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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)/Council

Subject: Draft Joint Way Forward on migration issues between Afghanistan and the EU
- Adoption

1. As part of the reinforcement of the relations between the EU and Afghanistan in the area of migration and migration-related issues, the two sides committed to develop cooperation in the area of return and readmission, with the objective of defining a Joint Way Forward on Migration Issues between Afghanistan and the EU (thereafter "JWF"). The draft JWF is attached to this Note.
2. Shortly after the definition of the EU position for the JWF, at the JHA Counsellors meeting (Expulsion) on 5 April 2016, negotiations on the JWF were launched with the Afghan authorities. Information on the progress of the negotiations was provided by the Commission, which also consulted on the approach to be taken, at the JHA Counsellors meetings (Expulsion) on 24 and 30 May, as well as on 5 July 2016. Following the conclusion of the negotiations, the JWF was considered by the JHA Counsellors (Expulsion) at their meetings on 15 and 22 September 2016 and agreed by delegations.

3. The Permanent Representatives Committee and the Council are invited to confirm the agreement reached and to endorse the attached draft JWF, with a view to enabling its signature on the EU side, in the run-up to the Afghanistan Brussels Conference, to be held on 4-5 October 2016.
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**Joint Way Forward on migration issues
between Afghanistan and the EU**

Introduction

The European Union (EU) and the Islamic Republic of Afghanistan face unprecedented refugees and migration challenges. Addressing them requires solidarity, determination and collective efforts.

This Joint Way Forward (JWF) reflects the joint commitment of the EU and the Government of Afghanistan to step up their cooperation on addressing and preventing irregular migration, and on return of irregular migrants, who after the consideration of all relevant international law and legal procedures cannot be granted international protection status, as part of the overall partnership between the Government of Afghanistan and the EU, through coordinated efforts. For this purpose the Government of Afghanistan and the EU agreed to launch a High Level Dialogue on Migration.

The JWF is not intended to create legal rights or obligations under international law. It paves the way for a structural dialogue and cooperation on migration issues, based on a commitment to identify effective ways to address the needs of both sides. It comes in support of the EU Member States bilateral relations with Afghanistan and cannot be interpreted as superseding the existing or preventing the conclusion of future bilateral agreements between the EU Member States and Afghanistan.

This JWF identifies a series of actions to be taken as a matter of urgency by the EU and the Government of Afghanistan with the objective to establish a rapid, effective and manageable process for a smooth, dignified and orderly return of Afghan nationals who do not fulfil the conditions in force for entry to, presence in, or residence on the territory of the EU, and to facilitate their reintegration in Afghanistan in a spirit of cooperation.

In their cooperation under this declaration, the EU and Afghanistan remain committed to all their international obligations, in particular;

- respecting the provisions of the 1951 Convention relating to the Status of Refugees and its 1967 New York Protocol;
- upholding the rights and freedoms guaranteed in the International Covenant on Civil and Political rights and the EU Charter on Fundamental Rights and the Universal Declaration on Human Rights;
- respecting the safety, dignity and human rights of irregular migrants subject to a return and readmission procedure.

Part I: Scope of cooperation

1. The EU and the Government of Afghanistan intend to cooperate closely in order to organize the dignified, safe and orderly return of Afghan nationals to Afghanistan who do not fulfil the conditions to stay in the EU.
2. In line with its obligations under international law, Afghanistan reaffirms its commitment to readmit its citizens who entered into the EU or are staying on the EU territory irregularly, after due consideration of each individual case by Member States.
3. Afghan nationals who are found to have no legal basis to remain in an EU Member State, whose protection needs or compelling humanitarian reasons, if any, have been considered in accordance with the applicable legislation and who have received an enforceable decision to leave that Member State, can choose to return voluntarily. Afghan nationals who choose not to comply with such a decision on a voluntary basis will be returned to Afghanistan, once administrative and judicial procedures with suspensive effects have been exhausted.

The EU Member States consider granting appropriate time for return under the conditions provided for by applicable laws, taking account of the specific circumstances of the individual case.

4. Prior to returning Afghan nationals, the EU side will give fair consideration to humanitarian aspects in accordance with international law to unaccompanied minors, single women and women who are head of their families, family unity, elderly and seriously sick people. Special measures will ensure that such vulnerable groups receive adequate protection, assistance and care throughout the whole process.
5. Unaccompanied minors are not to be returned without successful tracing of family members or without adequate reception and care-taking arrangements having been put in place in Afghanistan.

Part II: Facilitating the return process

1. To facilitate the return process, the EU side will ensure that every Afghan returning to Afghanistan on a voluntary or non-voluntary basis in line with the EU and international laws is in possession of a recognised valid travel document, such as an Afghan passport, an Afghan travel document or the EU standard travel document for return¹.
2. When the person to be returned has no valid passport, the Afghan competent authority will ensure that a passport or a travel document is issued no later than four weeks following the request made by the Member State.

¹ European standard travel document for the return of Third-Country nationals (Council recommendation of 30 November 1994)

When the Member State has evidence of the nationality of the person to be returned, the Afghan authorities will make every effort to verify the evidence and issue a passport or a travel document within two weeks.

When the travel document has not been issued within these time limits, the Member State may issue the EU standard travel document for return.

3. To facilitate the return and readmission of Afghan nationals, EU Member States may use scheduled or non-scheduled flights to Kabul airport (in existing designated facilities) and any other specified Afghan airports as mutually agreed, including joint flights returning Afghan nationals from several EU Member States organised and coordinated by Frontex. Both sides will explore the possibility to build a dedicated terminal for return in Kabul airport and express their willingness to carry out non-scheduled flights at the best convenient times. The EU Member States understand that there should be a limitation to the number of non-voluntary returnees to 50 per flight in the first six months following the signature of this declaration.
4. In case of non-scheduled flights, the EU Member States intend to provide flight data, the maximum number of returnees and personal information of the pool of returnees for each flight three weeks prior to their return date. The EU Member States may have to overbook the flight with persons out of the pool but not exceed the maximum number as previously announced. The EU Member States and Frontex will coordinate their non-scheduled flights with Afghan authorities in order to ensure an orderly management of returns.

5. While travelling to Afghanistan, the EU escort staff will carry a valid Afghan visa at all time. The Afghan missions will issue such visas without delay. The EU Member States will take adequate measures in the return process of female returnees, including providing female escorts. The escort staff will be specially trained and act in line with the EU standards.
6. The EU Member States will ensure that any person readmitted by Afghanistan who, it later emerges, is not of Afghan nationality, is taken back by the Member State concerned. Details are to be developed by the Working Group.

Part III: Information and awareness-raising

1. The EU, its Member States and the Government of Afghanistan cooperate closely to ensure, with the assistance if necessary of relevant non-governmental and inter-governmental organisations, that Afghan nationals present in the EU are provided with objective and accurate information regarding their return and reintegration in Afghanistan, to allow for decisions to return to be taken in full knowledge of the facts. To this effect, the EU and its Member States, together with relevant inter-governmental or non-governmental organisations, will carry out information campaigns targeted at Afghan communities in the EU.
2. To prevent further irregular migration from Afghanistan and to create conditions conducive to the sustainable reintegration of Afghan returnees, the Government of Afghanistan will take the necessary measures to sensitize the population to the dangers of irregular migration, including through information and awareness raising campaigns. The EU will contribute to finance such information campaigns.

Part IV: Return Programmes and Reintegration Assistance

1. The EU side intends to meet the costs of travel for Afghans up to the final destination in Afghanistan and of their luggage, in accordance with international flight weight, including administrative costs to arrange for travel.
2. Return programmes and reintegration assistance are separate from and irrespective of the development assistance provided to Afghanistan, which seeks to address many of the root causes of irregular migration to Europe, including through job creation.
3. In order to facilitate reintegration, the EU is developing and funding programmes providing support for Afghan nationals returning to Afghanistan. Special consideration will be given to the needs of women, children and other vulnerable groups in the development and implementation of the reintegration programmes.
4. To facilitate the re-establishment of returnees' livelihoods in Afghanistan and considering the broader reconstruction and rehabilitation needs of Afghanistan, the EU is launching the reintegration programme, as described in attachment.

Part V: Fight against Smuggling and Trafficking in Human Beings

1. The EU will enhance its efforts to support the Afghan Government in tackling trafficking in human beings and migrant smuggling. Such assistance should include capacity-building for law enforcement agencies, as well as specific support for drafting and enacting effective legislation on migrant smuggling.
2. Concrete proposals will be jointly developed by the EU and the Afghan side in parallel with the beginning of the cooperation under this declaration.

Part VI: Joint Working Group

A joint working group will meet regularly to facilitate the application of this declaration. The said working group will:

- a) monitor the application of this declaration and report to the EU-Afghanistan High Level Dialogue on Migration;
- b) discuss further arrangements to facilitate cooperation and enable an orderly management of return flows;
- c) recommend changes to this declaration.

Part VII: Exchange of Documents

The EU and Afghanistan declare their intention to exchange the following documents:

- a) a list of diplomatic and consular staff in the territory of the requesting side for the purpose of issuing travel documents;
- b) a list of airports that should preferably be used for return operations;
- c) all information to facilitate communication or the proper implementation of this declaration;
and
- d) a list of documents to be considered as evidence of nationality.

Part VIII: Start of cooperation

Cooperation will begin on the day this declaration is signed. The declaration provides the framework for cooperation for an initial period of two years. If neither the EU nor Afghanistan announces their intention to discontinue the cooperation on the basis of this declaration thirty (30) days before the end of this period of two years, cooperation on its basis continues for another two years.

Part IX: Exchange of views

In the case of differences concerning the understanding of this declaration or the cooperation based on it, a mutually acceptable solution should be found on the basis of the English version in the joint working group and the High Level Dialogue on Migration.

This Joint Way Forward was signed in Brussels on 3 October 2016 in the Dari and English languages.

For the European Union

For the Government of
the Islamic Republic of Afghanistan

Name

(Title/Position)

Name

Title/Position)

Proposed reintegration package

The package will support the sustainable reintegration of Afghan nationals returning to Afghanistan. It will be complimentary to reintegration support financed by EU Member States' programmes.

This EU reintegration package supports short-, mid and long-term reintegration efforts through a combination of on- and off-budget instruments that address the immediate needs of the returnees and their host communities with quick impact measures, the institutional capacities of the responsible government institutions and the provision of vocational training and skills development geared towards economic perspectives in-country and through legal migration.

The package will be split into the following three parts:

- Incentive package for the Government of Afghanistan. The objective is to contribute to the achievement of results in three focal sectors regarding migration: a) Reintegration of returning migrants; b) Skills development, labour market access and job-creation; and c) Legal labour migration.
- Support to IOM for the implementation of activities jointly developed with the Government of Afghanistan related to the reintegration of returnees. Their families and host communities will be also targeted. IOM will focus on activities related to return and reintegration, including addressing immediate economic needs on arrival, TVET for individual returnees, community development project and creation/expansion of business.

- Program on preventing irregular migration by improving employment. It will support the implementation of skills development, TVET, labour market and job creation activities, in order to prevent irregular migration, as well as technical support for the implementation of the labour policy and labour migration strategy.

The EU's incentive programme approach will be open to other interested partners and can be further expanded as the reintegration instrument providing for the highest degree of Afghan ownership.

The package will be implemented in close coordination with the Government of Afghanistan.

**Explanatory note from
the Islamic Republic of Afghanistan on the Joint Way Forward**

The bilateral arrangements between EU Member States and Afghanistan with regards to visa requirement for escorts will continue to apply. In all other cases, the Afghan Missions will offer expedited visas services, within 5 working days, valid for up to one year, at the regular fees aligned closely to current reciprocal arrangements.

Escort visas can be issued in advance of any specific escort mission if desired. There will be no visa charge for escorts holding official passports.

The Joint Working Group will look into any relevant operational aspect of cooperation, including on practical issues regarding escorts and any possible visa aspects, which will be reviewed by the Joint Working Group after six months if deemed necessary.
