Briefing Note

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ACP-EU cooperation on readmission:

Where does it stand and where to go?

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The information presented in this paper was compiled by the authors on the basis of a literature review and 22 interviews with representatives of EU and ACP governments and regional and international organisations. The authors thank all interviewees for their insights and time. The sole responsibility for the content of this publication lies with the authors.

Context

The Cotonou Partnership Agreement (CPA) between the ACP Group of States and the EU, in place since 2000, contains provisions on migration in Article 13. During the second revision of the CPA, finalised in 2010, ACP and EU could not agree on a modification of this article. The parties thus decided to engage in further dialogue on migration. One aim of this dialogue is to prepare the ground for the next revision of the Agreement in 2015. Both parties reported on the progress of the dialogue at the ACP-EU Council of Ministers in 2011 and decided to continue meeting, with the aim to produce concrete results (e.g. joint report, joint Council Conclusions) to strengthen the operational aspects of ACP-EU cooperation in the area of visa, remittances and readmission by the ACP-EU Council on 11-15 June 2012. The dialogue proves to be challenging, with different views on both sides, not in the least in the area of readmission. The aim of this note therefore is to contribute to the process, specifically by strengthening the common knowledge base on readmission. The note examines the EU and the ACP's different approaches and concerns.

The readmission clause in Article 13

The current Article 13 covers respect for human rights, non-discrimination of legally residing migrants, the causes of migration flows and irregular migration. Under point 5, the article includes a readmission clause which states that:

[...] each Member State of the European Union shall accept the return of and readmission of any of its nationals who are illegally present on the territory of an ACP State, at that State's request and without

further formalities; each of the ACP States shall accept the return of and readmission of any of its nationals who are illegally present on the territory of a Member State of the EU, at that Member State's request and without further formalities. The Member States and the ACP States will provide their nationals with appropriate identity documents for such purposes. At the request of a Party, negotiations shall be initiated with ACP States aiming at concluding in good faith and with due regard for the relevant rules of international law, bilateral agreements governing specific obligations for the readmission and return of their nationals.[...]

It continues to say that **third country nationals** [TCN] shall also be covered by these arrangements if deemed necessary by any of the Parties. (If an agreement includes a TCN clause, this implies that persons who do not have the nationality of either of the parties (including stateless persons) can be returned to the territory of one of parties through which they have transited before entering the territory of the other party.)

Understanding readmission

Readmission is the act by a state of accepting the re-entry of an individual who has been found irregularly entering into, being present in or residing in another state. Readmission agreements usually facilitate forced return, i.e. the return of a migrant who is not willing to leave the host state's territory voluntarily.

Under international customary law, every state has the obligation to readmit its own nationals. States do not usually outright reject readmitting their nationals but they can obstruct or delay the process by refusing to issue documents or identify their nationals.

EU policy on readmission

To date, the EU has **concluded readmission agreements with 13 countries**, none of which are ACP countries. However, negotiations between the EU and a first ACP state, **Cape Verde**, are almost finalised. The concluded readmission agreements differ, for example in terms of the time limits they impose on states to respond to readmission requests.² Many agreements include an **accelerated procedure** (if migrants were intercepted in the border region or at airports) which allows for their readmission within a much shorter time period. The European Commission has pointed out that, although the accelerated procedure does not free Member States from having to apply the safeguards under the EU *acquis* (such as access to asylum procedure and respect of *non-refoulement* principle³), "there is a potential for deficiencies in practice"⁴. All EU readmission agreements include a TCN clause, although the use made of the clause differs between EU Member States. Some EU Member States, as a matter of policy, only send persons back to their country of origin.

In 2011, the Commission evaluated the EU's readmission agreements and made proposals to improve the EU's approach to such agreements. Inter alia, the Commission:

- questioned the necessity to include the TCN clause in every negotiation mandate of the European Commission defined by EU Member States and suggested that as a rule, future negotiating mandates should not include TCN;
- proposed to offer **incentives at the outset of negotiations**, especially if the EU deems it necessary to include TCN (visa related policy tools, financial assistance, elements of the Global

¹ Coleman, N. (2009). European Readmission Policy: Third Country Interests and Refugee Rights.

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² Annex 9 to the 1944 Convention on International Civil Aviation requires that States, when requested to provide travel documents to facilitate the return of one of its nationals, respond within a reasonable period of time, and not more than 30 days after such a request is made, either by issuing a travel document or by satisfying the requesting State that the person concerned is not one of its nationals.

The protection of refugees from being returned to places where their lives or freedoms could be threatened.

⁴ European Commission. 2011. Communication from the Commission to the European Parliament and the Council. Evaluation of EU Readmission Agreements. COM (2011) 76 final. http://eur-lex.europa.eu/Notice.do?mode=dbl&lang=en&ihmlang=en&lng1=en,en&lng2=bg,cs,da,de,el,en,es,et,fi,fr,hu,it,lt,lv,mt,nl

Approach to Migration 'toolbox' and legal migration) and ideally open negotiations in parallel with framework agreement (association or cooperation agreement) negotiations;

- proposed that negotiating mandates indicate possible retaliation measures in cases of persistent and unjustified denial of cooperation by the partner country;
- suggested an article by which Parties commit themselves to give **preference to voluntary departure**, to provide papers and documents necessary for voluntary departure and not to impose sanctions for non-compliance with migration rules on persons who return voluntarily.

Following the European Commission's evaluation, the EU Council of Ministers adopted **Conclusions on readmission in June 2011**, stating that the EU should seek to **incorporate issues on readmission into a broader and coherent cooperation** with third countries. The Conclusions also assert that although every state is obliged to readmit its own nationals, the **use of incentives is important** and should be tailor-made⁵. The current Danish Presidency of the EU is attempting to operationalise the Conclusions defining an EU strategy on readmission. On the basis of a questionnaire distributed by the presidency to all EU Member States, a **list of relevant new third countries** to be approached for a readmission agreement will be identified by **June 2012**.

Currently, the Commission does not have a mandate to negotiate future readmission agreements with an ACP country. The Commission generally attempts to link readmission agreements with visa facilitation, which it is not in a position to offer, as many Member States are of the opinion that readmission-relevant ACP states currently do not fully meet the criteria and/or standards that would allow linking readmission agreements with visas. A block agreement with all ACP countries is also viewed as unrealistic due to the capacity differences between countries. The current focus is therefore to insist on the direct applicability of the already existing readmission clause in Article 13, which is limited to the readmission of nationals and does not cover TCNs. (See Annex II for information on the Commission's plans for funding return measures in 2014-2020 and civil society reactions to the proposals).

In the next sections we turn to a consideration of the differing views of both parties on readmission, starting with an outline of the EU concerns, followed by the ACP concerns.

EU concerns on readmission cooperation with the ACP

Out of the issues being discussed in the ACP-EU dialogue on migration, readmission is the biggest priority for the Europeans. The EU MS feel that the ACP are holding back on readmission and would like to see a higher level of agreement and cooperation. In particular they are **seeking (legal) commitments** from the ACP side. They insist on the **direct applicability** of the readmission clause in Article 13 and also refer to **international customary law** on the issue. As they describe it, a number of **ACP countries are dragging their feet** on cooperation on readmission because they do not at all or at least delay **responding to requests** or **identifying their nationals** and **issuing travel documents**.

According to EU Member States, cooperation by the ACP side is in the interest of the migrant, as the shorter the process of return, the shorter the period that the migrant may be detained⁶. (Under the EU's return directive, adopted in 2008, migrants at risk to abscond can be detained for up to a period of six months⁷).

EU Member States also argue that **forced return has to work for voluntary return to become more attractive for migrants**. As Member States interviewees described it, migrants know that EU Member States face difficulties in returning them forcefully, so there is limited to no incentive for them to return voluntarily.

⁵ Council of the European Union. 2011. Council Conclusions defining the EU strategy on readmission. 3096th Justice and Home Affairs Council Meeting. Luxembourg 9 and 10 June 2011. http://www.consilium.europa.eu/App/NewsRoom/loadDocument.aspx?id=352&lang=EN&directory=en/jha/&fileName=1 22501.pdf

⁶ This argument is invalid according to many NGOs, who argue that fears of absconding are exaggerated and question the reasoning for detaining a migrant who has not committed a crime.

⁷ In particular circumstances, detention may be prolonged by a maximum of 12 months. If no other accommodation is available, Member States may use prison accommodation.

In some of the EU Member States' view, the fact that the EU provides the European Development Fund (EDF) should be enough of an incentive to cooperate on readmission. Some argue that they cannot explain to their constituencies why development aid is being provided if there is a lack of cooperation in other areas important to EU countries, such as readmission. Many do not want to be seen to be giving additional development cooperation in return for the ACP to act in accordance with the readmission clause which is in any case an obligation under international law. They also argue that they cannot allow more legal migration as some ACP representatives call for, if ACP countries do not show good will first and they can be sure that forced return is an option. This view can also be found in the Commission's recent Communication on the Global Approach to Migration which states that '...without well-functioning border controls, lower levels of irregular migration and an effective return policy, it will not be possible for the EU to offer more opportunities for legal migration and mobility. The legitimacy of any policy framework relies on this'⁸.

Some Member States are of the opinion that the EU should **cut its development budget** if ACP states continue, in their view, to be uncooperative on readmission. However, in the interviews conducted in preparation for this paper, the vast majority stated that the political cost of cutting aid for this reason would be too high and this might also exacerbate the root causes of irregular migration and may therefore reinforce irregular migration, in addition to diminishing the country's capacity to control migration.

Almost all EU Member States interviewed **regretted that the dialogue on migration had lost momentum** since 2010. They noted that the dialogue never got to a stage where it was clear what "we can give and get". They also expressed the wish to understand better what the ACP side required from the EU to move forward.

On the EU side, the outcome of the dialogue on readmission is particularly important for smaller Member States who may not be able to negotiate larger agreements which include readmission with ACP countries. Bigger Member States like France and Spain have negotiated bilateral agreements which include readmission clauses.

ACP concerns on readmission cooperation with the EU

All ACP representatives interviewed stressed that **readmission cannot be addressed in isolation** and is only one piece in a large chain of migration processes. While they **expressed willingness to cooperate** on readmission and **acknowledged the obligation under international law**, they noted that the EU often forgets about **what happens to the irregular migrant upon returning** if there are **not sufficient means for reintegration**. Facing meager prospects at home, many attempt to reach Europe's shores again as soon as possible.

Several ACP representatives suggested that **ACP concessions on readmission** could be met with concessions on **visa facilitation** on the EU side. It was also proposed that the EU review **EU asylum procedures** (see paragraph below) in return for concessions.

ACP countries pointed out a number of **deficits in the EU's migration management**, which **could be aggravated** through a stricter enforcement of the readmission clause.

• Although the EU has safeguards in place to give asylum-seekers a fair procedure, in practice, ACP countries receive signals that asylum-seekers are not always treated correctly. In some cases, for example, although they have a right to interpretation arrangements, none are provided, their right to appeal is ignored, migrants in detention cannot practice their religion properly etc. They are also not always informed about their rights and the proper procedure to apply for asylum. As a result, some are sent back to countries where their safety cannot be guaranteed and the EU thus breaches the non-refoulement principle. The accelerated procedure in the asylum procedures

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⁸ European Commission (2011). The Global Approach to Migration and Mobility. http://ec.europa.eu/home-affairs/news/intro/docs/1_EN_ACT_part1_v9.pdf

directive ⁹ encourages early rejection of asylum-seekers. ACP states called for the EU to **enforce** its **safeguards more strictly.**

- Forced return procedures are often degrading and unnecessary force is applied to the migrant during transportation (hand-cuffed migrants accompanied by police officers as if they were criminals). The EU should have stricter safeguards to ensure dignified treatment.
- The **social rights of irregular migrants should be made portable**, if they have made contributions to the social welfare system as a regular or irregular migrant before facing a return decision. If their benefits cannot be exported, migrants should be reimbursed ¹⁰. (In its 2011 Communication on the Global Approach, the Commission proposes the portability of social and pension rights for regular migrants (which already does not meet acceptance in many Member States).

ACP representatives also expressed concern about the **political climate in the EU** partly stirring antimigrant sentiments. For example, France and the Netherlands set yearly targets for deporting irregular migrants. ACP countries criticised these and other initiatives which in their view are political statements and not based on case-by-case assessments of the migrant's situation, which stirs up controversy in countries of origin. Representatives also noted that **readmission** and particularly the **TCN clause** is a **politically sensitive issue** in ACP countries met by much criticism among civil society, which should be considered by the EU.

Responding to EU concerns, ACP countries stated that one reason for the delay in identifying nationals and issuing travel documents was the lack of consular representation of many ACP states in EU Member States and that some of their procedures required that documents were issued in the capitals and checks were being carried out in the country (e.g. of the correct description of a village a person provided in an interview determining his/her nationality), which requires time. They also pointed out that the quality of nationality identification methods differed from one EU Member State to another and could be improved. Some described how many EU Member States determined nationality based on language and accents rather than by assessing the migrant's knowledge of the region etc. It was argued that if the determination work was not done properly by Member States, the country of origin had to redo it, which slowed down the readmission process. The proposals for time limits the EU put forward for the last Cotonou Revision were therefore out of the question for many ACP countries. As they noted, each ACP country is different and capacities differ as well, which is why the timeframe also has to differ. In addition, following up on readmission requests and interviewing nationals is very costly if the ACP country does not have consular representation in place.

Some ACP countries also described **difficulties in receiving returned migrants**, especially if migrants were "dumped" in the capital and did not have enough means to return to their place of origin or feared to do so for lack of respect upon return, which might for example force them to become beggars or thieves in the capital. In this context, ACP countries mentioned that the **EU** still **did not provide good enough incentives for voluntary return** and that **reintegration programmes were underfinanced** (see Annex I for an overview of EU financial assistance provided for voluntary returnees in the initial stages of return and during the reintegration period). Box 1 summarises the results of a recent study on assisted return programmes in EU Member States conducted by the European Migration Network at the request of the European Commission, which shows that many EU Member States provide some sort of return and reintegration assistance, while many challenges to do so effectively and extensively remain. ACP representatives expressed the feeling that there are fewer voluntary return initiatives than a few years ago. Some stated that their own countries could also do more to improve reintegration. Some also stressed that **reintegration projects** worked better (and served the entire community) than transferring money to individuals.

⁹ The first asylum procedures directive was adopted in 2005. The Commission has since made two attempts to revise it – the latest in June 2011, to address the loopholes in granting and withdrawing protection.

¹⁰ This demand is also shared by the Platform for international cooperation on undocumented migrants (PICUM), see http://picum.org/picum.org/uploads/file /PICUM%20comments%20GAMM%205%20March%202012.pdf

Box 1: Results of a study on fostering Assisted Return and Reintegration

Programmes and strategies in EU Member States fostering Assisted Return to and Reintegration in Third Countries (2011)¹¹

According to the study, nearly all Member States, with the exception of Greece and Slovenia, provide for Assisted Voluntary Return. 16 Member States have measures in place to provide voluntary returnees with training and/or other vocational development as well as business development opportunities upon return. The study also shows that the sustainability of return measures is not a standard element of Assisted Return programmes in many Member States.

The study also looked at **obstacles** to Assisted Return and Reintegration programmes.

Reasons related to EU Member States were:

- limited public funding
- lack of political will
- rumours of an amnesty
- confusion due to the presence of several stakeholders/actors in the field, each having their own set of conditions for participation in Assisted Return
- fears that pension contributions in the host country would not be recovered
- limited language proficiency of the migrant and difficulties in accessing information
- fear of not being able to return to the EU

Reasons related to the country of origin:

- lack of cooperation between Member States and countries of return (countries not issuing documents)
- the situation in the country of origin, particularly when considered dangerous
- fear of being detained upon return
- lack of reintegration prospects in the country of origin

The current ACP-EU dialogue was described as a "dialogue of the deaf" by a few representatives and they accused the EU of compartmentalising issues which needed to be addressed jointly. There was a feeling that the EU was really only interested in discussing readmission, while visas and remittances were addressed only superficially (for example: rejection of the EU to discuss long-term visas in the dialogue). They also pointed out that the **European Commission** often does not have a **mandate** to discuss a number of things which should be cleared within the EU before dialoguing with the ACP.

On the outcome of the dialogue, representatives stressed that the **dialogue is not a negotiation process**. If the intention is to negotiate (a Memorandum of Understanding, interpretative declaration etc.) rather than dialogue, then this should be clearly expressed and enable both sides to prepare.

Some ACP representatives expressed the wish for the **ACP-EU dialogue** to be **informed by more data** (on existing bilateral readmission agreements, readmission processes in Member States, initiatives for reintegration etc.).

Possible issues to address in the future

The ACP-EU dialogue on migration is an ongoing process. Given the analysis presented in this Briefing Note, the following questions would be useful to address in the context of the dialogue, and ACP-EU cooperation on readmission more broadly:

- What can ACP and EU concretely do to eliminate barriers to voluntary return (see box 1)?
- How might the EU give stronger guarantees on the proper implementation of its safeguards regarding international protection and human rights of migrants?
- How can the ACP improve their readmission procedures?
 - Can the EU and ACP improve their nationality determination systems to facilitate the issuing of documents for readmission?
 - Would improvements to implementation of procedures allow an agreement on time frames (periods to confirm nationality, issue documents etc.)?

¹¹ European Migration Network (2011). EU Programmes and Strategies in EU Member States fostering Assisted Return to and Reintegration in Third Countries http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?directoryID=123

 How can the ACP and EU countries strengthen their cooperation to facilitate the reintegration of returnees in order to address poverty and avoid return to the EU, thereby linking readmission more closely with migration and development?

To move forward, it will be important to clarify expectations of the concrete outcome of the dialogue that exist on both sides and what approach suits these expectations best. This may result in an agreement to work towards an interpretative declaration on Article 13 or rather to continue dialoguing to enhance mutual understanding and agreement on readmission and broader migration issues without necessarily resulting in a joint declaration in the short run. Depending on the desired outcome, it could be considered to adapt the format of the meetings, to meet in smaller groups that prepare documents to be adopted by the whole group. Improving the common knowledge base could be instrumental in fostering an informed dialogue. In any case, it will be up to the EU and ACP representatives involved to seize the opportunity provided by the dialogue to strengthen mutually satisfactory cooperation on migration, in the spirit of the Cotonou Partnership Agreement.

Annex I: Financial contributions for assisted voluntary return during the initial stages of return and during the reintegration phase¹²

Member States differentiate between two types of contributions: post-return contributions and reintegration contributions. The key difference between these two types is that while the former usually focus on providing one-off or short-term support directly following arrival, the latter provide longer-term financial assistance (typically up to 12 months) covering access to housing, healthcare and (self-) employment. The contributions for reintegration are usually more substantial than those allocated to post-return contributions.

Financial assistance provided during the initial stages of return

Member State	Category of Person	Sum	Additional Information	
Austria	Adult	€370	Maximum amounts	
	Minor (Minor under 14)	€200		
Belgium	Adult	€250		
	Minor	€125		
Czech Republic	Adult	€500 / €300	First / second phase of special	
	Minor	€250 / €150	return project ⁷² .	
Germany	Adult	€300 - €700	Depending on country of	
	Minor	€150 - €375	origin/return; rates are for 2009	
Latvia	Adult/Minor	€400	Covers the costs of return for and expenses incurred during the first few months in the country of return.	
Lithuania	Adult/Minor	€405	Covers in land travel and immediate needs of returnee during the first days after arrival.	
Netherlands	Adult/unaccompanied minor (lawful stay)	€500		
	Accompanying minor (lawful stay)	€100	-	
	Adult/unaccompanied minor (illegal residence)	€200		
Poland	Adult/Minor	€85-€200	One-off reintegration allocation, the amount of money depending on the IOM project.	
Portugal	Adult/Minor	€50	Aimed at paying for transport and other expenses that might be incurred upon arrival at the country of return.	

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¹² The information provided in this annex draws on EMN (2011). EU Programmes and Strategies in EU Member States fostering Assisted Return to and Reintegration in Third Countries http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?directoryID=123

Financial assistance provided to returnees for reintegration upon return

Member State	Type of Reintegration Assistance	Sum	Additional comments
Austria	Individual assistance	up to €3 500 per person in kind	For participants in country- specific reintegration projects or returnees of specific federal provinces
Belgium	Individual assistance	€700 per adult €350 per minor (no maximum per household)	Vulnerable groups can receive an additional €500. Further increases are possible in projects under the European Return Fund.
Czech Republic	Individual assistance	-	Since 2008 limited to rejected asylum applicants who meet vulnerability criteria
France	Individual assistance	€7 000 maximum	Includes assistance to start-up project
Ireland	Total reintegration support	€71 307	Total spent on reintegration support in 2008
Italy	Individual assistance	€900 per person €1 650 (household maximum)	Possibility to increase up to €1 650 per family
Lithuania	Individual or family assistance	€1 500	Assistance in kind
Netherlands	Individual assistance	€1 750 per adult	Limited to asylum applicants who meet certain criteria. Depends on country of return, maximum of €2 000 provided for returnees to Sierra Leone
	Individual assistance	€3 500 per chronically ill returnee	-
Poland	Individual assistance on the basis of a business plan	From €1 000 up to €2 000, depending on the IOM project	Applicable since 2008 within projects co-financed by the EU.
Portugal	Reintegration subsidy	€1 100 maximum	Granted on a case-by-case basis
Slovak Republic	Individual assistance	€2 300 maximum	Applicable April 2009 – April 2010 Direct payments to service providers and contractors
	Individual assistance	€900	From April 2010 Direct payments to service providers and contractors
Spain	Individual assistance	€1 500 - €5 000 per project	-
Sweden	Individual assistance	€3250 per adult €1600 per minor	Maximum €8000 per family
United Kingdom	Assisted Return Package	€3 630	Rise from €1 210 in 2006

Annex II: EU funding for irregular migration/return/reintegration: 2014-2020

In the context of the next EU multi-annual financial framework for the period 2014 – 2020, the Commission has proposed an **Asylum and Migration Fund**¹³ (EUR 3,869 million (in current prices)) under the Home Affairs budget (Heading 3) which will also fund actions in or in relation to third countries to **reinforce the EU's leverage** in respect of the **external policy dimension of home affairs policies**. These actions will cater primarily **for EU interests and objectives** and have a direct impact in the EU and its Member States. They are **not** intended to support actions which are **development oriented**.

More than 80% of the Fund is suggested to be used for **national programmes** of Member States to support some compulsory objectives (among them developing an **assisted voluntary return programme** including a component on **reintegration**) and to address the specific needs of each Member State. The Fund will also support actions of Member States to **facilitate enforced return**. With regard to readmission it will fund:

- co-operation with consular authorities and immigration services of third countries with a view to obtaining travel documents, facilitating repatriation and ensuring readmission;
- assisted voluntary return measures, including medical examinations and assistance, travel arrangements, financial contributions, pre- and post-return counselling and assistance;
- measures to launch the progress of reintegration for the returnee's personal development, such as cash-incentives, training, placement and employment assistance and start-up support for economic activities:
- facilities and services in third countries ensuring appropriate temporary accommodation and reception upon arrival;
- specific assistance for vulnerable persons

It is also proposed that the migration and asylum component of the **Development Cooperation Instrument (DCI)** will **continue to exist** post-2014 and should serve the needs of developing countries.

A large group of **civil society organisations** has criticized the **Euro-centric shift of funding** through the new Migration and Asylum Fund under Home Affairs. They perceive the aim to reinforce the EU's leverage in respect of home affairs policies in third countries as worrying and are concerned to what extent the new funding structure will serve to address the needs of migrants and will **be coherent with development objectives**. In addition, they fear that the existence of both internal (home affairs) and external (development) instruments may lead to **overlaps and confusion**. ¹⁴

In the coming months, the Commission's proposal is subject to negotiations within and between the Council and the European Parliament, the EU's co-legislators. It remains to be seen what the outcome of the negotiations will be.

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¹³ The proposal is available at http://ec.europa.eu/home-affairs/news/intro/docs/751.pdf

¹⁴ Their statement on the new funding arrangements for migration can be found here http://redcross-eu.net/en/upload/documents/pdf/2012/Statement EU Funding Asylum and Migration 7 March 2012.pdf

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European Commission. 2011. Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund. SEC(2011) 1358 & 1359 final. Brussels, 15 November 2011. http://ec.europa.eu/home-affairs/news/intro/docs/751.pdf

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