has explicitly consented to the statement;
- (b) any other protection or security measure which may be necessary in the individual transfer case.

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

Article 8

Means of evidence regarding nationality

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

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

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

Article 9

Means of evidence regarding third-country nationals and stateless persons

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

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

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

Article 10

Time limits

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

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

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

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

Article 11

Transfer modalities and modes of transportation

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

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

Article 12

Readmission in error

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

SECTION IV

TRANSIT OPERATIONS

Article 13

Principles

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

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

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

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

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

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

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

Article 14

Transit procedure

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

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

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

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

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

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

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

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

4. The competent authorities of the requested State shall, subject to mutual consultations, assist in the transit operations, in particular through the surveillance of the persons in question and the provision of suitable amenities for that purpose.

SECTION V

COSTS

Article 15

Transport and transit costs

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

SECTION VI

DATA PROTECTION AND NON-AFFECTION CLAUSE

Article 16

Data Protection

The communication of personal data shall only take place if such communication is necessary for the implementation of this Agreement by the competent authorities of Albania or a Member State as the case may be. The processing and treatment of personal data in a particular case shall be subject to the domestic laws of Albania and, where the controller is a competent authority of a Member State, to the provisions of Directive 95/46/EC⁽¹⁾ 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

⁽¹⁾ 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, 23.11.1995, p. 31). Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

those data are not adequate, relevant, accurate, or they are excessive in relation to the purpose of processing. This includes the notification of any rectification, erasure or blocking to the other Party;

- (g) upon request, the receiving authority shall inform the communicating authority of the use of the communicated data and of the results obtained therefrom;
- (h) personal data may only be communicated to the competent authorities. Further communication to other bodies requires the prior consent of the communicating authority;
- (i) the communicating and the receiving authorities are under an obligation to make a written record of the communication and receipt of personal data.

Article 17

Non-affection clause

1. This Agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Albania arising from International Law and, in particular, from the European Convention of 4 November 1950 for the Protection of Human Rights, the Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees, and international instruments on extradition.

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

SECTION VII

IMPLEMENTATION AND APPLICATION

Article 18

Joint readmission committee

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

- (a) to monitor the application of this Agreement;
- (b) to decide on implementing arrangements necessary for the uniform application of this Agreement;
- (c) to have regular exchanges of information on the implementing Protocols drawn up by individual Member States and Albania pursuant to Article 19;
- (d) to decide on amendments to the annexes to this Agreement;

- (e) to recommend amendments to this Agreement.

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

3. The committee shall be composed of representatives of the Community and Albania; the Community shall be represented by the Commission, assisted by experts from Member States.

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

5. The committee shall establish its rules of procedure.

Article 19

Implementing Protocols

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

- (a) designation of the competent authorities, border crossing points and exchange of contact points;
- (b) conditions for escorted returns, including the transit of third-country nationals and stateless persons under escort;
- (c) means and documents additional to those listed in the Annexes 1 to 4 to this Agreement.

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

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

Article 20

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 19, be concluded between individual Member States and Albania.

SECTION VIII

FINAL PROVISIONS*Article 21***Territorial application**

1. Subject to paragraph 2, this Agreement shall apply to the territory in which the Treaty establishing the European Community is applicable and to the territory of Albania.
2. This Agreement shall not apply to the territory of the Kingdom of Denmark.

*Article 22***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. Subject to paragraph 3, this Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties notify each other that the procedures referred to in the first paragraph have been completed.

3. Articles 3 and 5 of this Agreement shall enter into force two years after the date referred to in paragraph 2.

4. This Agreement is concluded for an unlimited period.

5. 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 23***Annexes**

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

Done at Luxembourg on the fourteenth day of April in the year two thousand and five in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish, Swedish and Albanian languages, each of these texts being equally authentic.

Por la Comunidad Europea

Za Evropské společenství

For Det Europæiske Fællesskab

Für die Europäische Gemeinschaft

Euroopa Ühenduse nimel

Για την Ευρωπαϊκή Κοινότητα

For the European Community

Pour la Communauté européenne

Per la Comunità europea

Eiropas Kopienas vārdā

Europos bendrijos vardu

az Európai Közösség részéről

Għall-Komunità Ewropea

Voor de Europese Gemeenschap

W imieniu Wspólnoty Europejskiej

Pela Comunidade Europeia

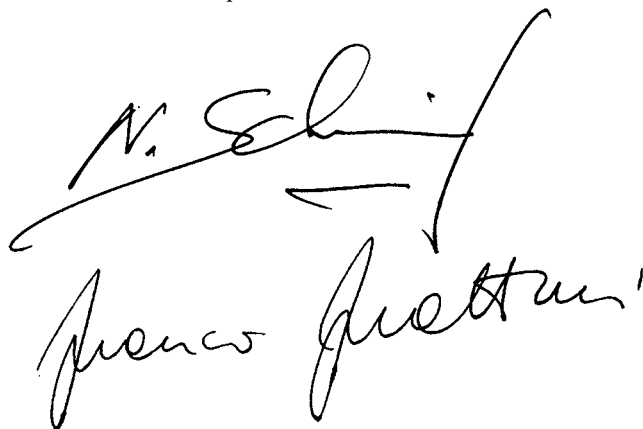
Za Európske spoločenstvo

za Evropsko skupnost

Euroopan yhteisön puolesta

På Europeiska gemenskapens vägnar

Për Komitetin Evropian



N. Schifano

Por la República de Albania
Za Albánskou republiku
På Republikken Albanien
Für die Republik Albanien
Albaania Vabariigi nimel
Για τη Δημοκρατία της Αλβανίας
For the Republic of Albania
Pour la République d'Albanie
Per la Repubblica di Albania
Albānijas Republikas vārdā -
Albanijos Respublikos vardu
az Albán Köztársaság részéről
Għar-Repubblika ta' l-Albanija
Voor de Republiek Albanië
W imieniu Republiki Albanii
Për Republikën e Shqipërisë
För Republiken Albanien
Albanian tasavallan puolesta
Za Republiko Albanijo
Za Albánsku republiku
Pela República da Albânia

A handwritten signature in black ink, appearing to be 'E. Perry' with a long, sweeping underline.

ANNEX 1

Common list of documents the presentation of which is considered as proof of nationality

(Articles 2(1), 3(1), 4(1) and 5(1))

- 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,
 - seamen's registration books and skippers' service cards,
 - citizenship certificates and other official documents that mention or indicate citizenship.
-

ANNEX 2

Common list of documents the presentation of which is considered as prima facie evidence of nationality

(Articles 2(1), 3(1), 4(1) and 5(1))

- Photocopies of any of the documents listed in Annex 1 to this Agreement,
 - driving licences or photocopies thereof,
 - birth certificates or photocopies thereof,
 - company identity cards or 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 of the person concerned.
-

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 3(1) and 5(1))

- Entry/departure stamps or similar endorsement in the travel document of the person concerned or other evidence of entry/departure (e.g. photographic),
 - documents, certificates and bills of any kind (e.g. hotel bills, appointments for medical or hospital treatment, 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,
 - 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.
-

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 3(1) and 5(1))

- Description of place and circumstances under which the person concerned has been intercepted after entering the territory of the requesting State, issued by the relevant authorities of that State,
 - information related to the identity and/or stay of a person which has been provided by an international organisation,
 - statement by the person concerned,
 - reports/confirmation of information by family members, travelling companions, etc.
-

ANNEX 5



(Emblem of Albania)

.....
(Place and date)

.....
(Designation of requesting authority)

Reference:

To

.....
(Designation of receiving authority)

READMISSION APPLICATION

pursuant to Article 7 of the Agreement of 14 April 2005 between the European Community and the Republic of Albania
on the readmission of persons residing without authorisation

A. Personal Details

1. Full name (underline surname):

2. Maiden name:

3. Date and place of birth:

4. Father's name, mother's name:

5. Sex and physical description (height, colour of eyes, distinguishing marks etc.):

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

7. Nationality and language:

8. Civil status: ☐ married ☐ single ☐ divorced ☐ widowed

married: name of spouse:

Names and age of children (if any):

9. Last address in the requesting State:

Photograph

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)

D. Observations

.....

.....

.....

.....

(Signature of the requesting authority)

(Seal/stamp)

ANNEX 6



Emblem of Albania

.....
(Place and date)

.....
(Designation of requesting authority)

Reference:

To

.....
(Designation of receiving authority)

TRANSIT APPLICATION

pursuant to Article 14 of the Agreement of 14 April 2005 between the European Community and the Republic of Albania
on the readmission of persons residing without authorisation

A. Personal details

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, nicknames or pseudonyms):

.....

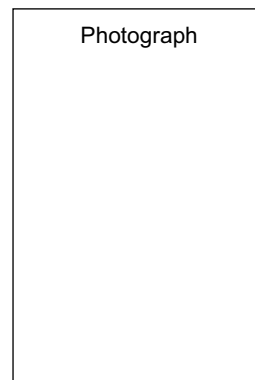
6. Nationality and language:

.....

7. Type and number of travel document:

.....

Photograph



B. Transit Operation

1. Type of transit

☐

by air

☐

by sea

☐

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 13 paragraph 2)

☐

yes

☐

no

6. Knowledge of any reason for a refusal of transit

(Article 13 paragraph 3)

☐

yes

☐

no

C. Observations

.....

.....

.....

.....

(Signature of the requesting authority)

(Seal/stamp)

JOINT DECLARATION ON THE RELATION TO THE FUTURE STABILISATION AND ASSOCIATION AGREEMENT

The Parties take note that, on 31 January 2003, negotiations were launched on the conclusion of a Stabilisation and Association Agreement (SAA) between Albania, of the one part, and the Community and its Member States, of the other part, which will also include provisions on the prevention and control of illegal immigration and readmission. The Parties therefore agree that this Agreement will be fully taken into account in the relevant provisions of the SAA.

JOINT DECLARATION ON ARTICLE 3

The Parties take note that the readmission obligation vis-à-vis third-country nationals and stateless persons holding a valid visa issued by Albania (Article 3(1)(a) of this Agreement) shall only apply if the visa has been used for entering the territory of Albania.

JOINT DECLARATION ON ARTICLE 18

The meeting of the Joint Readmission Committee shall be held, wherever possible, in parallel with the relevant Subcommittee set up under the future Stabilisation and Association Agreement.

It shall keep that Subcommittee informed of its work.

The rules of procedure of the Joint Readmission Committee shall be compatible with the rules of procedure of that Subcommittee.

JOINT DECLARATION CONCERNING 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 Albania 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 Albania conclude a readmission agreement with Iceland and Norway in the same terms as this Agreement.

COUNCIL DECISION**of 3 March 2005****concerning the conclusion of the Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation**

(2005/372/EC)

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,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The Commission has negotiated on behalf of the European Community an Agreement with the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation.

(2) This Agreement was signed, on behalf of the European Community, on 4 June 2004 subject to its possible conclusion at a later date, in accordance with the Decision of 25 November 2003.

(3) This Agreement should be approved.

(4) The Agreement establishes a Joint Readmission Committee which may take decisions having legal effect on certain technical matters. It is therefore appropriate to provide for simplified procedures for the establishment of the Community position in such cases.

(5) 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 establishing the European Community, the United Kingdom has notified its wish to take part in the adoption and application of this Decision.

(6) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by or subject to its application.

(7) 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 establishing the European Community, Denmark does not take part in the adoption of this Decision and is not bound by it or subject to its application,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation and the declarations annexed thereto 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 21(2) of the Agreement.

Article 3

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

Article 4

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

For all other of the Joint 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, 3 March 2005.

For the Council
The President
F. BILTGEN

AGREEMENT**between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation**

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

and

THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, hereinafter referred to as 'Sri Lanka',

hereinafter referred to as 'the Contracting Parties',

DETERMINED to strengthen their cooperation in order to combat illegal immigration more effectively,

CONCERNED at the significant increase in the activities of organised criminal groups in the smuggling of migrants and other related criminal activities,

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 territories of Sri Lanka or one of the Member States of the European Union, and to facilitate the transit of such persons in a spirit of cooperation,

EMPHASISING that this Agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States of the European Union and Sri Lanka under International Law,

CONSIDERING that the provisions of this Agreement, that fall 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:

*Article 1***Definitions**

- (e) 'Stateless person' shall mean any person who does not hold a nationality. This shall not include persons who have been deprived of, or who have renounced, their nationality since entering the territory of Sri Lanka or one of the Member States respectively unless such persons have at least been promised naturalisation by that State;

For the purpose of this Agreement:

- (a) 'Member State' shall mean any Member State of the European Union, with the exception of the Kingdom of Denmark;
- (b) 'National of a Member State' shall mean any person who holds the nationality, as defined for Community purposes, of a Member State;
- (c) 'National of Sri Lanka' shall mean any person who holds the citizenship of Sri Lanka;
- (d) 'Third-country national' shall mean any person who holds a nationality or citizenship other than that of Sri Lanka or one of the Member States;
- (f) 'Residence authorisation' shall mean a permit of any type issued by Sri Lanka or one of the Member States entitling a person to reside on its territory. This shall not include temporary permissions to remain on its territory in connection with the processing of an asylum application or an application for a residence authorisation;
- (g) 'Visa' shall mean an authorisation issued or a decision taken by Sri Lanka or one of the Member States which is required with a view to entry in, or transit through, its territory. This shall not include airport transit visa.

SECTION I

READMISSION OBLIGATIONS BY SRI LANKA*Article 2***Readmission of own nationals**

1. Sri Lanka 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 established on the basis of prima facie evidence furnished, that they are nationals of Sri Lanka.

2. At the request of a Member State, Sri Lanka 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 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, Sri Lanka shall extend the validity of the travel document or, where necessary, issue a new travel document with the same period of validity expeditiously, which shall normally be within 14 calendar days and not exceed 30 calendar days. If Sri Lanka has not acknowledged receipt of the request of a Member State within 30 calendar days, it shall be deemed to accept the use of the common provisional travel document for return purposes, which is attached as Annex 7 to this Agreement.

*Article 3***Readmission of third-country nationals and stateless persons**

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

- (a) at the time of entry held a valid visa or residence authorisation issued by Sri Lanka; or
- (b) entered the territory of the Member States unlawfully coming directly from the territory of Sri Lanka. A person comes directly from Sri Lanka within the meaning of this subparagraph if he or she arrived on the territory of the Member States by air or ship without having entered another country in-between.

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 Colombo international airport; or
- (b) the requesting Member State has issued to the third country national or stateless person a visa or residence authorisation before or after entering its territory unless that person is in possession of a visa or residence permit, issued by Sri Lanka, which has a longer period of validity.

3. At the request of a Member State, Sri Lanka 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 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, Sri Lanka shall issue a new travel document with the same period of validity expeditiously, which shall normally be within 14 calendar days and not exceed 30 calendar days. If Sri Lanka has not acknowledged receipt of the request of a Member State within 30 calendar days, it shall be deemed to accept the use of the common provisional travel document for return purposes, which is attached as Annex 7 to this Agreement.

SECTION II

READMISSION OBLIGATIONS BY THE COMMUNITY*Article 4***Readmission of own nationals**

1. A Member State shall readmit, upon application by Sri Lanka 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 Sri Lanka provided that it is proved, or may be validly established on the basis of prima facie evidence furnished, that they are nationals of that Member State.

2. At the request of Sri Lanka, 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 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 extend the validity of the travel document or, where necessary, issue a new travel document with the same period of validity expeditiously, which shall normally be within 14 calendar days and not exceed 30 calendar days. If the Member State concerned has not acknowledged receipt of the request of Sri Lanka within 30 calendar days, it shall be deemed to accept the use of the common provisional travel document for return purposes, which is attached as Annex 7 to this Agreement.

Article 5

Readmission of third-country nationals and stateless persons

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

- (a) at the time of entry held a valid visa or residence authorisation issued by the requested Member State; or
- (b) entered the territory of Sri Lanka unlawfully coming directly from the territory of the requested Member State. A person comes directly from the territory of the requested Member State within the meaning of this subparagraph if he or she arrived in Sri Lanka by air or ship without having entered another country in-between.

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) Sri Lanka has issued, to the third country national or stateless person, a visa or residence authorisation before or after entering its territory, unless that person is in possession of a visa or residence permit, issued by the requested Member State, which has a longer period of validity.

3. If two or more Member States issued a visa or residence authorisation, the readmission obligation in paragraph 1 is for the Member State that issued the document with a longer period of validity or, if one or several of them have already expired, the document that is still valid. If all of the documents have already expired, the readmission obligation in paragraph 1 is for the Member State that issued the document with the most recent expiry date.

4. At the request of Sri Lanka, 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 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 expeditiously, which shall normally be within 14 calendar days and not exceed 30 calendar days. If the Member State concerned has not acknowledged receipt of the request of Sri Lanka within 30 calendar days, it shall be deemed to accept the use

of the common provisional travel document for return purposes, which is attached as Annex 7 to this Agreement.

SECTION III

READMISSION PROCEDURE

Article 6

Principle

1. Subject to paragraph 2, any transfer of a person to be readmitted on the basis of one of the obligations contained in Articles 2 to 5 shall require the submission of a readmission application to the competent authority of the requested State.

2. The readmission application may be replaced by a written communication to the 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 visa or residence authorisation of the requested State; and
- (b) the person to be readmitted is willing to return to the requested State.

Article 7

Readmission application

1. Where possible, the readmission application is to contain the following information:

- (a) the particulars of the person to be readmitted (e.g. given name, surname, maiden name, earlier names, nicknames or pseudonyms, date and place of birth, sex, physical description, father's and mother's name, current and any previous nationality, language, civil status, names of spouse, children (if any) or other next of kin, last place of residence, passport or identity card number, driving licence, schools attended);
- (b) indication of the means with which proof or *prima facie* evidence of nationality, transit and unlawful entry and residence will be provided.

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**

1. Proof of nationality pursuant to Articles 2(1) and 4(1) can, in particular, be provided 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 and Sri Lanka 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 Articles 2(1) and 4(1) can, in particular, be provided through the documents listed in Annex 2 to this Agreement, even if their period of validity has expired. Prima facie evidence of nationality cannot be provided through false documents.

3. Save in the case of availability of authentic documents as listed in Annex 1, the competent diplomatic representation of Sri Lanka or the Member State concerned may, whenever necessary and upon request, make arrangements to interview the person to be readmitted without undue delay in order to establish his or her nationality.

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

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

2. Prima facie evidence of the conditions for readmission of third-country nationals and stateless persons laid down in Articles 3(1) and 5(1) shall, in particular, be provided through the means of evidence listed in Annex 4 to this Agreement; it cannot be provided through false documents. Where such prima facie evidence is presented, the Member States and Sri Lanka shall deem the conditions to be established, unless they can prove otherwise. In doubtful cases the Contracting Parties will consult with a view to interviewing, without undue delay, the person to be readmitted.

3. The unlawfulness of entry, presence or residence shall be established by means of the travel documents of the person concerned in which the necessary visa or other residence authorisation for the territory of the requesting State are missing. A statement by the requesting State that the person

concerned has been found not to have the necessary travel documents, visa or residence authorisation shall likewise provide prima facie evidence 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 State within a maximum of one year after the requesting State's competent authority has gained knowledge that a third-country national or a stateless person does not, or does no longer, fulfil the conditions in force for entry, presence or residence. Where there are legal or factual obstacles to the application being submitted in time, the time limit shall, upon request, be extended but only until the obstacles have ceased to exist.

2. A readmission application must be replied to without undue delay, and normally within a period of 15 calendar days and not exceed 30 calendar days; 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. If there was no acknowledgement of receipt within this time limit the transfer shall be deemed to have been agreed to.

3. After agreement has been given or, where appropriate, if no acknowledgement was given within the 30 calendar-day 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 Sri Lanka and the Member State concerned shall make arrangements in writing and in advance regarding the transfer date, the point of entry, possible escorts and other information relevant to the transfer.

2. No means of transportation, whether by air, land or sea, shall be prohibited. Return by air shall not be restricted to the use of the national carriers of the Contracting Parties and may take place by using scheduled flights as well as charter flights. In the event of escorted returns, such escorts shall not be restricted to authorised persons of the requesting State, provided that they are authorised persons from Sri Lanka or any other Member State. Sri Lanka and the Member State concerned shall carry out prior mutual consultations on the modalities of charter flights.

SECTION IV

TRANSIT OPERATIONS*Article 12***Principles**

1. The Member States and Sri Lanka 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. Sri Lanka 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 Sri Lanka so requests, only if the onward journey in other possible States of transit and the readmission by the State of destination is assured.

3. Transit can be refused by Sri Lanka or a Member State

- (a) if the third-country national or the stateless person runs the risk of persecution, or could be subject 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 State; or
- (b) on grounds of public health, domestic security, public order or other national interests of the requested State.

4. Sri Lanka 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 operations 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), other possible States of transit and intended final destination;
- (b) the particulars of the person concerned (e.g. given name, surname, maiden name, nicknames or pseudonyms, 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 from the viewpoint of the requesting State 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 requested State shall, without undue delay and in writing, inform the requesting State of the admission, confirming the point of entry and the envisaged time of admission, or inform it of the admission refusal and of the reasons for such refusal.

3. If the transit operation is effected by air, the person to be readmitted and possible escorts shall be exempt from having to obtain an airport transit visa.

4. The competent authorities of the requested State shall, subject to mutual consultations, support the transit operations, 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 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 NON-AFFECTION CLAUSE*Article 15***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 Sri Lanka 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 Sri Lanka and, where the controller is a competent authority of a Member State, to the provisions of 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, 23.11.1995, p. 31) 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 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. given names, surnames, any previous names, nicknames or pseudonyms, sex, father's and mother's name, date and place of birth, current and any previous nationality, last place of residence, schools attended, civil status, names of spouse and children, if any, and names of other next of kin),
 - passport, identity card or driving licence (number, period of validity, date of issue, issuing authority, place of issue),
 - stopping places 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 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 that 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 of the Community, the Member States and Sri Lanka arising from International Law and, in particular, from any applicable International Convention or agreement to which they are Parties.
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***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 Joint 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 Sri Lanka pursuant to Article 18;
 - (d) to decide on specific implementing arrangements aiming at an orderly management of return flows;
 - (e) to decide on amendments to the Annexes to this Agreement;
 - (f) to recommend amendments to this Agreement.
2. The decisions of the Joint Committee shall be binding on the Parties.
3. The Joint Committee shall be composed by representatives of the Community and Sri Lanka; the Community shall be represented by the Commission of the European Communities, assisted by experts from Member States.
4. The Joint Committee shall meet where necessary at the request of one of the Contracting Parties.
5. The Joint Committee shall establish its rules of procedures.

Article 18

Implementing Protocols

1. Sri Lanka 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 and the exchange of contact points;
 - (b) the conditions for escorted returns, including the transit of third-country nationals and stateless persons under escort;
 - (c) means and documents additional to those listed in the Annexes 1 to 4 to this Agreement.
2. The implementing Protocols referred to in paragraph 1 will enter into force only after the Joint Readmission Committee (Article 17) has been notified.
3. Sri Lanka 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 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 Sri Lanka, in so far as the provisions of the latter are incompatible with those of this Agreement.

SECTION VIII

FINAL PROVISIONS

Article 20

Territorial application

1. Subject to paragraph 2, this Agreement shall apply to the territory in which the Treaty establishing the European Community is applicable and to the territory of Sri Lanka.
2. This Agreement shall not apply to the territory of the Kingdom of Denmark.

Article 21

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 Contracting Parties notify each other that the procedures referred to in the first paragraph have been completed.
3. This Agreement is concluded for an unlimited period.
4. 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.

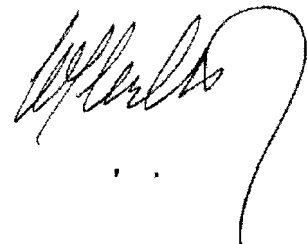
Article 22

Annexes

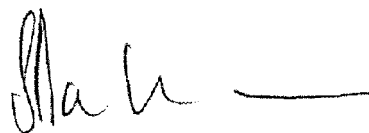
Annexes 1 to 7 shall form an integral part of this Agreement.

Done at Colombo on the fourth day of June in the year two thousand and four in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish, Sinhala and Tamil languages, each of these texts being equally authentic.

For the European Community

Philippe Morin


*For the Democratic Socialist Republic of
Sri Lanka*



ANNEX 1

Common list of documents the presentation of which is considered as proof of nationality

(Article 2(1), article 3(1), article 4(1) and article 5(1))

- valid or expired passports of any kind, issued by official authorities of the Member States or Sri Lanka (national passports, diplomatic passports, service passports and, where applicable, collective passports and surrogate passports including children's passports),
 - valid identity cards of any kind, issued by official authorities of the Member States or Sri Lanka (including temporary and provisional ones),
 - citizenship certificates or other official documents that mention or indicate citizenship;
 - service books and military identity cards,
 - seaman's registration books and skippers' service cards.
-

ANNEX 2

Common list of documents the presentation of which is considered as prima facie evidence of nationality

(Article 2(1), article 3(1), article 4(1) and article 5(1))

- photocopies (*) of any of the documents listed in Annex 1 to this Agreement,
- photocopies (*) of citizenship certificates and other official documents that mention or indicate citizenship,
- driving licences or photocopies (*) thereof,
- birth certificates or photocopies (*) thereof,
- any other official document issued by the authorities of the requested State,
- company identity cards or photocopies (*) thereof,
- statements by witnesses,
- statements made by the person concerned and language spoken by him or her.

—

(*) For the purpose of this Annex, the term 'photocopies' means photocopies officially made by authorities of Sri Lanka or the Member States.

ANNEX 3

Common list of documents which are considered as proof of the conditions for the readmission of third country nationals and stateless persons

(Article 3(1) and article 5(1))

- entry/departure stamps or similar endorsement in the travel document of the person concerned or other evidence of entry/departure (e.g. photographic),
 - documents of an official nature, such as hospital in-patients' and outpatients' tickets, which clearly show that the person concerned stayed on the territory of the requested State,
 - tickets and/or passenger lists of air or boat passages which show the presence 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.
-

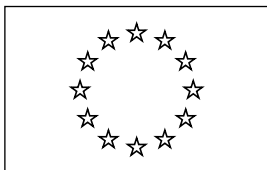
ANNEX 4

Common list of documents which are considered as prima facie evidence of the conditions for the readmission of third country nationals and stateless persons

(Article 3(1), article 5(1))

- description of place and circumstances under which the person concerned has been intercepted after entering the territory of the requesting State, issued by the relevant authorities of that State,
 - information related to the identity and/or stay of a person which has been provided by an international organisation,
 - documents of an unofficial nature, such as hotel bills, car rental agreements or credit card receipts, which clearly specify the name and passport number or other identifying feature of the person concerned,
 - reports/confirmation of information by family members.
-

ANNEX 5



(Emblem of Sri Lanka)

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

Reference:

To

.....
(Designation of receiving authority)**READMISSION APPLICATION**

pursuant to Article 7 of the Agreement of 4 June 2004 between the European Community
and the Democratic Socialist Republic of Sri Lanka 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. Father's and mother's name:

6. Also known as (earlier names, nicknames or pseudonyms):

7. Nationality and language:

8. Civil status: ☐ married ☐ single ☐ divorced ☐ widowed

If married: name of spouse:

Names and age of children (if any):

9. Names of brothers/sisters and other next of kin:

10. Last address in the requesting State:

11. Previous address in the requested State:

12. Names (and periods) of schools attended in the requested State:

.....

13. Profession and names of former employers in the requested State (if any):

.....

14. Names and addresses of doctors/dentists in the requested State:

.....

15. Date and means of leaving the requested State (by air – name of airline, ship etc.):

.....

16. Date and means of entry to the requesting 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.

.....

(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)

D. Observations

.....

.....

.....

.....

(Signature)

(Seal/stamp)

ANNEX 6



[Emblem of Sri Lanka]

.....

(Place and date)

.....

(Designation of requesting authority)

Reference

.....

To

.....

.....

.....

(Designation of receiving authority)

TRANSIT APPLICATION

pursuant to Article 13 of the Agreement of 4 June 2004 between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation

A. **Personal details**

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, nicknames or pseudonyms):

.....

6. Nationality and language:

.....

7. Type and number of travel document:

.....

Photograph

B. Transit operation

1. Type of transit

☐ by air☐ by sea☐ 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)

☐ yes☐ no

6. Knowledge of any reason for a refusal of transit

(Article 12 paragraph 3)

☐ yes☐ no**C. Observations**

.....

.....

.....

.....

(Signature)

(Seal/stamp)

ANNEX 7



(Emblem of Sri Lanka)

(Place and date)

(Designation of issuing authority)

Reference

COMMON PROVISIONAL TRAVEL DOCUMENT

pursuant to Articles 2 to 5 of the Agreement of 4 June 2004 between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation

Valid for a single return journey from (issuing State)
 to (point of entry/country of destination)
 via (transit countries)
 by (mode of transportation)
 leaving on (date of departure)

**This travel document expires on and must be produced to the
 Immigration Officer on arrival in (point of entry/country of destination)**

Name Forename Date of birth Place of birth Sex / Height Distinguishing marks (if any)	Holder's Photograph
Personal Identity card No Nationality	Signature

Address in Sri Lanka (if known)

(Signature)

(Seal/stamp)

JOINT DECLARATION ON ARTICLE 2(1)

The Parties take note that, under Sri Lanka's constitution and according to its current citizenship laws (Citizenship Act No 18 of 1948), it is not possible for a Sri Lankan national to be deprived of his or her Sri Lankan nationality without acquiring the nationality of another State. Similarly, the renunciation of nationality by a Sri Lankan national acquires legal validity only if he or she has acquired the nationality of another State.

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

JOINT DECLARATION ON ARTICLE 3(1)(b) AND ARTICLE 5(1)(b)

The Parties agree that mere airside transit stays in a third country shall not be considered as 'having entered another country in-between' in the meaning of those two provisions.

JOINT DECLARATION CONCERNING DENMARK

The Contracting Parties take note that this Agreement does not apply to the territory of the Kingdom of Denmark. In such circumstances it is considered appropriate that Sri Lanka and Denmark should conclude a readmission agreement on 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 considered appropriate that Sri Lanka and Iceland and Norway should conclude a Readmission Agreement on the same terms as this Agreement.

JOINT DECLARATION ON THE FACILITATION OF LAW ENFORCEMENT COOPERATION

The delegations of the Community and Sri Lanka commit themselves to a joint effort to fight against illegal immigration. They agree that if the problem of illegal immigration originating from Sri Lanka is to be comprehensively dealt with, effective cooperative measures flowing from this situation would need to be instituted.

In addition, both Parties recognise the need to take measures against organised criminal activities, such as human trafficking, migrant smuggling and financing for terrorist purposes, which have become grounds for growing concern.

Accordingly, the European Community, in conformity with all relevant international instruments including the Palermo Protocols against the Trafficking of Human Beings and the Smuggling of Migrants, and acting within its sphere of competences, will encourage and facilitate the cooperation between law enforcement, immigration or other relevant authorities of Member States, as appropriate, with their counterparts of Sri Lanka, in accordance with their domestic law.
