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WORKING PAPER

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MEETING DOCUMENT

From:	German delegation
To:	Visa Working Party
N° Cion doc.:	7173/18
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) - Proposal from the German delegation to integrate visa leverage into the new draft Visa Code

With a view to the meeting of the Visa Working Party of 10 April 2018, delegations will find in the Annex a proposal from the German delegation on Art. 25a of the abovementioned proposal.

Proposal to integrate visa leverage into the new draft Visa Code

Experience with the use of visa leverage following the adoption of Council conclusions on visa policy at the JAI Council on 7 June 2017 demonstrated that it can be difficult for member states to reach agreement on a country of origin for which this negative leverage is used. For this reason Germany has supported the proposal of including visa leverage in the Visa Code to ensure legal certainty when using the planned tools (fees, processing times, multi-annual visas, certificates) and have a mechanism allowing member states to use the instrument in an effective and flexible manner.

In Germany's view, a three-level approach may be appropriate to increase the effectiveness of visa leverage and create incentives for countries of origin to improve cooperation on readmission.

The rules on visa leverage in the new Visa Code could be as follows:

- Depending on the level of cooperation of the country of origin, countries whose nationals require a visa could be divided into three categories: fully cooperative countries (list A), partially cooperative countries (list B) and all other countries (not listed).
- Nationals of these countries would then be treated differently with regard to certificates, required translations, visa fees, exemptions from visa fees for certain groups of persons, processing times and the validity of the visa.
- Only nationals of countries of origin on list A would benefit from all types of visa facilitation in the Visa Code.
- Countries included in list B would benefit from visa facilitation only to a limited extent, such as multiple-entry visas with a limited validity. In our view the vast majority of third-countries would be included in list B.
- Countries that are not included in lists A or B, i.e. uncooperative countries of origin, should not be able to benefit from visa facilitation of the Visa Code. In individual cases, additional specific measures may be taken into account.

The procedure to draw up these lists should follow objective criteria and indicators of functioning cooperation (cf. the criteria in the current mechanism according to doc. 9880/17 VISA 211 RESTREINT UE, no. 4). To ensure that a country of origin can influence this categorization, the original rules should continue to apply for a predetermined transitional period. The European Commission would send the countries of origin the list of criteria, which still needs to be defined in detail, together with a note informing them that their willingness to cooperate will be assessed after the end of the transitional period. The legal consequences of inclusion in lists A or B or non-inclusion will also be communicated to the countries of origin.

The lists should be maintained by the European Commission. However, on the basis of an initial analysis by the European Commission, the member states should decide by majority vote in COREPER on including a country of origin in one of the two positive lists. Countries of origin should not be automatically assigned to a list on the basis of this analysis, but as a result of a decision on every individual case taking all circumstances into account. Any favourable treatment granted to third countries within the framework of existing visa facilitation agreements should be taken into account when defining the measures in detail.

Advantage of this approach:

The lists would be designed as **positive lists**. The scheme could therefore strengthen harmonized decisions of member states on the assignment of countries of origin to these lists.

Germany believes that, in contrast to the current version of Article 25a, the proposed approach is more likely to lead to an immediate change in the uncooperative countries of origin, because they would have to actively work towards a more positive status. By contrast, the mechanism proposed by the European Commission to link a lack of cooperation by the countries of origin to a more negative status is difficult to implement because of the different foreign-policy interests of the member states. The differentiated approach of the present proposal allows more flexibility in changing a country of origin's willingness to cooperate. It could also help turn visa leverage into an effective and efficient instrument in practice. Economic effects must also be taken into account, particularly in the case of existing association agreements and free trade agreements and in tourism.