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From:	Commission
To:	Delegations
Subject:	Joint Declaration on Migration Cooperation between Afghanistan and the EU

Joint Declaration on Migration Cooperation between Afghanistan and the EU

Introduction

The European Union (EU) and the Islamic Republic of Afghanistan continue facing significant refugees and migration challenges, which are of a longer - term nature. Addressing these challenges requires solidarity, determination and collective efforts. The Joint Declaration on Migration Cooperation between Afghanistan and the EU (JDMC) reflects the shared commitment of the EU and the Government of Afghanistan to step up their cooperation to manage migration from and to Afghanistan, including the prevention of irregular migration and the return of irregular migrants. The latter include those Afghans who after the application of all relevant national and international legal instruments and legal procedures cannot be granted international protection. This cooperation is part of the overall partnership between the Government of Afghanistan and the EU through coordinated efforts.

The Government of Afghanistan and the EU commit to pursue their comprehensive Dialogue on Migration¹. The JDMC is not intended to create legal rights or obligations under international or domestic law. It paves the way for a structural dialogue and cooperation on migration issues, based on a commitment to identify effective ways to address the needs of both sides. It comes in support of the EU Member States bilateral relations with Afghanistan and cannot be interpreted as superseding the existing bilateral arrangements between the EU Member States and Afghanistan or preventing the conclusion of future bilateral agreements or arrangements between the EU Member States and Afghanistan.

This JDMC identifies a series of actions to be pursued by the EU and the Government of Afghanistan with the objective to establish a rapid, effective and manageable process for a smooth, dignified and orderly return of Afghan nationals who do not fulfil the conditions in force for entry to, presence in, or residence on the territory of the EU, and to facilitate their sustainable reintegration in Afghanistan in a spirit of cooperation.

In their cooperation under this declaration, the EU and Afghanistan remain committed to all their respective international obligations, in particular;

- respecting the provisions of the 1951 Convention relating to the Status of Refugees and its 1967 New York Protocol;

¹ Through for instance ‘The EU-Afghanistan Cooperation Agreement on Partnership and Development (CAPD)’, signed by the EU and Afghanistan in February 2017, under which there is a Special Working Group on Human Rights, Good Governance and Migration.

- upholding the rights and freedoms guaranteed in the International Covenant on Civil and Political rights and the EU Charter on Fundamental Rights and the Universal Declaration on Human Rights;
- respecting the safety, dignity and human rights of irregular migrants subject to a return and readmission procedure.

Part I: Scope of cooperation

1. The EU and the Government of Afghanistan intend to cooperate closely in order to organise the dignified, safe and orderly return of Afghan nationals to Afghanistan who do not fulfil the conditions to stay in the EU.
2. In line with its obligations under international law, Afghanistan reaffirms its commitment to readmit its citizens who entered into the EU or are staying on the EU territory irregularly, after due consideration of each individual case by EU Member States.
3. Afghan nationals who are found to have no legal basis to remain in an EU Member State, whose protection needs or compelling humanitarian reasons, if any, have been considered in accordance with the applicable legislation and who have received an enforceable decision to leave that Member State, can choose to return voluntarily. Both sides agree that this option is the preferred manner of organising the return of Afghan nationals.

Afghan nationals who choose not to comply with an EU Member State return decision on a voluntary basis will be returned to Afghanistan, once administrative and judicial procedures with suspensive effects have been exhausted.

The EU Member States consider granting appropriate time for return under the conditions provided for by applicable laws, taking account of the specific circumstances of each individual case.

4. Prior to returning Afghan nationals, the EU side will give fair consideration to humanitarian aspects in accordance with international law especially to unaccompanied minors, elderly, single women and women who are head of their families. Family unity and the principle of *non-refoulement* will be respected, including regarding seriously sick people. Special measures will ensure that such vulnerable groups receive adequate protection, assistance and care throughout the whole process.
5. An unaccompanied minor is not to be returned unless he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in Afghanistan. Due consideration shall always be given to the best interests of the child.

For the purpose of this declaration:

- in order to assess the notion of family unity, a “family unit” consists of parents with minor children below 18;
- “seriously sick people” are people with a very serious disease that cannot be treated in Afghanistan.

6. Based on this political declaration, the EU and the Afghan Government will cooperate closely to facilitate and work towards a more effective management of migratory pressures.
7. Part of this political declaration is the mutual commitment to further improve the cooperation on accompanying development measures in order to contribute to a more sustainable Afghan institutional structure and a more effective implementation process in support of reintegrating the returning Afghans sustainably.

Part II: Facilitating the return process

1. To facilitate the return process, the EU will ensure that every Afghan returning to Afghanistan on a voluntary or non-voluntary basis in line with the EU and international laws is in possession of a recognised valid travel document, such as an Afghan passport, an Afghan travel document or the EU standard travel document for return².
2. When the Afghan national to be returned has no valid passport, the Afghan competent authority will ensure that a vetting process is completed and a passport or a travel document is issued no later than four weeks following the request made by the EU Member State.

When the EU Member State has evidence of the Afghan nationality of the person to be returned, the Afghan authorities will make every effort to verify the evidence and, issue a passport or a travel document within two weeks.

When the travel document has not been issued within these time limits, the EU Member State may issue the EU standard travel document for return.

² European standard travel document for the return of Third-Country nationals (Council recommendation of 30 November 1994).

3. To facilitate the return and readmission of Afghan nationals, EU Member States may use scheduled or non-scheduled flights to Kabul airport (in existing designated facilities) and any other specified Afghan airports as mutually agreed, including joint flights returning Afghan nationals from several EU Member States organised and coordinated by Frontex. All EU Member States may participate in joint return operations by non-scheduled flights. Joint return flights will be carried out in the framework of this declaration.
4. In case of non-scheduled flights, the EU Member States will provide, flight data (with a maximum number of 50 returnees per flight, a number that can be increased in agreement with the government of Afghanistan) and personal information of the returnees concerned, in compliance with the applicable rules on protection of personal data, three weeks prior to their return date. The EU Member States might need to overbook the flight with persons out of the pool but will not exceed the maximum number as previously announced. The EU Member States and Frontex will coordinate their non-scheduled flights with Afghan authorities in order to ensure an orderly management of returns, so as to limit the maximum number of non-voluntary returnees to 500 per month, a number that can be increased after prior consultations. This ceiling number applies to all non-voluntary returnees regardless of whether they have been repatriated on the basis of a bilateral arrangement or the JDMC. All Afghan returnees will be readmitted upon arrival.

5. While travelling to Afghanistan, the EU escort staff and other accompanying staff will not need to carry a valid Afghan visa unless they must enter the territory of Afghanistan. In such cases, the Afghan missions will issue within 5 working days multiple-entry visas with one-year validity, free of charge for holders of service passports. The EU Member States will take adequate measures in the return process of female returnees, including providing female escorts. The escort staff will be specially trained and act in line with the EU standards.³
6. The EU Member States will ensure that any person readmitted by Afghanistan who, it later emerges, is not an Afghan national, is taken back by the concerned EU Member State or is transferred to her/his country of origin by the EU Member State concerned.

Part III: Information and awareness raising

1. The EU, its Member States and the Government of Afghanistan cooperate closely to ensure, with the assistance if necessary of relevant non-governmental and inter-governmental organisations, that Afghan nationals present in the EU are provided with objective and accurate information regarding their return and reintegration in Afghanistan, to allow for decisions to return to be taken in full knowledge of the facts. To this effect, the EU and its Member States, together with relevant inter-governmental or non-governmental organisations, will carry out information campaigns targeted at Afghan communities in the EU.

³ Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders.

2. To prevent further irregular migration from Afghanistan and to create conditions conducive to the sustainable reintegration of Afghan returnees, the Government of Afghanistan will take the necessary measures including through information and awareness raising campaigns aimed to sensitise the population to the dangers of irregular migration. The EU intends to contribute to finance such information campaigns.

Part IV: Return Programmes and Reintegration Assistance

1. Regarding the return programmes, the EU intends to meet all travel costs, including administrative and luggage costs in accordance with international flight weight standards for returning Afghans up to the final destination in Afghanistan.
2. In order to facilitate sustainable reintegration, the EU is developing and funding programmes providing support for Afghan nationals returning to Afghanistan and their host communities. Special consideration will be given to the needs of children, women, and returnees in vulnerable situations in the development and implementation of the reintegration programmes.
3. Reintegration assistance to returnees will complement and be closely coordinated with the overall development cooperation between Afghanistan and the EU. Both sides remain fully committed to the principles of aid-efficiency increasing synergies between different interventions, focusing in particular on in-country implementation systems and capacities, building on the humanitarian-development nexus and mobilising resources at bilateral as well as regional level.

4. The EU's assistance towards sustainable reintegration of returnees will be implemented in line with the revised Afghan National Peace and Development Framework (ANPDF), in particular concerning fostering of local governance and the provision of basic services to the affected groups of population, enshrined also in the Sustainable Development Goals.
5. To facilitate the re-establishment of returnees' livelihoods in Afghanistan, the EU intends to support, in a coherent framework, sustainable reintegration efforts that address the needs of the returnees and their host communities and that strengthen the institutional capacities of the responsible government institutions. These measures will be developed jointly and based on agreed areas of intervention in line with the Government's national priority programmes in the framework of the preparation of the country and multi-country indicative programmes 2021-2027 in relation to Afghanistan.

Part V: Fight against Smuggling of Migrants and Trafficking in Human Beings

1. The EU will enhance its efforts to support the Afghan Government in preventing and tackling trafficking in human beings and smuggling of migrants. Such assistance includes capacity building for law enforcement agencies, as well as specific required support for drafting and enacting effective legislation on smuggling of migrants.
2. Concrete proposals will be jointly developed by the EU and Afghanistan in parallel with the beginning of the cooperation under this declaration.

Part VI: Joint Working Group

A Joint Working Group will meet regularly, if possible every six months or at least once a year, to facilitate the application of this declaration without prejudice to the possibility to convene meetings at short notice on the request of Afghanistan or the EU to discuss any issues that arise. The said working group will:

- a) monitor the application of this declaration;
- b) discuss further arrangements to facilitate cooperation and enable an orderly management of return flows;
- c) recommend changes to this declaration, if required.

Part VII: Exchange of Documents

The EU and Afghanistan declare their intention to exchange the following documents:

- a) list of diplomatic and consular staff in the territory of the requesting side for the purpose of issuing travel documents;
- b) a list of airports that should preferably be used for return operations;
- c) all information to facilitate communication and the effective implementation of this declaration; and
- d) a list of documents to be considered as evidence of nationality.

Part VIII: Start of cooperation

This Declaration is signed in English and Dari languages; both texts are equally valid.

Cooperation will begin on the day this declaration is signed. The declaration provides the framework for cooperation for an indefinite period. Every year, on the date of anniversary of the signature of this declaration, and after prior consultation of the Joint Working Group, each party to this declaration may notify the other Party of its intention to discontinue the cooperation, in which case cooperation on the basis of this declaration will cease after three (3) months.

Part IX: Exchange of views

In the event of differences in interpretation and thus understanding of this declaration or the cooperation based on it, a mutually acceptable solution should be found on the basis of the English version in the Joint Working Group.

Part X: Relationship with bilateral arrangements

Member States which have concluded a bilateral arrangement with Afghanistan, should follow the procedures foreseen therein, without prejudice of the possibility for all Member States to participate in Joint Return Operations coordinated by Frontex. For those Joint Return Operations, requests for landing permits should be dealt with by the EU Delegation.

This Joint Declaration on Migration Cooperation was signed in [place] on [date].

For the European Union

For the Government of

the Islamic Republic of Afghanistan

Name

Name

(Title/Position)

(Title/Position)
