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**Council of the
European Union**

**Brussels, 9 February 2016
(OR. en)**

5949/16

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NOTE

From: European Commission and European External Action Service (EEAS)
To: Permanent Representatives Committee

Subject: Joint Commission-EEAS non-paper on enhancing cooperation on migration, mobility and readmission with Morocco

Delegations will find attached the above joint Commission-EEAS non-paper.



EUROPEAN COMMISSION

Brussels, 9 February 2016

Ares(2016)688517

FROM:	European Commission and European External Action Service (EEAS)
TO:	COREPER Ambassadors
SUBJECT:	Joint Commission-EEAS non-paper on enhancing cooperation on migration, mobility and readmission with Morocco

Country Fiche proposing possible leverages across Commission-EEAS policy areas to enhance returns and effectively implement readmission commitments.

1. Key migration features of Morocco

Morocco nationals as migrants in the EU

Currently, around 2 million Moroccan nationals legally reside in the EU (most of them in FR – around 30%, ES – 26%, IT – 15%, NL and BE – 6% each, DE – 3%). Data for 2014 (incomplete) indicates 1,920,096 valid permits. There were 1,971,424 valid permits in 2013.

Remittances of Moroccan nationals resident abroad, coming in particular from the EU, remain an important economic factor, even though their value in relation to Morocco's GDP is declining. The amount of remittances sent by Moroccan nationals residing in the EU was 40 million EUR in 2014. In 2014, 434,652 Moroccan nationals applied for Schengen visas and 371,311 visas were issued, including 162,473 multiple-entry visas (representing 43.8% of all visas issued). The refusal rate was at 12.4%. In 2015 (up until end September), 3,800 Moroccan nationals applied for asylum in the EU28. Out of the 435 first instance asylum decisions, 55 were positive.

Morocco keeps close links with its diaspora. It was one of the first countries to establish a Minister responsible for the contacts with the diaspora (MCMREAM), recognising in this way the fact that Moroccans residing abroad are a specific target of the country's public policies.

Illegal stayers: 25,329 in 2014 of a total of 4,410,780 regular stayers in the EU, of which 36 % of the Moroccans stayed illegally in Spain. Many Moroccans enter Spain through legal means but often overstay the legally allowed period.

Returns: in 2014, 32,825 Moroccan nationals were ordered to leave the EU (most concerned Member States: ES - 10,300, FR - 7,780, BE - 5,670, IT - 5,530), with 11,065 persons effectively returned (ES - 6,500, FR - 2,225, BE - 455, IT - 680). This corresponds to an overall return rate of 33.7% (below EU average level of 40%).

In 2015, a significant increase of illegal border-crossings of Moroccan nationals entering Greece has been reported - 6,215 crossings until 15 December 2015. This results from the fact that Moroccans benefit from visa-free access to Turkey. In total, Frontex reports 13,100 illegal border crossings of Moroccan nationals between Jan-Dec 2015, as compared to 3,008 during the same period in 2014 (provisional data). As regards illegal entries through Italy, these more than doubled in 2015 (5,174) as compared to 2014 (2,496). The total number of Moroccans arriving irregularly remained, until recently, relatively limited, also due to good cooperation with Spain in preventing departures from the Moroccan coast. It could therefore be assumed that the majority of current returnees are over-stayers or individuals who have lost their right of residence as a result of a criminal conviction. A new trend of Syrians flying to Morocco and then entering the EU in Spain via land or sea has been observed. In 2014, Member States reported 959 detections of facilitators with Moroccan nationality of which 84 % were detected in Spain. This is a significance increase from 366 detected in 2013. Detected document fraudsters at external borders: Morocco top ten nationality (after Syria); 767 out of 9,420 detected in 2014.

Frontex is not carrying out return operations to Morocco currently, although Member States (in particular Greece) are very keen on such flights being organized by Frontex, notably in light of the growing numbers of irregular migrants from Morocco reaching the EU's shores.

Migration situation in Morocco

Morocco is not only a country of origin and transit, but also a host country for asylum seekers and migrants. The High Commissioner for the Plan (Haut-Commissaire au Plan, HCP) estimated that foreigners living in Morocco in 2014 numbered 86,206 (an increase of 67% if compared to 2004). **Regular migrants** still represent a small percentage of the local population resident in Morocco (0,24%). The most frequently represented nationalities are: European citizens (52%), sub-Saharan Africans (18%), North Africans (15%). Concerning **irregular migrants**, mainly sub-Saharan Africans, the estimations vary between 30,000 and 40,000 people. Morocco is the first country in the region to have adopted a **national migration strategy** (launched in 2013) and based on three components: 1. the process of regularisation of migrants and follow-up to the asylum requests; 2. a legislative reform process and 3. a strategy for the integration of migrants.

In January 2014, the Ministry of Interior launched the first regularisation operation. 27,648 requests were received and 92% of them were positively assessed. Regularised migrants come mainly from Sub-Saharan Africa and the Middle East. The new migration policy recognises to **regularised migrants** the same rights as to Moroccans. They benefit from a resident's card to be renewed after a year and are foreseen to be integrated on a temporary or more stable basis in Morocco.

Concerning **asylum** seekers: a total of 5,251 people are under the protection of the HCR. 3,776 people presented an asylum request via the HCR in 2015. Asylum requests from Syrians have increased in 2015 (more than 50% of the asylum seekers on 2015). The HCR continues nonetheless to intervene both to register asylum requests and in case of detention.

Border management takes place in close cooperation with Spain in the north of the country (Ceuta and Melilla). Morocco added a fourth fence on this border in 2014 (to the three already existing ones). Close cooperation with ES has significantly limited attempts to cross the border to reach Ceuta and Melilla in 2015. Morocco is also reinforcing its controls at the border with Algeria, in order to block as much as possible illegal cross border trafficking.

Morocco has ratified most of the international **human rights** conventions. However, NGOs and international organisations, report that the treatment of migrants by the Moroccan authorities is not always in line with international commitments and 2015 has been marked by reported violations of migrants' rights.

2. EU-Morocco relations and cooperation on migration

Overall relations with the EU

The recent judgment of 10 December 2015 of the General Court on the agriculture agreement between the EU and Morocco is having a strong negative impact on the overall EU-Morocco relations , including on migration and therefore also on the re-launching of negotiations on readmission and visa facilitation agreements with Morocco. We are in close contact with Morocco to address these issues in a manner which aims to allow for the resumption of normal contacts.

Migration is already a priority aspect of EU-Morocco bilateral relations and cooperation, included in the Action Plan on the Advanced Status signed in 2013. The EU relies on cooperation with Morocco and the other African partners to manage better the migration crisis and prevent irregular migration.

In June 2013, the EU concluded a **Mobility Partnership** with Morocco, which allows for better management of its operational and financial support to the Moroccan migration policy. The Mobility Partnership reaffirms the objective of concluding negotiations on a visa facilitation **agreement** and a **readmission agreement**. Negotiations on the readmission agreement have been ongoing since 2003, based on the mandate received by the Commission in 2000 (some 15 negotiation rounds have already taken place). Negotiations are very difficult, and are currently stalled. Since 2013, negotiations on readmission are carried out in parallel with those of the **visa facilitation agreement**. One negotiating round took place in January 2015. A second round scheduled for May 2015 was cancelled by the Moroccan side. This was before the decision of the General Court in December 2015. No new dates have been suggested by Morocco, despite repeated requests from the EU.

When meetings do take place, **dialogue** and cooperation with Morocco in the field of migration is taking place through regular exchanges:

- o High level dialogues and meetings (visit of Commissioner Avramopoulos in May 2015 and HRVP Mogherini in July 2015)
- o Sub-committee on Social affairs and migration in the framework of the Association Agreement (on a yearly basis)
- o High level and local coordination meetings in the framework of the Mobility Partnership
- o Negotiations on readmission and visa facilitation
- o Regular policy dialogue and more technical cooperation as part of the preparation and implementation of programme and projects financed by the EU.

Financial assistance: current EU support to migration in Morocco amounts to more than € 20 million. It ranges from institutional support to the new Moroccan migration policy (€ 10 million), promoting essentially the access of regularised migrants to education, health and employment, to supporting specialised civil society organisations which provide migrants with first help and orientation services as well as contribute to fighting racism and xenophobia. Specific support to the Mobility Partnership, including support to the Moroccan diaspora, is also in place (the "Sharaka" programme, € 5 million). Migration is also one of the focal sectors under the ENI Single Support Framework, with additional € 35-45 million to be provided as support to its national migration policy (probably through sector budget support). In addition, Morocco is a beneficiary country under relevant ENI regional programmes, including the EU Trust Fund for Africa, and benefits from programmes funded by the 'Migration and Asylum' thematic programme; it also receives considerable bilateral support from EU MS in the migration area. Furthermore, Morocco is a potential beneficiary under the Mobility Partnership Facility (financed under AMIF-ISF 2014 and implemented by ICMPD) and the Readmission Capacity Building Facility (financed under AMIF 2015 and implemented by IOM).

Morocco is part of the **Rabat Process** (Euro-Africa conference on Migration and Development) since its establishment in 2006. As Chair of the process, Morocco played an important role in the **Valletta Summit** of November 2015.

Contentious issues on migration issues:

(i) The **Third-country nationals' clause** in the proposed EU-Morocco readmission agreement according to which Morocco would have to readmit third country nationals having transited through its territory before entering the EU is highly problematic for Morocco. Moreover, Morocco is also reluctant to readmit its own nationals, as reported by the Member States and illustrated by the low return rate. Morocco cooperates well with Spain to prevent third country nationals from leaving Sub-Saharan Africa to Europe from Morocco (with the exception of Ceuta-Melilla).

(ii) The objective to conclude an Agreement on **visa facilitation** is considered not sufficiently attractive by Morocco.

Migration relations between Morocco and EU Member States

Readmission bilateral agreements: several Member States have bilateral agreements with Morocco (Belgium, Germany, Spain, France, Italy, Portugal, the Netherlands and the UK). Moroccan authorities are known as not facilitating when it comes to return and readmission of their nationals staying illegally in the EU. Member States report, as main issues of concern: the insufficient cooperation of the Moroccan authorities in the identification of persons to be returned; the difficulty to obtain travel documents; the protracted inquiries in the country of origin even for persons with valid identity documents; and difficult returns in case of family claims. Morocco is also reluctant to readmit those of its nationals who have been convicted of crimes in the EU and whose return is a strong priority for the Member States. An important exception is the good Spanish-Moroccan bilateral cooperation for newly arrived Moroccans, less so for those staying illegally in Spain for longer periods.

3. Key interests of the country and the EU in the migration area**3.1. Morocco's interests / priorities**

- Morocco has a fundamental interest in ensuring that its nationals, legally residing in the EU, are **well integrated** and not stigmatised due to uncontrolled migration flows and to an increasingly frequent association of migration more generally with terrorist threats as well as criminal activities in EU MS.
- Support Morocco's development through the investments of its citizens abroad (**invest at home in Morocco**).
- Morocco is also very interested in reinforcing **legal migration and mobility** of Moroccans to Europe. However, Morocco has clearly stated that the facilitations offered in the visa facilitation agreement negotiations were a timid top up in comparison to the across-the-board facilitation that the Commission proposal for a visa recast code would have offered indistinctly to all countries. (In the meantime, the Council is poised to drop these across the board facilitations from the visa recast code – the negotiations are ongoing). In addition, the coupling of visa facilitation negotiations with the readmission ones substantially limits the interest of Morocco in moving ahead with the VFA negotiations.
- Morocco has expressed its interest in EU funding for a biometric database of its population.
- Morocco continues to play an important **regional role**, in particular in relation to the Sahel (and therefore to promote triangular cooperation).
- Morocco is interested in receiving EU **recognition** and support to its efforts in developing and implementing its **national migration policy** and communicating it.
- Morocco is interested in EU support in returning irregular migrants from sub Saharan Africa to countries of origin.

3.2. EU's interests / priorities

- **Return of irregular migrants from Morocco and prevention of further irregular migration** is, at this stage one of the EU's main priorities in relation to Morocco. Morocco is one of the 8 priority countries to focus current efforts.
- On return and readmission in particular, urgently to progress on the conclusion of a readmission agreement, and in the meantime, promote efficient implementation of existing bilateral agreements.
- Reinforcing the prevention and control of **irregular migration** from Morocco to the EU.
- Effective cooperation to maximise the impact of migration on **development** and the concerted organisation of **legal migration** and **mobility**.
- Address issues of **security** in relation to migration (fight against trafficking and smuggling, organised crime).
- Address the **root causes** of migration, notably youth unemployment, through continued support for and policy dialogue on skills development.
- Support consistent action in Sahara and Sahel countries to address root causes of migration, for instance to address **climate change** impacts such as water scarcity and large degradation.
- **In a broader sense, Morocco' s political and socio-economic stability**: continue and progress with an ambitious and broad partnership aiming at reinforcing the stability of Morocco, in the framework of the new Constitution.

4. Possible components of an EU incentive package

4.1 Possible positive incentives

a) Migration

Political and financial support to Morocco's efforts to develop and implement its national strategy on migration but also to play a role at regional level as Chair to the Rabat Process and in relation to Sahel remain in general important components of incentives EU can offer to Morocco.

Readmission

- To unblock the **negotiations on the readmission agreement**, an approach that provides more flexibility with regards to the third country nationals' clause could be considered, based on different available options and taking into account the progress of discussions on readmission with Sub-Saharan countries.

However any modification to the standard approach to the third countries nationals' clause needs to take into account any potential impact this could have with other third countries – for example Pakistan, Turkey - whose readmission agreements with the EU include third country nationals' clause, and future negotiations with other countries. However, this would be in line with the principle of differentiation emphasised in the revised ENP and would offer an important positive incentive to Morocco.

- Support for development of a biometric database, for which Morocco expressed interest. The establishment of modern national civil registers coupled with biometric databases has multiple advantages, including help to prevent electoral fraud, facilitate planning (school planning for instance), facilitate the delivery of social benefits, countering crime and terrorism, as well as facilitating the identification of irregular migrants under return operations.
- Support for reintegration of returnees readmitted by Morocco – which is also important for enhancing returns.
- Support for capacity building on readmission, including support to Morocco to develop its own cooperation on readmission with relevant countries (for instance promote co-operation with sub-Saharan countries);

Mobility and legal migration

- The possibility of pooling the available offers (including for education and scholarships), to present more attractive package when negotiating with Morocco could be explored with the Member States.
- Ongoing review of the Blue Card Directive with the aim of setting more attractive conditions for non-EU workers considering taking up a highly skilled employment in the EU MS. This should increase legal migration opportunities, including for Moroccan nationals.
- Proactive use of the recent agreement on the on EU wide rules for students and researchers, trainees and volunteers, which should make it easier for foreign students, researchers and trainees to get a visa to come to the EU and to move across EU Member States.
- Reinforce cooperation at EU level in order to promote the functioning of schemes promoting legal migration (for skilled and 'niche' sector workers), including MS ones.
- Further financial support might be envisaged under AMIF or ISF, although the resources available are very limited.

Migrants' integration and protection

- Adopt in 2016 the support programme over three years in the field of migration (35 Mio €).
- Consider additional funds from the Emergency Trust Fund.

b) Development

The “ EU-Morocco Action Plan for the implementation of the Advanced Status” provides the general framework for our relations and cooperation with Morocco. This special status is valued by Morocco and continued recognition of this status would remain an important incentive. The EU has actively been supporting the reform processes launched by the Moroccan Government by providing assistance in social sectors (supporting healthcare, education, literacy and social protection reforms), economic sectors (supporting agricultural development, the reform of the business climate, private sector development or regulatory approximation) as well as in the field of democratisation. The Single Support Framework 2014– 2017 establishes the priorities of our cooperation with Morocco in the coming years with an indicative allocation range of € 728,000,000 to € 890,000,000.

- Enhance support to the socio-economic development of the country and its stabilisation (democratisation and good governance). In the future particular focus should be put on youth (education, skills development, employability and mobility).
- Increasing through the Trust Fund the envelopes dedicated to assisting Morocco in coping with its own migration flows as destination country through capacity building, technical assistance and exchange of expertise in the broad field of migration governance process (in the framework of EUROMED Migration IV), including border management.

c) Education

- Promote a full use of the potential of the Erasmus + programme and additional actions (examine the possibility of opening a national window for Morocco) to boost mobility of students and university staff with their European counterparts and the mobility of young workers, young people and volunteers in the frame of informal education youth projects.
- Develop policy dialogue and support on vocational education and training and skills development to enhance employability, especially of young people.

d) Research and Innovation

The Agreement on scientific and technical cooperation with Morocco entered into force in 2005.

- Support the full association of Morocco to EU Programmes, for instance to Horizon 2020.

e) Trade

DCFTA negotiations were launched in 2013 and four rounds of technical negotiations have already taken place, but have stalled since April 2014, pending the finalisation of a Moroccan impact assessment study. The fifth round of negotiations programmed to take place in May 2015, was replaced by "high-level" talks in which MOR orally presented the results of its impact assessment study but asked for more time before holding further negotiations.

- Re-launch an open dialogue on the benefits and challenges of the DCFTA should be re-launched, once Morocco has had more time to clarify its priorities internally.
- Consider the option to link readmission negotiations with DCFTA negotiations (on the mobility of service providers).

f) Climate change and renewable energy

Morocco is engaged at national and international level in these two domains. Morocco will be the organiser of COP22. The COP22 will also offer the immediate opportunity to follow-up on Valletta's commitment to address the root causes of irregular migration, including from an environmental perspective. The COP will bring closely together climate change adaptation and migration issues, especially as Morocco intends to give it a strong Africa dimension. Triangular or regional cooperation with neighbouring countries in the field of adaptation to climate change will be essential to address some of the root causes of migration in the Sahara and Sahel, such as water scarcity and land degradation.

- Provide EU support (also financial) to Morocco for the organisation of the event. As it concerns renewable energy, both solar and wind, Morocco is implementing a large multi-billion investment plan, to which the EU is providing substantial financial support. These investments in renewable energy are expected to have a high impact in terms of job creation and therefore to contribute to moderate migratory pressure.
- Enhance EU support to the development of the renewable energy industry in Morocco.

g) Security

The EU is interested in reinforcing its relations and cooperation with Morocco in this area at bilateral and regional level. Our efforts during the past year to establish a political dialogue in the field of counter-terrorism have not, however, achieved concrete results.

- promote dialogue with Morocco on the security dossier, to identify the aspects on which our cooperation could focus and actions on which cooperation at EU level could bring an added value.

h) Agriculture/Fisheries

Bilateral trade for agricultural, processed agricultural and fishery products is governed by the EU-Morocco Agreement in force since October 2012. This agreement is benefiting both the EU and Morocco (trade liberalisation). **The Moroccan reaction to the recent judgment of 10 December 2015 of the General Court on the agriculture agreement between the EU and Morocco constitutes the stumbling block at present for any negotiation, including on migration. The EU is also concerned by the impact of this judgment and is in the process of defining an appeal to move to the Court in order to have it repealed.**

Under the agreement, Morocco benefits from preferential duty free access to the EU market for most agricultural products.

A number of preferential tariff rate quotas have been set for the latter, including tomatoes, which constitute Morocco's main agriculture export product. Exports of agricultural products from Morocco amount to 14% of Morocco's total exports to the EU. Fruits and vegetables are the main product category (80%), tomatoes representing around 22%. The agricultural agreement which entered into force on 1 October 2012 has had a positive effect on the volume of Moroccan exports. The current Protocol to the fisheries agreement was concluded in 2013. These two agreements are benefiting both the Moroccan and the EU (trade liberalisation). The Fishery Protocol goes nonetheless beyond trade liberalisation elements to include the provision of financial assistance to accompany its implementation (element of leverage).

- Promote the smooth implementation of these two agreements (in the case of the Fishery Protocol including its financial assistance component).

4.2 Possible negative incentives

- Negative leverage through Schengen visa issuance, within the boundaries of the Visa Code, to be discussed with the Member States.
- In order to stem the flows of Moroccan irregular migrants reaching the EU via Turkey, Turkey and European Union could jointly take necessary steps vis-à-vis Morocco under the EU-Turkey Action Plan.
- Link further EU financial assistance to Morocco to tangible outcomes in cooperation on migration, mobility and readmission.

Trade

Inform Morocco that under the new Strategy 'Trade for All' the Commission will make better use of synergies between trade policy and the EU policy on return/readmission. Indicate, therefore, that cooperation on readmission could have an impact on the overall trade relationship between the EU and Morocco.

5. Proposed next steps

Morocco is an important partner in the Southern neighbourhood. Our relation is already very broad and several processes are ongoing in the framework of the Advanced Status, albeit under difficult conditions and with limited progress so far. **The recent 'pause' of regular relations by Morocco in response to the Court judgement on the Agriculture agreement is a major source of concern**, and it is unclear at present how long this will last and what the precise impact will be. Hence, the need for a careful consideration on the timing and modalities of engaging with Morocco on sensitive issues such as migration.

Morocco is, nonetheless, still very interested in being recognised as a privileged and advanced partner to the EU. The most **important incentive would therefore remain the EU recognition of a 'special' status to Morocco** among the partners in the Southern neighbourhood. Morocco can be considered as a positive example in the field of migration in the region.

Nevertheless, cooperation on returns and readmission is unsatisfactory (both as far as practical cooperation on the basis of the existing bilateral readmission agreements, with the exception of Spain, and the stalled negotiations of the EU – Morocco readmission agreement), and given the increasing numbers of Moroccan nationals entering the EU irregularly.

This fiche identifies a range of possible positive and negative incentives that can be used by the EU in order to unblock the cooperation with Morocco on readmission as a matter of urgency – both in terms of practical cooperation and as regards the re-launch of negotiations on a readmission agreement. Pending the negotiations, the focus will be to facilitate the implementation of existing bilateral readmission agreements, with the support of Frontex and all EU networks focusing on return (EURINT, EURLO).

In parallel, Member States are invited to comment, complement and strengthen this package with elements that fall under national competence.

The package should be conceived in a way that incentives and leverages can be deployed and calibrated flexibly in accordance with Morocco's level of constructiveness and engagement. Whilst a deal based on positive, mutually beneficial cooperation should be the preferred outcome, the EU should nevertheless stand ready to leverage negative incentives if necessary.

In order to fulfil the task by European Council to further increase leverage in the fields of return and readmission, using where appropriate the "more-for-more" principle and to agree on a comprehensive and tailor-made incentives to be used vis-à-vis third countries, it is proposed to discuss and agree:

- Which ones of the identified elements could be used as the most effective in terms of impact? What other elements could be added?

COM/EEAS proposes that, **in initial stages, leverage should include:**

- Provide more flexibility with regards to the third country nationals' clause (**to be discussed with the Member States**), based on different available options and taking into account the progress of discussions on readmission with Sub-Saharan countries.
- The incentives identified – including work on climate change (COP 22), renewable energy, Erasmus +, Horizon 2020;
- Funding/technical assistance to capacity building on readmission, migrant smuggling, programmes for the reintegration of returnees and the further development of a national biometric database;

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- The use of negative leverage – in particular the Schengen visa issuance, within the boundaries of the Visa Code (e.g. a reduction in the number of visas issued, and in particular of the share of multiple entry visa and restrictions in bilateral visa exemption agreements for diplomatic and service passport holders).
 - In the longer run the EU should continue its dialogue and cooperation with Morocco in all the areas covered by the Mobility Partnership, in order to re-launch and reinforce the processes already ongoing (support to the Moroccan migration policy, fighting irregular migration, support to legal migration, tackling the root causes of migration, including through cooperating with Morocco at regional level – Sahel and Sub-Saharan Africa).
 - In parallel, the incentive/leverage package should be completed with elements falling under national competence.
 - High-level visits by the Commission (and in cooperation with Member States) – could be envisaged to apply leverage and enhance cooperation on readmission, exploring possibilities to upgrade engagement with Morocco – including considering Morocco's special status as a southern partner re Migration, via its regional role as chair of the Rabat process, as well as options for upgrading visa facilitation and controlled legal mobility schemes, – or possibilities in case of lack of cooperation on readmission ('less for less').
-