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NOTE

From:	Presidency
To:	Delegations
Subject:	Draft Council conclusions on the expulsion of illegally staying third-country nationals

In view of the JHA Counsellors meeting on 13 May 2016, delegations will find attached the above mentioned draft Council conclusions.

Draft Council conclusions on the expulsion of illegally staying third-country nationals

THE COUNCIL OF THE EUROPEAN UNION,

- *Recalling* the conclusions of the European Council of 25 and 26 June 2015 in which the Heads of State and Government called for promoting return and readmission cooperation with relevant third countries by mobilising all possible tools.;
- *Acknowledging* the importance of an integrated approach based on comprehensive tailor-made packages which serve as guidance for the EU and its Member States in their relations with relevant third countries, including, where appropriate, on the use of both positive and negative incentives for improving cooperation on return and readmission.
- *Noting* that readmission agreements are currently the main instrument of the European Union to lay down arrangements on readmission with third countries, the negotiation of which is not always successful and often a long process, whereas Member States have a relatively broader variety of instruments at their disposal that allow for the establishment of arrangements, including readmission agreements but also legally non-binding instruments such as Memoranda of Understanding and exchanges of letters;
- *Recalling* the conclusions of the Justice and Home Affairs Council of 8-9 October 2015, stating that all measures must be taken to ensure irregular migrants' effective return, including by strengthening the link between visa facilitation and readmission and the taking of steps to prevent the misuse of rights and procedures;
- *Referring to* the Directive on Return which imposes a legal obligation on Member States to issue a return decision to any third-country national who stays irregularly on their territory and – where called for – take measures to enforce it in a consistent and efficient manner, and which furthermore sets out safeguards to protect the rights of returnees, and enable their return to be carried out in a humane and proportionate manner;

- *Recalling* the Commission's Communication on the EU Action Plan on return of 9 September 2015 which, together with the “Return Handbook”, offers competent national authorities practical non-binding instructions to better apply standards and procedures as set out in the Return Directive when carrying out return, and pragmatic and operational elements with the aim of increasing their capacity to return irregular migrants, including through voluntary return and opportunities for returnees in their home countries;
- *Emphasising* that national procedures, administrative and legal frameworks of Member States, and national interpretation of EU case-law should not lead to delays or obstructions in the return of illegally staying third-country nationals;
- *Stressing* that increased cooperation between Member States may strengthen the effectiveness of Assisted Voluntary Return and Reintegration (AVR(R)) programmes and accompanying reintegration measures, and that limiting disparities between AVR(R) schemes of different Member States may help prevent so-called *return shopping*, misuse of return schemes, and secondary movements of irregular migrants;
- *Welcoming* the Commission’s proposal on improving the security standards of the European travel document for the return of illegally staying third-country nationals in order to be recognized by more third countries;
- *Welcoming* the Commission’s proposal on the European Border and Coast Guard, in particular as regards the establishment of a specialised ‘Return Office’, which should provide Member States with all necessary operational reinforcement to effectively return illegally staying third country nationals.

AGREES;

- That the high-level migration dialogues of the EU in the context of the tailor made packages with a special focus on return and readmission are useful instruments which should remain a central part of the external dimension of the European Agenda on Migration, and that regular reporting on their further development, including at the European Council of 28/29 June 2016, would be welcomed;

- That, in addition to readmission agreements, legally non-binding working arrangements on identification, return and readmission could be established with third countries at EU level, pertaining in particular to own nationals and including the holding of regular, informal meetings at expert level to review implementation and address possible obstacles. The Council should be involved in the negotiating process, as appropriate. Such legally non-binding arrangements should be fully compatible with existing bilateral readmission agreements of the Member States, and may in cases contribute to creating the conditions for the negotiation and conclusion of future readmission agreements as cooperation develops.

INVITES MEMBER STATES;

- To take necessary measures to avoid the misuse of migrants' rights and of asylum and migration procedures with the purpose of obstructing the process of return, where appropriate in a harmonised manner;
- To effectively address hurdles that occur during the process of return by reducing administrative burdens and aligning and simplifying rules and regulations to overcome procedural challenges, especially in relation to the application of detention, the suspensive effect of return and asylum decisions, and multiple and last minute asylum applications and appeals;
- To continue to assist the Commission in keeping the Return Handbook up-to-date and, where necessary, clarifying and improving practices and procedures in the Handbook in order to render the implementation of the Return Directive more efficient and effective, also with a view to promoting best practices of Member States in relation to return;
- To regularly and pro-actively exchange information on legal obstacles to return in the various Contact Groups on asylum and on return with the aim of sharing best practices and ensuring the correct and full use of EU legislation in support of effective return;

- To regularly and pro-actively exchange, amongst each other and with the involvement of the Commission and competent EU Agencies, information on best practices with regard to voluntary return notably in view of preventing additional pull factors and possible return shopping;
- To observe, when drafting and implementing AVR(R) schemes and programmes, the non-binding common standards for AVR(R) programmes developed in the framework of the Return Experts Group and Working Party on Expulsion¹. These standards provide valuable guidance *inter alia* on approximating the in-cash and in-kind assistance that different Member States offer, reducing pull-factors for irregular migrants, precluding AVR(R) assistance for nationals from visa-free countries, ensuring that the same person can not make use of such assistance twice, issuing of travel documents, and developing information campaigns;
- To design and implement joint AVR(R) projects which should be more comprehensive and cost efficient, owing to economy of scale, while making use of these same standards;
- To assist the swift completion of negotiations with the European Parliament on the proposals regarding the EU Travel document for the return of illegally staying third country nationals, and the EU Border and Coast Guard with particular regard for the provisions on the Return Office.

INVITES THE COMMISSION;

- To take the misuse of migrants' rights and of asylum and migration procedures that obstructs return into account when reviewing relevant instruments of the asylum *acquis*, as announced in its Communication of 6 April 2016², in particular the Asylum Procedures Directive;

¹ ST 8829/16 MIGR 90 COMIX 357

² COM(2016) 197 final of 6.4.2016 http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160406/towards_a_reform_of_the_common_european_asylum_system_and_enhancing_legal_avenues_to_europe_-_20160406_en.pdf

- To explore also the possibilities for a targeted review of the Return Directive in view of enhancing the effectiveness of return procedures and ensuring consistency and complementarity with its proposals for reform of the Common European Asylum System³ and bearing in mind the intrinsic linkages between the Return Directive and the asylum acquis, in particular the Asylum Procedures Directive⁴ and Reception Conditions Directive⁵;
- To evaluate in early 2017, the use and implementation of the abovementioned non-binding common standards on AVR(R) and to report on the results, in order to further improve the design and implementation of AVR(R) schemes;
- To ensure sufficient funding for future joint AVR(R) programmes, and to enhance national AVR(R) schemes under the AMIF in accordance with these standards.

³ COM(2016) 197 final of 6.4.2016 http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160406/towards_a_reform_of_the_common_european_asylum_system_and_enhancing_legal_avenues_to_europe_-_20160406_en.pdf

⁴ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)

⁵ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)