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## NOTE

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From: Presidency

To: Visa Working Party/Mixed Committee (EU-Iceland/Norway and Switzerland/Liechtenstein)

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Subject: Towards a second-generation of Visa Facilitation Agreement ?  
– Overview and way forward

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### 1. Background and evolution

The perspective of concluding Visa Facilitation Agreements (VFAs) between the EU and third countries goes back to 2005, as part of a common approach linked to the European Neighbourhood Policy (ENP), targeting in particular the Balkans and the Eastern Partnership countries, with a view already to be able to conclude an EU readmission agreement (EURA) with them in exchange.

Member States have embraced this approach, and over the last 18 years (2007-2024) 15 VFAs (including 2 revised ones) have been concluded with 13 third countries (see table in annex). And for the first time in 2014, such a VFA benefited a third country that does not fall within the above-mentioned framework (Cabo Verde).

In exchange for this, the third country is therefore obliged to conclude a EURA.

This 'VFA - EURA' equation has served as a springboard for a number of these third countries to subsequently conclude a visa waiver, on the prior basis of satisfactory implementation of the two aforementioned agreements, and at the end of negotiations between the EU and the third country in question spanning several years (= visa liberalization dialogues).

So far, all these VFAs have remained in force, but those concluded with third countries that have benefited from a visa waiver in the meantime have become redundant, except in two cases:

- when a Member State has decided to maintain the visa requirement for third-country nationals intending to exercise a paid activity;
- for holders of non-biometric passports issued within the previous 10 years by a third country benefiting from a VFA (since holders on non-biometric passports are excluded from the visa waiver).

Up to now, only 5 out of 13 VFAs (Russia (suspended), Armenia, Azerbaijan, Cabo Verde and Belarus (partially suspended)) are still fully applicable.

And the scope of the facilitations granted through these VFAs has so far focused on the same provisions:

- a) a reduction in the visa fee by more or less half (or even a fee waiver) for some limited categories of citizens;
- b) a reduction of the number of supporting documents to be submitted (usually reduced to one document) related to the purpose of the journey for some categories of citizens;
- c) a reduction in the processing time for visa applications;
- d) a broader use of 'multiple-entry' visas of long validity for certain categories of citizens;
- e) the abolition of the visa requirement for holders of diplomatic passports

The implementing guidelines of these standard provisions have often slightly varied from one VFA to another with quite limited tailor-made approach - according to the profile of each third country concerned - during the negotiations.

On the other hand, the categories of citizens benefiting from provisions b) and d) listed above have continued to increase over time.

Finally, it should be remembered that although a recital of the Visa Code refers to these VFAs, it does not regulate their negotiation and conclusion. Hence, Visa facilitation agreements are concluded between the EU and the respective third country according to the general rules governing international agreements of the EU. They are therefore not part of the Schengen *acquis* and are not binding on the Schengen associated countries (and Denmark), even if these countries are called upon to conclude similar bilateral visa facilitation agreements with the third country concerned<sup>1</sup>.

## **2. Overview after 18 years of VFAs (2007 - 2024)**

**First assessment :** whereas the original Visa Code focused, among other things, on harmonising certain provisions (such as waiving visa fees for some categories of people or the intention to substantially reduce the divergent national practices of Member States in processing applications), the second Visa Code goes much further by adding new categories of applicants (either exempt from paying the visa fee, or who may be exempted from paying this fee, or who may benefit from a reduction of the fee (art. 16)), a default visa cascade on the validity of multiple-entry visas (art. 24(2)), and the possibility of adapting this default cascade to local circumstances to better harmonise the issuing of multiple-entry visas (art. 24(2b and 2d)).

While this new legislative framework is obviously to be welcomed from 2020, it indirectly contributes to weakening the attractiveness of the current VFA model for third countries, which will seek more facilitations other than the horizontal ones provided in the Visa Code for 4 years now and which all nationalities subject to visas are potentially entitled to benefit from.

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<sup>1</sup> In practice, this can lead to different visa fees and visa procedures being applicable, depending on the competent Member State, in the period between the conclusion of the EU-level facilitation agreement and the conclusion of bilateral agreement between the Schengen associated states (and Denmark) and the respective third country. This period can span several years.

Two examples to illustrate this concern:

- in the mid-2010s, the negotiation of VFAs with Morocco, Tunisia and Jordan failed because of the willingness of these third countries to benefit among others from wider-ranging facilitations (for tourists in particular) than those only envisaged within the proposed revision of the Visa Code which was taking place at the same moment. As the facilitation provisions within the Visa Code were still on the table, Member States were not ready to give a blank cheque to those third countries asking for these wider-ranging facilitations during the negotiation of VFAs (based on what these VFAs negotiations have been suspended);
- the decision to harmonize the locally adopted cascade (LAC) within the GCC countries, meaning the issuance of a multiple entry visa to all their citizens as from the very first visa application undermines as well the attractiveness of the present VFA which does not combine these two parameters up to now, unlike the Visa Code for 4 years now through the LAC.

**Second assessment :** the facilitations in many of the current VFA are quite similar to the 2020 version of the Visa Code : art. 16 (possibility for Member States to reduce the visa fee/reduction of the visa fee in the VFA); art. 24 (default cascade and locally adopted cascade facilitating the issuance of MEV with a longer validity period/extended use in the VFA of the issuance of MEV with a longer validity period in favor of certain categories of persons).

And even though the aforementioned articles of the Visa Code are unilateral, unlike the VFA - which is based on reciprocity and will benefit to the citizens of the third country concerned, irrespective of their place of residence -, the facilitation measures applied via these two instruments serve essentially the same purpose.

**Third assessment:** second-generation VFAs would contribute further to a reduction in consular fees that could revive a similar concern voiced by a number of Member States in the 2010s.

Not to mention that these consular fees have been reduced with the implementation of the default cascade and /or the locally adopted one, which implies an increase in the issuance of MEV for an ever longer validity period... but still for the same visa fee being charged (80 €), regardless of the length of validity of the visa (and significantly lower than the one applied by certain third countries).

An amount which will increase shortly to 90€ in order firstly to finance the staff reinforcement of the consular posts / the central authorities so that they can respect, again, certain requirements laid down in the Visa Code. A welcome increase, undoubtedly, but it will not stop the overall downward trend in consular fees mentioned above.

And if economies of scale (such as the end of visa sticker production) are expected in the future with the eVisa, there will be no reduction in expenditure on materials and staff involved in the substantive processing of visa applications.

**Fourth assessment:** the constant expansion of the categories of beneficiaries, as mentioned in point 1, lett. b) and d) above, has led to the silent inclusion of tourists in the revision of the Cabo Verde VFA in 2020 (see the cascade into the agreement under art. 4(2)).

### **3. Avenues for reflection in the perspective of a second-generation VFA**

As a preamble to these avenues for reflection, the following **general principles** could be adopted as a basis for concluding any future VFAs:

- the recognition of the EU Laissez-Passer by the third country (e.g. Cabo Verde);
- the systematic acceptance of the third country nationals (TCN) clause in future EURAs by the third country.

On the basis of the foregoing overview, the Presidency sets out below a number of ideas for (new) standard provisions likely to be inserted in all second-generation VFAs (some of them appear already in the revised VFA with Cabo Verde (2020)) and tailor-made ones. And in both cases, without concealing the concerns that these avenues could raise.

#### **Perspective of (new) standard provisions:**

- systematically promote the following calculation method of the handling fee: "The fee for processing visa applications shall be 75% of the amount to be charged in accordance with the applicable domestic legislation" (see Cabo Verde);
- authorise the suspension of the VFA in whole or in part for reasons of public order, national security, protection of public health (see Cabo Verde) and irregular migration;

- systematically limiting facilitations to holders of biometric passports;
- extending the validity of visas free of charge in exceptional circumstances to cover the period required for the person to return to his / her country of residence (see Cabo Verde);
- making the entry into force of the VFA conditional on the transmission by the third country of 2 personalised specimens of all its travel documents in circulation.

For all that, (new) standard provisions should not mean necessarily to enlarge them inconsiderately, in particular when these standard provisions could appear too generous to be part of the core ones, otherwise we take the risk to lose useful leverages during the negotiations.

In this respect, the question deserves to be asked whether the quite large provisions within the revised VFA with Cabo Verde would be of this one the more adequate model for a second generation of VFA.

**Perspective of more tailor-made provisions once the negotiation has been launched:**

Focusing more than previously on the profile of the third country during the negotiations would give us more leverage to modulate the content of the VFA for our benefit.

Doing so it would nevertheless require taking into account the additional workload and extra training of posted staff (since VFA provisions must be applied all around the world, irrespective of the place of residence) we could more than likely be confronted with.

Tailor-made provisions which could be taken into consideration during the negotiation:

- extend the scope of categories of beneficiaries to include tourists in a new VFA model / in the course of future VFAs negotiations as we did already with the upgraded Cabo Verde in 2020? This is a category of beneficiaries whose *bona fide* character has always been more difficult to establish (as far as the proof of the purpose of the travel or the will to return to the country of residence or of nationality). Taking this step could represent a higher risk in terms of migration and security, but consideration could be given to offering this benefit in a VFA to tourists from certain third countries only, presenting a (very) low security or migratory risk, keeping in mind that locally adopted cascades might become / be very generous in certain third countries / regions (as it is now for GCC nationals);

- the "VFA versus EURA" equation has logically always been based on migration and security concerns. However, consideration could also be given to using the VFA tool in a broader-context, taking into account extra facilitations which could be granted according to the level of alignment of the third country's international policy with that of the EU, for example in terms of sanctions taken against a third country;
- taking more systematically into consideration the opportunity to use the visa waiver for service passport holders as a leverage.

#### 4. Questions to delegations

*1) Do you think, in the light of the above reflection, that the VFA remains an effective and relevant instrument within the framework of the EU visa policy?*

*2) If so, do you share the view that VFAs would benefit from a new model taking into account the evolution of the Schengen acquis in visa matter since 2020 so that they keep sufficient attractiveness to act as an effective leverage with regard to readmission and to facilitate the conclusion of EURAs in exchange?*

*3) If so, what avenues for reflection suggested by the Presidency (or others) you think best respond to the perspective of revising the current VFA model? And which ones you think should be discarded?*

*4) Would you consider in this perspective the provisions of the revised Cabo Verde VFA in 2020 as an example to follow?*

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Third country	Enter into force of the VFA	Enter into force of the visa waiver
Russia	01.06.2007 (suspended)	
Albania *	18 09 2007	15.12.2010
Bosnia-Herzegovina *	01.01.2008	15.12.2010
North Macedonia	01.01.2008	19.12.2009
Moldova *	01.01.2008 Revised in 07/2013	28.04.2014
Montenegro *	01.01.2008	19.12.2009
Serbia **	01.01.2008	19.12.2009
Ukraine *	01.01.2008	11.07.2017
Georgia	01.03.2011	28.03.2017
Armenia	01.01.2014	
Azerbaijan	01 09 2014	
Cabo Verde	01.12.2014 Revised in 12/2020	
Belarus	01.07.2020 (partially suspended)	

\* VFA still in force for non-biometric passports

\*\* VFA still in force for non-biometric passports and those issued by the Serbian Coordination Directorate (in the process of being visa waived)