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THE EUROPEAN UNION**

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REVISED NOTE

from: Presidency

to: JHA Counsellors

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Subject: Draft Council Conclusions defining the European Union strategy on readmission

Counsellors will find attached the above draft Council Conclusions.

Draft Council conclusions defining the EU strategy on readmission

THE COUNCIL

Whereas combating illegal immigration is a major migration policy goal of the European Union;

Whereas a fundamental element of fighting effectively against illegal immigration is cooperation among Member States, the Commission, European agencies and the countries of origin and transit; of which readmission agreements are essential tools;

Emphasising the obligation of each State under customary international law to readmit its own nationals;

Recalling the Treaty of Lisbon which has made explicit the already existing external competence of the Union to conclude readmission agreements with third countries;

Recalling that since 2000 the Council has issued 19 negotiating directives on the conclusion of readmission agreements, out of which 13 EU readmission agreements have already entered into force;

Recalling the Global Approach to Migration, the European Pact on Immigration and Asylum as well as the Stockholm Programme and their acknowledgement of the importance of the EU readmission policy for curbing illegal immigration;

Recalling that the EU readmission policy forms an integral part of the Global Approach to Migration and the development of the EU readmission policy should also reflect the developments of the Global Approach;

Expressing the need that EU readmission policy should be more embedded in the overall external relations policy of the European Union, which is guided, inter alia, by the respect for human rights and fundamental freedoms by virtue of Article 21 (1) and (3) TEU;

Recalling that human rights standards will continue to be fully respected in the framework of return policy;

Recalling the earlier Council Conclusions of 19 May 2003 on the Communication of the Commission on integrating migration issues in the EU's relations with third countries: migration and development; the Council Conclusions of 2 November 2004 on the priorities for the successful development of a common readmission policy; the Council Conclusions of 12 June 2007 on the evaluation of the progress and outcome of negotiations for Community readmission agreements with third countries; as well as Council Conclusions of 8 December 2008 on the evaluation of the Global Approach to Migration and on the partnership with countries of origin and transit;

Bearing in mind that in the Stockholm Programme the European Council invited the Commission to present an evaluation of EU readmission agreements and ongoing negotiations, and to propose a mechanism to monitor the implementation of the agreements;

Taking note the Communication of the Commission of 23 February 2011 on the evaluation of the EU readmission agreements;

Noting that the Council should define a renewed, coherent strategy on readmission, taking into account the overall relations with the countries concerned, including a common approach towards third countries that do not cooperate in readmitting their own nationals;

ADOPTS THE FOLLOWING CONCLUSIONS:

1. The Council recognises the significant added value of EU readmission agreements as tools of an effective return policy in order to tackle illegal immigration. The Council therefore welcomes the fact that 13 EU readmission agreements have already entered into force and underlines the importance of initiating and continuing negotiations with a view to concluding rapidly those for which a mandate is still outstanding as well as exploring the opportunity of launching new negotiations with third countries. Furthermore, the Council urges the Commission to make further appropriate steps when negotiations stall.
2. The Council calls on Member States to implement EU readmission agreements in force. Existing bilateral agreements or arrangements may only be applied so far as they are compatible with the EU readmission agreements or they are foreseen by the EU readmission agreements. It is of great importance since using conflicting bilateral agreements instead of EU readmission agreements undermines the effectiveness and credibility of EU readmission policy towards the third countries which expect that their readmission procedures with all Member States will be harmonised following the entry into force of an EU readmission agreement.
3. The Council calls on the Commission and the Member States to pursue the dialogues with the third countries concerned and to take measures necessary to further improve the rate of approved readmission requests and effective returns; also using to this end the Joint Readmission Committees' meetings and further strengthening them in this regard.

4. With regard to the future mandates on readmission, the Council should consider the migration pressure from a third country concerned on a particular Member State or on the European Union as a whole, the cooperation on return by the third country concerned, as well as the geographical position of the third country concerned situated at a migration route towards Europe to be the most important criteria for determining, on a case-by-case basis, with which further third countries EU readmission agreements should be negotiated. Furthermore, the Council considers that while acknowledging the importance of the transit countries, in the future readmission policy more attention should be paid to the main countries of origin to be indentified on a regular basis. At any rate, co-operation between countries of origin, transit and destination should also be strengthened.
5. If the Council decides to open visa facilitation negotiations with a third country, the current policy of accompanying an EU visa facilitation agreement with a parallel EU readmission agreement should be continued.
6. EU readmission agreements represent an important instrument in the Union's relations with the third country in question. Negotiating directives should better reflect the overall relations with the third country concerned, and should, where appropriate, contain flexibility.
7. The Council underlines that, in the spirit of loyal cooperation, the Commission should continue consulting and informing the relevant Council preparatory bodies in the process of negotiations of the future EU readmission agreements. The Council calls on Member States to continue giving the Commission full political and diplomatic support in the course of the negotiations (including through their bilateral relations with the third country in question) as well as to provide the Commission with their national expertise.

8. The Council acknowledges the importance of seeking to incorporate issues on readmission into a broader and coherent cooperation with third countries. Notwithstanding the fact that under customary international law it is an obligation of each State to readmit its own nationals and control its borders, application of incentives is important, although they should not be prerequisites for launching negotiations. Future negotiating directives should include tailor-made incentives, which may be offered to the third country concerned in order to ensure the proper level of cooperation by the third county concerned. Such incentives should be defined on a case-by-case basis and according to the particular needs of both sides. They should be proportional to the obligations assumed by the third country in question. On this basis, the incentives may consist of elements of the Global Approach to Migration and/or non-migration related issues embodied into EU framework agreements with the same third country. The Council reiterates that the principle of “no agreement at any cost” should continue to be followed. The principle of conditionality shall [...] apply, including through the withdrawal of incentives and introducing certain measures when a third country does not co-operate in the effective implementation of its readmission obligation, without prejudice to existing international legal obligations.
9. The Council will continue, as a general rule, incorporating clauses on the readmission of third country nationals in the negotiating directives, with due regard to the geographical situation and transit character for illegal migration of the third country concerned. Notwithstanding the importance of the application of the clauses on the readmission of third country nationals, Member States should continue, when possible and except accelerated procedures, endeavouring to return illegal migrants to their countries of origin.
10. The Council will continue incorporating the rules on accelerated procedure and transit operations in the negotiating directives, since it is more beneficial and would increase converging practices than having these procedural rules in the various and rather technical bilateral implementing protocols. In duly justified and exceptional cases where one or both procedures are unlikely to be used in practice in relation to a given third country, those procedures may be omitted from the EU readmission agreements.

11. The Council is of the view that Joint Readmission Committees are to be considered as the main tools for monitoring the implementation of the EU readmission agreements, where the experts of the Member States will be invited. It is important to stress that the meetings of the Joint Readmission Committees, as the main rule, should continue to be of technical nature. The participation of external actors, [...] in the Committees' meetings may be considered on case-by-case basis and for particular points of the agenda, in case both parties agree and in accordance with the rules of procedure of the Joint Readmission Committees.

12. The Council invites the Commission to share its conclusions drawn from the pilot projects carried out by the Commission on monitoring the implementation of certain readmission agreements.
