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NOTE

From: Presidency

To: Delegations

Subject: Link between return/readmission and visa policies

Delegations will find attached a revised version of the above Presidency paper, following the JHA Counsellors meeting of 17 May 2017. Changes are highlighted in **bold** and ~~strikethrough~~.

Background Introduction

On 27 March 2017, the JHA Council held a discussion on enhancing the effectiveness of the EU return policy. During this discussion, a number of Ministers expressed the view that leverage - in particular the visa policy - should be used in relation to those third countries, which do not cooperate on the readmission of their own nationals who are irregularly present in the Member States, supporting the views expressed, in particular, by Dr Thomas de Maizière, Federal Minister of the Interior of Germany

It is clear that there are, **both positive and negative**, other elements that can be included in the EU's toolbox to be used as leverage in urging third countries to cooperate on returns. **Such elements can be identified within the context of different policy areas.** This particular document however will **specifically** focus on a process based on visa policy.

The present document concerns practical and other measures, which may be implemented within the present legal framework, **without prejudice to the competence of the Member States.** It is noted that the Council, in the context of the negotiations with the European Parliament on the Visa Code recast, has proposed the introduction of a legal link between readmission and the application of procedural facilitations in the context of the visa policy¹. It should be made sure that the measures referred to below supplement such a link which, if adopted, would constitute an explicit legal measure.

Way Forward

On the basis of the above, the following process offers a way to deal in a coordinated fashion with third countries which do not cooperate with EU-Member States on the return/readmission of their own nationals irregularly present in the Member States:

¹ Cf. Article 13 of negotiating mandate in doc. 8435/16.

1. **The Representatives of the Governments of the Member States and the Representatives of the Governments of the associated States meeting within the** Coreper would be invited to give guidance, on a case-by-case basis, **and considering a gradual and pragmatic approach,** on the need to take measures regarding a third country not cooperating with the EU **in the area of** return/~~and~~ readmission policy, ~~taking~~. **In this context, they will take** into account ~~in particular~~ the political situation of that country, **as well as its overall cooperation in the field of migration, including in the area of border management, the prevention and the fight against migrant smuggling.**

2. **The guidance of the Representatives of the Governments of the Member States and of the Representatives of the Governments of the associated States meeting within the** Coreper would be based on the information provided either by the Commission, the EEAS, **relevant EU agencies** or by ~~one or several~~ Member States on the situation in that specific country, and ~~in particular~~ on the information made available via IRMA (Integrated Returns Management Application).

3. **The Representatives of the Governments of the Member States and the Representatives of the Governments of the associated States meeting within the** Coreper would invite the relevant Working Party/ies to examine the situation in that specific third country. **In this context, the relevant Working Party/ies will take** into account the information provided by the Commission, the EEAS, **relevant EU agencies** and Member States, and suggest the appropriate measures to **the Representatives of the Governments of the Member States and the Representatives of the Governments of the associated States within the** Coreper, based on the toolbox described below.

4. **The guidance of the Representatives of the Governments of the Member States and of the Representatives of the Governments of the associated States meeting within the** Coreper should take into account certain indicators to assess the cooperation by specific third countries, such as:
 - **the** number of return decisions issued to persons illegally staying on the territory of the EU;
 - **the** number of effective returns of persons issued with return decisions as a percentage of the number of return decisions issued to citizens of the third country in question;

RESTREINT UE/EU RESTRICTED

- **the number of readmission applications accepted by the third country as a percentage of the number of such applications submitted to it;**
- **the** level of practical cooperation in the area of return (including the existence or prospect of conclusion of formal/informal agreements/arrangements on practical modalities for effective readmission);
- cooperation in the different stages of the return procedure, **such as:**
 - identification (by interviews or through other means, time required to respond to the request);
 - timely delivery of necessary travel documents; acceptance of the European travel document for the return of illegally staying third-country nationals;
 - timely issuing of visa to escorts where necessary;
 - acceptance of charter flights and joint return flights;
 - cooperation in the implementation of the return operation (timely acceptance of the flight plan, granting of the landing permission, non-refusal of returnees upon arrival).

5. **The Representatives of the Governments of the Member States and the Representatives of the Governments of the associated States meeting within the** Coreper may recommend the coordinated application by Member States of one or more measures (EU-visa policy toolbox), such as:

- Measures targeting the "elite" of the third country concerned²:
 - visa fees (Article 16(5)(b) of the Visa Code): Member States ~~should~~**may** refrain from waiving visa fees from holders of diplomatic and service passports³;

² Exceptions may be considered, for a limited period of time, if the holders of the passports concerned are travelling to the Schengen area in order to attend a meeting by an international organisation or an international conference or participating in a State visit.

³ ~~Exceptions may be considered, for a limited period of time, if the holders of the passports concerned are travelling to the Schengen area in order to attend a meeting by an international organisation or an international conference or participating in a State visit.~~

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- **supporting documents (Article 14(6) of the Visa Code): Member States may not waive one or more of the requirements needed for introducing a visa application;**
- (bilateral) visa waivers (Article 4(1) of Regulation 539/2001): Member States may take the decision not to waive the visa requirement for holders of diplomatic, service/ official and special passports⁴.
- General measures:
 - opening hours of consulates: **reduction of the** opening hours ~~would be reduced or~~ the closing of **visa sections of** consulates, **including external service providers,** for an agreed period of time could be considered;
 - supporting documents (Article 14(1) of the Visa Code): as foreseen in Article 14(5) of the Visa Code, increasing the number of supporting documents required when applying for a visa and require their translation/legalisation;
 - issuing of multiple entry visas (MEVs) (Art. 24(2) of the Visa Code): varying the validity period of MEVs (6 months up to 5 years) depending upon the effectiveness of the cooperation;
 - decision on the application (Art. 23(1) of the Visa Code): to be taken at the latest 15 calendar days of the lodging of the application; consulates could apply the 15 calendar days systematically.

⁴ ~~Exceptions may be considered, for a limited period of time, if the holders of the passports concerned are travelling to the Schengen area in order to attend a meeting by an international organisation or an international conference or participating in a State visit.~~

6. If **the Representatives of the Governments of the Member States and the Representatives of the Governments of the associated States meeting within the** Coreper recommend some of the above measures, their application should be further coordinated by local Schengen cooperation. The coordinated application of those measures, **in full compliance with the agreed approach,** should be regularly monitored by **the Representatives of the Governments of the Member States and the Representatives of the Governments of the associated States meeting within the** Coreper, **taking into account any new developments.**
7. If **the Representatives of the Governments of the Member States and the Representatives of the Governments of the associated States meeting within the** Coreper choose not to recommend any of the above measures to a specific third country, **they** may revert to the examination of the situation in that country at a later date as necessary.
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