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**'I/A' ITEM NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)/Council
Subject:	Draft Standard Operating Procedures between the EU and the Republic of Mali for the identification and return of persons without an authorisation to stay

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1. Mali was identified by the European Council, in its Conclusions of 28 June, as one of the priority countries with which the EU and its Member States should reinforce cooperation on migration. In this context, developing cooperation in the area of return and readmission, through the negotiation of Standard Operating Procedures for the identification and return of persons without an authorisation to stay (SOPs), is one the main objectives to be achieved.
2. The draft EU position on the SOP, submitted by the Commission services, was considered by the JHA Counsellors (Expulsion) at their meeting on 5 July 2016 and, following a silence procedure, agreed by delegations.
3. The text of the SOPs was considered by the Commission in the framework of two negotiating rounds with the Malian authorities, held in July and in September 2016. Agreement was reached by the two sides on the text of the SOPs which appears in the Annex to this Note.

4. The JHA Counsellors (Expulsion) reached agreement on the text of the SOPs which appears in the Annex to this Note at their meeting on 5 December 2016.
  5. The Permanent Representatives Committee and the Council are invited to confirm the agreement reached by the JHA Counsellors and to endorse the SOPs.
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**Draft**

**Standard Operating Procedures between the EU and the Republic of Mali  
for the Identification and Return of Persons without an Authorisation to Stay**

These operating procedures for the identification and return of persons without an authorisation to stay aim at establishing efficient and transparent procedures for the identification and safe, dignified return of persons who do not fulfil the conditions for entry to, presence in, or residence on the territory of the requesting country.

These operating procedures do not create new legal obligations. They do not affect the rights of individuals. They aim to facilitate cooperation on readmission between the Member States of the European Union and the Republic of Mali, and complement and reinforce bilateral efforts of EU Member States in the same field.

They fall within the framework of the legal instruments in force concerning the identification and readmission, notably Article 13 of the Cotonou Agreement, and within the spirit of the action plan adopted at the Valletta summit.

**1. Holders of valid passport**

No formalities will be required for the return of a person holding a valid passport.

**2. Persons with established nationality**

Without the need for the concerned person to be present and without prejudice to the right to consular protection, the competent diplomatic and consular representation of the Republic of Mali issues a travel document within 3 working days following the submission of any of the following documents: expired passport; expired travel document; national identity card whether valid or expired; consular identity card whether valid or expired; card with a National Identification Number (NINA card); certificate of nationality or any other administrative identity document or civil status certificate containing the National Identification Number.

The diplomatic and consular representation of the Republic of Mali also issues a travel document within 3 working days following the submission of elements confirming the nationality gathered in the EU Visa Information System (VIS) or national visa systems for Member States not using the VIS system.

### **3. Other cases: Establishing nationality**

If none of the documents or elements of proof listed in point 2 can be presented, the verification of nationality is necessary, following one of the methods set out below.

#### i) Interviews by consular authorities or by identification missions

Upon invitation by the requesting country, the competent diplomatic and consular representation of the Republic of Mali makes necessary arrangements to interview the person whose nationality should be verified, and to issue a travel document within 14 working days following the request of the interview.

Upon invitation by the requesting country or a joint invitation by several requesting countries and/or the European Agency for the Management of Operational Cooperation at the external borders of the Member States of the European Union (Frontex), the competent authorities of the Republic of Mali conduct an identification mission in the requesting country or countries, and interview the persons whose nationality should be verified. The identification missions are carried out without undue delays. Members of such identification missions are authorised to verify the nationality. The competent consular authorities issue a travel document within 3 working days following the confirmation of nationality by the members of the identification mission. To this end, the identification mission draws up minutes indicating the list of persons whose nationality has been verified and for whom the travel document should be issued. The travel costs of identification missions are born by the requesting country or countries or Frontex.

Interviews by diplomatic or consular representation or by identification missions are conducted where the person to be identified is accommodated or detained, or in the premises designated by the competent authorities in the requesting country. Consular interviews can be held by videoconference.

ii) Verification of nationality by consulting biometric databases

A focal point is established within the National Directorate of Civil Registry of Ministry of Territorial Administration of the Republic of Mali. Upon request of the competent authorities of the requesting country and based on the elements of evidence presented to support such a request – notably fingerprints of the persons to be identified, the focal point makes the necessary search in the Civil Registry Data Centre, and informs by electronic means via the Ministry of Foreign Affairs of the Republic of Mali, the competent authorities of the requesting country of the outcome of this search within fourteen (14) working days following the receipt of the request.

On the basis of such confirmation, the diplomatic or consular representative of the Republic of Mali issues at the request of the requesting country a travel document within three (3) calendar days.

This procedure will be updated once the diplomatic and consular representations of the Republic of Mali will have the possibility to consult directly the above mentioned databases.

iii) Elements of presumption of nationality

Alternatively, nationality is presumed established based on presentation of one of the following documents, even if their period of validity has expired:

- (a) military service book and identity card, and birth certificates other than those referred to in point 2, or photocopies thereof;
- (b) photocopies of any of the documents listed under points 1 and 2;
- (c) photocopies of other official documents that mention or clearly indicate nationality;
- (d) statements made by the person concerned, duly collected by the administrative or judicial authorities of the requesting country.

Where a confirmation of nationality can be made solely on the basis of the documents listed under point 3 iii) (a) — (d), the Republic of Mali issues the travel document within maximum fifteen (15) working days following the request for establishing nationality.

When the nationality cannot be established and consequently no travel document is issued, the requested country provides a justification in writing.

#### **4. Information provided**

The following information is provided by the requesting country with the request for establishing nationality and for issuing travel documents:

(a) the given name, surname, date of birth, place of birth, and the last place of residence, to the extent that this information is available;

(b) the indication of the means for the proof of nationality.

The photograph and fingerprints can also be provided where possible and necessary.

The requests by the competent authorities of the requesting country to those of the Republic of Mali in the framework of these operating procedures, as well as the responses to these requests and confirmations of nationality following the interview can be submitted by any means of communication. Electronic submission is preferred.

#### **5. Validity of travel document**

The travel document issued by diplomatic and consular representations of the Republic of Mali has a validity of at least six (6) months.

#### **6. Transfer modalities**

The transport is done by air, using scheduled or charter flights.

In the case of charter flights, a maximum of 20 persons subject to non-voluntary return per flight will be applied.

## 7. Implementation

The EU and Mali reaffirm their intention to closely cooperate to ensure the effective implementation of these operating procedures.

To this end, a working group involving representatives of the EU and of the Republic of Mali will meet regularly, at the request of any of the two partners, and at least once per year. The group will monitor the practical implementation of these operating procedures and will discuss, if necessary, possible improvements to the procedures set out in this document.

In this context, the time limits of travel documents issuance will be subject to continuous monitoring. If, nevertheless, it turns out, after a period of 6 months following the implementation of these operating procedures, that the time limits mentioned are not respected, the EU and Mali agree that the issue of travel documents - including the EU document will be discussed again, in order to find the necessary solutions.

In any event, the parties agree that the final options should lead to agreed and shared decisions.

These operating procedures should be applied from the date on which the EU and Mali sign them.

The EU and Mali each can, at any time, indicate their intention to stop applying these operating procedures. In such a case, a written notification should be transmitted through diplomatic channels, at least six months ahead of the end of application of these procedures.

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