



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 25 January 2012

5728/12

LIMITE

MIGR 11

NOTE

from:	Presidency
to	Working Party on Integration, Migration and Expulsion
on	1 February 2012

Subject:	Operationalising the Council Conclusions of 9 – 10 June 2011 defining the European Union Strategy on Readmission
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**Operationalising the Council Conclusions of 9 – 10 June 2011
defining the European Union Strategy on Readmission**

1. Background and purpose

Combating illegal immigration is a major migration policy goal of the European Union.

At the occasion of its meeting (JHA on 9 – 10 June 2011), the Council adopted a set of Conclusions (doc. 11260/11 MIGR 118) defining the future strategy of the European Union in the field of readmission. These Council Conclusions, which are foreseen in the Stockholm Programme, are based on the Communication by the Commission of 23 February 2011.

With the adoption of the aforesaid set of Conclusions, the Council has intended to create a coherent return policy which should be embedded in the overall external relations policy of the European Union. The strategy takes as its starting point the obligation of each State under customary international law to readmit its own nationals, while recalling that the human rights standards will continue to be fully respected in the framework of return policy. Furthermore, the Council intended the strategy to reflect the developments of the Global Approach to Migration and Mobility.

Against this background, the Presidency of the Council intends to launch technical discussions in the framework of the Council Working Party on Migration, Expulsion and Integration (Expulsion formation) with a view to operationalising the aforesaid Council Conclusions, thereby preparing the way for the elaboration of new, more efficient and flexible standard negotiation directives for the conclusion of readmission agreements between the Union and third countries.

2. Operationalising the Council Conclusions

The European Union has faced a number of problems in concluding readmission agreements with third countries. Such problems may be rooted in various factors, but for the Presidency two key factors stand out: Firstly, The lack of real political will to enter into a readmission agreement with the European Union on the part of the third country in question and secondly, the question of the so-called “third country clauses”.

As regards the first problem, the Presidency would like to open discussions on how to make the conclusion of readmission agreements more politically attractive to third countries.

The Presidency suggests that, in line with the principles contained in Council Conclusions 6 and 8, the negotiation and conclusion of readmission agreements could, where feasible, be linked to the conclusion of agreements, not only on visa facilitation but also in other policy areas, between the European Union and the third country in question. The conclusion of (or withdrawal from) such other agreements could be made conditional on the willingness of the third country to also conclude a readmission agreement with the European Union and might in this way serve as a powerful incentive, where there is otherwise no real political will to conclude a readmission agreement on the part of the third country.

As regards further strengthening the cooperation between the Council and the Commission, cf. Council Conclusion 7, the Presidency invites delegations to discuss how Member States can offer technical support and expertise to the Commission in the most efficient manner. The Presidency also intends to invite the Commission to report to the Working Party on the current political and diplomatic support from Member States in the course of negotiations of readmission agreements, including whether the current level of diplomatic support is sufficient.

The problems related to the inclusion of “third country clauses” in readmission agreements, cf. Council Conclusion 9, have been pointed out by the Commission on several occasions. Whereas such clauses are indeed useful when dealing with third countries which are situated on main migration routes towards Europe and therefore serve as transit countries for illegal immigrants, their practical added value is in the Presidency’s view more doubtful when dealing with third countries which do not belong to this particular category. In the latter case, the Presidency suggests that insisting on the inclusion of a “third country clause” may unnecessarily further complicate negotiations of readmission agreements with little actual benefit for the European Union in practical terms.

Bearing in mind the basic principle of returning illegal immigrants to their countries of origin whenever possible, the Presidency invites the Working Party to discuss the use of third country clauses in readmission agreements, and, if possible, to identify technical criteria indicating a need for including “third country clauses” in readmission agreements on a case-by-case basis.

The monitoring of the human rights situation of readmitted persons, cf. Council Conclusion 12, is an important issue for the discussions on new and more efficient and flexible negotiation directives. However, the Presidency is also aware of the need for the Commission to be given adequate time to carry out a thorough analysis of the outcome of pilot projects before presenting its conclusions.

The Presidency accordingly proposes to invite the Commission to present its conclusions before the end of [year].

Overview on operationalising the Council Conclusions of 9 – 10 June 2011 defining the European Union Strategy on Readmission

Introduction

In the following, the Presidency presents its proposals on the operationalising of the Council Conclusions of 9 – 10 June defining the European Union strategy on readmission.

Each Council Conclusion demanding further steps is presented followed by a description of the current status or state-of-play concerning the elements in that particular Conclusion, the challenge(s) faced in implementing the specific Conclusion, and the action(s) or initiative(s) needed to handle the challenge(s) adequately. Also, the timescale and/or deadline for implementing the proposed action(s) or initiative(s) are indicated, as well as the responsible parties.

Council Conclusion 4

With regard to the future mandates on readmission, the Council should consider the migration pressure from a third country concerned on a particular Member State or on the European Union as a whole, the cooperation on return by the third country concerned, as well as the geographical position of the third country concerned situated at a migration route towards Europe to be the most important criteria for determining, on a case-by-case basis, with which further third countries EU readmission agreements should be negotiated. Furthermore, the Council considers that while acknowledging the importance of the transit countries, in the future readmission policy more attention should be paid to the main countries of origin to be identified on a regular basis. At any rate, co-operation between countries of origin, transit and destination should also be strengthened.

Current status / state-of-play

Relevant and multifaceted data on the migration pressure from third countries on particular Member States and on the EU as a whole is readily available. This includes data on migration from the main countries of origin. Furthermore, the main migration routes into the EU are identified.

Challenge(s)

A coherent strategy on determining with which further third countries EU readmission agreements should be negotiated, based on the criteria identified by the Council to be the most important, is yet to be completed.

Such strategy should form the basis for identification of a number of new third countries, with which EU readmission agreements should be negotiated. In doing so, the issue of including a third country clause should be dealt with, cf. Conclusion 9.

Action(s) / initiative(s)

Preparation of a strategy and identification of new third countries.

Timescale / deadline

A strategy is to be presented to the Council before [month/year]. At the same time, a number of relevant new third countries should be identified determined on the basis of the strategy.

Responsible party

[Council of the European Union (Presidency) and European Commission.]

Council Conclusion 6

EU readmission agreements represent an important instrument in the Union's relations with the third country in question. Negotiating directives should better take into account the overall relations with the third country concerned, and should, where appropriate, contain flexibility.

Current status/state of play

No comprehensive overview of EU relations and agreements with all relevant third countries is currently available.

Challenge(s)

A comprehensive overview of EU relations and agreements with all relevant third countries should be prepared in order to feed into the discussions on new standard negotiation directives.

Action(s) / initiative(s)

Elaboration of new, more efficient and flexible standard negotiation directives.

Timescale/ deadline

Draft new standard negotiation directives to be presented to the Council before [month/year].

Responsible party

[Council of the European Union (Presidency) and European Commission.]

Council Conclusion 7

The Council underlines that, in the spirit of loyal cooperation and in accordance with Article 218(4) TFEU¹, the Commission should continue consulting and informing the relevant Council preparatory bodies in the process of negotiations of the future EU readmission agreements. The Council calls on Member States to continue giving the Commission full political and diplomatic support in the course of the negotiations (including through their bilateral relations with the third country in question) as well as to provide the Commission with their national expertise.

Current status / state-of-play

The Commission consults and informs the Council Working Party on Integration, Migration and Expulsion in the process of negotiations of the future EU readmission agreements. Member States provides the Commission with their national expertise in the Joint Readmission Committees.

[Contribution from the Commission on the current political and diplomatic support in the course of the negotiations offered by the Member States]

Challenge(s)

[to be identified based on the Commission's contribution, see above]

Action(s) / initiative(s)

[to be identified based on the Commission's contribution, see above]

¹ TFEU Article 218

1. [...] agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.

[...]

4. The Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.

Timescale / deadline

[As soon as possible / Should be implemented immediately].

Responsible party

Member States.

Council Conclusion 8

The Council acknowledges the importance of seeking to incorporate issues on readmission into a broader and coherent cooperation with third countries. Notwithstanding the fact that under customary international law it is an obligation of each State to readmit its own nationals and without prejudice to obligations regarding border control, the use of incentives is important, although they should not be prerequisites for launching negotiations. Future negotiating directives could include tailor-made incentives, which may be offered to the third country concerned in order to ensure the proper level of cooperation by the third country concerned. Such incentives should be defined on a case-by-case basis and according to the particular needs of both sides. They should be proportional to the obligations assumed by the third country in question. On this basis, the incentives may consist of elements of the Global Approach to Migration and/or non-migration related issues embodied into EU framework agreements with the same third country. The Council reiterates that the principle of “no agreement at any cost” should continue to be followed. The principle of conditionality should apply in an appropriate manner, including through the withdrawal of incentives when a third country does not cooperate in the effective implementation of its readmission obligation, without prejudice to existing international legal obligations.

Current status/state of play

No comprehensive overview of EU relations and agreements with all relevant third countries is currently available.

Challenge(s)

A comprehensive overview of EU relations and agreements with all relevant third countries should be prepared in order to feed into the discussions on the use of tailor-made incentives for third countries to conclude readmission agreements with the EU.

Action(s) / initiative(s)

Identification of relevant agreements, both in the migration and other policy fields, which could possibly be linked to the conclusion of readmission agreements.

Timescale/ deadline

List of agreements with third countries, the conclusion of or withdrawal from, which could possibly be linked to the conclusion of readmission agreements, to be presented to the Council before [month/year].

Responsible party

[Council of the European Union (Presidency) and European Commission.]

Council Conclusion 9

The Council will continue, as a general rule, incorporating clauses on the readmission of third country nationals in the negotiating directives, with due regard to the geographical situation and transit character for illegal migration of the third country concerned. Notwithstanding the importance of the application of the clauses on the readmission of third country nationals, Member States should continue, when possible and except accelerated procedures, endeavouring to return illegal migrants to their countries of origin.

Current status / state-of-play

An EU readmission agreement with a major transit country for irregular migration to the EU without a third country clause holds little value for the EU. The viewpoint that this is even true in regard to minor or non transit countries, as migration routes into the EU may change, sometimes rapidly, over time, is legitimate, [at least as long as readmission agreements with all the major countries of origin do not exist]. All EU readmission agreements concluded so far include an obligation to readmit, under certain conditions, third country nationals who have transited through the territory of a contracting Party.

Challenge(s)

Notwithstanding the legitimate viewpoint mentioned above, the aversion of most contracting parties to third country clauses has a clear negative effect with regard to progress of the negotiations and the effectiveness of such clauses.

Action(s) / initiative(s)

When identifying new third countries, with which EU readmission agreements should be negotiated, cf. Council Conclusion 4, attention should be directed to countries that operate in the same geographical and/or migration context. Identifying a major transit country should therefore be followed by simultaneously identifying those countries of origin that produce migrants, who in turn transit in the identified transit country en route to EU.

Designing such coherent strategies ensures that the need for third country clauses in individual cases is lessened, making way for more rapid negotiations, and resulting in the possibility of entering into more negotiations covering a lesser time span. This ensures that the need to include such clauses is slowly reduced without in each case giving way on the need to ensure that third country nationals may *de facto* be returned.

Timescale / deadline

See Conclusion 4.

Responsible party

[Council of the European Union (Presidency) and European Commission.]

Council Conclusion 10

The Council will continue incorporating the rules on accelerated procedure and transit operations in the negotiating directives, since it is more beneficial and would increase converging practices than having these procedural rules in the various and rather technical bilateral implementing protocols. In duly justified and exceptional cases where one or both procedures are unlikely to be used in practice in relation to a given third country, those procedures may be omitted from the EU readmission agreements.

Current status / state-of-play

Member States' use of transit and accelerated procedures is low. In [year], all Member States submitted altogether approx. [number] accelerated procedures applications under all EU readmission agreements, and approx. [number] transit procedure applications.

Challenge(s)

The rules on accelerated procedure and transit operations often prove to be serious obstacles in the negotiations. Nevertheless, both procedures have so far always been included in the negotiation directives given to the Commission.

The Council's criteria – “in duly justified and exceptional cases where one or both procedures are unlikely to be used in practice in relation to a given third country” – are yet to be elaborated upon in regard to specific countries.

Action(s) / initiative(s)

Elaboration of the Council's criteria parallel with the process of identification of new third countries, cf. Conclusion 4, in order to clarify whether rules on accelerated procedure and transit operations may be omitted from these EU readmission agreements.

Timescale / deadline

See Conclusion 4.

Responsible party

[Council of the European Union (Presidency) and European Commission.]

Council Conclusion 12

The Council invites the Commission to share its conclusions drawn from pilot projects carried out by the Commission on monitoring the impact of implementation of certain readmission agreements.

Current status/state of play

Awaiting the conclusions by the Commission drawn from pilot projects concerning the monitoring of the impact of implementation of readmission agreements with [contribution from the Commission on which mandates are to be monitored].

Challenge(s)

Currently there is no assessment of whether provisions on the monitoring of the human rights situation of readmitted persons can be implemented in practice and have sufficiently added value to be included in future readmission agreements.

In order to have the most comprehensive basis for discussions in the Council on monitoring issues, there is a need for the Commission to carry out a detailed and thorough analysis of its pilot projects.

Action(s) / initiative(s)

Analysis by the Commission of the outcome of pilot projects on monitoring in [contribution from the Commission on which mandates are to be monitored].

Timescale/ deadline

European Commission to be invited to present its conclusions to the Council before [the end of year].

Responsible party

European Commission.
