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NOTE

From: Presidency
To: Delegations

Subject: Annual implementation of the visa-remission mechanism and perspectives
on readmission

Delegations will find in Annex a **courtesy translation** of doc. 5983/22.

The European Council called in December 2021 on the Commission and the High Representative, together with the Member States, "*to swiftly take action to ensure effective returns from the EU to countries of origin by using as leverage all relevant EU policies, instruments and tools, including development, trade and visas, to ensure the full implementation of existing readmission agreements and arrangements*".

Cooperation on return and readmission is an essential part of the dialogue with partner countries in the framework of a comprehensive, integrated and coherent approach to migration. It is thus one of the cornerstones of the Pact on Migration and Asylum.

In this respect, at the informal meeting of the Ministers of the Interior on 3 February in Lille, the Ministers encouraged the Presidency to continue its work on the basis of a gradual approach: the first stage of this approach must include efforts and tangible progress in the field of return and readmission.

The visa readmission mechanism provided for in Article 25a of the Visa Code, which entered into force on 1 February 2020, is one of the most successful instruments available to the European Union. Its implementation should aim at the highest possible efficiency.

Initial lessons can already be drawn from the exercise of this mechanism held in 2021, as well as from the discussions held on this subject in the IMEX-Expulsion working party on 17 and 28 January.

The strengthening of the steering of the external dimension of migration, with the creation of the Operational coordination mechanism for the external dimension of migration (MOCADÉM), may also provide more concrete leads.

On the basis of the discussions in the IMEX working party on 17 January 2022, the Presidency proposes to take the discussion further.

1. Improving the implementation of the mechanism of Article 25a of the Visa Code

On 22 December 2021, the Commission published its second report under Article 25a of the Visa Code. This report analyses readmission cooperation for 32 third countries in 2020, selected on the basis of two objective criteria combined: a threshold of 1 300 removal decisions issued in the EU in 2019, and a minimum of 1 000 persons illegally present in the EU in 2019. Member States agreed in the IMEX working party on the need to strengthen the Commission's and the High Representative's demarches towards 10 countries of interest given their low level of cooperation on readmission. A first progress report on these approaches could be made in the framework of the working party on the external aspects of migration and asylum (EMWP) in March, on the occasion of an analysis of the overall migration relationship with these countries. If the Commission deems it necessary, and taking into account the results of the demarches towards the third countries concerned and the Union's overall relations with these countries, it will then propose to the Council implementing decisions aimed at restricting or granting facilities for issuing short-stay visas (response time, list of supporting documents, limitation of multiple-entry visas, etc.).

The Presidency identifies three areas of progress to improve the implementation of the mechanism in the future.

1.1. Diligent implementation

It is important that the Union's reaction to poor cooperation follows as closely as possible the identification of the problem. Situations may evolve quickly, requiring immediate responses. A notification can also be made by a Member State, in which case the situation will be examined within one month (Article 25a (3) and (4)). Beyond such situations, the annual review of third country cooperation should start as soon as possible, also taking into account the availability of statistics from the previous year. The different stages of this evaluation should follow each other at a steady pace.

Thus, the Presidency suggests the following annual process, which could be followed for the cooperation recorded in 2022:

- a form is sent by the Commission to the Member States in January in order to ensure an efficient collection of data by the competent services;
- Member States have 6 weeks to collect and transmit the data to the Commission
- the annual report is adopted as soon as possible;
- the Presidency refers the report to the IMEX working party before the end of May; the Council draws up a list of countries of interest before the end of June, on the basis of which the Commission initiates a dialogue with the third countries;

- the dialogue with the authorities of the third countries shall be initiated and the Council shall be informed, in particular in the framework of the EMWP and, if necessary, the MOCADDEM ;
- enforcement decisions against non-cooperative third countries or positive measures against those whose cooperation is satisfactory shall be presented to the Council before 15 September ;
- these decisions are adopted within one month, taking into account the evolution of the cooperation of the third countries concerned; the MOCADDEM could intervene to determine the possible next steps.

It is worth recalling that in the context of the first round (reference year 2019), it took 10 months to draft the report and the approaches to the third countries concerned (limited number) took 3 months. In the context of the second cycle (2020 reference year), it took about 9 months to draft the report. Demarches to the third countries concerned are now about to start.

1.2. Application to a potentially large range of countries

Article 25a is part of European legislation and its implementation should not be seen as exceptional, even if the issuance of restrictive visa decisions must respect the principle of proportionality and remain a last resort.

It therefore seems desirable that, in the initial phase, the number of countries of interest with which the Commission and the High Representative initiate contacts should be large enough to reflect the existing difficulties in terms of readmission (for example, 10 third countries were identified this year in the IMEX working party). This would make it possible to avoid singling out a small number of third countries from the outset, which may not be retained at the end of the procedure.

1.3. *Precise monitoring of the results obtained*

According to paragraphs 6 and 7 of Article 25a, the Commission shall continuously evaluate the effectiveness of the measures adopted and report to the Council and the European Parliament six months after the entry into force of an implementing decision.

For this evaluation, it would be necessary to analyse the impact of the visa restrictive measures on the cooperation in the field of readmission and to exchange information on the way in which the Member States have applied the implementing decision (evolution of the number of Schengen visa applications before and after the decision, evolution of the rate of delivery before and after the decision, average duration of examination of the applications after suspension of the mandatory 15 days deadline before and after the decision etc.). The working party on visas could thus provide feedback on the way in which the enforcement decision was applied and the difficulties encountered in applying them. In some cases, the application of enforcement decisions on visa restrictions may not be sufficiently incentive: for example, if the demand for visas by nationals of a targeted third country is low, the measures may have less effect.

After the evaluation, and if the measures are found to be ineffective, the Commission may propose additional measures to the Council (Article 25a (5)(b) - raising the visa fee up to 120-160 euros), which if necessary would also be discussed in the Visa Working Party.

2. The place of readmission levers in the overall management of the relationship with third countries

The external dimension of migration must be conceived to address "*all migratory routes, in a whole-of-route and comprehensive approach*", according to the terms used by the European Council in December 2021. In order to improve its steering, the Council established the MOCADDEM, which operates through round tables synthesising information and proposals from the various Council working parties. It is able to identify the various levers that can be mobilised quickly and flexibly with regard to third countries, in order to improve the effectiveness of readmission in practice, including, among others

- the programming of the NDICI (or, later, the deployment of its funds), through a flexible incentive approach

- legal migration and visa facilitation,
- trade (the approach taken in this respect in the GSP regulation could contribute to this),
- the political engagement expected from the EU by certain third countries (high-level visits, etc.).

As established by the Council under the Croatian Presidency¹, the mobilisation of levers other than visas can be done in parallel with the latter, in a cumulative manner, or subsequently if it has not been sufficient.

Questions:

- What is your assessment of the implementation of the visa readmission mechanism in the framework of the first exercise conducted in 2021 for the year 2019?
- Do you agree with the above-mentioned recommendations of the Presidency, in particular with regard to the timeframe?
- How do you think that MOCADDEM can contribute to the mobilisation of other levers? In particular, how can we reconcile the need for responsiveness with the need for prior examination by the working parties concerned? Would it be useful to identify other possible levers?

¹ Document 15076/19