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From: General Secretariat of the Council

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

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No. prev. doc.: 16126/23, CM 5784/23

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Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1806 as regards the revision of the suspension mechanism

– comments from delegations

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Following the meeting of the JHA Counsellors (visa) on 7 December 2023 and the subsequent request for written contribution on the above-mentioned proposal (CM 5784/23), delegations will find attached the written comments submitted by delegations.

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## AUSTRIA

### Article 8a (1)(d)

- (d) a significant risk or imminent threat to the public policy or internal security of Member States related to a third country listed in Annex II, **in particular** deriving from any of the following:
- (i) a substantial increase in serious criminal offences, linked to the nationals of that third country, substantiated by objective, concrete and relevant information and data provided by the competent authorities;
  - (ii) hybrid threats;
  - (iii) ***deficiencis in the document security, naturalisation and/or name changing procedures and/or legislation***;<sup>1</sup>

### Article 8a (2)

2. For the purposes of paragraph 1, points (a), (b) and (d)(i), of this Article a substantial increase ~~shall mean~~ an increase exceeding a threshold of 50%, unless the Commission in accordance with Article 8b(4) or Article 8c(2) concludes that a lower or, ***in exceptional cases***<sup>2</sup>, higher increase is applicable in the particular case, **by providing duly justified reasons for this decision**.

### Article 8e(1)

The Commission shall adopt the implementing act referred to in the first subparagraph within one month of:

- (a) receiving the notification referred to in Article 8b(1) **or (1a)**<sup>3</sup>;

### Article 8e(2)

- ~~2. On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 11(4), temporarily suspending the exemption from the visa requirement for the nationals of the third country concerned for a period of 12 months<sup>4</sup>.~~

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<sup>1</sup> Comment: AT suggests adding shortcomings in the area of document security, naturalisation or where name change laws might facilitate identity concealment.

<sup>2</sup> Comment: The possibility for the Commission to consider higher thresholds when deciding whether to suspend a visa exemption in cases of a substantial increase in irregular migration, unfounded asylum applications or serious criminal offences linked to the nationals of that third country, should be limited to exceptional cases.

<sup>3</sup> Comment: Reference to Art. 8b(1a) is missing!

<sup>4</sup> Comment: AT would prefer the urgency procedure as suggested by the EC which would allow immediately applicable implementing acts, when imperative grounds of urgency exist (the control mechanism of Regulation (EU) No 182/2011 is seen as appropriate.).

## Article 8f(1)

1. Where the grounds referred to in Article 8a persist, the Commission shall adopt, at the latest two months before the expiry of the 12-month period referred to in Article 8e(1) **and (4)**, a delegated act in accordance with Article 10, amending Annex II to temporarily suspend the application of that Annex for a period of 24 months for all nationals of the third country concerned. That amendment shall be made by inserting a footnote next to the name of the third country in question, indicating that the exemption from the visa requirement is suspended with regard to that third country and specifying the period of that suspension. The delegated act shall take effect from the date of expiry of the implementing act referred to in Article 8e(1) **and (4)**<sup>5</sup>.

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<sup>5</sup> Comment: If kept, reference to Art. 8e para 4 should be added.

## CZECHIA

Our main concern remains particularly with the issue of thresholds, especially their value and their explicit mention in the operative part of the proposal. We believe that including threshold values directly in the operational part of the text could potentially make the initiation of the mechanism even more complex and rigid than it is now. In our view, such a proposal would directly contradict the purpose of the revision, which is to respond with more efficiency and flexibility to possible undesirable phenomena related to visa-exempt third countries.

We also request the Presidency to reconsider adding "deterioration in the Union's external relations with a third country listed in Annex II" as another ground for suspension, as we consider it essential for the EU to be able to respond to any violations of criteria that the EU listed in Article 1 as relevant criteria for visa-free travel, even in the case of other countries listed in Annex II, not just those that have been liberalized based on the visa dialogue.

Please take into account that CZ is flexible in the case of urgent procedure, although CZ tends to prefer a method that would better reflect the leading role of the Council in such an urgent procedure.

We would also like to express our flexible approach to the possible inclusion of the FR proposal regarding paragraph 1 of Article 8e.

### Recitals

- (8) ***For the purposes of the suspension mechanism, a substantial increase indicates an increase exceeding a threshold of 30 % while a low recognition rate refers to a recognition rate of asylum applications of around 20 %.*** These thresholds to trigger the suspension mechanism in case of a substantial increase in the number of nationals of a third country refused entry or found to be staying in the Member State's territory without a right to do so, or in the number of asylum applications from the nationals of that third country for which the recognition rate is low, or in the number of serious criminal offences linked to the nationals of that third country, ***are indicative and*** should be subject to a case-by-case assessment by the Commission. In particular, the Commission should be able to assess whether ~~there are~~ specific circumstances, in the cases notified by Member States or under its own analysis, ~~which~~ would justify the application of lower or higher thresholds than those indicated ~~in relevant provisions of Regulation (EU) 2018/1806~~**above**. The Commission's assessment should take into account, for example, the number of unauthorised crossings of the external borders of the Member States, unfounded asylum applications or criminal offences in proportion to the number and size of Member States affected and the impact of those numbers on the overall migratory situation, functioning of the asylum systems or internal security of the Member States affected, as well as actions taken by the third country concerned to remedy the situation.

## **Article 8a**

*(h) a significant and abrupt deterioration in the Union's external relations with a third country listed in Annex II, considering, in particular, human rights and fundamental freedoms, as well as the implications for regional coherence and reciprocity.*

~~2. For the purposes of paragraph 1, points (a), (b) and (d)(i), of this Article a substantial increase shall mean an increase exceeding a threshold of 50%, unless the Commission in accordance with Article 8b(4) or Article 8e(2) concludes that a lower or higher increase is applicable in the particular case, **by providing duly justified reasons for this decision.**~~

~~3. For the purposes of paragraph 1, point (b), of this Article a low recognition rate shall mean a recognition rate of asylum applications of less than 4%, unless the Commission in accordance with Article 8b(4) or Article 8e(2) concludes that a higher recognition rate is applicable in the particular case, **by providing duly justified reasons for this decision.**~~

## **Article 8c(1)**

1. The Commission shall monitor the existence of the grounds for suspension referred to in Article 8a(1) on a regular basis.

With particular regard to the third countries which have been listed in Annex II as a result of the successful conclusion of a visa liberalisation dialogue conducted between the Union and that third country, the Commission shall *also* monitor the continuous compliance with the specific requirements, which are based on Article 1 and which were used to assess the appropriateness of granting visa liberalisation.

## FRANCE

### **Considérant 4 en lien avec l'article 8(2) :**

Les autorités françaises remercient la Commission pour son explication permettant de préciser que l'ajout au considérant 4 ainsi qu'à l'article 8(2) visent à permettre une application cumulative des motifs de suspension et soutiennent sa proposition de remplacer « *without prejudice to* » par « **in addition to** ».

### **Considérant 4a en lien avec l'article 8a(1):**

Les autorités françaises soutiennent l'ajout du nouveau considérant 4a mais souhaiteraient également que soit ajouté un nouveau motif à part entière lié à la sécurité documentaire dans la partie opérative du texte.

### **Considérant 5 en lien avec l'article 8a(1), point d), ii) :**

Sous réserve des évolutions sur le CFS et le règlement « situation de crise », les autorités françaises souhaiteraient que soit supprimée la référence aux menaces hybrides, pour ne laisser que la mention de « l'instrumentalisation des migrations » à l'article 8a(1), point d), ii).

### **Considérant 10 :**

Les autorités françaises sont favorables à l'ajout proposé par la Présidence au considérant 10 quant aux informations issues, entre autres, des systèmes d'information européens et des agences de l'UE.

### **Considérant 12 en lien avec l'article 8e(4) et (5) :**

Les autorités françaises soutiennent les propositions de la Présidence au considérant 12 ainsi qu'à l'article 8e(4) et (5) car, aux yeux des autorités françaises et sous réserve d'une confirmation de la Présidence, cette rédaction doit être comprise comme permettant d'éviter que seule la Commission puisse évaluer le degré d'urgence et, ainsi, décider seule de l'actionnement du mécanisme.

### **Considérant 13 :**

En cohérence avec notre avis favorable aux modifications au considérant 12 et à l'article 8e(4) et (5), les autorités françaises soutiennent l'ajout au considérant 13 d'une référence à la proposition par la Commission d'une décision d'exécution du Conseil visant à lever la suspension temporaire introduite selon la procédure d'urgence.

### **Autre considérant :**

Les autorités françaises réitèrent leur souhait de prévoir dans un considérant la prise en compte de critères qualitatifs, comme le contexte politique ou les enjeux économiques, au même titre que les conséquences de la suspension de l'exemption de visa sur les relations extérieures globales entre l'UE et ses Etats membres avec le pays tiers concerné :

« **and taking into account the consequences of a suspension of the exemption from the visa requirement for the overall external relations of the Union and its Member States with the third country concerned as well as the political context or economic matters at stake** ».

### **Article 8a(1), alinéa 1 :**

Les autorités françaises peuvent accepter l'ajout « ***any of (...)*** » à l'alinéa premier de l'article 8a(1).

### **Article 8a(1), point d) :**

Les autorités françaises peuvent également accepter « ***in particular*** » au point d) de l'article 8a(1).

### **Article 8a(2) et (3) :**

Les autorités françaises saluent l'intégration des seuils dans le corps de l'article 8. Cependant, elles demandent activement l'introduction de seuils plus souples, sur le plan quantitatif, pour davantage d'efficacité et envoyer un message clair aux Etats tiers sur la possibilité de l'Union d'utiliser ce mécanisme. Il conviendrait à cet effet d'augmenter le taux de « faible reconnaissance » et d'assouplir celui de « hausse substantielle ». En ce sens, les autorités françaises travaillent à la question et soutiennent les propositions également émises par les délégations norvégienne, danoise, tchèque et suédoise visant à établir un seuil de reconnaissance des demandes d'asile de 20% et un seuil d'augmentation substantielle de 30%, ces analyses étant le fruit des constats des Etats membres dans leurs pratiques quotidiennes avec les pays tiers peu ou pas coopératifs. En effet,

- Le seuil de 20% de taux de protection est celui proposé par la Commission et accepté par le Conseil comme un indicateur en deçà duquel un taux de protection est considéré comme faible dans le cadre du Pacte. Il nous semble judicieux de reprendre le même indicateur ;
- Le seuil de 30% d'augmentation substantielle permettrait d'élargir le champ des pays constituant une cible potentielle du mécanisme, le seuil de 50% étant, de l'avis de tous, difficilement atteignable.

Enfin, en ce qui concerne l'ajout de « ***by providing duly justified reasons for this decision*** », les autorités françaises remercient la Commission pour ses explications en séance quant aux modalités concrètes de sa mise en œuvre (formaliser l'obligation de la Commission de justifier ses décisions). Ainsi, elles peuvent accueillir favorablement cet ajout. Elles souhaiteraient néanmoins que la possibilité pour la Commission d'augmenter le seuil de « hausse substantielle » soit supprimé pour ne pas concéder un pouvoir discrétionnaire plus important que celui prévu par le texte actuel.

### **Article 8b(1) :**

Les autorités françaises saluent l'élargissement des périodes de référence pour l'identification des motifs de suspension par les Etats membres (« au moins deux mois » contre seulement deux mois).

S'agissant des deux périodes qui pourraient être utilisées à titre de comparaison, néanmoins, elles s'interrogent sur les comparaisons (« soit la même période de l'année précédente, soit [les] deux derniers mois ayant précédé l'application de l'exemption de l'obligation de visa à l'égard des ressortissants d'un pays tiers figurant sur la liste de l'annexe II ») qu'il serait possible d'établir en l'état du texte concernant les pays qui étaient déjà exemptés avant l'entrée en vigueur du règlement. Afin de mieux apprécier l'évolution des seuils pour ces pays, les autorités françaises proposent d'amender l'article en ajoutant la mention d'une période de référence pertinente « par défaut » (« *or any relevant period* ») :

1. *A Member State may notify the Commission if it is confronted, over a period of at least two months, compared with either the same period in the preceding year or the last two months prior to the implementation of the exemption from the visa requirement for nationals of a third country listed in Annex II **or any relevant period**, with one or more of the circumstances amounting to the grounds for suspension referred to in Article 8a(1), points (a), (b), (c), and (d)(i).*

### **Article 8b(1a) :**

Les autorités françaises soutiennent la proposition de la Présidence d'ajouter un nouveau paragraphe 1a à l'article 8b, qui permettra aux Etats membres de ne pas être liés par la période de référence mentionnée au paragraphe 1 en ce qui concerne les motifs de suspension prévus aux points d) ii), e) et f) de l'article 8a(1).

Elles souhaiteraient néanmoins demander l'ajout du point g) de l'article 8a(1) à ce nouveau paragraphe 1a de l'article 8b afin de permettre aux Etats membres de notifier l'éventuel non-respect de la mise en œuvre des feuilles de route « libéralisation ».

### **Article 8b(4) et (5) :**

Les autorités françaises souhaiteraient s'assurer de la mise en place d'un examen diligent et transparent des notifications émises par un Etat membre à la Commission. Pour cela, il pourrait être précisé comme suit :

- Au paragraphe 3 : « la Commission informe immédiatement le Parlement européen et le Conseil d'une telle notification ; **une discussion est organisée dans les enceintes dédiées de chacune de ces institutions** » ;
- Au paragraphe 4 : en lien avec l'ajout proposé ci-dessous, il pourrait être prévu que la Commission tienne compte de ces discussions dans son examen ; nous pourrions insérer un nouveau point g) précisant cela comme suit : « [...] **g) Les discussions prévues au paragraphe 3 de cet article** » ;

- Au paragraphe 5, un délai et les modalités selon lesquels la Commission doit informer le Parlement et le Conseil des résultats de son examen pourraient être précisés, en lien avec le délai d'un mois prévu à l'article 8e) et avec l'obligation de motivation de sa décision désormais proposée par la Présidence à l'article 8a, paragraphes 2 et 3.

#### **Article 8d :**

Quant aux pays exemptés grâce à un dialogue sur la libéralisation (paragraphe 1), il conviendrait de remplacer « *whenever it considers (...)* » par « ***the Commission shall report on specific matters/ challenges following the roadmap towards visa liberalisation or any other issue indicating, based on concrete and reliable information, that the third country is no longer complying with certain specific requirements which are based on Article 1 and which were used to assess the appropriateness of granting visa liberalisation*** », tout en préservant la possibilité pour le Parlement et le Conseil de demander un suivi.

Quant aux pays exemptés sans dialogue (paragraphe 2), les autorités françaises demandent également à ce que « *whenever it considers it to be necessary* » soit substitué par « ***The Commission shall also report on third countries listed in Annex II other than the ones referred to in paragraph 1 of this Article regarding specific matters/ challenges, based on concrete and reliable information that the third country is no longer complying with certain specific requirements which are based on Article 1 and which were used to assess the appropriateness of granting visa liberalisation*** », en conservant là aussi la possibilité pour le Parlement et le Conseil d'en faire la demande.

Enfin, le paragraphe 2 devrait être complété pour indiquer que : « des recommandations précises visant à pallier les défaillances identifiées sont systématiquement élaborées ».

#### **Article 8e(1) :**

Comme pour l'article 8b, les autorités françaises souhaitent que, lorsque l'analyse de la Commission la conduit à ne pas donner suite à une notification d'un Etat membre, ce refus soit débattu obligatoirement en Conseil.

En outre, en dehors de l'enclenchement du mécanisme lorsqu'une majorité simple d'Etats membres notifie la Commission (paragraphe 1, alinéa 3, point c)), nous proposons que l'enclenchement soit également possible lorsque les Etats membres notifient la Commission sur le motif de l'augmentation de la demande d'asile ou sur celui des refus d'entrée ou du nombre des ressortissants de de pays tiers en séjour irrégulier représentent 65% soit de la demande d'asile globale, soit des décisions de refus d'entrée ou de retour des ressortissants du pays tiers au sein de l'UE. En effet, la condition actuellement retenue et consistant à réunir une majorité simple d'Etats membres est quasiment impossible à atteindre, car les Etats membres pouvant fonder leur notification sur les motifs prévus par le règlement sont systématiquement très limités en nombre. Pour inclure cette proposition et améliorer la lisibilité de l'article 8 e, paragraphe 1, l'amendement pourrait prendre la forme suivante :

**1. The Commission shall adopt an implementing act temporarily suspending the exemption from the visa requirement for the nationals of the third country concerned for a period of 12 months, taking into account the consequences of a suspension of the exemption from the visa requirement for the overall external relations of the Union and its Member States with the third country concerned, while working in close cooperation with that third country to find alternative long-term solutions, on the following cases :**

**a)** ~~Where, on the basis of the examination referred to in Article 8b (4), or the analysis referred to in Article 8c(2), and taking into account the consequences of a suspension of the exemption from the visa requirement for the overall external relations of the Union and its Member States with the third country concerned, while working in close cooperation with that third country to find alternative long-term solutions, the Commission decides that action is needed ; or~~

**b)** ~~where a simple majority of Member States have notified the Commission of the existence of circumstances referred to in Article 8a(1), points (a), (b), (c) or (d), (e) or (f) ; the Commission shall adopt an implementing act temporarily suspending the exemption from the visa requirement for the nationals of the third country concerned for a period of 12 months.~~

**c) when Member States representing 65% of applications for international protection at Union level from the third country concerned, or refusals of entry, or return decisions regarding the third-country nationals concerned, have notified the Commission of the existence of circumstances referred to in Article 8a(1), points (a) or (b).**

**Article 8e(4) et (5) :**

Les autorités françaises soutiennent ces nouvelles propositions. Elles souhaiteraient obtenir des précisions de la part de la Présidence sur le caractère urgent et la délimitation concrète des deux procédures consacrées dans cet article (“ordinaire” et “d’urgence”). Dans cet optique, et en lien avec le Service Juridique du Conseil, le considérant 12 pourrait être amendé afin de préciser la signification des “raisons d’urgences impérieuses” qui impliquent le recours à la procédure d’urgence.

**Mécanisme de suspension subsidiaire à titre national :**

Enfin, les autorités françaises souhaitent soumettre à l’avis des délégations l’idée d’un mécanisme de suspension subsidiaire qui permettrait à un Etat membre confronté à une urgence due à un afflux massif de ressortissants en situation irrégulière d’un pays tiers exempté, d’y répondre en rétablissant à titre national et sur son seul territoire, l’obligation de visa. Il s’agirait d’un mécanisme similaire à celui actuellement prévu par l’article 3(2) du code des visas pour les VTA nationaux et qui serait donc entouré de toutes les garanties nécessaires. En l’état de nos travaux, notre proposition s’articule autour des trois points suivants :

- Premièrement, le recours à ce mécanisme ne serait permis qu'en dernier recours, dès lors qu'une notification a été faite à la Commission conformément au règlement, mais qu'elle n'est pas suivie d'un acte d'exécution, et que l'Etat membre ayant notifié est confronté de manière spécifique à la situation d'afflux massif. Ainsi, le principe de subsidiarité est respecté en garantissant à l'Union la priorité d'action. Le seuil d'application de ce mécanisme devra être précisé ;
- Deuxièmement, la durée de la mesure nationale serait de 6 mois dans un premier temps et pourra être renouvelée (si les circonstances l'ayant fondée persistent) ;
- Troisièmement, la manière dont il pourra être tenu compte des conséquences d'une suspension par un Etat membre sur les relations extérieures globales de l'Union et de ses Etats membres doit être définie. Il pourrait être envisagé que la décision de ne pas agir au niveau de l'Union soit assortie d'un avis de la Commission sur les conséquences d'adopter une décision au niveau national.

# GERMANY

## 1. **Article 8 (2): agreements on short-stay visa waivers**

Germany can support the new wording of Article 8(2) and welcomes the corresponding amendment of recital 4.

## 2. **Article 8a (1): Grounds for suspension**

Article 8a (1) point (d): Germany can support the addition of “in particular” and the clarification in recital 4a that problems related to document security can be interpreted hereunder.

Article 8a (1) point (d) (ii) – hybrid threats: We can in principle agree with Art. 8a (1) point (d) (ii).

## 3. **Article 8b: Notification**

We support that Member States shall be able to notify COM also with regard to the new suspension grounds and can agree with Art. 8b (1a).

## 4. **Article 8e and 8f: Procedure**

Article 8e (1) point (a) – time limit after notification: we support that the time limit of one month for the adoption of an implementing act does not apply to the new suspension grounds.

Article 8e (4) and (5) and recitals 12, 13 – urgency procedure: Germany welcomes a stronger role of the Council. Could the Presidency explain how the suggested procedure would work exactly: who would define that imperative grounds of urgency require expedited action? Would it be possible to further specify the term “imperative grounds of urgency”?

## 6. **Recitals**

Recitals - EU IT systems and agencies: We can support the new reference in recital 10 to data from EU IT systems and agencies.

## GREECE

### *Article 8b para.4(d)*

- (d) the reports prepared by the European Border and Coast Guard established by Regulation (EU) 2019/1896 of the European Parliament and of the Council, the European Union Agency for Asylum established by Regulation (EU) 2021/2303 of the European Parliament and of the Council, the European Union Agency for Law Enforcement Cooperation (Europol) established by Regulation (EU) 2016/794 of the European Parliament and of the Council or any other relevant institution, body, office or agency of the Union ~~or international organisation~~, if the circumstances so require in the specific case;

*EL is in favour of limiting the material used to those reports prepared by EU institutions and agencies.*

### *Article 8c para. 2*

Where the Commission, ~~taking into account on the basis, *inter alia*, of data and statistics from EU IT systems and EU agencies~~ has concrete and reliable information on the existence of any of the grounds referred to in Article 8a(1) it shall inform the European Parliament and the Council of its analysis, and Article 8e and Article 8f shall apply.

*EL: Our proposal is in accordance with the delegated acts of ETIAS (C(2021) 4980 final and article 5 par. 1 of C(2021) 4981) and article 33 (e) of the ETIAS regulation.*

## MALTA

While Malta acknowledges the ongoing efforts by the Presidency to achieve a compromise, Malta regrets the absence of any attempt in the current draft to address the legitimate concerns raised during negotiations.

Malta reiterates its significant reservations regarding the reference to "genuine link" in Article 8a, paragraph 1, point (e). As highlighted before, including in the written comments of 16 November 2023, there is no defined relationship of such a notion in the process of granting citizenship in EU law or public international law. The lack of clarity introduces the risk of potential implementation problems, as the absence of a common definition may lead to varying interpretations and inconsistencies in applying the legislative act. This lack of precision not only jeopardizes the effectiveness of the proposal but also diminishes the credibility of the EU, undermining its ability to establish a consistent and transparent framework for grounds of visa suspension.

Malta has been constructive throughout negotiations, providing drafting suggestions that address these concerns while still preserving the viability of citizenship-by-investment schemes as a ground for suspending a visa waiver agreement. These proposals contribute to the overall legal certainty and effectiveness of the proposed legislation.

Addressing these issues is crucial for enhancing the clarity of the legislative act and facilitating its successful implementation. While taking note of the Presidency's desire to reach a Council position during its term, Malta urges consideration of these concerns in the next compromise proposal. Failing to do so would be short-sighted and go against the spirit of better law making, particularly considering the European Parliament has not yet appointed a rapporteur. Malta appreciates the attention to this matter and looks forward to continued discussions.

## THE NETHERLANDS

The Netherlands welcomes the Presidency Revised text. The compromise proposal addresses several of the concerns expressed by Member States during the Visa Working Party such as, under article 8b, the possibility for Member States to notify the Commission with regards to the additional triggers as well. Please find below three remarks/text suggestions.

### Article 8a

The Netherlands suggests to include a recognition rate of 10% (or less). The current recognition rate is at the low end of the spectrum. Considering that duly justified reasons need to be provided by the Commission, the current benchmark of 4% or less could limit the effectiveness of the mechanism in the case of a substantial increase in the number of asylum applications.

Text proposal:

3. For the purposes of paragraph 1, point (b), of this Article a low recognition rate shall mean a recognition rate of asylum applications **of less than 10%**, unless the Commission in accordance with Article 8b(4) or Article 8c(2) concludes that a higher recognition rate is applicable in the particular case, by providing duly justified reasons for this decision.

### Article 8b 4(c)

The Netherlands proposes to add the following under article 8b 4(c): “the overall impact of those circumstances on the migratory situation in the Union as it appears from the data provided by the Member States or **on the basis, inter alia, of data from EU IT-systems and agencies available to the Commission.**”

### Article 8e

Under article 8e, the Netherlands has some legal concerns with regard to the revised urgency procedure. In particular concerns whether the current motivation suffices for transferring implementing powers to the Council.

While recognizing that implementing powers may be transferred from the Commission to the Council, as is outlined in article 291(2) of the Treaty on the Functioning of the European Union, this can only be done in sufficiently motivated exceptional cases. In this case the regulation concerned should motivate why there has been opted for a political decision-making (Council) instead of the regular urgency procedure as laid down in the comitology regulation (experts of each member state). In the compromise proposal this motivation is currently limited to: “imperative grounds of urgency”.

Furthermore, in the compromise proposal it remains unclear in what manner/fora the member states “shall decide immediately” when the Commission publishes a proposal for suspension under this procedure. The Netherlands therefore prefers to keep the original text for the urgency procedure with additional elaboration on the grounds which allow to initiate the urgency procedure.

## ROMANIA

As agreed at JHA Counsellors (VISA) meeting, we would like to reiterate **some of our drafting suggestions** for the next version of the PRES compromise proposal regarding the amendment of the suspension mechanism, as they were also mentioned on the occasion of Visa Working Party on November 16<sup>th</sup>.

- With regard to **article 8a), para 1, letter d)**, **RO suggests introducing an explicit reference to both “terrorism offences and related activities” to avoid a potential legislative gap generating the impossibility to activate the suspension mechanism when MS(s) confront with such offences.**

RO recalls that the EU legislation (*Directive (EU) no.681/2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime* and *Directive (EU) 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*) makes a clear distinction between the two categories of offences: terrorist offences and serious crimes. Therefore, since there is not an absolute overlapping between the 2 categories of offences, RO suggests adding the wording “terrorism offences and related activities” in article 8 a), para 1, letter d).

- In order to cover the entire range of situations of non-cooperation with regard to the issuance of documents, **RO would like to suggest a redrafting of art. 8a), para 5b), respectively by deleting “within the deadlines set out in the readmission agreement”.**

As point of clarification, **RO would like to ask the COM and PRES to clarify if the wording used within the entire text (“readmission”) covers both situations of non-cooperation of the third-state in question:**

- in the field of readmission (either on the basis of an existing Agreement concluded by EU or on the basis of a bilateral Agreement concluded by an EU MS);
- in the field of return (given the general obligation of the third countries in question to receive their citizens, as provided in the ICAO Convention – Annex IX – Chapter 5).

## SWEDEN

Following the discussion last week in counsellor's format, please find below two comments from the Swedish delegation with a view to the next compromise proposal on the visa suspension mechanism:

- **Article 8b p.4:** We suggest the following addition in red to be added: “ [...] *The Commission shall examine any notification made pursuant to paragraph 1 and 1a of this Article, taking into account *in particular*: [...] ”*
  - **Article 8a p.1 (b):** We want to reiterate our support for making the thresholds more flexible, and we support amendments to the effect of lowering the established definition of “substantial increase” of the number of asylum applications as well as an increase of the “low recognition rate”
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