



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from:	Presidency
to	Working Party on Integration, Migration and Expulsion
on	12 March 2012

Subject:	Operationalising the Council Conclusions of June 2011 defining the European Union Strategy on Readmission
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On the occasion of the meeting of the Working Party on Integration, Migration and Expulsion (Expulsion Formation) on 1 February 2012, the Presidency presented its paper entitled “Operationalising the Council Conclusions of 9 – 10 June 2011 defining the European Union Strategy on Readmission” (doc. 5728/12 MIGR 11).

On the basis of the discussions in the Working Party, the Presidency has prepared the annexed fiches which sets out the measures, timing and key actors in terms of operationalising the aforementioned June Conclusions (doc. 11260/11 MIGR 118).

The Presidency proposes that an operationalisation of the June Conclusions falls within the framework of a road map to ensure coherent EU response to continued migratory pressures, which is currently under preparation as a follow up to the JHA Council meeting on 12 – 13 December 2011. Thus, operationalising the June Conclusions will be one of the measures prioritised in such a road map.

As a result, it should be emphasised that the purpose of the present exercise is not to draft new conclusions, nor to re-open political discussions on those already adopted, but to ensure the proper and timely implementation of the Conclusions adopted by the Council on 9 – 10 June 2011.

It should be born in mind that the Commission implements the June Conclusions and the EU readmission policy in general by means of proposing the mandates for negotiations, negotiating and monitoring of the application of EU readmission agreements. In proposing the mandates, the Commission takes into consideration all the political and technical circumstances.

Therefore, no additional policy papers are to be produced. Instead, focus is on the down-to-earth, practical and transparent operationalisation of the June Conclusions on behalf of the Commission. One way could be to fully articulate the practical “guidelines” that the Commission already follow when implementing the June Conclusions. In doing so, the Council’s expectations regarding the Commission’s executive performance on the basis of the June Conclusions may be clearly defined and aligned with the Commission’s actual action.

The Presidency, in particular, wishes to discuss how the Council and Commission implement Council Conclusions 4, 6 – 10 and 12 in such a way that the highest degree of synergy and coordination between the Council and the Commission, in full respect of their respective mandates as laid down in the Treaty and the political will of the Council as expressed in the aforesaid Conclusions, can be achieved. This is necessary in order to meet the requirements for an even more coherent readmission strategy for the European Union.

In practical terms, the Presidency proposes to invite primarily the Commission, but also Member States – as well as the Presidency itself – to initiate a number of practical and solution oriented activities on the operationalisation of the Council Conclusions.

**Fiches 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 in a separate fiche 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 timing for implementing the proposed action(s) or initiative(s) is 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 substantive discussion on the main third countries of origin of illegal migration, with which the EU should consider negotiating an EU readmission agreement, based on the criteria identified by the Council to be the most important, is yet to be launched.

Such substantive discussion should form the basis for identification of a number of new third countries, with which concluding an EU readmission agreement would be an EU interest, with a focus on countries of origin of irregular migration.

Action(s) / initiative(s)

Launching of a substantive discussion and identification of new third countries, with which concluding an EU readmission agreement would be an EU interest.

Such a discussion is to be performed on the basis of a Presidency questionnaire and synthesis on which countries that poses a particular challenge regarding voluntary and/or forced return.

Timing

A Presidency questionnaire and synthesis on which countries that poses a particular challenge regarding voluntary and/or forced return is to be presented to the Council Working Party on Integration, Migration and Expulsion (expulsion formation) in June 2012.

Based on this synthesis, a substantive discussion of new third countries with which concluding an EU readmission agreement would be an EU interest is to be initiated at the meeting on 20 June 2012 of the Working Party on expulsion.

Immediately following such discussion, a number of relevant new third countries should be identified.

Responsible party

Council of the European Union 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 relevant third countries is currently available.

Challenge(s)

A comprehensive overview of EU relations and agreements with relevant third countries with which concluding an EU readmission agreement would be an EU interest cf. Conclusion 4, is yet to be prepared.

Action(s) / initiative(s)

Preparation of a comprehensive overview of EU relations and agreements with those identified third countries eligible for negotiation of EU readmission agreements, cf. Conclusion 4.

Timing

Immediately upon identification of the relevant third countries, cf. Conclusion 4.

Responsible party

Council of the European Union 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.

No comprehensive overview of Member States' relations and agreements with relevant third countries is currently available.

Challenge(s)

A comprehensive overview of Member States' relations and agreements with relevant third countries with which concluding an EU readmission agreement would be an EU interest cf. Conclusion 4, is yet to be prepared.

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.

Action(s) / initiative(s)

Preparation of a comprehensive overview of Member States' relations and agreements with those identified third countries eligible for negotiation of EU readmission agreements, cf. Conclusion 4.

Timing

An overview of Member States' relations and agreements with relevant third countries, cf. above, is to be presented to the Council Working Party on Integration, Migration and Expulsion (expulsion formation) in June 2012 based on a Presidency questionnaire and synthesis.

Responsible party

Council of the European Union.

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 possible, proportional incentives, which may be included in negotiating directives regarding those identified third countries with which EU readmission agreements is to be negotiated, cf. Conclusion 4, is available.

[As yet, the principle of conditionality has not been actualized in relation to specific third countries, with which there is an EU readmission agreement in place, in case of that country’s non-cooperation in the effective implementation of its readmission obligation.]

Challenge(s)

How and the extent to which proportional, tailor-made incentives (consisting of elements of the GAMM and/or non-migration related issues embodied into EU framework agreements with the same third country, cf. Conclusion 6) should be offered those relevant third countries with which concluding an EU readmission agreement would be an EU interest cf. Conclusion 4, is yet to be clarified.

Also, the use of the principle of conditionality to be applied in an appropriate manner, including through the withdrawal of incentives in case of non-effective readmission, is yet to be elaborated upon.

Action(s) / initiative(s)

Following the identification of those third countries with which concluding an EU readmission agreement would be an EU interest cf. Conclusion 4, the use and the content of proportional, tailor-made incentives offered to those identified countries should be discussed and considered.

An element of this consideration should be the prepared overview of the EU's and Member States' relations and agreements with those identified third countries cf. Conclusion 6 and 7.

Any proportional, tailor-made incentives are to be offered in combination with the principle of conditionality applied in an appropriate manner.

Timing

Immediately upon identification of the relevant third countries, cf. Conclusion 4.

Responsible party

Council of the European Union 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 effective 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 concluding an EU readmission agreement would be an EU interest cf. 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.

This approach 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.

Timing

A substantive discussion of new third countries with which concluding an EU readmission agreement would be an EU interest is to be initiated at the meeting on 20 June 2012 of the Working Party on expulsion, cf. Conclusion 4.

Immediately following such discussion, a number of relevant new third countries – including countries that operate in the same geographical and/or migration context – should be identified.

Responsible party

Council of the European Union 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 following the identification of new third countries, cf. Conclusion 4, in order to clarify whether rules on accelerated procedure and transit operations may be omitted from the EU readmission agreements with those countries.

Timing

Immediately upon identification of the relevant third countries, cf. Conclusion 4.

Responsible party

Council of the European Union 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

At present, no conclusions by the Commission drawn from future pilot projects concerning the monitoring of the impact of implementation of readmission agreements have been made. The agreements with Pakistan and Ukraine are currently considered as candidates for such monitoring.

Challenge(s)

Currently, there is no assessment of whether provisions on the monitoring of the impact of implementation of a readmission agreement 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 to carry out a detailed and thorough analysis of the future pilot projects.

Action(s) / initiative(s)

Analysis by the Commission of the outcome of future pilot projects on monitoring of the impact of the implementation of the readmission agreements singled out for examination.

Timing

European Commission is invited to present its conclusions to the Council, once the pilot projects have been finalised and analysed.

Responsible party

European Commission.