

PLAYING THE VISA CARD?

ECRE'S ASSESSMENT OF THE EU'S PLANS
TO USE VISA LEVERAGE TO INCREASE
READMISSION TO THIRD COUNTRIES



I. INTRODUCTION

As part of the revised Visa Code, the European Commission has [completed its first report](#) assessing how third country governments respond to return and readmission requests issued by EU Member States. It was welcomed by EU Member States, a large majority of which are interested in using visa facilitation or restriction as leverage to make third country governments better cooperate on return. Commissioner Johansson has vowed to push ahead in line with the measures set out in the related [Communication](#) which include extending processing times for visas, increasing costs, and shortening the validity of visas for countries which are not cooperating sufficiently on readmission according to the EC's assessment. While the list of countries for which the EU envisages visa measures is not public, the names of thirteen countries are circulating and there are reports that the governments in question have already been approached.

In light of these developments, this Policy Note assesses the likely impact of using visa leverage to increase the number of people returned and deported from the EU and the risks attached to pursuing this strategy. It argues that the current predominant focus on increasing return rates is misguided and leads to sub-par policy. It ends with a set of recommendations.

II. ANALYSIS

LINKING THE APPLICABLE VISA REGIME TO READMISSION: PAST EVIDENCE

Past analysis and research on the impact that visa restrictions or facilitation have on return do not provide a clear picture. The [European Commission's own impact assessment](#) ahead of the proposal for the revised Visa Code which focused amongst other things on the role that visa policy can play as leverage in the EU's readmission policy found that "there is no hard evidence on how visa leverage can translate into better cooperation of third countries on readmission". Visa leverage reportedly led to concluding readmission agreements with Bangladesh and Cote d'Ivoire but the agreements themselves [have not led to an increased return rate](#) for either of the countries. An attempt by France in 2005 to use visa sanctions in relations to Northern African countries provided to be ineffective and even [harmful to overall bilateral relations](#). In fact, research suggests that restrictive visa regimes tend to [decrease return rates](#) as closure of regular travel opportunities increases the desirability of remaining in Europe, including undermining the forms of circular migration common in countries with extensive and historical links with Europe.

Evidence from the implementation of visa facilitation agreements –seen as essential to securing readmission and increased return rates with countries in the Western Balkan and the Eastern Neighbourhood – is not conclusive either. First, the prospect of visa-free travel and/or eventual accession to the EU for the countries concerned does not exist for other third countries and, thus, the related motivation for governments to cooperate on readmission and ability to explain the need to do so to their constituents [does not apply in other contexts](#). Second, the focus was on incentives related to visa regimes and other policy areas such as investment and trade rather than punishment, which is different from what is envisaged under the Visa Code. Where the incentives of visa liberalisation are not sufficiently high, they cannot overcome obstacles to readmission agreements, as [negotiations with Morocco show](#). Third, return rates fluctuate even when a visa liberalisation regime is in place and when cooperation on readmission is assessed regularly, such as under [a visa suspension mechanism](#).

Given all these uncertainties, it is difficult to assess the likely impact of visa restrictions or liberalisation on return numbers. An additional factor is the susceptibility of governments to these tactics. It could be assumed that the number of Schengen visas requested by nationals of the country will determine how likely it is to respond to pressure, however there is no requirement on Member States to provide statistics on the nationality of Schengen visa applicants so EU-wide figures are not available. Relatedly, the targeting of restrictions is also relevant. The Commission's impact assessment proposed to target government officials first and to expand measures to the broader population only as a second step. Whether this is still envisaged is not clear and the reasoning in the assessment was ambiguous, suggesting both that targeting would be more effective and yet have fewer negative consequences.

RISKS ATTACHED TO VISAS AND READMISSION AS QUID PRO QUO

The approach pursued by the EU carries risks for individuals from the countries concerned, as well for the EU's overall relations with the country or wider region.

It is reported that among the countries for which the EU is considering adjusting the visa regime are Iraq, Iran, Libya, Senegal, Somalia, Mali, The Gambia, Cameroon, the Democratic Republic of Congo, Egypt, Eritrea, Ethiopia and Guinea-Bissau. Amnesty International's [The State of World's Human Rights 2020/2021](#) report details human rights violations in the vast majority of these countries including:

- » arbitrary arrests and detentions, torture and other ill-treatment, suppression of freedom of expression, unlawful killings, and enforced disappearances in Iraq;
- » suppression of freedom of expression, systematic and widespread torture and other ill-treatment, enforced disappearances, discrimination and violence against women and girls, and use of the death penalty in Iran;
- » clamp down on freedom of expression offline and online, arbitrary detention and enforced disappearances, torture and other ill-treatment in the case of Egypt;
- » smear campaigns and death threats against LGBT activists and criminalisation of same-sex sexual relations in Senegal;
- » ongoing conflict, abuses by armed groups, indiscriminate attacks targeting civilians and civilian infrastructure, unlawful killings, and violence against journalists in the case of Somalia
- » abuse by armed groups, extrajudicial killings, arbitrary arrests and detentions of activists in Mali;
- » abuse by armed groups, unlawful killings, gender-based violence and a crackdown on peaceful dissent

in Cameroon;

- » armed conflicts and intercommunal violence, impunity for grave human rights violations, including extrajudicial killings and summary executions, and conflict-related sexual violence against women in DRC;
- » arbitrary detention of government critics and pro-democracy leaders, continued violation of rights to freedom of expression, religion and freedom of movement, and indefinite military conscription in Eritrea;
- » excessive, and sometimes lethal, force by security forces, extrajudicial executions and arbitrary arrest, and detention of opposition members and journalists in Ethiopia;
- » violation of international humanitarian law, including possible war crimes by militias, armed groups and third states in Libya.

Thus, in the majority of the countries that are targeted for potential visa restrictions, individuals may face persecution, human rights violations or conflict which could result in them having to leave their country. DRC and Iraq are even included in the last [UNHCR's Global Trends report](#) among the world's top ten displacement situations; the protection rates for certain of the countries is high, notably Eritrea but also Iraq, Iran and Somalia. The proposed measure will make travel to safety using regular routes even more unattainable than it already is. Beyond people who are forcibly displaced, visa restrictions clamp down on regular migration to the EU, thus directly undermining one of the objectives of the Pact on Migration and Asylum. This in turn is likely to have the unintended consequence that [migrants will be less likely to return](#).

The risks and implications go beyond the individual level. Cooperation with Europe on readmission is politically sensitive for third countries and the approach in the Visa Code is closer to coercion than diplomacy. It could sour relations with third countries at a time where the EU presents itself as a more attractive partner, particularly to African countries, than other influential players. This should be of particular concern for those EU Member States who enjoy good cooperation with the relevant third countries, including on readmission, where the Commission's own assessment pointed out that the quality of cooperation varies from Member State to Member State.

There are also political risks related to the situation in the countries concerned. A case in point is The Gambia for which cooperation with the EU on asylum and migration has been [analysed in detail](#). As a country that has recently transitioned to democracy and is facing significant economic challenges, "wins" on return and readmission may undermine broader objectives related to sustainable development, social cohesion and democratic reform.

COOPERATION BEYOND THE RETURN RATE

The analysis above questions whether visa measures will improve cooperation on readmission and increase the number of people who are returned. Indeed, it may even be counter-productive in relation to this objective because there are tangible risks for human rights defenders, minorities, and others in precarious situations when restrictive visa policies are applied to whole populations and when relations with third countries deteriorate as a result. The approach may thus provoke increased displacement.

At least part of the reason why this path was nonetheless chosen relates to the way in which return policy is discussed, evaluated, and developed. ECRE has commented on this [elsewhere in detail](#). Apart from the overall disproportionate focus on return, the fixation on the effective return rate, i.e. the percentage of those actually returned of those who receive a return decision, is misguided. Using it as an indicator of the effectiveness of return can be misleading due to how the rate is calculated and due to how Member States issue return decisions and to whom, as the [Implementation report of the Returns Directive](#) demonstrates. The rate does not therefore adequately reflect the nature of overall cooperation with third countries on return. The Commission's first assessment of readmission cooperation as part of the Visa Code provides some insights: at least for some countries, the return rate and the overall assessment of return cooperation do not seem to correlate. This is the case for Afghanistan and Cote d'Ivoire where the overall assessment is more positive than would be deduced from the return rate. Conversely, the highest return rates recorded in the assessment are for autocratic regimes such as Azerbaijan (95%) and Belarus (91%), which should give pause for thought for multiple reasons.

The focus of EU return policy should shift from increasing return numbers to ensuring that clear, transparent and fair rules for return are implemented across the EU as per the Preamble of the Return Directive. As the recently published Strategy on Voluntary Return and Readmission states "To measure the real success of a return policy, it is nevertheless important to not only consider the return rates but also the situation of the individuals concerned, enabling their return in a dignified manner and taking into account their reintegration prospects once they return to their country of origin."

The fact that third countries often have a different approach to readmission, due to different political interests,

reliance on remittances, or because their citizens have a positive view of migration, is recognised by the EU but does not lead to a more constructive approach reflecting the interests of both sides. The strategy pursued via the Visa Code is a step in the wrong direction as it relies on threats and coercion. It also fails to recognise that the current visa regime between the EU and certain third countries is already detailed and restrictive. While it is unlikely that the EU's objectives will be achieved, the risks entailed are clear. Thus, the EU should reconsider this approach.

III. RECOMMENDATIONS

To the External Action Service (EAS):

- » Inform discussions on amending visa schemes for third countries and ensure that a broad perspective and the “Union’s overall relations with that third country” are taken into account, as per Article 25a (5) of the Visa Code;
- » Propose a risk analysis whereby any restrictive visa measure is evaluated against the potential risk for human rights defenders and people fleeing persecution, as well as the overall impact on EU relations with the third country and the EU’s overall objectives. This risk analysis should be made available to the Council and the European Parliament before any measure is taken.

To the European Commission:

- » Shift the focus of return policy from an insistence on the return rate to compliance with fair, transparent rules for return, and focus on sustainable return by supporting measures that enable return in a dignified manner;
- » Cooperate with the EAS on a risk analysis whereby any restrictive visa measure is evaluated against the potential risk to human rights defenders and people fleeing persecution, as well as assessing the impact of deterioration of relations with the third country on the EU’s overall objectives.

To the European Parliament:

- » Request that the European Commission and the EAS develop a risk analysis to weigh the impact of any visa measures against potential risks, which should be provided to the European Parliament before any measure is taken;
- » Where visa measures are taken, ask the European Commission and the EAS to report on their impact beyond readmission alone to include risks for individuals requesting Schengen visas as well as the EU’s overall relations with the third country.

To EU Member States:

- » Ensure that discussions on potential changes to the visa regime are guided by perspectives from ministries in charge of external affairs;
- » Develop a constructive approach to cooperation with third countries on readmission which includes incentives for third countries in the form of increased opportunities for legal and circular migration to Europe.