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COVER NOTE

From: Mr Jean Asselborn, President of the Justice and Home Affairs Council
date of receipt: 12 October 2015
To: Mr Donald Tusk, President of the European Council

Subject: Migration
- Progress achieved by the Justice and Home Affairs Council

Delegations will find enclosed, for information, a letter dated 9 October 2015 by Mr Jean Asselborn, President of the Justice and Home Affairs Council to the President of the European Council, Mr Donald Tusk.

Brussels, 9 October 2015

Dear President,

In view of the upcoming meeting of the European Council, I wish to inform you of progress achieved by the Justice and Home Affairs Council since last June, and in particular since the informal dinner of Heads of State or Government on 23 September 2015. Meeting on 8 October for the third time in a period of four weeks, Ministers of Justice and Home Affairs assembled again to further develop the EU's response to the current migratory challenges.

On 20 July, at the extraordinary meeting of the JHA Council, the Representatives of the Governments of the Member States meeting within the Council adopted Conclusions on the **resettlement**, through multilateral and national schemes, of 20 000 displaced persons in clear need of internal protection and a Resolution of the Representatives of the Governments of the Member States meeting within the Council on the **relocation** from Greece and Italy of 40 000 persons in clear need of international protection.

During its extraordinary meeting on 14 September, the Council formally adopted the Decision establishing provisional measures in the area of international protection to relocate 40 000 persons for the benefit of Italy and Greece. On the same occasion, the Council also adopted **Conclusions on the designation of certain third countries as safe countries of origin**.

In addition, during its extraordinary meeting on 22 September, the Council adopted another Decision establishing provisional measures in the area of international protection **relocating 66 000 persons for the benefit of Italy and Greece**. The remaining 54 000 persons, out of a total of 120 000, initially foreseen to be relocated from Hungary, will also be relocated in principle from Italy and Greece in the second year of the implementation of the decision. It was agreed that the Commission would submit a proposal to the Council on the remaining figures to be allocated accordingly per Member State. Furthermore, also in the second year, if the Commission or a Member State considers that an adaptation of the mechanism is justified by the evolution of the situation on the ground or that the Member State is confronted with an emergency situation characterised by a sudden inflow of nationals of third countries due to a sharp shift of migration flows, the Commission may submit a proposal to the Council suggesting to relocate from any Member State.

During their meeting on 8 October, Ministers continued their work on the **second package of proposals following the Commission's communication on a European Agenda on Migration**. They took stock of the discussions held so far on the **Common EU List of Safe Countries of Origin** and on the **Crisis Relocation Mechanism**. With respect to the first instrument, we will have to conduct a thorough assessment of the potential interference with the fundamental rights enshrined in the Charter of fundamental rights of the EU, as required by the European Court of Justice. On the second instrument, the Council aims at reaching an agreement which will allow the Presidency to initiate discussions with the European Parliament as soon as possible in accordance with the ordinary legislative procedure.

1/5

Having adopted the decisions on the relocation mechanisms for Italy and Greece during its last meetings, the Council focused this time on the implementation of these measures, notably the hotspots. During the discussion, the importance of establishing well-functioning hotspots to perform the relocation of persons requesting international protection was stressed once again. Italy and Greece referred to the presentation of their roadmaps on 1 October and reported on progress achieved on the establishment of the hotspots. The Council welcomed the first relocations, which took place on 9 October. EASO and Frontex informed Ministers about ongoing work on the ground, presented their assessment of the operational needs identified by Italy and Greece and, following the extraordinary meeting of SCIFA on 5 October, reiterated their call for contributions from Member States. While a number of them have already positively responded to these requirements, Ministers agreed to fill the gaps as soon as possible, but no later than the indicated deadline, namely 16 October 2015. At the same time, Ministers decided that places for relocation would be made available and shortcomings addressed accordingly, if necessary.

On 8 October, the Council also had thorough exchanges on the EU's return and readmission policy. A set of conclusions was adopted on what is indeed a highly challenging part of the work ahead of us. A coherent, credible and effective policy with regard to the voluntary and forced return of illegally staying third-country nationals, which fully respects human rights and the dignity of the persons concerned as well as the principle of *non-refoulement*, is what we are all aiming for, as an essential part of a comprehensive EU migration policy. Ministers welcomed the pragmatic and operational approach put forward by the Commission's EU Action Plan on return in response to the call of the European Council of 25 and 26 June 2015. They underlined the necessity to swiftly follow-up with concrete actions and adequate financial resources, with particular attention to the need to support Member States under strong migratory pressure as well as Frontex.

To increase the effectiveness of the EU's return system, Ministers reiterated their willingness to implement all measures, including the use of detention as a legitimate measure of last resort. They underlined the need to reinforce pre-removal detention capacities to ensure the physical availability of irregular migrants for return. The Council also urged the Commission to assess the functioning and implementation of the Return Directive and to identify obstacles to effective returns, including by using the Schengen evaluation mechanisms. Looking forward to the Commission's forthcoming proposals on existing European information systems (VIS, SIS, EURODAC) and new technological solutions, the Council called for the optimal use of these tools for return matters. In addition, the Council recommended promoting the regular use of the *EU return laissez-passer*.

With certain Member States underlining their positive cooperation on exchanging information with a view to facilitating the withdrawal of residence permits, in particular for migrants with a criminal record, they agreed to operationalize a network of national contact points by the end of 2015.

The Council also expressed its full support to the strengthening of Frontex, particularly with respect to the legislative package to be presented by the Commission in December 2015. In the short term, it invited Frontex to make full use of its current mandate in assisting Member States in return operations, through a dedicated Return Office to be set up without delay within the agency. In our view, Frontex should also be allowed to organize joint return operations of its own initiative.

Cooperation among all actors on return, in particular as regards the establishment and functioning of the hotspots, is crucial for improving return rates. In this light, the Council welcomed the Commission's intention to foster and steer an **integrated system of return management by building on synergies between all relevant stakeholders**¹.

The Council has put particular emphasis on the **effective implementation of all readmission commitments**, whether undertaken through formal readmission agreements, through the Cotonou Agreement or by means of **practical arrangements**. In particular, it invited the Commission, in close cooperation with the EEAS, to **swiftly launch bilateral dialogues to enhance practical cooperation with all relevant third countries of origin and transit for irregular migrants**, building on the experience of EU Member States having a record of successful return operations to these third countries. In addition to regular information on the outcome of these meetings, a first report on the progress achieved shall be completed at the latest by June 2016.

The Council also highlighted the importance of all EU actors **exploiting the full potential of EU diplomacy on the ground and prioritizing readmission in all relevant contacts at political level with countries of origin of irregular migrants**, thus helping to identifying potential leverage. On this issue, Commissioner Avramopoulos stressed his strong support for the organization of planned joint return flights to Pakistan by the end of the month, informing the Council that he will soon travel to Pakistan to discuss the implementation of the EU-Pakistan readmission agreement.

To further increase leverage in the fields of return and readmission, notably in the light of the upcoming Valletta Summit, the Council considered that the **"more-for-more" principle** and conditionality should be used, **where appropriate**. In this regard, the Council called on the Commission, together with the EEAS, to propose, within six months, comprehensive and tailor-made incentives to be used vis-à-vis third countries. The high-level dialogues conducted with key third countries by the High Representative have a particular role to play in this respect. The Council now looks forward to concrete results.

The Council also underlined that **additional efforts in terms of reintegration support** – joint reintegration projects but also further assessment to **avoid return shopping** – are needed to ensure the sustainability of return operations, notably voluntary return programs. Finally, it agreed to examine further **alternatives for refugees and their families in regions in third-countries affected by migratory pressure**.

During the same meeting, the Council began **addressing the future management of the external borders of the European Union**. In the current circumstances, **further efforts** need to be undertaken on **hotspots**, with a focus on **green borders**. Whilst recognizing that responsibility for border management primarily rests with Member States, a large majority of Ministers underlined **the need to strengthen collective responsibility for the EU's external frontiers**. We all consider vital to make full use of Frontex' current mandate, but also to strengthen. This will have to form part of the future legislative proposals to be presented by the Commission in December 2015.

¹ Notably the European Integrated Approach on Return towards Third Countries (EURINT), the European Reintegration Instrument Network (ERIN) and the European Return Liaison Officers network (EURLO), as well as Immigration Liaison Officers (ILOs), Frontex Liaison Officers and European Migration Liaison Officers (EMLOs), to be deployed by end of 2015 to Egypt, Morocco, Lebanon, Niger, Nigeria, Senegal, Pakistan, Serbia, Ethiopia, Tunisia, Sudan, Turkey and Jordan.

Some suggestions were made during the Council on a *European System of Border Guards*, including the possibility of requesting Member States to allocate a fixed annual quota of border guards to Frontex.

Moreover, the Council underscored that enhanced security and facilitation of border crossings by bona fide travellers can be obtained via an adequate **use of technologies at EU's external borders**. In this respect, we look forward to the new **Smart Borders package**, to be proposed by the Commission in the coming months. The importance of giving law enforcement authorities access to such technical solutions, of guaranteeing the interoperability of such technical systems with SIS and VIS and of making use of biometry is widely recognized. It was mentioned that such technical solutions could also be explored for EU citizens, to address security challenges.

Lastly, Ministers noted that the **future of the Schengen area**, and any progress on the European Agenda on Migration as well as other relevant internal EU policies, **depend on an efficient control at the external borders of the European Union**. The Council advocates an **effective Schengen evaluation system** answering the challenges on the ground and ensuring the respect of relevant rules. Where shortcomings are identified during these evaluations, European support measures should be made available.

The Council also addressed **visa issues** and gave **political guidance** for further progress on these files taking into account borders, readmission and security considerations. **Further efforts in legal migration will also have to be accomplished**. At this stage, I want to stress that only one legal instrument in this field is currently under negotiation, namely the **Researcher and Student Directive**. It should therefore be adopted rapidly and the remaining issues swiftly overcome, also in view of the upcoming Valetta conference, which Ministers discussed on 8 October in conjunction with a reflexion on the **link between migration and development policies**.

Following a decision by the European Council, the Presidency and the EEAS organised on 8 October the **High-Level Conference on the Eastern Mediterranean - Western Balkans Route** with the participation of Ministers of Home Affairs and of Foreign Affairs from EU Member States, Schengen associated countries, the Western Balkans, as well as Jordan, Lebanon and Turkey. UNHCR, the World Food Programme and IOM also participated. The main objective of the Conference was to address the challenges linked to the unprecedented pressure of migrants, mainly Syrian nationals entitled to international protection, who arrive to the EU using the Eastern Mediterranean-Western Balkans route. The Conference sent a strong signal that all the countries affected (the EU Member States as destination countries, the Western Balkans as transit countries, which are confronted with a strong migratory pressure, as well as the countries which, like Jordan, Lebanon and Turkey, host a large number of Syrian refugees) will work together and take common action, with concrete and operational measures, to properly address such challenges. A Declaration was adopted summarising the main engagements of all participants and it was agreed that a Senior Officials meeting aimed at reviewing the situation would be organised in early 2016.

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4/5

Influx of migrants to the European Union will not abate in the short run. **Operational measures and next steps have to remain at the centre of the Union's work in this area.** Further guidance and commitment from the European Council will be instrumental for pursuing our efforts.

Yours sincerely,



Jean ASSELBORN
President of the Justice and Home Affairs Council