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European Union

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#### 'I/A' ITEM NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Extension of the Joint Way Forward on Migration Issues between Afghanistan and the EU

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1. As part of the EU's cooperation with Afghanistan in the area of migration, the two sides have committed to a Joint Way Forward on Migration Issues between Afghanistan and the EU (thereafter "JWF", WK 6248/20 INIT, Annex 1).
2. The JWF, which is not considered a binding international agreement, was signed on 3 October 2016 and was automatically extended for another two years following the provisions of Part VIII of the JWF. Thus, it will expire on 3 October 2020.
3. Part I of the JWF defines the scope of cooperation and reaffirms Afghanistan's obligations under international law to readmit its citizens who entered into the EU or are staying on the EU territory irregularly. Part II contains various provisions aimed at facilitating the return process. In addition, the JWF contains provisions on information and awareness-raising (Part III), return programs and reintegration assistance (Part IV), fighting smuggling and trafficking in human beings (Part V), the creation of a Joint Working Group (Part VI) and the exchange of documents (Part VII).

4. In a letter sent to the EU Delegation in Afghanistan on 6 May 2020 (WK 6248/20 INIT, Annex 2), the Afghan government, while underlining its interest to renew the JWF, indicated its wish to make certain changes to the political declaration.
5. Given the upcoming expiry of the JWF in October 2020, the Commission informed the Council on 10 June 2020 that it intends to enter discussions with Afghanistan on the prolongation of the JWF (note from the Commission, WK 6248/2020 INIT).
6. In line with the case law of the Court of Justice<sup>1</sup>, the Council must authorise the opening of negotiations and the signing of non-binding instruments such as the JWF.
7. To this end, the matter was submitted to JHA Counsellors (Migration, Integration, Expulsion) on 17 and 24 June 2020.
8. The Commission updated delegations on the current situation regarding the JWF and informed them of its intentions in the forthcoming negotiations as well as the position of the Afghan government.
9. Delegations had the opportunity to discuss the application of the JWF and express their position with regard to the prolongation of the instrument beyond October 2020. The Commission answered delegations' questions on the current text and on the upcoming negotiations.
10. Following the JHA Counsellors meeting of 17 June 2020, the Presidency invited delegations to submit written contributions answering the following questions (CM 2657/20):
  - (1) Do delegations agree to prolong the JWF?
  - (2) Do delegations see the need to modify the JWF to include new elements requested by the Afghan government and/or put forward by the Commission?
  - (3) Do delegations wish to add or modify other provisions of the JWF?

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<sup>1</sup> Judgment of the Court (Grand Chamber) of 28 July 2016 — Council of the European Union v European Commission (Case C-660/13).

11. On the basis of discussions held on 17 and 24 June 2020 and written contributions received from Member States (WK 6846/2020 INIT), it is clear that there is strong support for the prolongation of the JWF.
12. Delegations agree that the current JWF should, to the extent possible, serve as a basis for upcoming negotiations and be considered a minimum standard of cooperation with Afghanistan in the field of returns.
13. In addition, delegations consider that the Commission should take into consideration the following general principles in the course of upcoming negotiations with the Afghan government:
  - Member States should continue to be able to issue EU standard travel documents when no travel document is provided by Afghan authorities (Part II, point 2, of the JWF).
  - The two-week deadline for issuing travel documents when Member States have evidence of the nationality of the person to be returned should be upheld (Part II, point 2, of the JWF).
  - The possibility of conducting non-scheduled flights without limitation of frequency should remain (Part II, point 3, of the JWF).
  - Visa requirements for escort staff should be lifted as far as possible (part II, point 5, of the JWF).
  - Afghan authorities should be made aware that the JWF allows for vulnerable groups, including unaccompanied minors, to be returned after giving fair consideration to humanitarian aspects (Part I, point 4, of the JWF). If possible, the scope of the notion of vulnerable groups should be limited.

- Member States should have greater flexibility when communicating flight and passenger data to Afghan authorities and should be entitled to modify the list of returnees at short notice (Part II, point 4, of the JWF).
  - Existing and future bilateral Memoranda of Understanding (MoU) between Member States and Afghanistan should not preclude the application of the JWF. In particular, Member States with such an MoU should be entitled to carry out joint return operations under the JWF.
14. It is further understood that the Commission will regularly update the Council, at the appropriate level, on the evolution of negotiations and will revert to the Council at the end of negotiations to seek the Council's authorisation for the signature of the instrument on behalf of the Union.
15. In light of the above, and subject to confirmation by the Permanent Representatives' Committee, the Council is invited to:
- authorise the Commission to enter on behalf of the Union into negotiations on the prolongation of the Joint Way Forward on Migration Issues between Afghanistan and the EU beyond October 2020, subject to the general principles outlined above at point 13.