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**NOTE**

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From: Commission services

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

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Subject: EU visa policy strategy - discussion paper on visa restrictive measures

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**1/ The issue at stake**

As outlined in ProtectEU, the European Union's internal security strategy, the Union has been confronted in recent years with security threats from hostile third countries, such as hybrid attacks, weaponisation of migration, acts of sabotage, espionage and disinformation. ProtectEU foresees various measures to respond to this new threat landscape.

Nevertheless, recent developments have demonstrated the need to equip the EU with visa restrictive measures for preparedness and response to unforeseen events. These visa restrictive measures, conceived as an agile new legal instrument in the Visa Code, would allow the EU to respond to challenges emerging in the new geopolitical context. Beyond preparedness, the existence of such measures would have a deterrent effect, and would allow the Union to react and defend its interests. The triggering of such last-resort measures would never be automatic, and Member States would always retain an important say in the triggering of the process.

Against this background, the Commission announced in the EU Visa Strategy a possible revision of the Visa Code, including the introduction of a new category of targeted restrictive visa measures within the EU's visa policy framework. This type of measures would equip the Commission with the ability to adopt, in consultation with Member States, binding measures that are in the interest of the EU and that would allow for the suspension, rejection or restriction of visa applications submitted by nationals of specific third countries. This proposal would constitute an important element for the EU visa policy to fully develop its potential as a strategic tool, enabling rapid and proportionate responses to security threats while upholding the rule of law and humanitarian principles.

Restrictive visa measures could target specific categories of travelers, such as holders of diplomatic, service or official passports; identified former and current combatants of aggressor States, State-affiliated elites (e.g. oligarchs) or applicants whose purpose of travel is non-essential.

In this context, careful consideration should be given to the overall EU interests, the relations of the EU with the country in question, and the EU Common Foreign and Security Policy objectives. To uphold transparency, proportionality and legal certainty, the activation of such measures should follow a clear procedure, including prior consultation of Member States and a predetermined review period.

Safeguards should be built in to provide sufficient flexibility to issue visas for human rights defenders, dissidents, independent journalists, members of civil society organisations, and to cater for other humanitarian or exceptional cases.

## **2/ Legal basis**

The proposal would require an amendment to Regulation (EC) No 810/2009 (Visa Code).

In the Visa Code, applications are declared admissible or not. Once declared admissible, they are examined and a decision is taken to issue or refuse the visa. Therefore, restrictive measures could translate into the refusal of applications lodged by nationals of certain third countries.

Applications by targeted categories of third-country nationals would still be accepted (declared admissible) but visas would be refused, for example on the grounds that the applicant constitutes a threat to the international relations of the Member States, based on Art 32.1(a)vi Visa Code:

*“vi: is considered to be a threat to public policy, internal security or public health as defined in Article 2(19) of the Schengen Borders Code or to the international relations of any of the Member States, in particular where an alert has been issued in Member States’ national databases for the purpose of refusing entry on the same grounds; “*

Importantly, since refused visa applications are stored in the Visa Information System (VIS) (together with the biometric data of the applicant), this would ensure traceability of rejected applicants. As a result, this option has the advantage of ensuring that other Member States have the appropriate information at their disposal, and of allowing for traceability of the effective implementation of the measures by Member States. With the full roll-out of interoperability, the storage of biometrics in the VIS should allow the detection of persons trying to travel to the EU with different travel documents.

Another option would be to declare inadmissible all applications by the targeted categories of third-country nationals. However, since inadmissible applications are not stored in the VIS and biometrics are not retained, this option would not ensure the necessary visibility and would weaken the implementation of the measure.

### **3/ Scope and targeted categories**

Categories of applicants targeted by these restrictive visa measures would not be inserted in the SIS as these restrictive visa measures do not apply to specific individuals, as is the case instead under Common Foreign and Security Policy (CFSP) sanctions, but to a wider category of applicants (e.g. holders of diplomatic passports, applicants travelling for non-essential reasons).

The amendment to the Visa Code could consist of a full new Article, setting out the possibility of adopting restrictions for different categories of third-country nationals:

- **Diplomatic/service passport holders** linked to hostile State.
- **Current/former combatants** with a direct involvement in aggression or war crimes (e.g., Russian active and ex-combatants).

In the above two cases, particular attention should be given to the identification of third-country nationals pertaining to such groups, which is why an individual assessment should always be carried out. If the person can be identified to pertain to such a group, the visa should be refused on the grounds of Article Art 32.1(a)vi of the Visa Code. All information available should be used by Member States to identify these individuals, and exchanges on this and coordination should be ensured by the local Schengen cooperation (LSC) concerned.

- **Applicants travelling for non-essential reasons.**

All applicants travelling from a given third country for a non-essential purpose, e.g. tourism, visiting family or friends would be refused a visa.

**Exemptions** will be defined in the legal act triggering the measures but would always include humanitarian grounds to give Member States the necessary leeway to issue a visa in individual exceptional cases. Among others, these would apply to:

- Human rights defenders, journalists and civil society actors (aligned with EU Guidelines on Human Rights Defenders).
- Medical or humanitarian cases (e.g. family visits for vulnerable groups).
- Students, researchers, or cultural exchanges (if not linked to hostile regimes).

#### **4/ Procedural Framework**

To ensure legal certainty and political accountability, the following aspects must be considered:

##### ***1. Triggering of the measure and assessment***

- The Commission would initiate the process by putting forward a proposal of the measure based on e.g. intelligence reports, CFSP/Council Conclusions, threats assessments, etc.
- The triggering could also be made based on requests by Member States, for example by simple majority.

##### ***2. Adoption procedure / act to be adopted***

In order to be effective, such measures will need to be adopted quickly. Therefore, an appropriate mechanism would be a Commission implementing act (modelled on the Visa Suspension Mechanism).

This act would be proposed by the Commission, following a comitology procedure where Member States should give a positive opinion so that the Commission can adopt the implementing act.

Such a procedure would ensure a swift response to crisis situations where the urgency to act is demonstrated while ensuring the political support of Member States via the comitology procedure.

##### ***3. Review and sunset clause***

- Regular review and monitoring
- Automatic expiration unless renewed (e.g. 1 year, preventing indefinite restrictions).
- Right of appeal for affected applicants (via national courts)

### Questions to Member States:

- Do you agree with the possible groups that could be targeted by restricted visa measures?
- In your view, how could such a measure be triggered?
- What would be, in your view, the best way to implement the measure (procedure/act to be adopted?)
- How should the measures be implemented in practice and what should be the role of the Local Schengen Coordination?
- How long should the initial measure last?
- Should a procedure to review/prolong/terminate the measure be provided for in the Visa Code?