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Subject: European Pact on Immigration and Asylum

Delegations will find attached the draft of the European Pact on Immigration and Asylum.

European Pact on Immigration and Asylum

In the last half-century, the political and civilisational project that underlay the establishment and deepening of the European Union has achieved considerable progress. One of the most remarkable benefits of this enterprise is the creation of a wide area of free movement that now covers most of Europe. This development has provided an unprecedented increase in freedom for European citizens and nationals of third countries, who travel freely across this common territory. It is also a major factor for growth and prosperity. Recent and future enlargements of the Schengen Area are further strengthening the freedom of movement for individuals.

International migration is a reality that will persist as long as there are differentials of wealth and development between the various regions of the world. It can be an opportunity, because it is a factor of human and economic exchange, and also enables people to achieve what they aspire to. It can contribute decisively to the economic growth of the European Union and of those Member States which need migrants because of the state of their labour markets or of their demography. Not least, it provides resources for the migrants and their home countries, and thus contributes to their development. The hypothesis of zero immigration is both unrealistic and dangerous.

In December 2005, the European Council adopted the Global Approach to Migration, and considers it still relevant. It reaffirms its conviction that migration issues are an integral part of the EU's external relations and that any harmonious and effective management of migration must be comprehensive, and consequently address the organisation of legal migration and the control of illegal immigration as ways of encouraging the synergy between migration and development. The European Council is convinced that the Global Approach to Migration can only make sense within a close partnership between the countries of origin, transit and destination.

The European Union, however, does not have the resources to decently receive all the migrants hoping to find a better life here. Poorly managed immigration may disrupt the social cohesion of the countries of destination. The organisation of immigration must consequently take account of Europe's reception capacity in terms of its labour market, housing, and health, education and social services, and protect migrants against possible exploitation by criminal networks.

The creation of a common area of free movement also brings Member States new challenges. One Member State's actions may affect the interests of the others. Access to the territory of one Member State may be followed by access to the others. It is consequently imperative that each Member State take account of its partners' interests when designing and implementing its immigration, integration and asylum policies.

EU Member States have sought for some twenty years to bring their policies in these areas closer together. The European Council welcomes the progress already made in this direction: abolition of internal border controls across most of Europe, adoption of a common visa policy, harmonisation of external border controls and asylum standards, alignment of certain conditions of legal immigration, cooperation in controlling illegal immigration, establishment of the Frontex agency, and setting up of dedicated funds for solidarity between Member States. The European Council particularly welcomes the major advances achieved under the Tampere (1999-2004) and Hague (2004-2009) programmes, which it undertakes to implement fully.

In line with the values that have consistently informed the European project and the policies implemented, the European Council solemnly reaffirms that migration and asylum policies must comply with the norms of international law, particularly those that concern human rights, human dignity and refugees.

Although real progress has been achieved on the path to a common immigration and asylum policy, further advances are necessary.

Convinced that a consistent approach is essential so as to include the management of migration among the European Union's global objectives, the European Council considers that the time has come, in a spirit of mutual responsibility and solidarity between Member States and of partnership with third countries, to give a new impetus to the definition of a common immigration and asylum policy that will take account of both the collective interest of the European Union and the specific needs of each Member State.

In this spirit and in the light of the Commission's communication of 17 June 2008, the European Council has decided to solemnly adopt this European Pact on Immigration and Asylum. Aware that full implementation of the Pact is likely in certain areas to require changes to the legal framework, and in particular to the treaty bases, the European Council makes five basic commitments, which will continue to be transposed into concrete measures, in particular in the programme to follow on from the Hague programme in 2010:

- to organise legal immigration to take account of the priorities, needs and reception capacities determined by each Member State, and to encourage integration;
- to control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a country of transit;
- to make border controls more effective;
- to construct a Europe of asylum;
- to create a comprehensive partnership with the countries of origin and of transit in order to encourage the synergy between migration and development.

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I. Organise legal immigration to take account of the priorities, needs and reception capacities determined by each Member State, and to encourage integration

The European Council considers that legal immigration should be the result of a desire on the part of both the migrant and the host country to their mutual benefit. It recalls that it is for each Member State to decide on the conditions of admission of legal migrants to its territory and, where necessary, to set their number. Any quotas involved might be implemented in partnership with the countries of origin. The European Council calls on Member States to implement an immigration policy that is both managed, particularly with respect to all labour market needs, and concerted, given the impact it may have on other Member States. The European Council stresses the importance of adopting a policy that enables fair treatment of migrants and their harmonious integration into the societies of their host countries.

To that end, the European Council agrees:

- (a) to invite Member States and the Commission to implement policies for labour migration, with due regard to the *acquis communautaire* and Community preference, bearing in mind potential human resources within the European Union, and using the most appropriate resources, which take account of all the needs of the labour market of each Member State, pursuant to the conclusions of the European Council of 13 and 14 March 2008;
- (b) to increase the attractiveness of the European Union for highly qualified workers and take new measures to further facilitate the reception of students and researchers and their movement within the EU;
- (c) to ensure, in encouraging temporary or circular migration, pursuant to the conclusions of the European Council of 14 December 2007, that those policies do not aggravate the brain drain;

- (d) to regulate family migration more effectively by inviting each Member State, in compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, to take into consideration in its national legislation, except for certain specific categories, its own reception capacities and families' capacity to integrate, as evaluated by their resources and accommodation in the country of destination and, for example, their knowledge of that country's language;
- (e) to strengthen mutual information on migration by improving existing instruments where necessary;
- (f) to improve information on the possibilities and conditions of legal migration, particularly by putting in place the instruments needed for that purpose as soon as possible;
- (g) to invite Member States, in line with the common principles approved by the Council in 2004, to establish ambitious policies, in a manner and with resources that they deem appropriate, to promote the harmonious integration in their host countries of immigrants who are likely to settle permanently; those policies, the implementation of which will call for a genuine effort on the part of the host countries, should be based on a balance between migrants' rights (in particular to education, work, security, and public and social services) and duties (compliance with the host country's laws). They will include specific measures to promote language-learning and access to employment, essential factors for integration; they will stress respect for the identities of the Member States and the European Union and for their fundamental values, such as human rights, freedom of opinion, democracy, tolerance, equality between men and women, and the compulsory schooling of children. The European Council also calls upon the Member States to take into account, by means of appropriate measures, the need to combat any forms of discrimination to which migrants may be exposed;
- (h) to promote information exchange on best practice implemented, in line with the common principles approved by the Council in 2004, in terms of reception and integration, and on EU measures to support national integration policies.

II. Control illegal immigration in particular by ensuring that illegal immigrants return to their countries of origin or to a transit country

The European Council reaffirms its determination to control illegal immigration. It recalls its attachment to the effective application of three basic principles:

- greater cooperation between Member States and the Commission and the countries of origin and of transit in order to control illegal immigration under the Global Approach to Migration is a necessity;
- illegal immigrants on Member States' territory must leave that territory. Each Member State undertakes to ensure that this principle is effectively applied with due regard for the law and for the dignity of the persons involved, giving preference to voluntary return, and each Member State shall recognise the return decisions taken by another Member State;
- all States are required to readmit their own nationals who are staying illegally on the territory of another State.

To that end, the European Council agrees:

- (a) to use only case-by-case regularisation, rather than generalised regularisation, under national law, for humanitarian or economic reasons;
- (b) to conclude readmission agreements at EU or bilateral level with those countries with which this is necessary, so that each Member State has the legal instruments to ensure that illegal immigrants are expelled; the effectiveness of EU readmission agreements will be evaluated; negotiating directives that have not succeeded should be reviewed; Member States and the Commission will consult closely when future EU readmission agreements are negotiated;

- (c) to ensure that the risks of irregular migration are prevented within the framework of the modalities of the policies for the entry and residence of third-country nationals or, where appropriate, other policies, including the modalities of the framework for freedom of movement;
- (d) to develop cooperation between Member States, using, on a voluntary basis and where necessary, common arrangements to ensure the expulsion of illegal immigrants (biometric identification of illegal entrants, joint flights, etc.);
- (e) to step up cooperation with the countries of origin and of transit, under the Global Approach to Migration, in order to control illegal immigration, in particular to follow with them an ambitious policy on police and judicial cooperation to combat international criminal organisations engaged in trafficking migrants and in human trafficking, and to provide better information to communities under threat so as to avoid the tragedies that can occur, particularly at sea;
- (f) to invite Member States, specifically with the support of Community instruments, to devise incentive systems to assist voluntary return and to keep each other informed on this point in order to prevent the fraudulent return to the European Union of those who receive such aid;
- (g) to invite Member States to take rigorous action, also in the interest of the immigrants, by way of dissuasive and proportionate penalties against those who exploit illegal immigrants (employers, etc.);
- (h) to put into full effect the Community provisions pursuant to which an expulsion decision taken by one Member State is applicable throughout the European Union, and, within that framework, an alert for such a decision entered in the Schengen Information System (SIS) obliges other Member States to prevent the person concerned from entering or residing within their territory.

III. Make border controls more effective

The European Council recalls that each Member State is responsible for the controls on its section of the external border. That control, giving access to a common area of free movement, is exercised in a spirit of joint responsibility on behalf of all Member States. Conditions for granting visas outside the external border should contribute fully to the integrated management of that border. Those Member States whose geographical location exposes them to influxes of immigrants, or whose resources are limited, should be able to count on the effective solidarity of the European Union.

To that end, the European Council agrees to:

- (a) invite Member States and the Commission to mobilise all their available resources to ensure more effective control of the external land, sea and air borders;
- (b) generalise the issue of biometric visas as from 1 January 2012 at the latest, as a result of the Visa Information System (VIS), immediately improve cooperation between Member States' consulates, pool resources as far as possible and gradually set up, on a voluntary basis, joint consular services for visas;
- (c) give the Frontex agency, with due regard for the role and responsibilities of the Member States, the resources to fulfil its mission of coordinating the control of the external border of the European Union, to cope with crisis situations and to undertake, at the request of Member States, any necessary operations, whether temporary or permanent, in accordance, in particular, with the Council conclusions of 5 and 6 June 2008. In the light of the results of an evaluation of the agency, its role and operational resources will be strengthened and a decision may be taken to create specialised offices to take account of the diversity of situations, particularly for the land border to the East and the sea border to the South: creating such offices should on no account undermine the unity of the Frontex agency. Ultimately, the possibility of setting up a European system of border guards may be examined;

- (d) give fuller consideration, in a spirit of solidarity, to the difficulties of those Member States subjected to disproportionate influxes of immigrants and, to that end, invite the Commission to submit proposals;
- (e) deploy modern technological means to ensure that systems are interoperable and to enable the effective integrated management of the external border, in line with the conclusions of the European Council on 19 and 20 June 2008 and of the Council on 5 and 6 June 2008.
From 2012, depending on the Commission's proposals, the focus should be on establishing electronic recording of entry and exit, together with a fast-track procedure for European citizens and other travellers;
- (f) intensify cooperation with the countries of origin and of transit in order to strengthen control of the external border and to combat illegal immigration by increasing the European Union's aid for the training and equipping of those countries' staff responsible for managing migration flows;
- (g) improve the modalities and frequency of the Schengen evaluation process in accordance with the Council conclusions of 5 and 6 June 2008.

IV. Construct a Europe of asylum

The European Council solemnly reiterates that any persecuted foreigner is entitled to obtain aid and protection on the territory of the European Union in application of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967, and other relevant treaties. The European Council welcomes the progress achieved in recent years as a result of the implementation of common minimum standards with a view to introducing the Common European Asylum System. It observes, however, that considerable disparities remain between one Member State and another concerning the grant of protection and the forms that protection takes. While reiterating that the grant of protection and refugee status is the responsibility of each Member State, the European Council considers that the time has come to take new initiatives to complete the establishment of a Common European Asylum System, provided for in the Hague programme, and thus to offer a higher degree of protection, as proposed by the Commission in its asylum action plan. A sustained dialogue should be conducted with the Office of the United Nations High Commissioner for Refugees in this new phase. The European Council stresses that the necessary strengthening of European border controls should not prevent access to protection systems by those people entitled to benefit under them.

To that end, the European Council agrees to:

- (a) establish in 2009 a European support office with the task of facilitating the exchange of information, analyses and experience among Member States, and developing practical cooperation between the administrations in charge of examining asylum applications. That office will not have the power to examine applications or to take decisions but will use the shared knowledge of countries of origin to help to bring national practices, procedures, and consequently decisions, into line with one another;
- (b) invite the Commission to present proposals for establishing, in 2010 if possible and in 2012 at the latest, a single asylum procedure comprising common guarantees and for adopting a uniform status for refugees and the beneficiaries of subsidiary protection;

- (c) establish procedures, in the case of crisis in a Member State faced with a massive influx of asylum-seekers, to enable the secondment of officials from other Member States to help that State and the demonstration of effective solidarity with that State by mobilising existing EU programmes more rapidly. For those Member States which are faced with specific and disproportionate pressures on their national asylum systems, due in particular to their geographical or demographic situation, solidarity shall also aim to promote, on a voluntary and coordinated basis, better reallocation of beneficiaries of international protection from such Member States to others, while ensuring that asylum systems are not abused. In accordance with those principles, the Commission, in consultation with the Office of the United Nations High Commissioner for Refugees where appropriate, will facilitate such voluntary and coordinated reallocation. Specific funding under existing EU financial instruments should be provided for this reallocation, in accordance with budgetary procedures;
- (d) strengthen cooperation with the Office of the United Nations High Commissioner for Refugees to ensure better protection for people outside the territory of European Union Member States who request protection, in particular by:
- moving, on a voluntary basis, towards the resettlement within the European Union of people placed under the protection of the Office of the United Nations High Commissioner for Refugees, particularly as part of regional protection programmes;
 - inviting the Commission, in liaison with the Office of the United Nations High Commissioner for Refugees, to present proposals for cooperation with third countries in order to strengthen the capacities of their protection systems;
- (e) invite the Member States to provide the personnel responsible for external border controls with training in the rights and obligations pertaining to international protection.

V. Create a comprehensive partnership with the countries of origin and of transit to encourage the synergy between migration and development

Recalling its conclusions of December 2005, December 2006 and June 2007, the European Council reaffirms its attachment to the Global Approach to Migration, which was the inspiration for the Euro-African conferences in Rabat and Tripoli in 2006 and the Euro-African summit in Lisbon in 2007. It is convinced that this approach, which addresses the organisation of legal migration, the control of illegal immigration, and the synergy between migration and development for the benefit of all the countries concerned and of the migrants themselves, is a highly relevant approach to the East and South of Europe. Migration must become a major component in Member States' and EU external relations, which presupposes examination of the quality of the existing dialogue with each third country on migration.

The European Council undertakes, on this basis, to support the development of the countries involved and with them to build a close partnership encouraging the synergy between migration and development.

To that end, the European Council agrees to:

- (a) conclude EU-level or bilateral agreements with the countries of origin and of transit containing, as appropriate, clauses on the opportunities for legal migration adapted to the labour market situation in the Member States, the control of illegal immigration, readmission, and the development of the countries of origin and of transit; the European Council invites the Member States and the Commission to inform and consult each other on the objectives and limits of such bilateral agreements, and on readmission agreements;
- (b) encourage Member States, as far as they are able, to offer the nationals of partner countries to the East and South of Europe opportunities for legal immigration adapted to the labour market situation in Member States, enabling those nationals to acquire training or professional experience and accumulate savings that they can use for the benefit of their home countries. The European Council invites Member States to encourage in this context forms of temporary or circular migration, in order to prevent a brain drain;

- (c) pursue policies of cooperation with the countries of origin and of transit in order to deter or prevent illegal immigration, in particular by capacity-building in those countries;
- (d) integrate migration and development policies more effectively by examining how such policies may benefit the regions of origin of immigration, in coherence with other aspects of development policy and the Millennium Development Goals. The European Council invites Member States and the Commission in this context to focus, within the sectoral priorities identified with the partner countries, on solidarity development projects that raise the living standards of citizens, for example in the areas of nutrition, health care, education, vocational training and employment;
- (e) promote co-development actions that enable migrants to take part in the development of their home countries. The European Council recommends that Member States support the adoption of specific financial instruments for transferring migrants' remittances securely and more cheaply to their countries for the purposes of investment and welfare insurance;
- (f) firmly implement the partnership between the European Union and Africa agreed in Lisbon in December 2007, the conclusions of the first Euro-Mediterranean ministerial meeting on migration held in Albufeira in November 2007 and the Rabat action plan and to that end call on the second Euro-African ministerial conference on migration and development in Paris in autumn 2008 to decide on practical measures; develop, in accordance with its conclusions of June 2007, the Global Approach to Migration to the East and South-east of Europe, and, in this respect, welcome the initiative of a ministerial conference on this topic in April 2009 in Prague; continue to make use of the existing political and sectoral dialogues, particularly with the countries of Latin America, the Caribbean and Asia, in order to consolidate mutual understanding of what is at stake in the field of migration and intensify current cooperation;

- (g) speed up the deployment of the key tools of the Global Approach to Migration (migration balances, cooperation platforms, partnerships for mobility and circular migration programmes), to ensure a balance between the migration routes from the South and those from the East and South-east and take account of the lessons learned in these matters when negotiating EU and bilateral agreements on migration and readmission with countries of origin and of transit, as well as Pilot Mobility Partnerships;
- (h) ensure when implementing these various actions that they are consistent with other aspects of the EU's development cooperation policy, particularly the European Consensus on Development of 2005, and other policies, particularly the neighbourhood policy.

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The European Council invites the European Parliament, the Council, the Commission and the Member States, each for their own part, to take the decisions necessary for the implementation of this Pact in order to develop a common immigration and asylum policy. The programme which will be the successor of the Hague programme in 2010 will, in particular, enable the Pact to be transposed further into practical actions.

It has decided, for its part, to hold an annual debate on immigration and asylum policies. To that end, it invites the Commission to present a report to the Council each year, based on Member States' contributions and accompanied, as necessary, by proposals for recommendations, on the implementation, by both the Union and its Member States, of this Pact and of the programme that will follow on from the Hague programme. This annual debate will also enable the European Council to be kept informed of the most significant developments planned by each Member State in conducting its immigration and asylum policy.

To prepare for this debate, the European Council invites the Commission to propose a tracking method to the Council.

Finally, the European Council reaffirms the need to find appropriate resources to meet the requirements arising from immigration and asylum policies and implementation of the Global Approach to Migration.