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From: Presidency  
To: Delegations

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Subject: Presidency discussion paper on streamlining the process under Visa Code Article 25a

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**DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (28.02.2023)**

Delegations will find below the above-mentioned Presidency discussion paper for the forthcoming Integration, Migration and Expulsion (IMEX Expulsion) working party meeting on 27 October 2022.

**PRESIDENCY DISCUSSION PAPER ON STREAMLINING THE PROCESS UNDER VISA  
CODE ARTICLE 25A**

The EU return policy faces many challenges, as a result of which the overall number of returns is well below the desirable level. This fact erodes the legitimacy of the whole EU asylum and migration system and may serve as a further incentive for irregular migration towards the Union.

Many of the challenges concern internal dimension. The first State of Schengen Report 2022 drew attention to divergent practices in the issuance of return decisions and entry bans to third-country nationals with no legal right to stay. Moreover, data collection remains a challenge. The revision of internal rules proposed by the Commission in the recast Return Directive has been stalling since 2019, as the LIBE Committee has not been able to agree on the report related to this file.

In the external dimension, the cooperation with third countries on return and readmission has been identified by the Council as a key aspect for improving returns, including in several European Council conclusions, with the latest of 16 December 2021. In these conclusions the Council is calling for better implementation of existing readmission agreements, conclusion of new arrangements and creating and applying the necessary leverage by using all relevant EU policies, instruments and tools, including development, trade and visa. Since then, the Council, at various levels, has repeatedly stressed that a coherent approach towards third countries including using all available tools is crucial to encourage their cooperation on returns.

In February 2020, the revised Visa Code introduced a possibility to use visa leverage towards third countries with which the cooperation on readmission is insufficient. Article 25a (“Cooperation on readmission”) defines restrictive measures on short-stay visas the Commission may propose to the Council to temporarily impose on the non-cooperating third countries, such as an extension of the processing period<sup>1</sup>, the suspension of possible waivers for required documents<sup>2</sup>, an increase in the visa fee<sup>3</sup> and the suspension of the mandatory issuance of multiple entry visas with a long validity<sup>4</sup>, while taking into account the EU’s overall relations with the third country concerned and monitoring the steps taken by the Commission to improve the level of cooperation. The same instrument also foresees a possibility to apply positive visa measures for third countries with which the cooperation on readmission is considered satisfactory.

Since the adoption of this new instrument, different Council bodies have been involved in the discussions regarding possible restrictive visa measures for countries which have not been sufficiently cooperating on readmission, including the Justice and Home Affairs Council, Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), Working Party on External Aspects of Asylum and Migration (EMWP), IMEX Expulsion Working Party and Visa Working Party.

### **Previous rounds of application of Article 25a**

Article 25a defines the individual steps of the exercise. It foresees that “the Commission shall regularly assess, at least once a year, third countries’ cooperation with regard to readmission.” It also establishes that where the Commission considers that a country is not cooperating sufficiently on readmission, it shall propose to the Council to adopt a Council implementing decision imposing visa measures towards that country. As stated above, before proceeding to this stage, the overall relations with a specified third country and the steps taken by the Commission to improve the level of cooperation need to be taken into account.

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<sup>1</sup> Temporary suspension of Article 23 (1).

<sup>2</sup> Temporary suspension of Article 14 (6).

<sup>3</sup> Temporary suspension of Article 16 (1) and (5).

<sup>4</sup> Suspension of Article 24 (2) and (24 (c)).

So far, the exercise has been launched three times:

- **The first exercise** took place in 2021. The report summarizing cooperation on returns with 39 visa-bound third countries throughout 2019 was issued in February. The findings of the report, the overall relations with certain countries and the possibility to take visa measures were then discussed at the IMEX Expulsion Working Party meeting, Justice and Home Affairs Council, bilateral meetings that the Presidency held with all interested Member States and Schengen Associated States, SCIFA, JHA counsellors meetings, and EMWP. COREPER and Visa Working Party were informed about the results of all these discussions. In July, the Commission proposed to impose visa restrictive measures on three countries: Bangladesh, the Gambia and Iraq. In October, following the Commission's proposal, the Council adopted visa measures against the Gambia. **DELETED**
  
- **The second exercise** was also launched in 2021, with the report covering cooperation with 32 visa-bound third countries in 2020, being adopted in December 2021. The follow-up discussion was held at the IMEX Expulsion Working Party and JHA counsellors meetings in January 2022, where the delegates identified 10 priority countries. The overall relations with these and additional third countries identified by the Commission for further engagement were examined at the EMWP meeting in April. A comprehensive outreach toward the identified countries followed, and the proposals for possible measures should be tabled soon.

- **The third exercise** was initiated in March 2022 when the Commission requested the Member States to provide qualitative and quantitative data concerning third countries' cooperation on readmission in 2021. The deadline for providing this data to Frontex was originally set for the end of April. Nonetheless, the data collection was prolonged until May upon the request of the Member States. The third annual report, assessing the level of cooperation on returns in 2021 with 34 countries, should be issued by the end of 2022.

During the discussions concerning the second visa leverage exercise, in April 2021, the exercise under Article 25a was also discussed at SCIFA, where the majority of Member States called for speeding up the process by setting up a tighter timeline. This proposal was again raised by the Czech Presidency at SCIFA on 4 October 2022. It is apparent that the current gap between the year of the data analysed and the year of evaluation results from the interplay of various factors, including a lengthy data collection process. In order to avoid compromising the overall process and undermining the credibility of the visa leverage mechanism, as well as to bring more predictability, the Presidency believes it is desirable to set indicative deadlines for the individual steps to be followed.

## Timeline proposal for the future Visa Code Article 25a process

In response to the approach agreed upon at the SCIFA meeting on 4 October 2022, the Presidency proposes to streamline the process under Visa Code Article 25a, i. e. **the fourth exercise beginning in January 2023**, as follows:

<b>Visa Code Article 25a process – TIMELINE</b>		
<b>Deadline (by the end of)</b>	<b>Actor</b>	<b>Action</b>
February	Member States	provide return-related data to Frontex
April	Frontex	provides the analysed data to the Commission
May	Commission	issues the annual report
June	IMEX Expulsion Working Party	discusses the findings of the report, identifies priority third countries
July	EMWP	assesses overall relations with the identified third countries
	Commission, EEAS	strengthen outreach towards the identified third countries <sup>5</sup>
September	Commission	issues proposals for the Council Implementing Decisions
October	Visa Working Party	examines the Commission proposals
	Council	adopts the Commission proposals

<sup>5</sup> The Commission's outreach towards the long-term priority third countries, i. e. most assessed third countries, is taking place continuously. For the third countries where no prior engagement on readmission has taken place, this phase would be more pronounced. The Council would be regularly informed about the next steps through the relevant Working Parties, i. e. at EMWP and IMEX Expulsion Working Party meetings.

At the forthcoming Integration, Migration and Expulsion (IMEX Expulsion) Working Party meeting on 27 October 2022, delegations are invited to share their views on the following three questions:

1. *Do you agree with the proposed timeline of the Visa Code Article 25a process?*
2. *Would the Member States be able to provide the necessary input for the quantitative and qualitative data collection by the end of February?*
3. *What additional measures could be introduced to make the process more effective, predictable, transparent and up-to-date?*

Additionally, the Commission is invited to share their view on the following question:

- *Would you be able to increase the efficiency of your internal decision-making processes in order to deliver the annual report by the end of May?*