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NOTE

From: Presidency

To: Permanent Representatives Committee

Subject: Communication on enhancing cooperation on return and readmission
(including the Commission's Assessment of third countries' level of
cooperation on readmission in 2019)

- Presidency discussion paper

Background

The 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.

As an essential element of any coherent and efficient immigration policy, in the New Pact on Migration and Asylum (New Pact), the Commission underlines the importance of comprehensive, balanced, tailor-made and mutually beneficial migration partnerships with third countries.

These partnerships should take into account both the EU's and the partners' interests and be embedded into the EU's overall relations with third countries, alongside other policies, such as development cooperation, foreign investments and trade.

Visa policy plays here a special role since it is an important element in the toolbox for improving cooperation on return and readmission with third countries.

The Member States' experience so far demonstrates that a balance of incentives and more restrictive practices is needed to enhance cooperation on return and readmission, and this may be achieved by 'creating and applying the necessary leverage using all relevant EU policies, instruments and tools, including development, trade and visa'. This was also clearly stated in several European Council conclusions, most recently in October 2018¹.

With the revised Visa Code coming into force on 2 February 2020, a first concrete step was taken to identify tangible and structural measures aimed at improving cooperation on return and readmission.

Article 25a of the Visa Code introduced a mechanism whereby the EU can use various visa-related measures as leverage to get third countries to better comply with their obligation under international law to readmit their own nationals. It is composed of two steps. *First*, on the basis of data provided by Member States, as well as Union institutions, bodies, offices and agencies, the Commission is to assess third countries' cooperation on readmission regularly, at least once a year.

The *second* step is the possible Council decision to apply visa measures - where the Commission considers that a third country is not cooperating sufficiently, the Commission shall propose the Council to adopt an implementing decision applying specific restrictions related to visa processing and, possibly, a higher visa fee. At the same time, if the Commission finds a third country to be cooperating sufficiently on readmission, it may propose to the Council to adopt an implementing decision providing for a reduction of the visa fees, a reduction of the processing time or an increase in the period of validity of multiple-entry visas.

¹ 13/18 CO EUR 16 CONCL 5

An important intermediate step between these two steps is the outreach towards those in case third countries cooperating poorly on readmission. Before tabling proposals for visa measures, the Commission shall take steps to improve the level of cooperation of the third country concerned in the field of readmission. If this attempt to improve cooperation fails and the third country concerned is still considered not to be cooperating sufficiently on readmission, then the Commission shall submit a proposal to the Council to adopt restrictive visa measures. However, Article 25a of the revised Visa Code does not provide a time period within which these attempts to improve cooperation should take place. It is equally important that before the Commission tables a proposal to adopt restrictive visa measures, a second condition has to be fulfilled – i.e. the Union’s overall relations with the concerned third country, including in the field of migration, have to be assessed and taken into account. The Presidency deems that following this procedure is of the utmost importance.

Enhancing cooperation on return and readmission as part of a fair, effective and comprehensive EU migration policy

On 10 February 2020, the Commission released its first factual assessment on cooperation with third countries on readmission, covering the year 2019, accompanied by a Communication "Enhancing cooperation on return and readmission as a part of fair, effective and comprehensive EU migration policy".

However, due to the security classification of the report, the Portuguese Presidency of the Council (PPUE) promoted its debate at JHA Counsellors in-person meeting.

In the Communication, the Commission indicates how to address the internal and external challenges linked to return and readmission in a structured and effective manner. In a broader sense, it may help to identify incentives, which would be applied to third countries within the sphere of return and readmission, outside the visa area, considering the Union's interests and relations and it may be a contribution to step up and strengthen the readmission cooperation with partners, towards a more comprehensive approach.

In order to obtain the desired outcome, which is to improve effective returns and foster smoother cooperation between the Union and the third countries in this regard, there are still some challenges to be faced. They arise both within the Union itself and from the cooperation with those third countries.

Firstly, on the EU side, there should be an effort to obtain a more coherent perspective in some of the areas related to return and readmission. Addressing the existing legislative and administrative gaps and inefficiencies in national frameworks, increasing the uptake of voluntary return, reducing absconding and providing assistance to vulnerable groups will help to increase the effectiveness of return. In addition to other ongoing initiatives, the Communication announces the upcoming adoption by the Commission of a dedicated Strategy enhancing voluntary returns and reintegration as one of the areas that will need further deepening, with streamlined and adequate resources allocation.

As regards the challenges concerning third country cooperation on readmission, the communication outlines that the main obstacles are the identification of irregular migrants and issuance of travel documents by third countries authorities. This concerns both the quality and effectiveness of such an assistance, which can result in the delays in the overall process, with the inevitable increase of costs. The refusal of non-voluntary returnees by certain third countries and non-acceptance of charter flights also present important challenges.

In the Communication, the Commission concludes that in almost one third of the countries cooperation works well with most Member States, for almost another one third the level of cooperation is average, while for more than one third the level of cooperation needs to be improved from the perspective of Member States.

The communication also underlines that all EU readmission agreements bring significant added value in facilitating cooperation on readmission, and that the Member States bilateral readmission instruments are mostly respected by third countries, even if the level of cooperation may differ, depending on the instrument. In addition, the chances of a successful and swift cooperation also increase with the deployment of electronic platforms for processing readmission applications and European Return and Migration Liaison Officers (EURLO), which can facilitate the readmission process locally.

The assessment under Article 25a also serves as a trigger for the comprehensive leverage mechanism which was endorsed by COREPER in June 2020. This informal mechanism foresees that additional leverage can be taken in addition to visa measures, in the absence of visa measures, or when visa measures did not deliver the desired result.

This subject is also addressed in the Pact, in line with the Commission's proposal for an Asylum and Migration Management Regulation (AMMR), where such an assessment could also contribute to the process of identifying incentives in policy areas beyond visa, to improve cooperation with third countries to facilitate return and readmission, as proposed in article 7 of the AMMR.

A special effort will have to be made concerning the existing dichotomy related with the successful cooperation that some third countries have bilaterally with some Member states, but unsuccessful when it comes to cooperation on return and readmission with the EU as a whole. This situation may end up creating additional difficulties in terms of decision-making and reduce the cooperation level among the Member States.

Current debate

In the Integration, Migration and Expulsion working party (IMEX Expulsion) meeting held on February 24, delegations shared their general comments on the first Commission's assessment of third countries' level of cooperation on readmission. Delegations broadly welcomed the report, but some delegations considered that the report could have included more clear conclusions on which third countries assessed should be considered as not cooperating sufficiently on readmission.

Delegations proposed different criteria to be used for determining which visa-bound third countries should be further examined. Some proposed to focus on countries not cooperating on forced returns, or where there is a significant caseload, or where attempts to improve cooperation failed in the past. One delegation also considered that the focus could be on countries that are most relevant for the frontline Member States.

This is the right moment to launch the debate at political level on how to enhance leverage vis-à-vis third countries through a more strategic and targeted use of existing tools and calibrating positive and negative incentives as appropriate. In addition, at the above-mentioned IMEX meeting, a number of delegations called for quick follow-up on the report. The Presidency considers that work should now proceed, in full respect of the Visa Code procedure, by examining specific visa-bound third countries, in order to assess which of them are most non-cooperative and which are cooperating in an excellent manner.

To this purpose the Presidency invites the ministers to debate the following issues:

Questions

- 1) **mandate the Presidency to establish a limited list of those few visa-bound third countries which are the most non-cooperating on readmission and a list of those few visa-bound third countries which are cooperating in an excellent manner, and for which respectively negative or positive visa measures could be considered.**
 - 2) **agree on a deadline for a period within which the Commission should take steps to improve readmission cooperation with the third countries on the above list of the most non-cooperating countries, and after which Commission would be expected to table a proposal to the Council to adopt restrictive visa measures, in case cooperation has not improved and the countries are still considered not to be sufficiently cooperating on readmission.**
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