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'I' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)

Subject: Joint Declaration on Migration Cooperation between Afghanistan and the EU

- authorization of signing/approval
- Decision to use the written procedure

1. As part of the EU's cooperation with Afghanistan in the area of migration, the two sides have committed to a Joint Way Forward on Migration Issues between Afghanistan and the EU (thereafter "JWF", 12191/16), which was signed on 3 October 2016 and was due to expire on 3 October 2020¹.
2. On 10 June 2020, the Commission informed the Council that it intends to enter into discussions with Afghanistan on prolongation of the JWF (WK 6248/2020 INIT). Following the JHA Counsellors (Migration, Integration, Expulsion) meetings held on 17 and 24 June 2020, on 13 July 2020 the Council authorised the Commission to enter on behalf of the Union into negotiations on the prolongation of the JWF beyond October 2020 (9233/20).

¹ The validity of JWF was automatically extended for another two years following the provisions of Part VIII of the JWF and both sides agreed to further prolong the validity of the agreement so as to allow for the adoption of the new agreement. Therefore the current JWF will expire on 28 February 2021.

3. Negotiations were completed and the text of the Joint Declaration on Migration Cooperation between Afghanistan and the EU (thereafter "JDMC"), the successor document to the JWF, was endorsed by the two sides at the meeting of the Joint Working Group under the JWF via videoconference on 11 November 2020. Further editorial amendments to the text were brought in the course of the Commission's inter-service consultation and shared with Afghanistan, and on 9 December 2020, Afghanistan requested further modifications to the text regarding joint flights and reintegration. As a result, minor modifications have been introduced into the text, and on 12 January 2021 the Commission submitted the text as resulting from negotiations to the Council.
4. The JDMC is a non-binding instrument which does not, nor is it intended to, create any legal obligations on either side under domestic or international law.
5. In its explanatory note (5223/21), the Commission explained that while preserving the main features of the JWF, the JDMC also brings significant improvements, including:
 - a tighter definition of vulnerable groups, notably the family unit and seriously sick people;
 - clarification that all EU Member States may participate in joint return operations by non-scheduled flights under the JDMC, even if they have concluded a bilateral agreement or arrangement with Afghanistan;
 - EU escort staff and other accompanying staff do not need to carry a valid Afghan visa unless they must enter the territory of Afghanistan;
 - all Afghan returnees to be readmitted upon arrival;
 - indefinite duration of the Declaration.

6. On 20 January 2021 JHA counsellors examined the JDMC, outlined in document 5223/21 ADD1. Delegations welcomed the JDMC and could agree to it.
7. In light of the above, the Permanent Representatives Committee is invited:
 - to recommend to the Council that it authorises the signing/ approves the text of the Joint Declaration on Migration Cooperation between Afghanistan and the EU, as set out in document 5223/21 ADD1, on behalf of the EU and
 - to decide, in accordance with the first subparagraph of Article 12(1) of the Council's Rules of Procedure and Article 1 of Council Decision 2020/430, that the Council uses the written procedure for the authorisation of the signing/approval of the text, on behalf of the EU, of the Joint Declaration on Migration Cooperation between Afghanistan and the EU, as set out in document 5223/21 ADD1.
