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Subject:	Draft Council Conclusions on EU Return Policy

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In view of the meeting of JHA Counsellors on 15 May 2014, delegations will find attached draft Council conclusions on EU Return Policy as adapted in light of the examination 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;

- **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, is an **essential 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.
- **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*".**
- 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 **pointing out** ~~suggesting~~ that the focus **should** be placed on a more effective implementation and thorough consolidation of the existing rules rather than ~~embarking~~ on new legislative initiatives.

2. The Council **notes** ~~agrees with the conclusion of the Commission~~ that the protective provisions of the Return Directive have not **only contributed to the protection of returnees, but also, in general, to well-managed return procedures** ~~undermined the efficiency of return procedures~~ and shares the finding **in the Commission Communication** 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 **establishing the identity of 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*".~~
3. **With a view to improving the return rate, the** ~~The~~ Council stresses the importance of a coherent and comprehensive approach towards third countries ~~that do not cooperate in~~ **identifying and** re-admitting their own nationals. In that respect, the Council reaffirms **the value of properly functioning** ~~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.

**The Council recognizes the key 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 are stranded on their territories to the countries of origin.**

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** ~~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 **between the EU and with** third-countries can take place in bilateral, regional and multilateral frameworks and **should preferably** ~~must always~~ be **built upon** ~~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 **in line with GAMM** 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.
- 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. ~~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.~~

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** ~~several~~ aspects of return management in selected third-countries. **In this context, the Council stresses that the EU will 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 ~~ACP-EU~~ cooperation on readmission **as it is the case with ACP countries.**

- 4.3. ~~Welcomes the Commission's suggestions for~~ **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** 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~~ **potential resort to threat of forced return removal** is an equally important element of **a credible** return policy. In that respect the Council acknowledges that **effective** national forced return monitoring ~~systems~~ **bodies** contribute to correctly executed returns and to protecting the authorities executing the returns from criticism through a system of impartial and objective reporting.
- 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 and~~ **The Council** invites this forum to examine **how forced return relates to voluntary return, the possible effects of whether** incentives to voluntary return **as potential pull factor for** ~~may trigger an unwanted pull effect for further~~ illegal immigration and **the impact of whether the strategic use of entry bans may enhances** **on more efficient** ~~the efficiency of~~ 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 ~~continue to~~ make use of this role in a ~~more~~ proactive manner. Therefore, FRONTEX is invited to ~~further~~ increase **its operational activities by developing** 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 **continue further supporting** Member States by offering **relevant** training on return issues and to cooperate with third-countries, to make it easier ~~for returnees~~ to obtain the necessary travel documents **for returnees**.

- 4.6. Takes note of the Commission's **intention to draw up** ~~suggestion that~~ a "Return Handbook" ~~be drawn up~~, compiling ~~common guidelines~~, best practices and **suggestions** ~~recommendations~~ to **support** ~~be used by~~ 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 ~~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.
5. In order to ensure that return and readmission are **key effective** instruments for a successful migration policy, the Council underlines the importance of **incorporating returns into wider EU external relations. Embedding returns into the EU foreign policy would enable a better use of appropriate leverage from both EU and Member State level. Against that background, the Council endorses launching** ~~undertaking~~ an initiative on a pilot project to ~~improve the return rate of illegal immigrants to a number of specific~~ **selected third-countries** of origin ~~as discussed and endorsed at the Strategic Committee on Immigration, Frontiers and Asylum.~~ **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 ~~the~~ **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 ~~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, **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.