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NOTE

From:	Presidency
To:	Delegations
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Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code) - Presidency revised text (Article 25a)

With a view to the meeting of the JHA Counsellors (Visa) of 8 June 2018, delegations will find in the Annex a Presidency compromise suggestion on Article 25a of the abovementioned proposal.

New changes compared to the Commission proposal are marked in **bold/underline** for additions and in **~~bold/strikethrough~~** for deletions.

Following the presentation of this compromise text on Article 25a, the square brackets in Article 16(2), second subparagraph, of the draft Regulation, as included in 9540/18, can be considered as having been removed, with the text therein staying unchanged.

*Article 25a***Cooperation on return and readmission**

1. Article 14 (6), Article 16(1) and (5), point (b), Article 23(1), and Article 24(2) shall not apply to applicants or categories of applicants, who are nationals of a third country that is considered not to be cooperating sufficiently with Member States on the return and readmission of irregular migrants, on the basis of relevant and objective data, in accordance with this Article. ~~This Article is without prejudice to the powers conferred on the Commission by Article 24(2d).~~

2. The Commission shall regularly assess third countries' cooperation with regard to return and readmission, taking account, in particular, of the following indicators:

- (a) the number of return decisions issued to persons illegally staying on the territory of the Member States from the third country in question;
- (b) the number of actual returns of persons issued with return decisions as a percentage of the number of return decisions issued to citizens 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 its territory;
- (c) the number of readmission requests accepted by the third country as a percentage of the number of such applications submitted to it.
- (d) the level of practical cooperation in the area of return cooperation 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 EU travel document or *laissez-passer*;**
 - iii. acceptance of charter flights;**
 - iv. acceptance of joint return operations.**

Such an assessment shall be based on the use of reliable data provided by Union's institutions, organs, bodies and Agencies, as well as by Member States.

3. A Member State may also notify the Commission if it is confronted with substantial and persisting practical problems in the cooperation with a third country in the return and readmission of irregular migrants on the basis of the same indicators as those listed in paragraph 2.

4. The Commission shall examine any notification made pursuant to paragraph 3 within a period of one month. **The Commission shall inform the Council of the results of its examination.**

5. Where, on the basis of the analysis referred to in paragraphs 2 and 4, **and taking into account the Union's overall relations with the third country concerned, as well as its overall cooperation in the field of migration,** the Commission decides that a country is not cooperating sufficiently and that action is therefore needed **or where, within 12 months, a simple majority of Member States have notified the Commission in accordance with paragraph 3,** it **shall notify the third country concerned and take steps with the authorities of that country in order to improve the level of its cooperation. The Commission shall inform the European Parliament and the Council of those steps without delay.**

5a. If, within 4 months of the date of the notification referred to in paragraph 5, and despite all the steps taken, the third country has not significantly improved the level of cooperation on the basis of the indicators referred to in paragraph 2, the Commission may shall submit a proposal to the Council to adopt an implementing decision, ~~taking also account of the Union's overall relations with the third country concerned, adopt an implementing act, in accordance with the examination procedure referred to in Article 52(2):~~

- (a) temporarily suspending the application of either Article 14(6), Article 16(5) point (b), Article 23(1), or Article 24(2), or of some or all of those provisions, to all nationals on the third country concerned or to certain categories thereof, or
- (b) applying, **on a gradual basis,** the visa fee set out in Article 16(2a) to all nationals of the third country concerned or to certain categories thereof.

6. The Commission shall continuously assess on the basis of the indicators set out in paragraph 2 whether significant improvement in the given third country's cooperation on **return and** readmission of irregular migrants can be established and, taking also account of the Union's overall relations with the third country concerned, may decide to **submit a proposal to the Council to** repeal or amend the implementing **decision act** referred to in paragraph 5a.

7. At the latest six months after the entry into force of the implementing **decision act** referred to in paragraph 5, the Commission shall report to the European Parliament and to the Council on progress achieved in that third country's cooperation on **return and** readmission.

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Corresponding recitals:

(11) In case of lack of cooperation of certain third countries to readmit their nationals apprehended in an irregular situation and failure of those third countries to cooperate effectively in the return process, a restrictive and temporary application of certain provisions of Regulation (EC) No 810/2009 should on the basis of a transparent mechanism based on objective criteria, be applied to enhance a given third country's cooperation on **return and** readmission of irregular migrants.

The Commission should assess regularly the cooperation of third countries with regard to return and readmission and examine the notification of Member States. The Commission should, before deciding that a third country is not cooperating sufficiently and that action is needed, take into account the overall cooperation of that third country in the field of migration, in particular in the area of border management, of prevention and fight against migrant smuggling and of prevention of irregular transit of migrants through its territory.

The Commission should, following a decision that the third country is not cooperating sufficiently or a notification by a simple majority of Member States that a third country is not cooperating, make a notification to the third country concerned and take steps with the authorities of that third country to improve the level of cooperation.

(11a) In order to ensure that all the relevant factors and possible implications of the application of the measures to enhance a given third country's cooperation on return and readmission are adequately taken into account, given the particularly sensitive political nature of such measures and their horizontal implications for the Member States, the Schengen associated countries and the Union itself, in particular for their external relations and for the overall functioning of the Schengen area, implementing powers should be conferred on the Council, acting on a proposal from the Commission.

Conferring such implementing power on the Council adequately takes into account the potential politically sensitive nature of the implementation of the measures to enhance the cooperation of a third country on return and readmission, given also the facilitation agreements that Member States have in place with third countries.

The Commission might submit to the Council a proposal to repeal or amend the implementing measures adopted by the Council.
