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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and of the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC **(first reading)** - Adoption of the legislative act = Statements

Spain has requested that the following statement be entered in the Council minutes

1. Migration is a European challenge that requires European solutions. Spain has been a staunch supporter of a comprehensive European migration policy, which addresses both the internal and the external dimensions in full conformity with international and European Union law. In this context, the return of persons without a right to stay is one of several key elements of this comprehensive migration policy.

2. Spain considers that the European regulatory framework for return should pursue two main objectives. On the one hand, it should establish a common European system for return, just as the Union has a common asylum system and an integrated border-management system. On the other hand, it should promote a more effective and efficient return procedure, while ensuring dignity, security and appropriate legal safeguards, in line with the principles of necessity and proportionality.

3. Spain considers that the text presented does not meet these two objectives for three main reasons: the fact that it opts not to establish a truly European return system; the serious legal, external-relations and operational concerns raised by return hubs; and the lack of proportionality of certain measures. However, recent events in Ceuta also show that European legislation lacks instruments that make effective return possible in exceptional situations that are out of the ordinary.

4. With reference to the first reason, one of the main objectives of the initial proposal, namely the mandatory mutual recognition of decisions on the basis of a European Return Order, has been abandoned. In addition, instead of focusing efforts on returning those who do not have the right to stay from the entire Schengen area, new mechanisms have been created for transferring people between Member States. Also, the number of references to national legislation has increased to the detriment of the harmonisation of the system. In short, the opportunity to achieve a common European system has been missed. Instead of moving towards a common system, we are taking steps backwards.

5. As regards the second reason, Spain remains extremely concerned about the return hubs. The proposed text would make it possible to establish these hubs by means of non-binding agreements, the content of which causes legal uncertainty and offers limited guarantees. Spain considers that these agreements do not make it possible to ensure that the rights and obligations of persons who will be returned to a third country are respected, regardless of whether or not they have any links to that country. Even families with children may be transferred to return hubs in countries with which they have no connection at all. Furthermore, if the agreements are not binding, this raises the question of how Member States and third countries could be obliged to comply with them. By making provision for the Union itself to conclude non-binding arrangements or agreements with third countries in this area, all of the Member States are assuming a high level of responsibility and an unacceptable risk. In addition, there is a high risk of litigation owing to potential breaches of the principle of non-refoulement enshrined in the Charter of Fundamental Rights of the European Union and in the European Convention on Human Rights.

Furthermore, Spain considers that the text does not adequately take into account the direct impact that the conclusion of such agreements by the Union or by other Member States with third countries may have on the credibility of the Union's external relations with third countries, as well as on Member States' bilateral relations. The text provides for an information mechanism for Member States that share a border. However, this wording does not cover all of Spain's key partner countries, with which other Member States could conclude agreements without having informed and consulted Spain.

Spain reiterates the importance of promoting cooperation with third countries through a comprehensive approach and comprehensive partnerships. Spain has serious doubts as to effectiveness and efficiency at operational level. In the absence of a family, social or economic link, Spain wonders what incentive a transferred person would have not to attempt to return to the Union when their prospects in an unfamiliar third country are limited. No minimally objective cost-benefit analysis has been carried out.

6. And with reference to the third reason, the text presented raises questions about the legality and proportionality of certain measures. For example, detention is no longer a measure of last resort. In addition, the period of deprivation of liberty has been increased to up to 24 months, with potentially indefinite extensions. Provision is made for the possibility of a chain of detentions in different Member States without any time limits. The question arises of whether it will be permitted in the EU to deprive persons in an irregular administrative situation of their liberty for longer periods than those applicable to criminals convicted of serious offences.

7. Finally, recent events in Ceuta have shown the need for specific mechanisms to ensure effective return in cases of chaotic mass entries at the external borders. However, this Regulation does not contain measures to address such exceptional circumstances.

8. In light of the above, Spain OPPOSES the adoption of the Regulation.

Portugal has requested that the following statement be entered in the Council minutes

Portugal supports the agreement reached by the co-legislators that lead to the finalization of the Return Regulation. It is indeed crucial in our view to provide the European Union with a legal framework that enables the effective management of migratory flows and the control of the Union's external borders, while simultaneously upholding the core values of a humanist European Union, namely the rule of law and the protection of human dignity.

However, Portugal cannot support, as a matter of principle, the concept of return hubs. We will not participate in this mechanism and oppose its financing through the Union budget. Furthermore, while we welcome the exclusion of unaccompanied minors from the scope of the return hubs, we consider that the same level of protection should be also extended to families with minors, in the children's best interest and in line with European Union's shared principles and values. This is a very important aspect for us.

In addition, Portugal has strong reservations on the maximum duration of the detention period foreseen in article 30. Article 35 is also a matter of concern, as economic and cooperation for development policies with third countries are made conditional to their support for return procedures and readmissions.