



EUROPEAN COMMISSION

Brussels, 25.9.2012  
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Proposal for a

**COUNCIL DECISION**

of [ ... ]

**concerning the conclusion of the Agreement between the European Union  
and the Republic of Cape Verde on the readmission of persons residing without  
authorisation**

## EXPLANATORY MEMORANDUM

### **1. POLITICAL AND LEGAL BACKGROUND**

Cape Verde is a stable and democratic country characterised by high standards of governance and respect for the rule of law and human rights. Cape Verde and the European Union enjoy excellent relations in the context of the EU-Cape Verde Special Partnership, a framework of mutual interests with a major political dimension. The Special Partnership was approved by the Council in 2007 and is currently being implemented. The priority sectors are: good governance, security, the information society, regional integration, technology and standards convergence, and poverty alleviation.

On 5 June 2008 Cape Verde and the European Union signed the Joint Declaration on a Mobility Partnership which provides for the opening of a dialogue between the two parties on readmission. In this context the annex to the Declaration contains an undertaking by the Commission to submit a recommendation to the Council under Article 13 of the Cotonou Agreement to authorise it to open negotiations on the conclusion of a readmission agreement with Cape Verde.

The negotiating directives for a European Union–Cape Verde readmission agreement were adopted by the Council on 4 June 2009. Negotiations were formally opened on 13 July 2009 in Brussels.

Three rounds of official negotiations took place, with the last on 23 November 2011.

The draft text was submitted for consultation to the Council Working Party on Immigration and Expulsion on 1 February 2012. The text agreed was initialled in Brussels on 24 April 2012 in the presence of José Manuel Barroso, President of the European Commission, and José Maria Neves, Prime Minister of Cape Verde.

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

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

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

The proposed decision concerning the conclusion of the Agreement sets out the necessary internal arrangements for the practical application of the Agreement. In particular, it specifies that the Commission, assisted by experts from Member States, will represent the Union within the Joint Readmission Committee set up by Article 18 of the Agreement. Under Article 18(5) of the Agreement, the Readmission Committee is to adopt its own rules of procedure. As for the other readmission agreements concluded by the Union thus far, the Union position in this regard is to 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 Readmission Committee, the Union position is to be established in accordance with the applicable provisions of the Treaty.

## 2. RESULTS OF THE NEGOTIATIONS

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

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

- The Agreement is divided into 8 sections with 23 articles altogether. It also contains 6 annexes, which form an integral part of it, and five joint declarations.
- The readmission obligations set out in the Agreement (Articles 2 to 5) are drawn up on a basis of full reciprocity, applying both to own nationals (Articles 2 and 4) and to third-country nationals and stateless persons (Articles 3 and 5).
- The obligation to readmit own nationals also includes former own nationals who have renounced, forfeited or been deprived of their nationality without acquiring the nationality of another State.
- The readmission obligation with regard to own nationals also covers family members (i.e. spouses and minor unmarried children), regardless of their nationality, who do not have an independent right of residence in the requesting State.
- The obligation to readmit third-country nationals and stateless persons (Articles 3 and 5) is linked to the following prerequisites: (a) the person concerned holds or held at the time of entering the territory of the requesting State a valid visa or residence permit issued by the requested State, or (b) the person concerned illegally entered the territory of the requesting State coming directly from the territory of the requested State. These obligations do not apply in respect of persons in airside transit or to whom the requesting State has issued a visa or residence permit before or after they entered its territory.
- Section III of the Agreement (Articles 6 to 12 in conjunction with Annexes 1 to 5) contains the necessary technical provisions regarding the readmission procedure (readmission application, means of evidence, time limits, transfer modalities and modes of transportation) and 'readmission in error' (Article 12). 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 travel document or identity card and, in case of third-country nationals, a valid visa or residence permit issued by the requested State (Article 6(2) and (3)).
- Article 6(5) of the Agreement sets out the 'accelerated procedure' which has been agreed for persons apprehended in the 'border region', i.e. within an area which extends up to 30 kilometres from the territories of seaports, including custom zones, and from international airports of Member States or of Cape Verde. Under the accelerated procedure, readmission applications have to be submitted within two working days, and replies have to be given within two working days.
- Under the normal procedure, the time limit for replies is eight calendar days.
- The Agreement contains a section on transit operations (Articles 13 and 14 in conjunction with Annex 6).

- Articles 15, 16 and 17 contain the necessary rules on costs, data protection and the relation to other international obligations and existing EU directives. The agreement is without prejudice to other arrangements relating to areas other than readmission, such as voluntary return.
- The Joint Readmission Committee will be composed in accordance with Article 18, and have the tasks and powers set out there.
- In order to execute this Agreement in practice, Article 19 creates the possibility for Cape Verde and individual Member States to conclude bilateral implementing Protocols. The relation between the bilateral implementing Protocols and this Agreement is clarified by Article 20.
- The final provisions (Article 21 to 23) contain the necessary rules on entry into force, duration, termination and the legal status of the annexes to the Agreement.
- The specific situation of the United Kingdom, Ireland and Denmark is reflected in the preamble, Article 1(d) and Article 21(2). The situation of Denmark is also mentioned in a joint declaration attached to the Agreement. The close association of Norway, Iceland, Liechtenstein and Switzerland with the implementation, application and development of the Schengen *acquis* is likewise reflected in a joint declaration attached to the Agreement.

### **3. CONCLUSIONS**

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

- approve, after having obtained the consent of the European Parliament, the attached Agreement between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorisation.

Proposal for a

## COUNCIL DECISION

of [ ... ]

**concerning the conclusion of the Agreement between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorisation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79(3), in conjunction with Article 218(6)(a), thereof,

Having regard to the proposal from the Commission,

Having regard to the consent of the European Parliament<sup>1</sup>,

Whereas:

- (1) In accordance with Council Decision 2010/XXX of [...]<sup>2</sup>, the Agreement between the European Union and the Republic of Cape Verde on readmission of persons residing without authorisation was signed by the Commission on [...], subject to its conclusion at a later date.
- (2) The Agreement should be concluded.
- (3) The Agreement establishes a Joint Readmission Committee which may adopt its own rules of procedure. Provision should be made for a simplified procedure for establishing the Union position in this regard.
- (4) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom *[is not taking part in the adoption of this Decision and will not be bound by this Agreement or subject to its application unless it notifies its wish to that effect in accordance with that Protocol/has notified its wish to take part in the adoption and application of this Decision]*.
- (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 on the

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ L [...], [...], p. [...].

Functioning of the European Union, Ireland [*is not taking part in the adoption of this Decision and will not be bound by this Agreement or subject to its application unless it notifies its wish to that effect in accordance with that Protocol/has notified its wish to take part in the adoption and application of this Decision*].

- (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 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,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Agreement between the European Union and the Republic of Cape Verde on readmission of persons residing without authorisation is hereby concluded.

The text of the Agreement is attached to this Decision.

#### *Article 2*

The President of the Council shall designate the person empowered to carry out, on behalf of the European Union, the notification provided for in Article 22(2) of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

#### *Article 3*

The Commission, assisted by experts from Member States, shall represent the Union in the Joint Readmission Committee established by Article 18 of the Agreement.

#### *Article 4*

The position of the Union within the Joint Readmission Committee with regard to the adoption of its rules of procedure as required under Article 18(5) of the Agreement shall be decided by the Commission after consultation with a special committee designated by the Council.

#### *Article 5*

This Decision shall enter into force on the date of its adoption. It shall be published in the Official Journal of the European Union.

The date of entry into force of the Agreement shall be published in the Official Journal of the European Union.

Done at Brussels,

*For the Council  
The President*

**ANNEX**

**AGREEMENT**

**between the European Union and the Republic of Cape Verde  
on the readmission of persons residing without authorisation**

THE HIGH CONTRACTING PARTIES,

THE EUROPEAN UNION, hereinafter referred to as ‘the Union’,

and

THE REPUBLIC OF CAPE VERDE, hereinafter referred to as ‘Cape Verde’,

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

HAVING REGARD to the obligation to initiate the negotiations for a readmission agreement at the request of either Party, set out in Article 13(5)(c)(ii) of the Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 and revised in Luxembourg on 25 June 2005, hereinafter referred to as the ‘Cotonou Agreement’,

DESIRING to facilitate the obligation for Parties to readmit their own nationals as confirmed by Article 13(5)(c)(i) of the Cotonou Agreement,

HAVING REGARD to the Joint Declaration of 5 June 2008 on a Mobility Partnership between the European Union and Cape Verde, in accordance with which the Parties will take steps to develop a dialogue on the readmission of persons residing without authorisation with a view to ensuring effective cooperation for their return,

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 Cape Verde 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 Union, its Member States and Cape Verde arising from international law and, in particular, from the Convention of 28 July 1951 on the Status of Refugees,



CONSIDERING that in accordance with the Protocol (No 21) on the position of the United Kingdom and of Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom and Ireland will not take part in this Agreement unless they notify their wish to that effect in accordance with that Protocol,

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

HAVE AGREED AS FOLLOWS:

*Article 1*  
*Definitions*

For the purposes of this Agreement:

- (a) the ‘Contracting Parties’ shall mean Cape Verde and the European Union;
- (b) ‘national of Cape Verde’ shall mean any person with Cape Verde citizenship;
- (c) ‘national of a Member State’ shall mean any person who holds the nationality, as defined for Union purposes, of a Member State;
- (d) ‘Member State’ shall mean any Member State of the European Union bound by this Agreement;
- (e) ‘third-country national’ shall mean any person who holds a nationality other than that of Cape Verde or one of the Member States;
- (f) ‘stateless person’ shall mean a person who does not hold the nationality of any country;
- (g) ‘residence permit’ shall mean a permit of any type issued by Cape Verde or one of the Member States entitling a person to reside on its territory. This shall not include temporary permissions to remain on its territory in connection with the processing of an asylum application or an application for a residence permit;
- (h) ‘visa’ shall mean an authorisation issued or a decision taken by Cape Verde or one of the Member States which is required in order to enter, or transit through, its territory. This shall not include the airport transit visa;

- (i) 'requesting State' shall mean the State (Cape Verde or one of the Member States) submitting a readmission application pursuant to Article 7 or a transit application pursuant to Article 14 of this Agreement;
- (j) 'requested State' shall mean the State (Cape Verde or one of the Member States) to which a readmission application pursuant to Article 7 or a transit application pursuant to Article 14 of this Agreement is addressed;
- (k) 'competent authority' shall mean any national authority of Cape Verde or one of the Member States entrusted with the implementation of this Agreement in accordance with Article 19(1)(a) thereof;
- (l) 'transit' shall mean the passage of a third-country national or a stateless person through the territory of the requested State while travelling from the requesting State to the country of destination;
- (m) 'border region' shall mean an area which extends up to 30 kilometres from the territories of seaports, including custom zones, and international airports of the Member States and Cape Verde.

## **SECTION I**

### **READMISSION OBLIGATIONS OF CAPE VERDE**

#### *Article 2*

#### ***Readmission of own nationals***

1. Pursuant to Article 13(5)(c)(i) of the Cotonou Agreement, Cape Verde shall readmit, upon application by a Member State and without further formalities other than those provided for in this Agreement, all persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the requesting Member State provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that they are nationals of Cape Verde.
2. Cape Verde shall also readmit:
  - minor unmarried children of the persons mentioned in paragraph 1, regardless of their place of birth or their nationality, unless they have an independent right of residence in the requesting Member State,
  - spouses, holding another nationality, of the persons mentioned in paragraph 1, provided they have the right to enter and stay or receive the right to enter and stay in the territory of Cape Verde, unless they have an independent right of residence in the requesting Member State.

3. Cape Verde shall also readmit persons who have been deprived of, or who have renounced, the nationality of Cape Verde since entering the territory of a Member State, unless such persons have at least been promised naturalisation by that Member State.

4. After Cape Verde has given a positive reply to the readmission application, the competent diplomatic mission or consular office of Cape Verde shall, irrespective of the will of the person to be readmitted, immediately and not later than within four working days issue the travel document required for the return of the person to be readmitted with a period of validity of six months. If Cape Verde has not, within four working days, issued the travel document, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes<sup>1</sup>.

5. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the competent diplomatic mission or consular office of Cape Verde shall, within four working days, issue a new travel document with a period of validity of the same duration. If Cape Verde has not, within four working days, issued the new travel document, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes<sup>2</sup>.

### *Article 3*

#### *Readmission of third-country nationals and stateless persons*

1. Cape Verde 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 assumed on the basis of prima facie evidence furnished, that such persons:

- (a) hold or held at the time of entering the territory in question a valid visa issued by Cape Verde, accompanied by legal proof of entry to the territory of Cape Verde, or a valid residence permit issued by Cape Verde; or
- (b) illegally entered the territory of the Member States coming directly from Cape Verde and that their prior presence in the territory of Cape Verde has been established.

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 Cape Verde; or
- (b) the requesting Member State has issued to the third-country national or stateless person a visa or residence permit before or after that person entered its territory,

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

<sup>2</sup> Ibid.

except where:

- that person holds a valid visa issued by Cape Verde, accompanied by legal proof of entry to the territory of Cape Verde, or a valid residence permit issued by Cape Verde, which has a longer period of validity or is still valid, or
  - that person has exceeded the length of time authorised by their visa or conducted activities unauthorised by their visa in the territory of the requesting Member State.
3. After Cape Verde has given a positive reply to the readmission application, the requesting Member State shall issue the EU standard travel document for expulsion purposes<sup>3</sup> to the person whose readmission has been accepted.

## **SECTION II**

### **READMISSION OBLIGATIONS OF THE UNION**

#### *Article 4*

#### ***Readmission of own nationals***

1. Pursuant to Article 13(5)(c)(i) of the Cotonou Agreement, a Member State shall readmit, upon application by Cape Verde 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 Cape Verde provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that they are nationals of that Member State.
2. A Member State shall also readmit:
- minor unmarried children of the persons mentioned in paragraph 1, regardless of their place of birth or their nationality, unless they have an independent right of residence in Cape Verde,
  - spouses, holding another nationality, of the persons mentioned in paragraph 1, provided they have the right to enter and stay or receive the right to enter and stay in the territory of the requested Member State, unless they have an independent right of residence in Cape Verde.
3. A Member State shall also readmit persons who have been deprived of, or who have renounced, the nationality of a Member State since entering the territory of Cape Verde, unless such persons have at least been promised naturalisation by Cape Verde.

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<sup>3</sup> Ibid.

4. After the requested Member State has given a positive reply to the readmission application, the competent diplomatic mission or consular office of that Member State shall, irrespective of the will of the person to be readmitted, immediately and not later than within four working days, issue the travel document required for the return of the person to be readmitted with a period of validity of six months.

5. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the competent diplomatic mission or consular office of that Member State shall, within four working days, issue a new travel document with a period of validity of the same duration.

#### *Article 5*

##### *Readmission of third-country nationals and stateless persons*

1. A Member State shall readmit, upon application by Cape Verde 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 Cape Verde provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that such persons:

- (a) hold or held at the time of entering the territory in question a valid visa issued by the requested Member State, accompanied by legal proof of entry to the territory of the requested Member State, or a valid residence permit issued by the requested Member State; or
- (b) illegally entered the territory of Cape Verde coming directly from the requested Member State and that their prior presence in the territory of the requested Member State has been established.

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) Cape Verde has issued a visa or residence permit to the third-country national or stateless person before or after they entered its territory, unless:
  - that person holds a visa issued by the requested Member State, accompanied by legal proof of entry to the territory of the requested Member State, or a valid residence permit issued by the requested Member State, which has a longer period of validity or is still valid, or
  - that person has exceeded the length of time authorised by their visa or conducted activities unauthorised by their visa in the territory of Cape Verde.

3. The readmission obligation in paragraph 1 rests on the Member State that issued a visa or residence permit. If two or more Member States issued a visa or residence permit, the readmission obligation in paragraph 1 rests on 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 rests on 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 rests on the Member State of last exit.

4. After the Member State has given a positive reply to the readmission application, where necessary, Cape Verde shall issue to the person whose readmission has been accepted the travel document required for his or her return.

### **SECTION III**

#### **READMISSION PROCEDURE**

##### *Article 6*

##### *Principles*

1. Subject to paragraphs 2 and 3, 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 drawn up in accordance with Article 7 to the competent authority of the requested State.

2. The transfer of the person to be readmitted may take place without the submission of a readmission application or the written notification referred to in Article 11(1) from the requesting State to the competent authority of the requested State:

- in the case of the requested State’s own nationals, if the person to be readmitted holds a valid travel document or identity card;
- in the case of third-country nationals or stateless persons, if the person was apprehended at the airport of the requesting State after arriving directly from the territory of the requested State.

3. Without prejudice to paragraph 2, in the case of third-country nationals or stateless persons holding a valid travel document and a valid visa or residence permit issued by the requested State, the transfer shall require only the written notification referred to in Article 11(1) from the requesting State to the competent authority of the requested State.

4. Without prejudice to paragraph 1 and by exception from paragraph 2, the written notification referred to in Article 11(1) from the requesting State to the competent authority of the requested State shall be necessary in the case of the transfer of persons requiring an escort.

5. Without prejudice to paragraphs 2 and 3, if a person has been apprehended in the border region of the requesting State after illegally crossing the border coming directly from the territory of the requested State, the requesting State may submit a readmission application within two working days of the apprehending of this person (accelerated procedure).

*Article 7*  
***Readmission application***

1. Readmission applications shall where possible be made in writing and must contain the following information:

- (a) the particulars of the person to be readmitted (e.g. given names, surnames, date of birth, and – where possible – place of birth, and the last place of residence) and, where applicable, the particulars of minor unmarried children and/or spouses;
- (b) in the case of own nationals, indication of the means by which proof or prima facie evidence of nationality will be provided in accordance with Annexes 1 and 2 respectively;
- (c) in the case of third-country nationals and stateless persons, indication of the means by which proof or prima facie evidence of the conditions for the readmission of third-country nationals and stateless persons will be provided in accordance with Annexes 3 and 4 respectively;
- (d) a photograph of the person to be readmitted.

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

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

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

4. A readmission application may be submitted by any means of communication, including by electronic means or fax.

*Article 8*  
***Evidence of nationality***

1. Proof of nationality pursuant to Article 2(1) and Article 4(1) may in particular be furnished through the documents listed in Annex 1 to this Agreement, even if their period of

validity has expired. If such documents are presented, the Member States and Cape Verde shall mutually recognise the nationality without further investigation being required. Proof of nationality cannot be furnished through false documents.

2. Prima facie evidence of nationality pursuant to Article 2(1) and Article 4(1) may in particular be furnished through the documents listed in Annex 2 to this Agreement, even if their period of validity has expired. If such documents are presented, the Member States and Cape Verde 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 the requested State concerned shall, upon a request from the requesting State which is to be included in the readmission application, make arrangements to interview the person to be readmitted without undue delay, at the latest within three calendar days of the date of the request, in order to establish his or her nationality. The procedure for such interviews may be established in the implementing Protocols provided for in Article 19 of this Agreement.

#### *Article 9*

#### *Evidence regarding third-country nationals and stateless persons*

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

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

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

#### *Article 10*

#### *Time limits*

1. The application for readmission of a third-country national or stateless person 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 the person concerned does not fulfil, or no longer fulfils, 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. All readmission applications must be replied to in writing:
  - within two working days if the application has been made under the accelerated procedure (Article 6(5));
  - within eight calendar days in all other cases.

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

Replies to readmission applications may be sent by any means of communication, including by electronic means or fax.

3. Reasons shall be given in writing for the refusal of a readmission request.
4. After readmission has been approved or, where appropriate, after expiry of the time limit laid down in paragraph 2, the person concerned shall be transferred within three months. At the request of 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 transport***

1. Without prejudice to Articles 6(2) and (3), before returning a person, the competent authorities of the requesting State shall, at least 48 hours in advance, notify the competent authorities of the requested State in writing of the transfer date, the point of entry, possible escorts and other information relevant to the transfer.
2. Transport may take place by air or sea. Return by air shall not be restricted to the use of the national carriers of Cape Verde 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 the persons concerned are authorised by Cape Verde or any Member State.

#### *Article 12*

#### ***Readmission in error***

The requesting State shall take back any person readmitted by the requested State 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 procedural provisions of this Agreement shall apply mutatis mutandis and all available information relating to the actual identity and nationality of the person to be taken back shall be provided.

## **SECTION IV TRANSIT OPERATIONS**

### *Article 13 Principles*

1. The Member States and Cape Verde shall endeavour to 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. Cape Verde shall nevertheless 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 Cape Verde so requests, 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 Cape Verde or a Member State:
  - (a) if the third-country national or the stateless person runs a real risk of being subjected to torture, inhuman or degrading treatment or punishment, or the death penalty, or of persecution because of their 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 to be subject to criminal 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. Cape Verde 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 a transit operation must be submitted to the competent authority of the requested State in writing and must contain the following information:

- (a) type of transit (by air, sea or land), possible other States of transit and intended final destination;
- (b) the particulars of the person concerned (e.g. given name, surname, maiden name, other names used/by which known or aliases, date of birth, sex and – where possible – place of birth, nationality, language, type and number of travel document);
- (c) envisaged point of entry, date 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.

A transit application may be submitted by any means of communication, including by electronic means or fax.

2. The requested State shall, within three working days after receipt of the application and in writing, inform the requesting State of the admission, confirming the point of entry and the envisaged date of admission, or inform it of the admission refusal and of the reasons for such refusal. If there is no reply within three working days, the transit shall be deemed to have been approved.

Replies to transit applications may be sent by any means of communication, including by electronic means or fax.

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.

If the transit operation to the final destination cannot proceed as expected for reasons of force majeure, the requested State shall, if necessary, issue the visa required to the person to be readmitted and to any escorts without delay for the period necessary to continue the transit operation.

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 WITHOUT PREJUDICE CLAUSE**

### *Article 16* ***Data protection***

The communication of personal data shall take place only if such communication is necessary for the implementation of this Agreement by the competent authorities of Cape Verde 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 Cape Verde and, where the controller is a competent authority of a Member State, to the provisions of Directive 95/46/EC and of the national legislation of that Member State adopted pursuant to this Directive. Additionally the following principles shall apply:

- (a) personal data must be processed fairly and lawfully;
- (b) personal data must be collected for the specified, explicit and legitimate purpose of implementing this Agreement and not further processed by the communicating authority nor by the receiving authority in a way incompatible with that purpose;
- (c) personal data must be adequate, relevant and not excessive in relation to the purpose for which they are collected and/or further processed; in particular, personal data communicated may concern only the following:
  - the particulars of the person to be transferred (e.g. given names, surnames, any previous names, other names used/by which known or aliases, sex, civil status, date and place of birth, current and any previous nationality),
  - passport, identity card or driving licence (number, period of validity, date of issue, issuing authority, place of issue),
  - stop-overs and itineraries,

- other information needed to identify the person to be transferred or to examine the readmission requirements pursuant to this Agreement;
- (d) personal data must be accurate and, where necessary, kept up to date;
- (e) personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purpose for which the data were collected or for which they are further processed;
- (f) both the communicating authority and the receiving authority shall take every reasonable step to ensure as appropriate the rectification, erasure or blocking of personal data where the processing does not comply with the provisions of this article, in particular because those data are not adequate, relevant, accurate, or they are excessive in relation to the purpose of processing; this includes the notification of any rectification, erasure or blocking to the other Party;
- (g) upon request, the receiving authority shall inform the communicating authority of the use of the communicated data and of the results obtained therefrom;
- (h) personal data may be communicated only to the competent authorities; further communication to other bodies shall require the prior consent of the communicating authority;
- (i) the communicating and the receiving authorities shall make a written record of the communication and receipt of personal data.

*Article 17*  
***Without prejudice clause***

1. This Agreement shall be without prejudice to the rights, obligations and responsibilities of the Union, its Member States and Cape Verde arising from international law including from international conventions to which they are party, in particular:
- the Convention of 28 July 1951 on the Status of Refugees as amended by the Protocol of 31 January 1967 on the Status of Refugees,
  - the European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms,
  - the international conventions on determining the State responsible for examining applications for asylum,
  - the Convention of 10 December 1984 against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,
  - international conventions on extradition and transit,

- multilateral international conventions and agreements on the readmission of foreign nationals.
2. Nothing in this Agreement shall prevent the return of a person under other formal or informal arrangements between the requested and requesting States.

## **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 shall, in particular, have the following tasks:
- (a) monitoring the application of the Agreement;
  - (b) deciding on the implementing arrangements necessary for the uniform application of the Agreement;
  - (c) regularly exchanging information on the implementing Protocols drawn up by individual Member States and Cape Verde pursuant to Article 19;
  - (d) recommending amendments to this Agreement and its Annexes.
2. The decisions of the Committee shall be binding on the Contracting Parties.
3. The Committee shall be composed of representatives of the Union and Cape Verde.
4. The Committee shall meet whenever necessary at the request of either of the Contracting Parties.
5. The Committee shall lay down its own rules of procedure.

### *Article 19 Implementing Protocols*

1. At the request of a Member State or Cape Verde, Cape Verde and that Member State shall draw up an implementing Protocol which shall, inter alia, lay down 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) evidence and documents additional to what is listed in Annexes 1 to 4 to this Agreement;
- (d) the arrangements for readmission under the accelerated procedure;
- (e) the procedure for interviews.

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

3. Cape Verde 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 legally binding instrument on the readmission of persons residing without authorisation which, under Article 19, have been or may be concluded between individual Member States and Cape Verde, in so far as the provisions of the latter are incompatible with those of this Agreement.

### **SECTION VIII FINAL CLAUSES**

#### *Article 21*

#### ***Territorial application***

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

2. This Agreement shall apply to the territory of Ireland and of the United Kingdom only pursuant to a notification by the European Union to Cape Verde to that effect. 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. 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 shall apply to Ireland and to the United Kingdom on the first day of the second month following the date of the notification referred to in Article 21(2).
4. This Agreement is concluded for an unlimited period.
5. Either 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 ..... on the ..... day of ..... in the year ..... in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

*For the European Union*  
(...)

*For the Republic of Cape Verde*  
(...)



## ANNEX I

### COMMON LIST OF DOCUMENTS THE PRESENTATION OF WHICH IS CONSIDERED AS PROOF OF NATIONALITY

#### (ARTICLES 2(1), 4(1) AND 8(1))

##### **When the requested State is either one of the Member States or Cape Verde:**

- passports of any kind (national passports, diplomatic passports, service passports, collective passports and replacement passports, including the passports of minors),
- laissez-passer issued by the requested State,
- 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 clearly indicate citizenship.

##### **Where the requested State is Cape Verde:**

- confirmation of identity as a result of a search carried out in the Visa Information System<sup>4</sup>,
- in the case of Member States not using the Visa Information System, positive identification established from the visa application records of those Member States.

##### **Where the requested State is one of the Member States:**

- positive identification established from visa application records kept by Cape Verde.

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<sup>4</sup> Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ L 218, 13.8.2008, p. 60.

## ANNEX 2

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

#### (ARTICLES 2(1), 4(1) AND 8(2))

- 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, which may in particular be shown by means of an official test result,
- fingerprints,
- 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), 5(1) AND 9(1))**

- Visa accompanied by proof of entry to the territory of the requested State and/or residence permit issued by the requested State,
- entry/departure stamps or similar endorsement in the travel document of the person concerned or other evidence of entry/departure (e.g. photographic),
- documents, certificates and bills of any kind (e.g. hotel bills, appointment cards for doctors/dentists, entry cards for public/private institutions, car rental agreements, credit card receipts etc.) which clearly show that the person concerned stayed on the territory of the requested State,
- tickets in a person's name and/or passenger lists of air, train, coach or boat companies 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 guide or travel agency,
- official statements made, in particular, by border authority staff and other witnesses who can testify that the person concerned crossed the border,
- official statements 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), 5(1) AND 9(2))**

- Visa issued by the requested State,
- description of the 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 relating to the identity and/or stay of a person which has been provided by an international organisation (e.g. UNHCR),
- reports/corroboration of information by family members, travelling companions, etc.,
- statements made by the person concerned,
- fingerprints.

ANNEX 5



[Emblem of the Republic of Cape Verde]

.....  
.....  
(Designation of requesting authority)

.....  
(Place and date)

Reference: .....

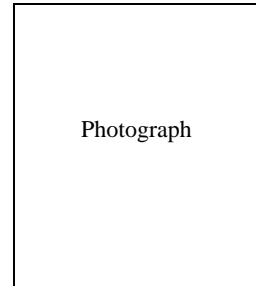
To  
.....  
.....  
.....  
(Designation of requested authority)

- ACCELERATED PROCEDURE (Article 6(5))
- INTERVIEW REQUEST (Article 8(3))

**READMISSION APPLICATION**  
**pursuant to Article 7 of the Agreement of ..... between**  
**the European Union and the Republic of Cape Verde**  
**on the readmission of persons residing without authorisation**

**A. PERSONAL DETAILS**

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



7. Civil status:         married         single    divorced         widowed  
If married :        name of spouse .....

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

8. Last address in the requesting State:  
.....

**B. PERSONAL DETAILS OF SPOUSE (IF APPROPRIATE)**

1. Full name (underline surname):  
.....

2. Name at birth:  
.....

3. Date and place of birth: .....

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

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

6. Nationality and language:  
.....

**C. PERSONAL DETAILS OF CHILDREN (IF APPROPRIATE)**

1. Full name (underline surname):  
.....

2. Date and place of birth: .....

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

4. Nationality and language:  
.....

**D. SPECIAL CIRCUMSTANCES RELATING TO THE TRANSFEREE**

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

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

**E. MEANS OF EVIDENCE ATTACHED**

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

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

2. .... (identity card No) ..... (date and place of issue)

	..... (issuing authority)	..... (expiry date)
3.	..... (driving licence No)	..... (date and place of issue)
	..... (issuing authority)	..... (expiry date)
4.	..... (other official document No)	..... (date and place of issue)
	..... (issuing authority)	..... (expiry date)

**F. OBSERVATIONS**

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.....  
(Signature) (Seal/stamp)

ANNEX 6



Emblem of the Republic of Cape Verde

.....  
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.....  
(Designation of requesting authority)

.....  
(Place and date)

Reference

.....

To

.....  
.....  
.....  
.....

(Designation of requested authority)

**TRANSIT APPLICATION**  
**pursuant to Article 14 of the Agreement of ..... between**  
**the European Union and the Republic of Cape Verde**  
**on the readmission of persons residing without authorisation**

**A. PERSONAL DETAILS**

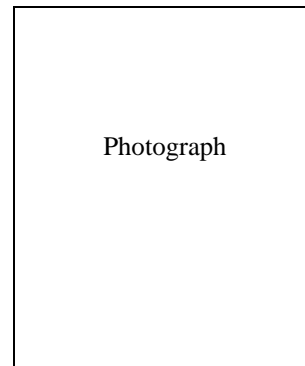
1. Full name (underline surname):  
.....

2. Name at birth:  
.....

3. Date and place of birth:  
.....

4. 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. Type and number of travel document:

.....

**B. TRANSIT OPERATION**

1. Type of transit:

by air                                       by land                                       by sea

2. State of final destination

.....

3. Possible other States of transit:

.....

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

.....

.....

.....

5. Admission guaranteed in any other transit State and in the State of final destination

(Article 13(2))

yes                                       no

6. Knowledge of any reason for refusal of transit

(Article 13(3))

yes                                       no

**C. OBSERVATIONS**

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(Signature) (Seal/stamp)

## **Joint Declaration concerning Articles 3 and 5**

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

## **Joint Declaration concerning 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. It is therefore desirable that Cape Verde and Denmark should 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 Union 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*. It is therefore desirable that Cape Verde should conclude a readmission agreement with Iceland and Norway in the same terms as this Agreement.

## **Joint Declaration concerning Switzerland**

The Contracting Parties take note of the close relationship between the European Union and Switzerland, particularly by virtue of the Agreement concerning the association of Switzerland with the implementation, application and development of the Schengen *acquis*, which entered into force on 1 March 2008. It is therefore desirable that Cape Verde should conclude a readmission agreement with Switzerland in the same terms as this Agreement.

## **Joint Declaration concerning the Principality of Liechtenstein**

The Contracting Parties take note of the close relationship between the European Union and the Principality of Liechtenstein, particularly by virtue of the Agreement concerning the association of the Principality of Liechtenstein with the implementation, application and development of the Schengen *acquis*, which entered into force on 19 December 2011. It is therefore desirable that Cape Verde should conclude a readmission agreement with the Principality of Liechtenstein in the same terms as this Agreement.