

# Procedure file

Basic information		
NLE - Non-legislative enactments Decision	<a href="#">2009/0036(NLE)</a>	Procedure completed
EC/Pakistan agreement: readmission agreement		
Subject 6.40.08 Relations with Asian countries 7.10.04 External borders crossing and controls, visas 7.10.08 Migration policy		
Geographical area Pakistan		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>LIBE</b> <a href="#">Civil Liberties, Justice and Home Affairs</a>		06/10/2009
		PPE <a href="#">SÓGOR Csaba</a>	
	Former committee responsible		
	<b>LIBE</b> <a href="#">Civil Liberties, Justice and Home Affairs</a>		
Council of the European Union	Committee for opinion	Rapporteur for opinion	Appointed
	<b>AFET</b> <a href="#">Foreign Affairs</a>		16/09/2009
		PPE <a href="#">ALBERTINI Gabriele</a>	
	Former committee for opinion		
	<b>AFET</b> <a href="#">Foreign Affairs</a>		
European Commission	Council configuration	Meeting	Date
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3034</a>	07/10/2010
	<a href="#">General Affairs</a>	<a href="#">2997</a>	22/02/2010
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2946</a>	04/06/2009
European Commission	Commission DG	Commissioner	
	<a href="#">Justice and Consumers</a>	MALMSTRÖM Cecilia	

Key events			
06/03/2009	Legislative proposal published	<a href="#">COM(2009)0106</a>	Summary
12/11/2009	Committee referral announced in Parliament		
02/12/2009	Additional information		Summary
13/07/2010	Vote in committee		Summary

15/07/2010	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A7-0231/2010</a>	
20/09/2010	Debate in Parliament		
21/09/2010	Results of vote in Parliament		
21/09/2010	Decision by Parliament	<a href="#">T7-0323/2010</a>	Summary
07/10/2010	Act adopted by Council after consultation of Parliament		
07/10/2010	End of procedure in Parliament		
04/11/2010	Final act published in Official Journal		

### Technical information

Procedure reference	2009/0036(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consent by Parliament
Legislative instrument	Decision
Legal basis	Treaty on the Functioning of the EU TFEU 218-p6a; Treaty on the Functioning of the EU TFEU 079-p3
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/00267

### Documentation gateway

Legislative proposal		<a href="#">COM(2009)0106</a>	06/03/2009	EC	Summary
Document attached to the procedure		<a href="#">08793/2009</a>	12/05/2009	CSL	
Supplementary legislative basic document		<a href="#">05942/2010</a>	16/02/2010	CSL	Summary
Committee draft report		<a href="#">PE439.903</a>	26/05/2010	EP	
Committee opinion	<b>AFET</b>	<a href="#">PE439.420</a>	07/06/2010	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A7-0231/2010</a>	15/07/2010	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T7-0323/2010</a>	21/09/2010	EP	Summary

### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

### Final act

[Decision 2010/649](#)  
[OJ L 287 04.11.2010, p. 0050](#) Summary

**PURPOSE:** to conclude a readmission agreement with Pakistan.

**PROPOSED ACT:** Council Decision.

**BACKGROUND:** on 18 September 2000, the General Affairs Council formally authorised the Commission to negotiate a readmission agreement between the European Community and Pakistan. In April 2001, the Commission transmitted a draft text to the Pakistan authorities. Following the Ministerial Troika meeting in Islamabad on 18 and 19 February 2004 and the establishment of the link between readmission and the ratification, by the EU, of the Cooperation Agreement between the European Community and the Islamic Republic of Pakistan on Partnership and Development, the first round of formal negotiations could be held in Islamabad in April 2004. Six further formal rounds of negotiations took place, the last one in Brussels on 17 September 2007.

Following the last round of negotiations, where all the outstanding issues could be resolved, both sides sought the endorsement of the agreed text from their respective constituencies. Following a lengthy consultation and approval process on both sides, the agreed text could finally be initialled on 9 September 2008 in Brussels by the Commission's Chief Negotiator and the Pakistani Ambassador to the EU.

**CONTENT:** the proposed Decision aims to conclude an agreement on the arrangements for the readmission of nationals of each of the parties concerned, under a strict framework provided for in the agreement. In particular, it specifies that the Commission, assisted by experts from Member States, represents the Community within the Joint Readmission Committee set up by Article 16 of the Agreement. As in the case for the other readmission agreements so far concluded by the Community, the Community position in this regard shall be established by the Commission in consultation with a special committee designated by the Council. As regards other decisions to be taken by the Joint Committee, the Community position shall be established in accordance with the applicable provisions of the Treaty.

The main provisions of the Agreement can be summarised as follows:

**Principle of reciprocity and scope:** the readmission obligations set out in the Agreement (Articles 2 and 3) are drawn up in a fully reciprocal way, comprising own nationals as well as third country nationals and stateless persons.

**Conditions for readmission:** the obligation to readmit third country nationals and stateless persons is linked to the following prerequisites:

(a) the person concerned holds, at the time of submission of the readmission application, a valid visa or residence authorisation issued by the requested State; or

(b) the person concerned unlawfully entered the territory of the requesting State coming directly from the territory of the requested State. Exempted from these obligations are persons in airside transit and all persons to whom the requesting State has either granted visa-free access or issued a visa or residence authorisation with a longer period of validity.

In return for Pakistan agreeing to the aforementioned obligation regarding the readmission of third-country nationals and stateless persons, the European Community agreed that the agreement shall only apply to persons who entered the territories of the Parties after its entry into force.

**Technical provisions regarding the readmission procedure:** the draft Agreement contains the necessary technical provisions regarding the readmission procedure:

- readmission application;
- means of evidence;
- time limits;
- transfer modalities;
- modes of transportation.

The Agreement also contains the necessary provisions regarding 'readmission in error'. Some procedural flexibility is provided by the fact that no readmission application will be needed in cases where the person to be readmitted is in possession of a valid national passport and, if he or she is a third-country national, also holds a valid visa or residence authorisation of the State which has to readmit him or her.

**Other provisions:** the Agreement contains a section on transit operations. It also contains the necessary rules on costs, data protection and the relation to other international obligations. Moreover, it sets out the composition and the tasks and powers of the Joint Readmission Committee.

**Territorial provisions:** the proposal takes account of the specific situation of Denmark, which is not part of the Schengen acquis and therefore is not required to comply with the provisions of the Agreement. The close association of Norway and Iceland to the implementation, application and development of the Schengen Acquis is likewise reflected in a joint declaration to the Agreement.

**Final provisions:** the final provisions contain the necessary rules on entry into force, duration, possible amendments, termination and the legal status of the Annexes to the agreement.

In order to execute this Agreement in practice, Article 17 creates the possibility for Pakistan and individual Member States to conclude bilateral implementing Protocols. The relation between the bilateral implementing Protocols and this Agreement is clarified by Article 18.

## EC/Pakistan agreement: readmission agreement

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The Lisbon Treaty, which entered into force on 1 December 2009, amended the EU's two core treaties, the Treaty on European Union (TEU) and the Treaty establishing the European Community (EC Treaty). The latter was renamed the Treaty on the Functioning of the European Union (TFEU).

These changes had various consequences for many ongoing procedures. First of all, the articles of the TEU and of the old EC Treaty that constitute the legal basis of all the proposals founded on those Treaties were renumbered in accordance with the table of equivalences mentioned in Article 5 of the Lisbon Treaty.

In addition, some proposals underwent a change to their legal basis going beyond a mere change to their numbering, and this resulted in changes to the type of procedure.

The Lisbon Treaty also introduced new concepts of decision-making procedure. The old "codecision procedure" was extended to new areas and renamed the "ordinary legislative procedure". A new "consent procedure" replaced the old "assent procedure". New interinstitutional

procedures were also set up for the adoption of certain non-legislative acts, for example the conclusion of some international agreements.

The ongoing proposals concerned by these changes were formally modified by the Commission in a Communication published on 2 December 2009 ([COM\(2009\)0665](#)).

In the case of the proposal for a Council Decision concerning the conclusion of the Agreement between the European Community and Pakistan on readmission, the entry into force of the Lisbon Treaty had the following impacts:

- the old legal basis - Treaty/EC/Art.63(3), Art.300(2) first para and (3) first para.- became Art 79(3), Art 218 (6)(a) of the TFEU. Please note that the numbering of the old legal basis corresponds to the consolidated version of the Treaty that was applicable immediately before the entry into force of the Lisbon Treaty, and may differ from the references in the original Commission proposal;
- the proposal, which had previously fallen under the old consultation procedure (CNS), was classified as an interinstitutional non-legislative procedure (NLE).

## EC/Pakistan agreement: readmission agreement

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**PURPOSE:** to conclude the Agreement between the European Community and Pakistan on the readmission of persons residing without authorisation.

**PROPOSED ACT:** Council Decision.

**CONTENT:** the aim of this proposal is to conclude, on behalf of the Union, the Agreement between the European Community and Pakistan on the readmission of persons residing without authorisation.

The Agreement was signed, on behalf of the European Community, on 26 October 2009 subject to its conclusion. For details of the content of the Agreement, please refer to the initial document of 06/03/2009 as well as Council document [08793/2009](#).

As consequence of the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union has replaced and succeeded the European Community. The procedures to be followed by the Union in order to conclude the Agreement are governed by Article 218(6) (a) of the Treaty on the Functioning of the European Union (TFEU) which states that the Council shall adopt a decision concluding the agreement.

The Agreement establishes a Joint Readmission Committee which may adopt its rules of procedure. It is appropriate to provide for a simplified procedure for the establishment of the European Union position in this case.

**Territorial application:** in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom has notified its wish to take part in the adoption and application of this Decision. Ireland, in accordance with the same Protocol, has decided not to participate in the adoption of this Decision. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

## EC/Pakistan agreement: readmission agreement

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report drawn up by Csaba SÓGOR (EPP, RO) recommending that the European Parliament give its consent to the proposal for a Council decision on the conclusion of the Agreement between the European Union and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation.

It should be noted that a minority opinion was expressed by a certain number of members from the S&D, Greens/ALE and GUE/NGL groups as regards the conclusion of the Agreement on the basis that there is a lack of strict safeguards and mechanisms concerning the violation of fundamental rights.

## EC/Pakistan agreement: readmission agreement

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The European Parliament adopted by 382 votes to 250, with 23 abstentions, a legislative resolution in which it gives its consent to the proposal for a Council decision on the conclusion of the Agreement between the European Union and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation.

The resolution is accompanied by a Commission declaration in which it recalls that EU law requires Member States to ensure that third country nationals present on the territory of the Member States may apply for international protection if they so wish and that in particular the Treaty, the Asylum Qualification and the Return Directive make it clear that Member States must respect the principle of non-refoulement in accordance with their international obligations. The Commission also recalls that EU Member States are in particular obliged to ensure, in all cases, that no return is effected in violation of the European Human Rights Convention and the EU Charter of Fundamental Rights, which oblige States to ensure that a person should not be returned if he or she would be likely to suffer serious harm on his or her return to a country of origin or transit.

Lastly, the Commission will report every 6 months to the European Parliament on the implementation of the EU readmission agreements and will establish contacts with relevant international organisations active in Pakistan as regards the situation of persons readmitted under the EU agreement.

## EC/Pakistan agreement: readmission agreement

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**PURPOSE:** conclusion of an Agreement with Pakistan on readmission.

**LEGISLATIVE ACT:** Council Decision 2010/649/EU on the conclusion of the Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation.

**CONTENT:** the proposed Decision aims to conclude an agreement on the arrangements for the readmission of nationals of each of the parties concerned, under a strict framework provided for in the agreement.

It should be noted that the Agreement previously concluded with the European Community has now been replaced by an Agreement with the European Union as a consequence of the entry into force of the Lisbon Treaty on 1 December 2009.

The main provisions of the Agreement can be summarised as follows:

**Principle of readmission:** the Agreement provides for the principle of readmission on the basis of complete reciprocity. In principle, therefore, the Requesting State (Pakistan, in general) is required to readmit to its territory its own nationals who do not fulfil or no longer fulfil the conditions for entry to the territory of the Requested State (a Member States, in general), upon the request of the latter. The Requesting State must therefore provide without delay the travel document necessary for the return of the person to be readmitted, valid for a period of at least six months.

Similar provisions exist for the readmission of national of third countries and/or stateless persons residing without authorisation in the Requested State. The requirement to readmit third country nationals or stateless persons is linked to the following conditions:

- a) if the person has, at the time of submission of the readmission application, a valid visa or residence authorisation issued by the Requested State;
- b) the person entered the territory of the requesting state unlawfully coming directly from Pakistan by air or ship without having entered another country in-between.

These obligations do not apply to persons in airside transit nor to those to whom a Member State has issue a visa or residence authorisation before or after entering its territory.

Where it relates to its own nationals or nationals of a third country or stateless persons, in all cases, Pakistan is required to establish, without delay, a travel document necessary for the return of the persons concerned.

**Readmission procedure:** the Agreement lays down the technical aspects relating to the readmission procedure. In particular, it lays down the provisions relating to:

- the readmission application (in general, a demand from a Member State to Pakistan for readmission),
- the readmission form and the content of the request,
- means of evidence regarding nationality if the documents cannot be relied upon (specific provisions in the case of third country nationals and stateless persons),
- time limits for the application request and the response (normally 30 calendar days),
- transfer modalities (3 months from the day of the acceptance of the request) and modes of transportation (escort, etc.).

**Readmission in error:** Pakistan or a Member State shall take back without delay any person readmitted in error within three months of the erroneous transfer of the person in question.

**Transit operations:** the Agreement contains a section devoted to transit operations as well as specific rules regarding transport and transit costs of those to be readmitted. In principle, the Requested State may allow the transit of a third country national or Stateless person when such a national or person cannot be returned to the State of destination directly after being satisfied, on the basis of written evidence, that the State of destination has committed itself to readmitting its national or the person as the case may be.

The Requested State may revoke consent if the onward journey in possible States of transit or the readmission by the State of destination is no longer assured. In such cases, the Requesting State shall take back the third country national or the Stateless person at its costs.

**Other provisions:** the Agreement contains the usual provisions on the data protection and on consistency with other legal obligations.

**Entry into force and application:** with a view to practical application, the Agreement provides Pakistan with the option of concluding bilateral implementing protocols with all the Member States. Final provisions govern the entry into force, the duration, eventual amendment, suspension and termination of the Agreement and define the legal status of its annexes. The Agreement also provides for the establishment of a Joint Readmission Committee responsible for facilitating the implementation of the Agreement and cooperation and exchanges of information between the Parties.

**Annexes:** the following annexes are an integral part of the Agreement:

- common list of documents the presentation of which is considered as evidence of nationality,
- common list of documents the presentation of which shall initiate the process for establishing nationality,
- common list of documents which shall be considered as means of evidence of the conditions for the readmission of third country nationals and stateless persons,
- common list of documents which are considered as means of evidence to initiate the investigations for the readmission of third country nationals and stateless persons,
- type model of readmission application,
- type model of transit application,
- several joint declarations.

**Territorial provisions:** in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom has notified its wish to take part in the adoption and application of this Decision, whereas Ireland has indicated it does not. Denmark, for its part, will not participate in the adoption of the decision nor in its application and the Agreement will not cover its territory (a declaration in the annex provides for the conclusion of a bilateral agreement between Denmark and Pakistan).

**ENTRY INTO FORCE:** the Agreement will enter into force when the necessary procedures will have been completed. The Decision enters into

force on 7 October 2010.