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NOTE

From:	French delegation
To:	Visa Working Party/Mixed Committee (EU-Iceland/Norway and Switzerland/Liechtenstein)
Subject:	Upholding and improving Article 25a - Non-paper

Since its creation by Regulation No. 2019/1155 of June 20th, 2019, Article 25a of the EU Visa Code has been an important step forward in the tools available to the EU to address non-cooperation by third countries in the area of consular cooperation and readmission of irregular migrants. Over time, third countries have proved to be quite sensitive to visa measures taken by Member States as a response to limited cooperation on readmission, and taking such measures at EU level should maximize their effect in order to re-build a constructive relationship.

Over the last year, some clear progress has been made thanks to Article 25a in terms of re-engaging third countries. However, our collective expectations have not been fully met. The fact that Article 25a has only been used against Gambia and Ethiopia so far, has limited its credibility and impact. Additionally, the measures provided for in Article 25a, which include a moderate increase in the costs of visas, an increase in processing times, as well as a potential suspension of facilitation agreements, may not be strong enough to convince third countries to go beyond reengagement and take actual steps to meet their international obligations and address irregular migration.

Hence we would like to propose some adjustments to Article 25a with the following lines of action:

- First, the process to activate Article 25a should be streamlined and, whenever possible, accelerated to make it more credible and effective. This could be done both within the current legal framework and through a revision. It is crucial to put in place tailored dialogues with the third countries in question. Hence, the mechanism's credibility could benefit from clearer procedures for both imposing and lifting restrictions, including definitions, objective criteria and more systematic follow-up. This will also increase clarity for third countries on the procedure and their obligations.
- Second, additional measures could be put in place for a more gradual approach. Such additional measures could include, amongst others, higher visa fees, the risk of suspension of visa exemption and facilitation agreements/arrangements for a certain category of persons concluded at EU level, and the possibility to refuse the issuance of visas regarding holders of ordinary passports. Indeed the different measures provided for in Article 25a (5) should be stronger so that non-cooperative third countries or third-countries already confronted with initial measures under Article 25a(5), point (a) understand that they need to address the concerns expressed by the EU.

This framework applies to the measures decided at EU level, without prejudice to the competence of each Member States to adopt national measures needed by their foreign policy in accordance with their own responsibilities and the principle of subsidiarity. Such measures shall be presented to other Member States as part of the local Schengen cooperation.

- Third, the strength and leverage of the mechanism are maximized when we act jointly at EU level. An efficient and coordinated approach should benefit from a coordination mechanism at European to ensure consistency.

- Fourth, it is important to stress that insufficient cooperation in the area of readmission does impact the assessment of migration risk made by consulates in the targeted countries since the readmission of irregular migrants is much more difficult to achieve when there is a lack of cooperation from the receiving country. **Such third countries should therefore know that insufficient cooperation on readmission would result in stricter procedures for visa applications, including as a justification for the refusal of visas, and it should be explored how to practically integrate this assessment into the risk analysis conducted by consulates.** Commission's assessments must be taken more seriously by our partners and used as a basis for measures.

By implementing these adjustments, the EU would be better able to address non-cooperation by third countries in the areas of consular cooperation and readmission of irregular migrants, and effectively utilize Article 25a as a tool to achieve its goals. We should collectively aim at a more regular activation of the mechanism of notification to the Commission by Member States, in order to deal in a targeted manner with third countries. And the activation of the measures included in Article 25a(5), point (a) should be more frequent as part of a more credible and incremental approach.

New recital on the implementation of the mechanism

Increasing the efficiency of return policy at EU level is an essential part of the EU migration policy. The visa-readmission mechanism should be an integral part of this effort. To this aim, it should be used in a streamlined way and its activation should not be considered as exceptional, whenever diplomatic outreach has not led to the desired increase of readmission cooperation of a given third country. Similarly, the Commission and the Council should strive to conduct the various steps of the mechanism in the shortest timeframe possible. The measures decided at EU level are without prejudice to the competence of each Member States to adopt national measures needed by their foreign policy in accordance with their own responsibilities and the principle of subsidiarity.

Proposed amendments to Article 25a

Cooperation on readmission

1. Depending on the level of cooperation of a third country with Member States on the readmission of irregular migrants, assessed on the basis of relevant and objective data, Article 14(6), Article 16(1), point (b) of Article 16(5), Article 23(1), and Article 24(2) and (2c) shall not apply to applicants or categories of applicants who are nationals of a third country that is considered not to be cooperating sufficiently, in accordance with this Article.

Lack of cooperation on readmission shall also be taken into account in the assessment of the risk of illegal immigration or the risk to the security of the Member States referred to in article 21 (1) for the needs of the implementation of measures taken in accordance with the decisions referred to in paragraph 5 and / or on a national basis.

2. The Commission shall regularly assess, at least once a year, third countries' cooperation with regard to readmission, taking account, in particular, of the following indicators:
 - (a) the number of return decisions issued to persons from the third country in question, illegally staying on the territory of the Member States;

- (b) the number of actual forced returns of persons issued with return decisions as a percentage of the number of return decisions issued to nationals of the third country in question including, where appropriate, on the basis of Union or bilateral readmission agreements, the number of third country nationals who have transited through the territory of the third country in question;
- (c) the number of readmission requests per Member State accepted by the third country as a percentage of the number of such requests submitted to it;
- (d) the level of practical cooperation with regard to return in the different stages of the return procedure, such as:
 - (i) assistance provided in the identification of persons illegally staying on the territory of the Member States and in the timely issuance of travel documents;
 - (ii) acceptance of the European travel document for the return of illegally staying third-country nationals or laissez-passer;
 - (iii) acceptance of the readmission of persons who are to be legally returned to their country;
 - (iv) acceptance of return flights and operations.

Such an assessment shall be based on the use of reliable data provided by Member States, as well as by Union institutions, bodies, offices and agencies. The Commission shall regularly, at least once a year, report its assessment to the Council.

3. A Member State, **or a simple majority of Member States**, may also notify the Commission if **they are** confronted with substantial and persisting practical problems in the cooperation with a third country in the readmission of irregular migrants on the basis of the same indicators as those listed in paragraph 2. **One or several Member States, representing a significant share of the return decisions issued against nationals of a third country or a significant share of readmission requests made to the authorities of this same third country, may also notify the Commission under this paragraph.** The Commission **shall immediately inform** the European Parliament and the Council of **this** notification.

The notification shall state the reasons on which it is based and shall include relevant data and statistics as well as a detailed explanation of the preliminary measures that the Member State concerned has taken, or a simple majority of Member States, or one or several Members States, representing a significant share of return decisions issued against nationals of this third country or readmission requests, have taken with a view to remedying the situation.

Where it occurs that the third country has suspended its cooperation, the Commission shall submit without delay a proposal to the Council to adopt an implementing decision including measures defined in points (a), (b) and (c).

[...]

5. Where, **with a primary focus** on the analysis referred to in paragraphs 2 and 4, and taking into account the steps taken by the Commission to improve the level of cooperation of the third country concerned in the field of readmission **as well as** the Union's overall relations with that third country, including in the field of migration, the Commission considers that a country is not cooperating sufficiently and that action is therefore needed, or where, within 12 months, **a simple majority of Member States or one or several Member States, representing a significant share of the return decisions issued against nationals of this third country or readmission requests**, have notified the Commission in accordance with paragraph 3, the Commission, while continuing its efforts to improve the cooperation with the third country concerned, shall submit **without delay** a proposal to the Council to adopt:
 - (a) an implementing decision temporarily suspending the application of any one or more of Article 14(6), point (b) of Article 16(5), Article 23(1), or Article 24(2) and (2c), as well as applying, on a gradual basis, one of the visa fees set out in Article 16(2a) to all nationals of the third country concerned or to certain categories thereof.

- (b) where, following an assessment by the Commission, the measures applied in accordance with the implementing decision referred to in point (a) of this paragraph are considered ineffective, an implementing decision applying the visa fees set out in Article 16(2b) to all nationals of the third country concerned or to certain categories thereof. **In parallel, visa exemption and facilitation arrangements or agreements, concluded at EU level regarding holders of diplomatic, service/official or special passports, shall be suspended.**
- (c) **where, following an assessment by the Commission, the measures applied in accordance with the implementing decisions referred to in points (a) and (b) of this paragraph are considered ineffective, an implementing decision may also provide, where appropriate, the possibility for Member States to refuse a visa to holders of ordinary passports issued by the third country concerned, in accordance with Article 32, without prejudice to the cases where a Member State is bound by an obligation of international law.**
6. The Commission shall continuously assess and report on the basis of the indicators set out in paragraph 2 whether substantial and sustained improvement in the cooperation with the third country concerned on readmission of irregular migrants can be established and, taking also account of the Union's overall relations with that third country, may submit a proposal to the Council to repeal, amend **or temporarily suspend** the implementing decisions referred to in paragraph 5.
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