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NOTE

From:	Presidency
To:	Visa Working Party
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Subject:	Connection between the facilitations set out in the Visa Code and readmission

At its meeting on 8 October 2015, the Council adopted the 'suggestions made by the Luxembourg Presidency for the continuation of the work on the Visa Package' and the 'conclusions on the future of the return policy'. Both decisions emphasize the importance of the link between the Visa Code and cooperation on readmission.

Return of irregular migrants who do not have a right to stay in the EU, is an essential part of the EU's comprehensive efforts to manage migration and in particular to reduce irregular migration. In June 2015, the Council concluded that all tools shall be mobilized to promote readmission of irregular migrants to countries of origin and transit. Member States' experience illustrates that a fine balance of pressure and incentives is needed to enhance cooperation on readmission. Visa policy is an important leverage in relations with third countries when it comes to readmission. Partly because there is a natural link between the conditions under which nationals from a third country can enter the EU, and the level of cooperation of a certain third country regarding return and readmission. However, visa policy can only serve as an efficient leverage if the "benefits" for the third country concerned are of concrete added value.

The procedural facilitations in the Visa Code, as proposed by the Commission in its original proposal, might affect the scope for making separate agreements with third countries: Countries might no longer be interested in a separate agreement on readmission if the benefits of visa facilitation have already been included in the Visa Code. Therefore, it might be necessary to include conditions of readmission in the Visa Code itself in order to reach the same (or more) effect.

Given the above, the Presidency sees a need for a discussion on the possibilities to connect the Visa Code and readmission.

Points of departure

1. The decision of the Council to "follow a coherent comprehensive policy approach taking fully into account ongoing efforts on readmission, security and borders whilst continuing work towards a positive impact of the visa policy on the wider European Union economy and, in particular, on tourism";
2. The COREPER conclusion to respect the recast approach¹ and as a consequence amend the grey parts of the text only²;
3. The consolidated version of the text of the recast, as discussed in the Visa Working Party on 7 and 8 December 2015³.

Options to discuss

With regards to the connection between the Visa Code and readmission the Presidency would like to discuss three possible options:

1. **Introduction of a recital which states that visa facilitation with third countries - beyond the rules provided for in the Visa Code - is reserved only for nationals of third countries that have concluded a readmission agreement.**

¹ See 12486/15.

² Amongst others in the light of expected proposals of the Parliament such as the introduction of humanitarian visa in the white parts.

³ See 15130/15.

This option would affirm the current practice that an agreement on visa facilitation should always be accompanied by a readmission agreement. Linking visa facilitation and readmission via separate agreements leaves room for manoeuvre. Amongst others because (unlike the following options), there is no need to establish a harmonized list of cooperative countries. For this option to be effective, facilitations in the Visa Code should be limited to a minimum in order to have something to offer while negotiating on readmission. This option therefore leaves little room for manoeuvre during negotiations with the European Parliament.

2. Addition of a condition to Articles 13(2), 18(2), 21(3), 21(4)¹. and/or Article 14(3)(d)² in order to make these facilitations possible, only for nationals of third countries that cooperate on return and readmission.

- a. A list of third countries whose nationals are eligible to the facilitations of these Articles shall be established by the Commission by means of an implementing act, adopted in accordance with the examination procedure referred to in Article 51(2)³, or;**

¹ Articles concerning *VIS registered regular travelers*: supporting documents (Article 13(2), verification of entry conditions and risk assessment (Article 18(2)) and issuing of multiple entry visa (Article 21(3) and 21(4).

² Exemption of the fees for holders of diplomatic and service passports.

³ When setting up a list, the Commission could take into account the following criteria:

- a. Existence of EU Readmission Agreements and practical experiences of Member States in the implementation of these agreements;
- b. Existence of bilateral readmission agreements and practical experiences of Member States in the implementation of these agreements;
- c. Practical experiences of Member States in their cooperation with third country authorities in view of
 - Timely identification of persons subject of a return decision;
 - Timely delivery of the necessary travel documents;
 - Timely fulfilment of other administrative requirements;
 - Organising and agreeing swiftly on practical modalities for effective return and readmission

For carrying out return and removal of illegally staying third-country nationals from the EU to the concerned third country in accordance with Directive 2008/115/EC.

- b. The assessment of the cooperation on return and readmission of a third country is left to the individual Member State/Consulate.**

The Articles mentioned have been chosen because they are part of the grey text and specifically aimed at persons (diplomats, government employees, business travelers) who will be able to influence the government most when it comes to cooperation on return and readmission. This option could be implemented in various ways. Two options are given in sub a and b. Option 2a might be more difficult to implement, because of the need to establish a harmonized list. Option 2b would be easily applicable but at the same time would lead to a non-harmonised approach and possible visa shopping.

3. The (revised) visa fee will become dependent on cooperation on return and readmission.

With reference to Article 14(2) of the Visa Code (white text), Member States called upon the Commission to revise the current visa fee at short notice in order to reflect the administrative costs. A third option could therefore be to make the visa fee dependent on cooperation of third countries on return and readmission. For this option, a list of cooperative third countries will have to be established. The implementation of this option should be discussed separately from the negotiations on the Visa Code. This option disregards the link to other facilitations like the exemption of supporting documents.

Questions

1. Would one or several of the suggested options be appropriate to apply in the on-going negotiations? If so, which option(s) do you prefer?
 2. What do you consider to be the advantages and disadvantages of these options?
 3. Are there additional options that you would like to consider?
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