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NOTE

From:	Presidency
To:	Visa Working Party/Mixed Committee (EU-Iceland/Norway and Switzerland/Liechtenstein)
Subject:	Visa suspension mechanism as regards holders of certain categories of passports – way forward

Following the recent developments in Georgia, the Member States agreed that the visa-free entry to the EU for holders of Georgian diplomatic passports should be suspended. The Member States have since expressed their views on the matter and, notably, indicated whether they commenced their national procedures to reintroduce the visa obligation for this category of travellers. Nevertheless, some pleaded for triggering the suspension mechanism (VSM) at EU level.

The mechanism was devised for targeting abuse in the area of migration and asylum resulting from visa-free travel for nationals of a third country, when they pose a threat to the public policy and internal security of Member States, and as a tool contributing to continuous compliance with the VLAP requirements in the immediate neighbourhood. Meanwhile, the nature of threats to public policy and internal security of the Member States and the Union continues to evolve, while rarely producing sudden developments meeting the criteria of the visa “emergency brake”. This, coupled with new challenges, led the Commission to put forward an amendment proposal. Broadening the grounds for suspension, the proposed changes explicitly address security threats resulting from investor citizenship schemes, lack of visa policy alignment and hybrid operations.

During the negotiations in the Council, more grounds have been introduced, referencing document security considerations and the Union's external relations with third countries. This last addition is meant to strengthen the link between the criteria for liberalization and those for suspension, in order to address situations of abrupt deterioration in the external relations, particularly when it relates to human rights and fundamental freedoms.

Failure to meet some of the criteria for liberalization can already trigger the mechanism. However, with the perspective of impacting all nationals at a later stage, the mechanism was not the tool of choice to target a limited category of travellers in response to fundamental rights violations by the authorities in Georgia. Seeking for a way to respond to such situations, many Member States were interested in a fast, uniform action in the form of the reintroduction of the visa obligation at EU level to a specific category of travellers only.

At the February meeting the Presidency opened debates around potential scenarios for reintroducing the visa obligation to holders of diplomatic passports under the current legislative framework. Each of them came with a specific balance of advantages and challenges. While the mechanism guarantees a uniform response, the individual reintroduction of a visa obligation allows for better targeting the impact on a specific category of travellers without an end date. Few Member States signalled openness to explore a targeted amendment to Annex II to the visa Regulation for that purpose.

The Presidency has also introduced an idea to further reflect on the developing situation and potentially use the lessons learned in preparation for negotiations with the European Parliament on the revision of the VSM. The Council mandate retains the overall design of the mechanism – a two-step approach, automatically expanding the suspension in case there is no improvement during the targeted first phase. It is not inconceivable, however, that a situation might reoccur where an EU response is desirable, while an impact on all nationals is not. Given also the openness indicated by the Commission, the Presidency would like to brainstorm ideas on how to future-proof the mechanism for these cases. The delegations are invited to reflect and share the opinion on the following questions:

1. In order to better answer to the particular demands of similar situations, especially when it is not desirable to target the whole population, could the mechanism be improved, for example by adding the possibility to adopt subsequent implementing acts targeting the narrow specific category or to adopt in the second phase a delegated act which covers only this category?
 2. Should the above considerations be taken into account during the current negotiations of the VSM, provided that this does not negatively impact their duration?
 3. In case the discussed issue can't be addressed within the negotiations of the current proposal, would you be open to exploring the potential to amend the legislation for the purpose of introducing an exception to visa exemption at EU level to holders of special categories of passports at the later stage?
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