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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Council conclusions on the future of the return policy

At its meeting on 8 October 2015, the Council adopted the conclusions on the future of the return policy set out in the Annex to this note.

Council conclusions on the future of the return policy

1. The Council reaffirms that a coherent, credible and effective policy with regard to the return of illegally staying third-country nationals, which fully respects human rights and the dignity of the persons concerned as well as the principle of *non-refoulement*, is an essential part of a comprehensive EU migration policy.
2. The Council welcomes the Commission's Communication on the EU Action Plan on return answering the call of the European Council of 25 and 26 June 2015 inviting the Commission to set up a dedicated European Return Programme. The Action Plan¹, as well as the Return Handbook², presented on 9 September 2015, contain pragmatic and operational elements with the aim to increasing the capacity of the Member States to return irregular migrants, while fully acknowledging the need to enhance cooperation and support to countries of origin and transit.

¹ Doc. 11846/15

² Doc. 11847/15

3. The European Council of 25 and 26 June 2015 set out a list of actions to be taken in the areas of return, readmission and reintegration. In order to take stock of the progress and identify remaining issues, the Council invites the Commission to report to this effect, by January 2016. Moreover, the Council invites the Commission to swiftly follow-up with concrete actions on the announcements made in the EU Action Plan on return.

4. Adequate financial resources need to be allocated to increase the effectiveness the EU's return system with particular attention being paid to support Member States under strong migratory pressure. The Asylum Migration and Integration Fund will support substantially the return activities of the Member States which are planning to devote more than 800 million Euros to return in their national programs in 2014-2020. Funding to support cooperation on readmission and reintegration of returnees, including between Member States and third countries, should be provided from all appropriate instruments, notably the Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa and EU financial programs. The Council also welcomes the setting up of the dedicated Readmission Capacity Building Facility by the Commission, under the Asylum, Migration and Integration Fund (AMIF). Moreover, Frontex should be allocated adequate resources to enable it to scale up substantially its support on return.

5. The EU and its Member States must do more in terms of return. Increased return rates should act as a deterrent to irregular migration. The Return Directive³, in force since January 2009, should be applied in a consistent and efficient manner to ensure high uniform standards of enforcement and to maintain a high level of mutual trust among Member States. The Council urges the Commission to assess the functioning and implementation of the Return Directive and identify any obstacles to effective returns, including by using the Schengen evaluation mechanism⁴. Based on this assessment, the Commission is invited to make legislative proposals, if appropriate, to remedy such obstacles. Better use of the existing European information systems should be made, in particular of the Schengen Information System (SIS), the Visa Information System (VIS) and Eurodac, which are important tools that must be further improved to allow for better information gathering, sharing and coordination among Member States for return purposes. The Council looks forward to the forthcoming proposals by the Commission, based on a feasibility study, to make it obligatory to enter in SIS all entry bans and return decisions, notably to enable their mutual recognition and enforcement, as soon as possible in 2016. Moreover, the revised Smart Borders legislation to be presented before the end of 2015, should help enhancing return by creating a record of all cross-border movements of third-country nationals. In addition, the Council welcomes Commission proposals regarding the use of Eurodac for return purposes. Furthermore, Member States will operationalise the network of national contact points to exchange information with a view to facilitating the withdrawal of residence permits, in particular for migrants with a criminal record, by the end of 2015.

³ This Directive does not apply to UK, IE and DK in accordance with Protocol No 21 and 22, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.

⁴ Council Regulation (EU) No 1053/2013 of 7 October 2013, OJ L 295, 6.11.2013, p. 27.

6. The Council recognises that national legal and administrative frameworks also play a key role in creating the enabling conditions for an effective EU return action. In particular, Member States must systematically issue return decisions, take all necessary steps to enforce them and provide adequate resources, including funding and staff, necessary for identifying and returning illegally staying third-country nationals. All measures must be taken to ensure irregular migrants' effective return, including use of detention as a legitimate measure of last resort. In particular, Member States should reinforce their pre-removal detention capacity to ensure the physical availability of irregular migrants for return and take steps to prevent the abuse of rights and procedures.
7. Practical cooperation among Member States on return is an essential element in increasing the return rate. Member States are therefore strongly encouraged to make better use of the expertise, and request, more systematically, the services currently being offered by Frontex, such as deployment of screening teams in its coordinated joint operations, assisting in acquisition of travel documents of migrants, organising joint return operations and training of national staff involved in return operations. Frontex, in turn, should step up all efforts to make full use of its current mandate in assisting Member States in return operations and other relevant activities. While Member States are primarily responsible for carrying out returns, the immediate creation of a dedicated Return Office within Frontex should enable it to scale up its support to Member States in order, *inter alia*, to facilitate, organise and fund return operations. Frontex must continue assisting individual Member States directly and be given the right to organise joint return operations on its own initiative, taking into account Member States' needs. All Member States and Frontex will cooperate closely in playing a particularly active role in the establishment and functioning of the *hotspots* with regard to return operations, as underlined by the conclusions of the European Council on 23 September 2015.
8. The Council expresses its full support to the strengthening of Frontex and looks forward to the legislative package to be presented by the Commission in December 2015. In this respect, the Council welcomes the Commission's intention to consider setting up Frontex Rapid Return Intervention Teams, offering support on identification, consular cooperation with third-countries, and organising return operations for Member States, building on the *hotspot* experiences.

9. The Council welcomes the Commission's intention to foster and steer an integrated system of return management by building synergies between the European Integrated Approach on Return towards Third Countries (EURINT), the European Reintegration Instrument Network (ERIN) and the European Return Liaison Officers network (EURLO), as well as European Migration Liaison Officers (EMLOs), Immigration Liaison Officers (ILOs) and Frontex Liaison officers. They should work in a mutually supporting way by avoiding duplication, to enhance the effectiveness of the EU return system. Their expertise and experience should be further shared with Member States for possible follow-up. All Member States are invited to consider active participation in these networks. Frontex should ensure the coordination at operational level of the integrated system of return management.

10. All tools shall be mobilised to increase cooperation on return and readmission. Member States, the Commission and the European External Action Service will prioritise readmission in all relevant contacts at political level with countries of origin of irregular migrants to ensure that a consistent message is received by those countries, including on the need for full and effective implementation of existing readmission agreements towards all Member States. The cooperation with countries of origin must also focus on the identification of irregular migrants and the issuing of travel documents. In this context, the cooperation with the diplomatic representations of the countries of origin is crucial and must be prioritised. In the area of Home Affairs, the Council will further consider the link between visa facilitation and readmission agreements in the framework of the recast Visa Code, notably by ensuring that visa facilitations, as envisaged in the Visa Code, are granted only after assessing the cooperation on readmission with all Member States.

11. The Council stresses that readmission of own nationals is an obligation under international customary law and that all States need to abide by this obligation. In relation to African, Caribbean and Pacific (ACP) countries, this obligation is further stipulated in Article 13 of the Cotonou Agreement⁵ that commits all participating States to readmit their own nationals without further formalities. The EU and its Member States will strive to ensure the effective implementation of all readmission commitments, whether undertaken through formal readmission agreements, the Cotonou Agreement or other arrangements. The Council invites the Commission, in close cooperation with the EEAS, to swiftly launch bilateral dialogues to enhance practical cooperation with all relevant third countries of origin and transit for irregular migrants, building on the experience of EU Member States having a record of successful return operations to these third countries. Frontex, together with the networks focused on return, should provide operational and technical support. The Commission and the EEAS should inform regularly on the outcome of these meetings and report on the progress achieved, at the latest by June 2016. Based on this, the Council invites the Commission to propose negotiating directives for readmission agreements with relevant countries of origin where it is necessary to formalise the practical cooperation arrangements. In parallel, the Council invites the Commission to ensure that ongoing negotiations on readmission agreements are accelerated and concluded as soon as possible.

⁵ 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; Official Journal L 317 , 15/12/2000 P. 0003 – 0353.

12. The Council welcomes the introduction of the more-for-more principle as a way to increase the EU's and Member States' leverage. A fine balance of incentives and pressure should be used to enhance the cooperation of third-countries on readmission and return. This principle must therefore be applied more broadly and actively used in a concerted way, at both EU and national level, linking improved cooperation on return and readmission to benefits in all policy areas, building on the experience with the pilot projects on return. The Council calls on the Commission, together with the EEAS, to propose, within six months, comprehensive and tailor-made packages to be used vis-à-vis third-countries in order to remedy problems encountered in implementing effective readmission. Such packages should be implemented immediately afterwards. Conditionality should be used where appropriate with the aim to improving cooperation. In this context, Member States are encouraged to identify leverage in the areas that fall under their national competence.

The high-level dialogues conducted by the High Representative, in cooperation with Member States and the Commission, should help identifying leverage and enhancing cooperation on readmission.

13. Cooperation with the countries of origin and transit is key to successful return operations. In the short term, the EU will explore the synergies of the EU diplomacy on the ground, through the EU delegations, and in particular through the European Migration Liaison Officers (EMLOs), to be deployed by the end of 2015 to Egypt, Morocco, Lebanon, Niger, Nigeria, Senegal, Pakistan, Serbia, Ethiopia, Tunisia, Sudan, Turkey and Jordan.

14. The Council invites the Commission and the EEAS, and the Member States, in particular through their representations outside the EU, in close cooperation with the liaison officers mentioned in paragraph 9, to promote the EU *laissez-passer* (standard travel document for the expulsion of third-country nationals)⁶ which should become the travel document commonly accepted for return purposes by third-countries. Moreover, Member States commit to using more regularly the EU *laissez-passer* in return operations.
15. Acknowledging that reintegration support is not a pre-condition for return, additional efforts in terms of reintegration support are needed to ensure the sustainability of return. Practical cooperation with the home authorities must also be enhanced to improve their capacity in readmitting their nationals in an efficient and timely manner.
16. Voluntary return programmes are usually implemented by national administrations in a number of third-countries. Where appropriate, Member States should design and implement joint reintegration projects that would become more comprehensive and cost efficient, owing to economy of scale. Member States can make use of available funding, apart from the provisions of AMIF, which is provided by the Commission. The Council welcomes the Commission's intention to monitor and assess through the European Migration Network whether disparities among voluntary return and reintegration programmes of the Member States could lead to *return shopping*.

⁶ Council Recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third-country nationals.

17. The EU shall look into developing safe and sustainable reception capacities and providing lasting prospects and adequate procedures for refugees and their families in regions in third-countries affected by migratory pressure, until return to their country of origin is possible. Once the conditions set by Directive 2013/32/EU⁷ are met, notably the principle of non-refoulement referred to in its Article 38, Member States are in a position to find asylum applications of these persons inadmissible on safe third country grounds in accordance with Article 33 of the said Directive, after which swift assisted return can follow. In parallel, similar regional capacities should be explored for the rapid return of those not qualifying for international protection.
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⁷ This Directive does not apply to UK, IE and DK in accordance with Protocol No 21 and 22, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union