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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 21 March 2018

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2018) 168 final

Subject: Proposal for a COUNCIL DECISION authorising the Commission to
approve, on behalf of the Union, the Global Compact for Safe, Orderly and
Regular Migration in the area of immigration policy

Delegations will find attached document COM(2018) 168 final.

Encl.: COM(2018) 168 final



Brussels, 21.3.2018
COM(2018) 168 final

2018/0078 (NLE)

Proposal for a

COUNCIL DECISION

**authorising the Commission to approve, on behalf of the Union, the Global Compact for
Safe, Orderly and Regular Migration in the area of immigration policy**

EXPLANATORY MEMORANDUM

Subject matter of the proposal

This proposal concerns the approval of the Global Compact for Safe, Orderly and Regular Migration (hereafter "the Global Compact on Migration") on behalf of the European Union.

The Global Compact for Safe, Orderly and Regular Migration

On 10 -11 December 2018, the Intergovernmental Conference to be held in Morocco is to adopt a Global Compact on Migration as provided in UN General Assembly Resolution 72/244 of 24 December 2017 on Modalities for the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration¹.

In a highly interdependent world, migration can only be addressed effectively by the international community as a whole. Migration is a global phenomenon that requires global solutions based on the principles of solidarity and shared responsibility.

In September 2016, the UN General Assembly adopted the New York Declaration for Refugees and Migrants², officially launching the process of elaboration of a Global Compact for Migration. The New York Declaration represents a milestone in developing a global response to migration and forced displacement. It was welcomed by the European Council in its conclusions on migration of 20 October 2016³.

Since 2016, the Union has been strongly and continuously engaged in the process of elaboration of the Global Compact for Migration, delivering EU coordinated statements through the EU delegations in the consultative and stocktaking phase. This unified EU approach resulted in a draft of the Global Compact for Migration which largely reflects EU *acquis* and policy, and reflects the Union's objective to promote multilateral solutions to common problems, in particular in the framework of the United Nations.

Over the past years, the Union has built a comprehensive long-term strategy on migration covering all aspects of this phenomenon, from saving lives, offering protection to those in need, addressing the root causes of irregular migration and forced displacement as well as providing support to forcibly displaced populations around the world. This strategy is built on partnership and close cooperation with partner countries and organisations such as the African Union, the United Nations and its Agencies. This comprehensive approach should be promoted globally.

The European Consensus on Development⁴, adopted in 2017, states that the EU and its Member States will actively support the elaboration of the UN Global Compacts on Migration and Refugees, as called for by the 2016 New York Declaration for Refugees and Migrants.

With the publication of the zero draft of the Global Compact for Migration on 5 February 2018 and of the "zero draft plus" on 5 March 2018, the process has entered its final phase of negotiations, leading to the intergovernmental conference to adopt the Global Compact for Migration to be held in December 2018 in Morocco.

¹ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/244

² <http://www.unhcr.org/new-york-declaration-for-refugees-and-migrants.html>

³ <http://www.consilium.europa.eu/en/press/press-releases/2016/10/20/european-council-conclusions-migration/pdf>

⁴ Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission, 2017/C 210/01 (OJ C 210, 30.6.2017, p. 1).

The envisaged date for approval of the Global Compact on Migration on behalf of the Union is 10 December 2018, on the occasion of the opening plenary meeting of the Intergovernmental Conference.

Legal basis

Article 16 TEU provides that Council shall exercise policy-making and coordination functions as laid down in the Treaties. The Council shall act by qualified majority except where the Treaties provide otherwise.

In its development cooperation policy under Article 208 TFEU, the Union shall take into account the objectives of development cooperation in the policies that it implements which are likely to affect developing countries. Those objectives have been defined broadly in the Court's consistent case-law, most recently in Case C-377/12, *Commission v Council*⁵, where it noted that migration (including the fight against illegal migration), is integrated into the development policy defined in the European Consensus on Development. The European Consensus on Development states that the EU and its Member States will actively support the elaboration of the UN Global Compacts on Migration and Refugees, as called for by the 2016 New York Declaration for Refugees and Migrants. The 2030 Agenda for Sustainable Development recognised that migration is a multidimensional reality of major relevance for the sustainable development of countries of origin, transit and destination.

According to Article 79(1) TFEU, the Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

For these purposes, measures shall be adopted in the areas of the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification; the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States; illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation and combating trafficking in persons, in particular women and children.

Moreover, under Article 79(4) TFEU measures may be established to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

The Global Compact on Migration sets up a list of shared objectives for safe, orderly and regular migration.

Therefore, the legal bases of the proposed decisions are Article 16 TEU, in conjunction with Articles 79 and 209 TFEU. Since, in accordance with Protocols No 21 and 22 to the TEU and to the TFEU, Ireland, the United Kingdom and Denmark are not taking part in the adoption of the Decision based on Article 16 TEU and Article 79 TFEU, two separate decisions are necessary for the approval of the Global Compact on Migration on behalf of the Union, one based on Article 16 TEU and Article 79 TFEU and the other based on Article 16 TEU and Article 209 TFEU.

⁵ Judgment of the Court of 11 June 2014, case C-377/12, *Commission v Council*, ECLI:EU:C:2014:1903.

Other elements

The Global Compact on Migration does not, nor does it intend to, create any legal obligations under domestic or international law.

In order to ensure that the Council Decisions on approval of the Global Compact on Migration are done at a stage where the policy making function is exercised in substance and that the EU continues to be active and influence its approval to ensure that the final text of Global Compact on Migration is consistent with the EU acquis and policy, a proposal is submitted exceptionally in order to allow the prior approval by the Council of the Global Compact on Migration.

The European Commission shall revert back to the Council should the Global Compact on Migration submitted to the Intergovernmental Conference substantially diverge from the text attached to this Decision.

Proposal for a

COUNCIL DECISION

authorising the Commission to approve, on behalf of the Union, the Global Compact for Safe, Orderly and Regular Migration in the area of immigration policy

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 16 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 17(1) of the Treaty on European Union lists the powers of the Commission and provides in particular that the Commission is to ensure the Union's external representation, with the exception of the common foreign and security policy and other cases provided for in the Treaties.
- (2) Article 221(1) of the Treaty on the Functioning of the European Union provides that Union delegations in third countries and at international organisations shall represent the Union.
- (3) Article 16 of the Treaty on European Union provides that Council shall exercise policy-making and coordination functions as laid down in the Treaties. The Council shall act by qualified majority except where the Treaties provide otherwise.
- (4) In a highly interdependent world, migration can only be addressed effectively by the international community as a whole. Migration is a global phenomenon that requires global solutions based on the principles of solidarity and shared responsibility.
- (5) In September 2016, the United Nations General Assembly adopted the New York Declaration for Refugees and Migrants⁶, officially launching the process of elaboration of a Global Compact for Safe, Orderly and Regular Migration ('Global Compact for Migration'). The New York Declaration represents a milestone in developing a global response to migration and forced displacement. It was welcomed by the European Council in its conclusions on migration of 20 October 2016⁷.
- (6) The Global Compact on Migration does not, nor does it intend to, create any legal obligations under domestic or international law.
- (7) The European Consensus on Development⁸, adopted in 2017, states that the EU and its Member States will actively support the elaboration of the UN Global Compacts on

⁶ <http://www.unhcr.org/new-york-declaration-for-refugees-and-migrants.html>

⁷ <http://www.consilium.europa.eu/en/press/press-releases/2016/10/20/european-council-conclusions-migration/pdf>

⁸ Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission, 2017/C 210/01 (OJ C 210, 30.6.2017, p. 1).

Migration and Refugees, as called for by the 2016 New York Declaration for Refugees and Migrants.

- (8) Since 2016, the European Union has been strongly and continuously engaged in the process of elaboration of the Global Compact for Migration, delivering EU coordinated statements through the EU delegations in the consultative and stocktaking phase. This unified EU approach resulted in a draft of the Global Compact for Migration which largely reflects EU acquis and policy, and reflects the European Union's objective to promote multilateral solutions to common problems, in particular in the framework of the United Nations.
- (9) Over the past years, the European Union has built a comprehensive long-term strategy on migration covering all aspects of this phenomenon, from saving lives, offering protection to those in need, addressing the root causes of irregular migration and forced displacement as well as providing support to forcibly displaced populations around the world. This strategy is built on partnership and close cooperation with partner countries and organisations such as the African Union, the United Nations and its Agencies. This comprehensive approach should be promoted globally.
- (10) With the publication of the zero draft of the Global Compact for Migration on 5 February 2018 and of the "zero draft plus" on 5 March 2018, the process has entered its final phase of negotiations, leading to an intergovernmental conference to adopt the Global Compact for Migration to be held on 10-11 December 2018 in Morocco.
- (11) The envisaged date for approval of the Global Compact on Migration on behalf of the Union on the occasion of the opening plenary meeting of the Intergovernmental Conference is 10 December 2018.
- (12) It is in the interest of the Union to contribute to a successful outcome of this process and it is paramount to preserve the unity of the EU position in order to ensure that the final text of Global Compact on Migration is consistent with the EU acquis and policy.
- (13) It is hence appropriate to authorise approval of the Global Compact for Safe, Orderly and Regular Migration in view of the Intergovernmental Conference to be held in December 2018.
- (14) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Decision and is not bound by or subject to its application.
- (15) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by or subject to its application.
- (16) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark to the Treaty on European Union (TEU) and to the TFEU, 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:

Sole Article

The Commission shall be authorised to approve, on behalf of the Union, in the area of immigration policy, the Global Compact for Safe, Orderly and Regular Migration, the "zero draft plus" as attached to this Decision, at the Intergovernmental Conference in Morocco on 10-11 December 2018.

The European Commission shall revert back to the Council should the Global Compact on Migration submitted to the Intergovernmental Conference in Morocco on 10-11 December 2018 substantially diverge from the text attached to this Decision.

The Commission and the EU Delegation will keep the Member States regularly informed and shall ensure the appropriate close cooperation.

Done at Brussels,

*For the Council
The President*