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From: General Secretariat of the Council

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To: Delegations

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Subject: Council conclusions on the return and readmission of illegally staying third-country nationals
- Council conclusions (9 June 2016)

Delegations will find in the annex the Council conclusions on the return and readmission of illegally staying third-country nationals adopted by the Council at its 3473rd meeting held on 9 June 2016.

**Draft Council conclusions on the return and readmission
of illegally staying third-country nationals**

THE COUNCIL OF THE EUROPEAN UNION,

1. *Recalling* the conclusions of the European Council of 25 and 26 June 2015 in which the Heads of State and Government called for return and readmission cooperation with relevant third countries to be promoted by mobilising all tools;
2. *Acknowledging* the importance of a coordinated and integrated approach to return policy, which is an area of shared competence, also on the basis of comprehensive tailor-made country packages which serve as guidance for the EU and its Member States in their relations with relevant third countries, which include, where appropriate, the use of both positive and negative incentives relevant to improving cooperation on return and readmission, including on a practical level;
3. *Noting* that readmission agreements are currently the European Union's main instrument for establishing readmission arrangements with third countries, the negotiation of which is often a long process and not always successful, whereas Member States have a relatively broader range of instruments at their disposal for the establishment of arrangements, including readmission agreements but also non-legally binding instruments such as memoranda of understanding and exchanges of letters;
4. *Recalling* the conclusions of the Justice and Home Affairs Council of 8 and 9 October 2015, stating that all measures must be taken to ensure irregular migrants' effective return, including by strengthening the link between visa facilitation and readmission, and taking steps to prevent the misuse of rights and procedures to frustrate return;

5. *Referring to* the Return Directive which imposes a legal obligation on Member States to issue a return decision to any third-country national who stays illegally on their territory and, where the third-country national does not return voluntarily, to take measures to enforce the decision in a consistent and efficient manner. The Directive furthermore sets out safeguards to protect the rights of all returnees, and enable returns to be effectively carried out in a humane manner and with full respect for their fundamental rights and dignity;
6. *Recalling* the Commission's Communication on the EU Action Plan on return of 9 September 2015, which also invites competent national authorities to apply the standards and procedures set out in the Return Directive in a more effective and balanced way when carrying out returns. Moreover, the 'Return Handbook' suggests pragmatic and operational guidance aimed at increasing the capacity to return irregular migrants, including through voluntary return and opportunities for returnees in their home countries;
7. *Emphasising* that national procedures, administrative and legal frameworks of Member States, including those on asylum, and national application of EU case law should aim to facilitate the swift return of illegally staying third-country nationals;
8. *Stressing* that increased cooperation and coordination between Member States may strengthen the effectiveness of Assisted Voluntary Return and Reintegration (AVR(R)) programmes and accompanying reintegration measures, and that disparities between the AVR(R) schemes of different Member States may lead to so-called *return shopping*, misuse of return schemes, and secondary movements of irregular migrants;
9. *Welcoming* the Commission's proposal on the European travel document for the return of illegally staying third-country nationals, inter alia on improving its security standards, in order to achieve wider acceptance by more third countries;

10. *Welcoming* the Commission's proposal on the European Border and Coast Guard, in particular as regards the establishment of a specialised 'Return Office', which should soon provide Member States with all necessary operational support, including regarding information exchange, to effectively return illegally staying third-country nationals;
11. *Welcoming* the ongoing discussion on a stronger link between visa facilitation and cooperation on readmission in the framework of the Visa Code.

ACKNOWLEDGES:

1. That the high-level migration dialogues of the EU and the tailor-made country packages are significant instruments of the external dimension of the European Union's policy on migration to increase cooperation on return and readmission. Regular reporting is required, not only on results but also on the further development of the packages and priorities, including reporting to the European Council of 28 and 29 June 2016;
2. That, in addition to readmission agreements, non-legally binding working arrangements on identification, return and readmission could be established with third countries at EU level to support and complement Member States' existing readmission and return arrangements, including regular, informal meetings at expert level to review implementation and address possible obstacles. Such non-legally binding arrangements as well as any future bilateral instrument should support the same objectives as the Member States' existing bilateral instruments on readmission, and may pave the way for the negotiation and conclusion of future EU readmission agreements as cooperation improves. The Council should at all times be involved in the negotiating process in an appropriate manner, including through closer coordination between the Commission, the EEAS and the Member States;

3. That the specific and short term measures included in the EU Action Plan on return should be implemented without delay. These measures include exploiting the full potential of programmes for voluntary return from transit countries and supporting the development of automated and centralised biometric databases and the issuance of biometric travel and identity documents notably by using the EU financial instruments for the external dimension, such as the EU Trust Fund for Africa.

INVITES MEMBER STATES:

1. To increase the effectiveness of returns by, in addition to voluntary returns, implementing more return decisions, on the understanding that returns should be carried out with the utmost diligence by all Member States;
2. To take necessary measures to prevent and avoid the misuse of migrants' rights or of asylum and migration procedures with the aim of frustrating the return process, and to do so in a humane and, where appropriate, harmonised manner and with full respect for their fundamental rights and dignity;
3. To effectively address hurdles encountered during the return process, while in all cases safeguarding effective legal protection, by reducing administrative burdens and aligning and simplifying rules and regulations to overcome procedural challenges, especially in relation to the application of detention, the suspensive effect of legal remedies, and unfounded multiple and last-minute asylum applications and appeals with the sole purpose of frustrating return;
4. To effectively, and subject to the principle of proportionality, use detention, by providing sufficient capacity, within the framework of the Return Directive, where necessary to avoid the absconding of irregular migrants and, as a consequence, also to prevent secondary movements to other Member States;
5. To make use of the full potential of all relevant IT systems, such as SIS, Eurodac and VIS, within the limits of their legal framework, to improve cooperation between the Member States in order to remove from the EU territory those third-country nationals who abscond from return procedures or make fraudulent use of residence permits;

6. To continue to cooperate with the Commission to keep the Return Handbook up-to-date and, where necessary, clarify and improve practices and procedures in the Handbook in order to render the implementation of the Return Directive more efficient and effective, also with a view to promoting best practices of Member States in the field of return;
7. To regularly and proactively exchange information on legal obstacles to return in the various Contact Groups on asylum and on return, with the aim of sharing best practices and ensuring the correct and full use of EU legislation to support effective return;
8. To regularly and proactively exchange, amongst each other and with the involvement of the Commission and competent EU agencies, information on best practices with regard to voluntary return and reintegration, notably to prevent possible pull factors and possible return shopping;
9. To regularly and proactively exchange information and best practices on the identification of third-country nationals, in particular those seeking international protection unsuccessfully in one Member State before travelling to another Member State;
10. To actively contribute to the development of tailor-made country packages on the basis of relevant bilateral leverages and relationships with partner third countries;
11. To observe, when drafting and implementing AVR(R) schemes and programmes, the non-binding common standards for AVR(R) programmes developed in the framework of the Return Experts Group and Working Party on Integration, Migration and Expulsion¹. These standards provide valuable guidance inter alia with regard to an indicative scale for in-cash and in-kind assistance for returnees to give more coherent and effective support to AVR(R) programmes, reducing possible pull factors for irregular migrants, ensuring that the same person cannot benefit more than once from such assistance, issuing travel documents, and information campaigns;

¹ 8829/16 MIGR 90 COMIX 357

12. To further implement existing and design new joint AVR(R) projects which should be more comprehensive and cost efficient, owing to economies of scale, while making use of these same standards, in addition to national AVR(R) projects;
13. To contribute constructively to the swift completion of negotiations with the European Parliament on the proposals regarding the EU travel document for the return of illegally staying third-country nationals, the revision of the Visa Code, especially concerning the link between visa facilitation and cooperation on readmission, and the proposal on the EU Border and Coast Guard, particularly as regards the provisions on the Return Office and its speedy implementation.

INVITES THE COMMISSION:

1. To take into account the misuse of migrants' rights and of asylum and migration procedures that frustrates return when reviewing relevant instruments of the asylum *acquis*, in particular the Asylum Procedures Directive, as announced in its Communication of 6 April 2016²;
2. To explore the possibility of a targeted review of the Return Directive in view of enhancing the effectiveness of return procedures and ensuring consistency and complementarity with its proposals for reform of the Common European Asylum System³ and bearing in mind the intrinsic link between the Return Directive and the asylum *acquis*, in particular the Asylum Procedures Directive⁴ and the Reception Conditions Directive⁵;

² Communication from the Commission to the European Parliament and the Council - Towards a reform of the common European asylum system and enhancing legal avenues to Europe (7665/16).

³ See footnote 2.

⁴ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

⁵ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

3. To build on existing and continue collecting best practices and review national legislation through the European Migration Network, also with a view to amending legislation, on relevant aspects of the abovementioned directives, such as the issuance of return decisions, suspensive effect of appeals, use of detention, intervention of judicial authorities during detention, alternatives to detention and procedures in relation to last-minute asylum applications, drawing inter alia from best practices identified by the Schengen evaluation mechanism;
4. To ensure that effective consultation mechanisms are in place and that coordination takes place, where appropriate within existing and further developed structures open for all Member States, with the aim that the interests of Member States, especially those most affected, and the views of their operational and policy experts are fully taken into account in the negotiations and dialogues with third countries;
5. To evaluate, by mid-2017, with the assistance of the existing fora, the use and implementation of the abovementioned non-binding common standards on AVR(R) and to report on the results, in order to further improve the design and implementation of AVR(R) schemes;
6. To ensure sufficient funding from the EU's financial instruments for the external dimension of migration, including the EU Trust Fund for Africa, to address the challenges of irregular migration to the EU including for future joint AVR(R) programmes, and to further support national AVR(R) schemes under the asylum, migration and integration fund (AMIF), where applicable in accordance with these standards.
