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LIMITE

**VISA 186
MIGR 168
RELEX 724
COASI 124
COAFR 227
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COMIX 427**

NOTE

From: General Secretariat of the Council
To: Visa Working Party/Mixed Committee (EU-Iceland/Norway and
Switzerland/Liechtenstein)

No. prev. doc.: 10858/21, 10859/21, 10860/21

Subject: Proposals for visa measures under Article 25a of the Visa Code
- comments from delegations

Following the request for contribution on the proposals for visa measures under Article 25a of the Visa Code (CM 4129/21), delegations will find attached the compilation of comments received from Member States and Schengen associates countries.

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AUSTRIA

Austria, like other MS, is seat of international organisations (IOs) and is bound by international law to allow enter without restrictions (and fees) for attendants of meetings or the accreditation of staff of IOs. Therefore we suggest the following clarification in the normative part of the text:

4. *Paragraph 1 shall be without prejudice to cases in which a Member State is bound by an obligation of international law, namely:*
- (i) as a host country of an international organization;*
 - (ii) as a host country to an international conference convened by, or under the auspices of the United Nations or any other international organization to which the Member State is the host country.*

CZECHIA

Member States should use the tools available to overcome the deficits of our return and readmission policies, therefore the Czech Republic supports the proposed implementing decisions in all three cases and hopes that they will be adopted swiftly.

FRANCE

- La France soutient l'ensemble de ces trois propositions de décisions d'exécution du Conseil en vue de l'activation du levier « visa » prévu à l'article 25(a) du Code des Visas (Bangladesh, Gambie, Irak).
- L'amélioration de la coopération de l'Irak constitue pour la France un enjeu particulièrement prioritaire.

GERMANY

We would like to thank the European Commission for quickly presenting the proposals for the implementing decisions based on Article 25a of the Visa Code with respect to Iraq, The Gambia and Bangladesh.

The German side has noticed certain progress with regard to cooperation from Bangladesh on readmission. Bangladesh has been increasingly cooperative and open to talks ever since the application of the visa leverage has been under discussion. For example, the Bangladeshi embassy and German authorities have held several meetings since then, including on 27 January and 24 June 2021, and further talks are scheduled. However, not everything promised during those meetings has actually been carried out. For example, Bangladesh offered to conduct interviews in June to verify the identity of some 100 persons, but these interviews have been postponed.

A concrete indication of improved cooperation is the number of passport substitutes issued: until May 2021, less than ten passport substitutes were issued each month. This number, however, has increased since June and was in the high double digits in July and August.

It is not yet clear whether this improved cooperation on returns will continue for the long term.

We therefore propose postponing the Council decision about the adoption of the implementing decision with respect to Bangladesh at least until mid-November. This would give Bangladesh an opportunity to demonstrate that this progress does in fact have real substance for the long term. The Commission and the Member States should use the time until then to make clear to Bangladesh that the improvement in cooperation must be permanent. If substantive improvement in cooperation on returns does not prove to be permanent, the implementing decision could be adopted by the end of the year.

We believe it is important that the members of the IMEX Working Party be involved in the next steps of adopting and carrying out the implementing decisions. We therefore welcome the Presidency's intention to invite members of the IMEX Working Party to the next meeting of the Visa Working Party on 8 September 2021. We suggest doing the same also for subsequent meetings to discuss the procedure pursuant to Article 25a of the Visa Code.

We would like to know whether the Commission is planning to draw up a guide or similar instrument for the concrete, operational implementation of the implementing decisions.

How does the Commission or the Council intend to inform the countries of origin concerned when the implementing decisions have been adopted? In particular, are there plans to communicate these decisions to the public, for example in a press release? In any case, we suggest that the Commission formulates wording to be used when communicating with the relevant diplomatic missions of the Member States abroad.

ITALY

Bangladesh

Over the last years, Bangladesh has constantly been included in the annual Decree on entry quotas for non-EU nationals onto the Italian territory for reasons of subordinate work and self-employment. Although its mild cooperation on readmission has fostered discussions on the likely future exclusion of Bangladesh from the aforementioned legal instrument, the suggested suspension of certain provisions of the Visa Code may prove counterproductive: it may engender indiscriminate effects on visa applicants, causing particular repercussions on bona fide individuals and a potential redirection towards irregular movements.

In light of the above, Italy voices a note of caution about the application of sanctions under Article 25(a) of Regulation (EC) 819/2009 (Visa Code) to Bangladesh.

Iraq

Italy considers the gradual application of Article 25(a) of Visa Code as an effective instrument to encourage a more active Iraqi engagement in the field of readmissions.

Nevertheless, in spite of the partially dissatisfactory engagement of Iraq in readmissions, Italy takes note of Iraqi authorities' current efforts to improve its migration policies and of the recent positive cooperation with the EU regarding the migration situation with Belarus.

Furthermore, adequate consideration should also be given to the high recognition rate (in 2019, 73% in Italy and 40% at EU level according to EUROSTAT data) concerning Iraqi applicants for international protection.

Based on the above, Italy maintains a cautious position at this stage on the application of sanctions towards Iraq, given its potential negative repercussions on relations both at bilateral and European levels. The adoption of the Council implementing decision suspending certain provisions of the Visa Code may indeed trigger a retaliation on the part of Iraqi authorities, with possible spillovers on political and economic connections.

The Gambia

Italy questions the opportunity of adopting sanctions under Article 25(a) of Regulation (EC) 819/2009 with respect to The Gambia, having regard to the overall satisfactory bilateral cooperation in the field of readmissions and the current delicate electoral scenario in the country.

Italy and The Gambia have indeed signed a Memorandum of Understanding to foster cooperation in repatriation operations. The latter consists of an identification mission carried out by Gambian officials operating in Italy under the FRONTEX financial umbrella.

Although the COVID-19 pandemic has entailed a deceleration in readmission procedures towards The Gambia, Italy considers such a slowdown as temporary.

General remarks

In general, Italy agrees on the use of leverage mechanisms in the EU external dimension to foster cooperation with third countries. On the other hand, when considering the implementation of measures under Article 25(a) we need to take account of the consequent increased workload of EU Member States' Visa offices in the targeted countries.

MALTA

Bangladesh

In this regard, kindly note that there is reasonable collaboration with Bangladesh, albeit such cooperation does not fully meet the commitments set out in the Standard Operating Procedures. An identification mission has been held in Malta by the Bangladeshi authorities and it does not appear that there are doubts on the nationality of interviewees. The Maltese authorities are constantly monitoring the developments related to the outcome of the identification mission, and there has been a return operation to Bangladesh earlier in 2021. At this juncture, what is required is not the triggering of Article 25(a) of the Visa Code but strengthening of our dialogue with the Bangladeshi authorities so as to identify the difficulties they are facing and find practical solutions to address their needs. Therefore, at this stage, Malta does not agree with the proposal to trigger Article 25(a) of the Visa Code for Bangladesh.

THE NETHERLANDS

COM proposals

- The NL is in general pleased that Commission has followed-up on promise to propose measures under article 25a before summer. NL is in favour of using the full potential of this instrument, with the Commission as guiding force.
- With regard to the three countries Iraq, Bangladesh and Gambia, the Commission seemed to apply a sound reasoning for proposing these negative visa measures with referral to repeated dialogues without result. We appreciate it that the Commission has given more information during VWP VISA 22 July on how they have come to the decision to propose measures for these three countries and not others, also considering the right of the Commission under art. 25a to propose visa measures outside of the shortlist. The same applies to the question we raised during the VWP why the Commission had decided to propose all possible negative visa measures under art. 25a; how the broader external relations had been weighed and what the expectations of the Commission are with regard to the effectiveness of these measures.
- In the meantime, Iraq has shown a constructive commitment to the Belarus/Lithuania issue this summer after being pressured to do so from the EU. However, the problem that we want to tackle with the negative visa measures – poor return cooperation – has not disappeared and we do not want to abandon our strategy (both at EU level and bilaterally) to move Iraq towards better return cooperation. It is therefore important to get clarity from COM about the planned tactics, timing and communication to ensure that we continue to make progress on both tracks (return and Belarus). We therefore want to ask COM to indicate prior to the VWP VISA of 8 Sept. how it sees the connection between these two tracks and what their plan is against that background.

(Further) process

- We need to work towards a more clear and transparent process for the second round, which already started. Therefore, we took the opportunity to plead in the VWP VISA of 22 July for an evaluation of this first round in IMEX before publication of the second report. There is a need to work out guidelines/methodology (i.e. on how we move from the report to a selection of countries to potential negative as well as positive measures, including when in the process broader external relations are weighed, where this is to be discussed, and within what timeframe and based on what criteria/indicators the outcome of the dialogues with the third countries lead to proposals for potential measures). Furthermore, we want to emphasize that we shouldn't lose sight of the possibility of also positive measures in case of good cooperation.
- We are very pleased that the Commission took note of the wish for an evaluation, also declared by Germany and the Czech Republic, and indicated that it intends to draw lessons learned with the MS from the first round. We would like the Commission to indicate during the VWP of 8 Sept. how they want to organize this.

SPAIN

GENERAL POSITION

- Spain believes a constructive approach is preferable and more effective as the activation of Article 25 could damage existing relations with our migratory partners.
- For Spain the prevention of migratory flows should be the priority
- Spain will follow very closely this issue especially if these measures were to apply to traditional EU and Spanish partners of the Atlantic and Western Africa migration route.

COMMENTS PER COUNTRY

As regards the proposed three countries, Bangladesh, Iraq and Gambia, we believe that, as stated by Article 25a, overall relations with the specific third country should be taken into account.

Bangladesh

(No specific comments)

Iraq

- Spain acknowledges that Iraq needs to collaborate more in the area of returns, notably on non-voluntary ones, and is supportive of the current engagement with Iraqi authorities for this purpose but at the same time, recognizes the difficult political situation the country is currently facing.
- Moreover, Spain has been following very closely the current crisis situation Lithuania is facing, especially affecting irregular Iraqi migrants, and has held contacts with the Lithuanian authorities to offer our support in dealing with sudden, large migratory flows as well as in the long term strategies on prevention and on returns.

The Gambia

- Even if we do not have a significant number of cases, albeit recently some minors arrived to the Canary Islands, The Gambia worries us mainly as a country of exit and transit of the Atlantic migration route.
- The Gambia is in a context marked by difficult socio-economic consequences due to the COVID pandemic affecting key sectors for the country, like tourism, ahead of Presidential elections on 4 December 2021.
- Spain recognises that visa policy is not a relevant factor in the arrival of Gambians to Spain.
- We should underline the importance of cooperation in the area of prevention, since Spain is engaged in supporting the operational capacities of security forces in The Gambia, as we can see with the deployment of a Common Operational Partnership (COP) financed by the EU.
- Our political engagement should also be underlined. Deputy Minister for Foreign Affairs, Cristina Gallach, visited the country recently and Spain is present in The Gambia with a Diplomatic Antenna.

SWITZERLAND

Switzerland thanks the Presidency for the opportunity to hand in a written contribution on the Commission proposals for visa measures under Article 25a of the Visa Code of 15 July 2021.

As already mentioned during the Visa Working Party meeting of 22 July 2021, Switzerland understands the motivation to focus on a limited number of countries in this first-time implementation of Article 25a of the Visa Code. This has allowed the Commission, the Presidency and the Schengen Member States to set up a framework for debate and action. Now that processes are in place and considering the fact that the mechanism of Article 25a benefits from strong support by the Schengen Member States, Switzerland suggests to broaden the scope of our action by considering more countries in the future.

Regarding the countries concerned in the proposals, Switzerland makes the following comments.

Bangladesh: Although the identification process takes some time, there has been an improvement in the return-related cooperation since the EU-Standard Operating Procedures have been applied to Switzerland. However, if other Schengen Member States face important problems in their cooperation with Bangladesh, Switzerland does not oppose the adoption of negative incentives towards Bangladesh.

The Gambia: Over the past months, the issuance of travel documents has become more difficult for Switzerland. Other longer-term challenges relate to last-minute refusals of landing permits and political instrumentalization of charter flights by officials of The Gambia. Nevertheless, our level of cooperation with The Gambia is not unsatisfactory to the extent that Switzerland would suggest visa measures on its behalf. However, if other Schengen Member States face important problems in their cooperation with The Gambia, Switzerland does not oppose the adoption of negative incentives towards The Gambia.

Iraq: Iraq is one of our priorities in the field of readmission. Overall cooperation on return with Iraq remains unsatisfactory. In particular, in the area of forced returns, Iraq issues travel documents only for persons with a criminal record, although this group of people constitutes a small minority of all pending cases from that country. Therefore, Switzerland supports negative incentives towards Iraq.

When it comes to the intensity of the measures proposed, the Council should examine whether it is appropriate to take the same measures towards three different situations. According to the Commission report of 10 February 2021, The Gambia, Bangladesh and Iraq respectively rank 25th, 11th and 5th amongst visa-bound third countries whose nationals have been issued return decisions in the Member States. As Article 25a, par. 5, letter b of the Visa Code is designed to take one or several measures and thus to adjust the intensity of restrictions, the Commission could have differentiated the proposals according to the level of cooperation of the three countries concerned. Switzerland would appreciate if the Commission could explain the idea behind this strategy during the next Visa Working Party meetings.

Finally, some operational and technical issues need to be discussed and addressed with a view to implement the Council implementing decision in a coordinated and efficient manner:

- *Suspension of waiver of certain supporting documents for certain categories of applicants (e.g. bona fide travellers)*

The Council should provide Schengen Member States with clear guidelines on which categories of applicants the waiver of certain supporting documents has to be suspended.

- *Suspension of optional visa fee waiver for holders of diplomatic passports*

It would be useful to discuss how Schengen Member States should implement this measure, if they maintain a bilateral agreement on the exemption of visa requirements for holders of diplomatic passports with the third country concerned. Furthermore, it should be clarified whether this measure also applies to service, special and official passports.

- *Suspension of the maximum processing time (beyond 15 days)*

It is important that the Schengen Member States follow harmonized guidelines in order to prevent divergent processing times and thus avoid the risk of visa shopping. Switzerland sees the need to agree at least on a minimum and maximum time limit.

➤ *Suspension of the mandatory issuance of multiple entry visas with a long validity*

The Council should here clarify the extent to which Schengen Member States can continue to issue multiple entry visas with a long validity.

➤ *Entry into force of the measures*

Considering the pandemic-related travel suspension of issuance of Schengen visas in most countries including for most cases of visits, the impact of the measures may be less significant if they enter into force while the suspension has not been lifted. Therefore, a discussion should take place on the timing of the entry into force.

➤ *Room for manoeuvre*

As a host State, Switzerland would like to underline that Schengen Member States shall be able to comply with their international obligations, respectively with their host state policy.

Furthermore, the question arises in general whether there is a certain flexibility in the implementation of the measures on a local level (Local Schengen Cooperation).

Switzerland would be grateful if the Presidency could timely bring forward these issues at technical level during the next Visa Working Party meetings.
