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"I/A" ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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Subject:	Draft Council Conclusions on EU Return Policy - Adoption

1. On 1 April 2014, the Commission submitted to the Council and the European Parliament a Communication on EU Return Policy (8415/14).
2. In light of this Commission Communication, the Presidency tabled draft conclusions on this matter. On 12, 15 and 20 May 2014, these draft conclusions were examined by the Justice and Home Affairs Counsellors in format of the Mixed Committee. Following this examination, an agreement was reached on the text as set out in the Annex to this Note.
3. The Permanent Representatives Committee is therefore invited to endorse these draft conclusions and to submit them to the Council for adoption.

Draft Council Conclusions on EU Return Policy

The Council,

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

- Reaffirms the Council Conclusions of 9/10 June 2011 defining the EU Strategy on Readmission; and the Council Conclusions of 14 April 2014 on the implementation of the Global Approach to Migration and Mobility;
- Recalls that a coherent, credible and effective policy with regard to the return of illegally staying third-country nationals that fully respects human rights and the dignity of the persons concerned, as well as the principle of *non-refoulement*, is an essential part of a comprehensive EU migration policy;
- Recalls that return policy is closely interlinked with readmission and that both are an integral part of the Global Approach to Migration and Mobility (GAMM), which is the overarching framework for the external aspects of the asylum and migration policy of the European Union;
- Recalls the assessment made in the United Nations International Law Commission's 8th Report on the expulsion of aliens, in which the UN Special Rapporteur acknowledges that the EU's Return Directive "*contains extremely progressive provisions on such matters that are far more advanced than the norms found in other regions of the world*";
- Welcomes the Commission's Communication on EU Return Policy of 28 March 2014.

Adopts the following conclusions:

1. The Council supports the overall approach set out in the Communication on EU Return Policy and points out that the focus should be placed on a more effective implementation and thorough consolidation of the existing rules rather than on new legislative initiatives.
2. The Council notes that the provisions of the Return Directive have not only contributed, in general, to well-managed return procedures but also to the protection of returnees, and shares the finding in the Commission Communication that the main reasons for non-return relate to the lack of cooperation from returnees in the return process and to problems in establishing the identity of returnees and in obtaining the necessary documentation from third-countries' authorities.
3. With a view to improving the return rate, the Council stresses the importance of a coherent and comprehensive approach towards third-countries in identifying and re-admitting their own nationals. In that respect, the Council reaffirms the value of properly functioning Readmission Agreements for effective returns as they set out clear obligations and procedures on return and re-admission of illegally staying third-country nationals for both the third-countries and the European Union and its Member States.

In this context, the Council also recognizes the important role of countries of transit. The setting up of efficient readmission procedures with these countries contributes to avoid pressure on return systems of Member States. Moreover, efforts should be made, in the framework of cooperation with these countries, to facilitate returns of migrants who find themselves on their territories to the countries of origin with due respect of fundamental rights and the principle of *non-refoulement*.

4. As regards the concrete follow-up measures proposed in the Commission's Communication on EU Return Policy, the Council:

- 4.1. Emphasises that a key challenge for a more successful EU return policy should be to strengthen cooperation between the EU and third-countries, in particular as regards identification and documentation of returnees. The Council considers that cooperation on return between the EU and third-countries can take place in bilateral, regional and multilateral frameworks and should preferably be built upon shared interests. With a view to contributing to the development of a more coherent and balanced relationship between the EU and relevant third-countries, the Council considers that cooperation must be in keeping with the "more for more" principle as defined and developed in the GAMM. At the same time, implementation of cooperation between the EU and third-countries should be flexible and adapted to the specificities of each case.
- 4.2. Recognises that efforts to build capacity in third-countries in the field of return, readmission and reintegration must be stepped up by, for example, improving the ability of the responsible authorities in partner countries to respond in a timely manner to readmission requests, identify the people to be returned and facilitate the issuing of travel documents, as well as to provide, when appropriate, assistance and reintegration support to those who are being returned.

Calls on the Commission to ensure that sufficient financial resources are available under the external cooperation instruments for capacity building in non-EU countries for relevant aspects of return management and for re-integration support in selected third-countries. In this context, the Council stresses that the EU should continue to offer financial support through the newly established Asylum, Migration and Integration Fund to meet the objectives of the EU return policy. The Council stresses the need to strengthen the operational aspects of cooperation on readmission as it is the case with ACP countries.

- 4.3. Encourages further improvement of operational cooperation between Member States, both on the promotion of voluntary return and on more efficient forced return. In this context, the Council underlines the added value of enhanced exchange of best practices between Member States' competent authorities. The Council recognises that voluntary return is in the interest of both Member States and returnees and underlines that voluntary return is the preferred option. At the same time, the Council recognises that voluntary return is not always a viable solution and that a potential resort to forced return is an equally important element of a credible return policy. In that respect the Council acknowledges that national forced-return monitoring systems can contribute to correctly executed returns and transparency.
- 4.4. The Council welcomes the enhanced role of the European Migration Network as a platform to collect and exchange information in order to facilitate improved cooperation among states and stakeholders in the field of return. The Council invites this forum to examine in particular the overall efficiency of return procedures, the possible effects of incentives to voluntary return as potential pull factor for illegal immigration and the impact of entry bans on more efficient return policies.
- 4.5. Reiterates that there is a clear added value in performing certain operational aspects of return jointly at Union level. Against that background, FRONTEX, which has a significant coordination role in this field, should make use of this role in a proactive manner. Therefore, FRONTEX is invited to increase its operational activities by further developing the recourse to Joint Return Operations (JROs) in a way which ensures that the practical needs of participating Member States are effectively met. FRONTEX is also encouraged to continue supporting Member States by offering relevant training on return issues and to cooperate with third-countries, to make it easier to obtain the necessary travel documents for returnees.

- 4.6. Underlines the importance of improving the operational cooperation between Member States on return and takes note of the Commission's intention to draw up a "Return Handbook", in close cooperation with Member States, to support Member States' competent authorities when carrying out return-related activities in an efficient manner. As regards the issues covered by the Handbook, the Council calls on the Commission to pay attention to the efficiency of administrative procedures, to limit itself to those issues already covered by the acquis, in full respect of the competences of the Member States, as well as to avoid any message which can be understood as encouraging illegal immigration or stay.
5. In order to ensure that return and readmission are effective instruments for a successful migration policy, the Council underlines the importance of embedding and fully integrating migration and return into EU foreign policy as a strategic priority. This would enable a better use of appropriate leverage from both EU and Member State level. Against that background, the Council endorses launching an initiative on a pilot project concerning a number of selected third-countries of origin. Member States can participate in this pilot project based on interests. The aim of this initiative should be to mobilise all adequate means in the framework of the more for more principle, to stimulate the selected pilot third-countries to comply with their international obligations, to improve the return rate and to readmit their own nationals who have been denied residence permits by an EU Member State or who entered or are staying illegally in the EU.

The Council, therefore, invites the Commission, the EEAS and the competent European agencies to take the necessary measures, in close consultation and cooperation with Member States, including on the basis of their concrete input, to launch this pilot project. The Commission is also invited to keep the Council and its preparatory bodies regularly informed of the state of play of the implementation of this pilot project.
