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NOTE

From:	Presidency
To:	Delegations
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Subject:	Draft Council Conclusions on EU Return Policy

Delegations will find attached the Presidency's draft Conclusions on the above subject, which will be examined by the JHA Counsellors on 12 May 2014.

Draft Council Conclusions on EU Return Policy

The Council,

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

- Recalls 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, is an indispensable part of a comprehensive EU migration policy;
- Recalls that return policy is closely interlinked with readmission policy 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.
- Adopts the following conclusions:
 1. The Council welcomes the Commission's Communication on *EU Return Policy* of 28 March 2014 and supports the overall approach set out in this Communication suggesting that the focus be placed on a more effective implementation and thorough consolidation of the existing rules rather than embarking on new legislative initiatives.

2. The Council agrees with the conclusion of the Commission that the protective provisions of the Return Directive have not undermined the efficiency of return procedures and shares the finding that the main reasons for non-return relate primarily to the lack of cooperation from returnees in the return process and to the subsequent problems in identifying returnees and in obtaining the necessary documentation from third-countries' authorities.
3. The Council recalls the tide of criticism by non-EU countries and civil society at the moment of adoption of the Return Directive in 2008 and appreciates 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*".
4. The Council stresses the importance of a coherent and comprehensive approach towards third countries that do not cooperate in re-admitting their own nationals. In that respect, the Council reaffirms that Readmission Agreements are an essential element 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.
5. As regards the concrete follow-up measures proposed in the Commission's Communication on *EU Return Policy*, the Council:
 - 5.1. Emphasises that a key challenge for a more successful EU return policy should be to establish a better cooperation between the EU and third-countries, in particular as regards identification and documentation of returnees. The Council considers that cooperation on return with third-countries can take place in bilateral, regional and multilateral frameworks and must always be based on 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 and founded on a performance-based approach. At the same time, implementation of cooperation between the EU and third countries should be flexible and adapted to the specificities of each case.

- 5.2. 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 appropriate assistance and reintegration support to those who are being returned. In this context, the Council stresses that the EU will continue to offer financial support through the newly established Asylum, Migration and Integration Fund to meet the objectives of the EU return policy.
- 5.3. 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 several aspects of return management in selected third countries. The Council stresses the need to strengthen the operational aspects of ACP-EU cooperation on readmission.
- 5.4. Welcomes the Commission's suggestions for 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 a cost-efficient and humane way of return 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 credible threat of forced removal is an equally important element of return policy. In that respect the Council acknowledges that national forced return monitoring bodies contribute to correctly executed returns and to protecting the authorities executing the returns from criticism through a system of impartial and objective reporting.

- 5.5 The Council welcomes the enhanced role of the European Migration Network as a platform to facilitate improved cooperation among states and stakeholders in the field of return and invites this forum to examine whether incentives to voluntary return may trigger an unwanted pull effect for further illegal immigration and whether the strategic use of entry bans may enhance the efficiency of return policies.
- 5.6 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 continue to make use of this role in a more proactive manner. Therefore, FRONTEX is invited to further increase the coordination of 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 further support Member States by offering training on return issues and to cooperate with third countries, to make it easier for returnees to obtain the necessary travel documents.
- 5.7. Takes note of the Commission's suggestion that a "Return Handbook" be drawn up, compiling common guidelines, best practices and recommendations to be used by Member States' competent authorities when carrying out return-related activities. As regards the issues covered by the Handbook, the Council calls on the Commission to apply self-restraint and to limit itself to those issues already covered by the *acquis* as well as to avoid any message which can be understood as rewarding illegal stay or encouraging illegal immigration.

6. In order to ensure that return and readmission are key instruments for a successful migration policy, the Council underlines the importance of undertaking an initiative on a pilot basis to improve the return rate of illegal immigrants to a number of specific countries of origin, as discussed and endorsed at the Strategic Committee on Immigration, Frontiers and Asylum. The aim of this initiative should be to mobilise all possible means, in the framework of the more for more principle, to stimulate the selected pilot countries to comply with the international obligations to readmit their own nationals who have been denied residence permits by an EU Member State or who entered the EU illegally.

The Council, therefore, invites the Commission, the EEAS and the competent European agencies (European Asylum Support Office (EASO) and FRONTEX) to take the necessary measures, in close consultation with Member States, 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.
