

April 2018

### Revision of the visa code

*Impact Assessment (SWD(2018) 77, SWD(2018) 78 (summary)) of a Commission proposal for a regulation amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code) (COM(2018) 252)*

#### Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above [proposal](#), submitted on 14 March 2018 and referred to Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE). EU visa policy aims to (1) facilitate legitimate travel, supporting tourism, trade and business, and (2) prevent irregular immigration and safeguard public order and security. The [visa code](#), which stipulates the procedures and conditions for issuing visas for the purpose of short stays and airport transit, has proved useful because it clarified such conditions and improved the level of procedural rights.<sup>1</sup> It has not been revised since its entry into force in 2010.

While the number of international tourists arriving in the EU has increased steadily, visa application procedures are still lengthy, costly and cumbersome. This deters tourists from travelling to Europe, and leads to investments going to countries outside the EU.<sup>2</sup> In 2014, following its [evaluation](#) of EU visa policy, the Commission published two legislative proposals<sup>3</sup> accompanied by an [impact assessment](#) to tackle the aforementioned issues.<sup>4</sup> Diverging views in the Council and the European Parliament, however, led to a stalemate.<sup>5</sup> The Commission announced a revision of the visa code in its [work programme for 2018](#) and in parallel withdrew its pending proposals.<sup>6</sup>

The proposed changes to the visa code seek to make it easier for *bona fide*<sup>7</sup> travellers to obtain a visa to travel to the EU, whilst enhancing security and tackling irregular migration. The IA repeatedly refers to 'increased migratory and security risks', while admitting that 'the vast majority of visa applicants are not posing any security and/or migratory threat to the EU' (IA, p. 10). The reform of the visa code must be seen in the context of a series of

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<sup>1</sup> European Commission, Implementation and development of the common visa policy to spur growth in the EU, [COM\(2012\) 649](#), 7 November 2012, p. 4; see also S. Peers, *EU Justice and Home Affairs Law*, Oxford University Press, 2016, p. 209.

<sup>2</sup> See A. Scherrer, [Revision of the Visa Code \(Regulation 810/2009\) and Visa Information System \(Regulation 767/2008\)](#), EPRS, European Parliament, March 2018; C. Dumbrava, [European information systems in the area of justice and home affairs: An overview](#), EPRS, European Parliament, May 2017, p. 6.

<sup>3</sup> European Commission, proposal for a regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code), [COM\(2014\) 164](#), 1 April 2014; and proposal for a regulation of the European Parliament and of the Council establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008, [COM\(2014\) 163](#), 1 April 2014.

<sup>4</sup> See A. Maniaki-Griva, [Initial appraisal of a European Commission impact assessment: Revision of the EU visa policy](#), EPRS, European Parliament, November 2014.

<sup>5</sup> The European Parliament decided to launch a legislative own-initiative report on humanitarian visas, which will be supported by a European Added Value Assessment produced by EPRS. A working document was presented in the LIBE Committee on 9 April 2018, see [EP working document](#), Rapporteur: Juan Fernando López Aguilar (S&D, Spain), 5 April 2018.

<sup>6</sup> The main elements of the 2014 visa package included, inter alia, the speeding up of the visa process, a one-year touring visa, the introduction of mandatory criteria for obtaining a multiple-entry visa (MEV), see A. Scherrer, op. cit., p. 6. The current proposal carries over those elements of the 2014 proposal, which aim to clarify and streamline existing provisions, but the proposed touring visa was withdrawn.

<sup>7</sup> Latin for 'in good faith', meaning the absence of fraud.

proposed revisions in the fields of migration, visa, security and border control, including a revision of the Visa Information System (VIS) envisaged later in 2018.<sup>8</sup>

## Problem definition

The IA identifies three problem areas: (1) insufficient financial resources to support visa processing; (2) the issuing of multiple-entry visas (MEVs); and (3) the role that visa policy can play as a leverage in EU readmission policy.<sup>9</sup>

### Overview of problem areas, consequences and problem drivers (based on IA, pp. 12-21)

Problem areas	Consequences	Problem drivers
(1) Administrative expenses incurred in the visa application procedure are not covered by the visa fee	Capacity problems at consulates, such as understaffing and lack of appropriate training, which negatively affect the quality and integrity of the visa application examination	The original visa fee of €60 does not reflect the increased costs and has led to insufficient financial resources
(2) Member States have developed diverging, mostly restrictive practices when issuing MEVs	Prevents spontaneous business or leisure travel; <sup>10</sup> increased administrative burden on consulates; possible increase in 'visa-shopping' <sup>11</sup>	Unclear legal basis <sup>12</sup>
(3) Low level of return of irregular migrants to some countries of origin	High costs for Member States; increased risk of secondary movement and abuse of the existing system; a possible incentive for further irregular migration	Third countries reluctant to readmit their own nationals

The inclusion of readmission elements in visa policy is new.<sup>13</sup> The Commission admits that 'as the Visa Code was not designed for use as leverage towards individual third countries, but rather as a means of standardising visa issuing procedures and conditions, it is not entirely suited to the new political context' (explanatory memorandum to the proposal, p. 2; IA, Annex 4, p. 66). This would consequently call for further analysis. However, the IA does not discuss the link between visa and readmission policy and possible (unintended) consequences in greater detail.

## Objectives of the legislative proposal

The **general** objective of the initiative is 'to strengthen the common visa policy while addressing migration and security concerns on one hand and taking into account economic considerations and general external relations on the other hand' (IA, p. 22). It is not clear what the term 'migration and security concerns' refers to exactly. This is, however, paramount to understanding the ultimate goal of the initiative.<sup>14</sup>

As far as the **specific** objectives are concerned, the proposal seeks to (1) ensure sufficient resources for Member States in order to safeguard the quality and integrity of visa processing; (2) ensure more systematic and harmonised issuing of MEVs; and (3) advance the EU's interests in the area of return and admission by increasing leverage vis-à-vis non-cooperative third countries in this area (IA, p. 23). This last objective appears to lack the

<sup>8</sup> See, for example, the proposals on the [Entry-Exit System \(EES\)](#), [European Travel Information and Authorisation System \(ETIAS\)](#), and interoperability between EU information systems on (1) [borders and visas](#), and (2) [police and judicial cooperation, asylum and migration](#). The [inception impact assessment](#) on the visa code and VIS of March 2017 deals almost exclusively with the VIS.

<sup>9</sup> The Commission lists the problems identified in the 2014 impact assessment and details the negotiations of the legislators that followed (IA, pp. 7-8; see also Annexes 4 and 7).

<sup>10</sup> The Commission acknowledges the difficulty of estimating the overall economic loss to the EU, see IA, p. 14 and Annex 6.

<sup>11</sup> 'Visa shopping' means that applicants disregard competence rules and apply to those Member States where they expect the most favourable outcome (IA, p. 15).

<sup>12</sup> Article 24(2) of the visa code leaves room for diverging interpretation with regard to the conditions for issuing long-validity MEV, the personal scope and the precise length of validity.

<sup>13</sup> The Commission suggested that visa policy can provide a useful leverage in cooperation on readmission in 2015, see European Commission, [EU Action Plan on Return](#), COM(2015) 453, 9 September 2015, p. 14.

<sup>14</sup> In addition, as highlighted by the European Data Protection Supervisor (EDPS), repeatedly referring to migration, internal security and the fight against terrorism almost interchangeably bears a risk of blurring the boundaries between migration management and the fight against terrorism, see EDPS, [Reflection paper on the interoperability of information systems in the area of Freedom, Security and Justice](#), 17 November 2017, p. 9.

specificity required by the [Better Regulation Guidelines](#). The IA does not identify any operational objectives, which will likely complicate the further monitoring and evaluation of the achievement of the objectives.<sup>15</sup>

## Range of options considered

For each of the problems identified, the Impact Assessment considers at least three policy options, including the baseline. The options are listed in the tables below; the Commission's preferred options are highlighted in grey. One option was discarded (lowering/abolishing visa fees, since this would not contribute to reaching the objective) (IA, p. 27).

**Table 1 – Options regarding insufficient financial resources (IA, pp. 24-25)**

Policy option	Description
1A	Baseline: unchanged common visa fee (€60, children aged 6-11: €35)
1B	Abolish the EU visa fee and allow Member States to set their visa fee nationally, based on real administrative costs (and a common calculation model defining the administrative costs that should be taken into account and the calculation method)
1C	Increase the common visa fee and establish a mechanism to adjust it periodically (e.g. every two years on the basis of criteria defined in the regulation)
• 1C1	€80 (children aged 6-11: €40)
• 1C2	€100 (children aged 6-11: €50)
• 1C3	€120 (children aged 6-11: €60)
• 1C4	Single Entry Visa (SEV)/Multiple Entry Visa (MEV) up to 6 months: €80, MEV 1-5 years: €120

**Table 2 – Options regarding repeated visa procedures (multiple-entry visas) (IA, pp. 25-26)**

Policy option	Description
2A	Baseline: Member States/individual consulates determine their general approach to issuing MEV with long validity
2B	Suggest a non-binding approach to issuing MEV with long validity in the Visa Code Handbook, including a general MEV cascade <sup>16</sup>
2C	Define binding MEV cascade(s) in the visa code and/or Commission implementing decisions
• 2C1	General MEV cascade: the visa code defines a 'one-size-fits-all' MEV cascade: after 2 visas in the last 12 months, the applicant obtains a 3-year MEV, and then a 5-year MEV
• 2C2	General and country MEV cascades: the visa code defines a less generous 'one-size-fits-all' MEV cascade: after 3 visas in the last 2 years, the applicant obtains a 1-year MEV, then a 2-year MEV, then 5-year MEV; also provides for the possibility of more favourable cascades for specific countries, based on an assessment in Local Schengen Cooperation (LSC) <sup>17</sup> and limited to countries cooperating on readmission
• 2C3	Country MEV cascades: the visa code provides for the possibility to adopt MEV cascades for specific countries, based on an assessment in LSC
2D	Define MEV with long validity (e.g. 2 or 5 years) as the new standard visa in the visa code, while allowing Member States to derogate and issue visas with shorter validity in individual cases

<sup>15</sup> See [Tool #16](#) of the Better Regulation Toolbox on 'How to set objectives', pp. 100-101.

<sup>16</sup> The Commission defines a MEV cascade as the 'agreed approach of how many previous visas/trips the applicant has to prove to qualify for a long-validity MEV and how the length of validity for each subsequent visa would increase' (IA, p. 4).

<sup>17</sup> Local Schengen Cooperation consists of regular meetings of Member States' consuls in a certain location, chaired by an EU delegation (IA, p. 4).

**Table 3 – Options regarding the return of irregular migrants (IA, pp. 26-27, see also pp. 23-24)**

Policy option	Description
3A	'Dynamic baseline': Continue the Coreper-led 'visa policy toolbox approach' (using the existing flexibility of the visa code) to put pressure on third countries not cooperating on readmission of irregular migrants; no legislative amendments
3B	Positive incentives: Amend the visa code to create a legal basis for positive incentives for cooperation on readmission, such as lower visa fees and a favourable MEV cascade, to be applied in countries that cooperate or improve their cooperation with Member States
3C	Negative incentives: Amend the visa code to create a legal basis for negative incentives for cooperation on readmission
• 3C1	Maximum approach: negative incentives on various aspects of the visa procedure, to be defined in the regulation (e.g. higher visa fee, more supporting documents, maximum processing time, limited length of MEVs), applicable to all passport holders
• 3C2	Targeted approach: negative incentives as above, applicable in two separate phases: 1) to holders of diplomatic and service passports; 2) to holders of ordinary passports

The range of options in the first two problem areas appears generally reasonable. Although the Commission acknowledges that digitalised visa procedures would be faster and imply lower costs, this was not included as an option in the IA.<sup>18</sup> Regarding the third problem area, it is clear that the 'visa policy toolbox', as developed by the Council, plays a central role in the IA. The toolbox is described as a 'mechanism', which is based on 'a set of agreed indicators measuring the level of cooperation of a given third country', whereby Coreper would give guidance, on a case-by-case basis, to Member States to apply to their dealings with third countries that do not cooperate on readmission, within the existing legal framework (IA, pp. 23-24). It is introduced as a dynamic baseline since 'no experiences in the effective implementation of the "toolbox approach" and its impact have been gathered yet' (IA, p. 24). It is unclear what 'dynamic baseline' means. Also, it appears that 'non-cooperation' is not explicitly defined, which raises the question as to how it will actually be measured. Taking into account that the toolbox is not explained further in the IA, and no public information is available, it is impossible to assess the use of this tool and its implications. In addition, a confidential toolbox brings about an inherent lack of scrutiny. One can reasonably question whether building options on a baseline, which is itself based on a 'toolbox' approach that 'can only be sketched vaguely',<sup>19</sup> is in line with the better regulation principles of openness and transparency that the Commission has set itself.

## Scope of the Impact Assessment

The IA concentrates on the fields where policy options are likely to have significant impact. Due to a scarcity of data, no quantitative assessment was carried out. Instead, the IA assesses the most relevant impacts qualitatively, using a 'multi-criteria analysis' (MCA) (IA, pp. 29, 31-32). For each problem area, a number of impact criteria are established, with a certain weight attached in terms of importance compared to the other impacts.<sup>20</sup> The performance of each policy option for each criterion is ranked on a scale of 0-3. This score, combined with a 'direction' score (+/-) comparing the option to the status quo and a score (ranging from +++ to ---) on general principles, such as effectiveness, proportionality, feasibility and coherence with other policies, allows comparison of the different policy options (IA, p. 32). The weighting of the impact criteria, as well as the performance scores could have been explained in more detail. The Commission subsequently conducted a sensitivity analysis of the MCA (IA, p. 40; Annex 8).<sup>21</sup>

<sup>18</sup> IA, p. 11; European Commission, Adapting the common visa policy to new challenges, [COM\(2018\) 251](#), 14 March 2018, pp. 7-8.

<sup>19</sup> The IA refers to 'Council document 9880/17 EU RESTRICTED' and states that 'as this document is restricted, the approach followed can only be sketched vaguely' (IA, p. 23, footnote 34). An official request to access the Council document was refused.

<sup>20</sup> For the weighting of each of the impact criterion, see IA, pp. 33, 36, 38.

<sup>21</sup> The Joint Research Centre of the European Commission defines [sensitivity analysis](#) as the study of how the uncertainty in the output of a mathematical model or system can be apportioned to different sources of uncertainty in its inputs.

*With regard to problem area 1:* The IA points out that an increase in the common visa fee will have a direct positive impact on the **financial resources of Member States**, while the impact of option 1B depends on how Member States adapt their visa fees (see table 4 below; IA, pp. 33-34; Annex 5).

**Table 4 – Revenues from visa fees (taken from IA, p. 34)**

	Visa fee revenue in €	Increase by	Rating
Current visa fee revenue all Member States worldwide	792 million		
Additional revenue for option 1C1 (€80)	205 million	26 %	+1
Additional revenue for option 1C2 (€100)	412 million	52 %	+2
Additional revenue for option 1C3 (€120)	619 million	78 %	+3
Additional revenue for option 1C4 (€80/120)	267 million	34 %	+1

Regarding the **integrity and security of the Schengen area**, the IA envisages a positive impact for all sub-options under 1C, and a negative impact for option 1B (IA, p. 33). With regard to **travel behaviour**, the IA considers that increasing the visa fee to €120 is the best-rated option (Member States would obtain the highest revenue), but that the increase to €80 is the most proportionate (IA, pp. 40-41). Option 1A (baseline) would not produce any changes. The MCA is based on key assumptions, such as that the additional revenues are fully invested into additional staff for visa processing, as well as IT tools and training, and that reduced travel is assessed as negative (despite the positive effects on climate gas emissions, which would however be outweighed by the other negative effects) (IA, pp. 33-34).

*With regard to problem area 2:* The IA specifies that **cost savings for Member States** would be greatest under option 2D, largely equally positive under all sub-options of 2C, and intangible under option 2B. As far as **cost savings for frequent travellers** and **changes in travel behaviour** are concerned, the IA indicates that option 2D would be most beneficial, followed by options 2C1, 2C2 and 2C3, and option 2B would come in last, with only limited positive impact. Option 2A (baseline) would not produce any changes. The standard MEV with long validity is the best-rated option, but would be disproportionate and incoherent with the visa code. Although options 2C1 and 2C2 have similar favourable ratings, the less generous, one-size-fits all, MEV cascade is the preferred option taking proportionality considerations into account (IA, pp. 42, 44).

*With regard to problem area 3:* Concerning the return of irregular migrants, the IA considers that options 3C1 and 3C2 would have the strongest impact on **improving return rates**, while options 3A and 3B would be neutral. According to the Commission, options 3C1 and 3C2 would have limited negative effect regarding **changes in travel behaviour** and **the external relations/image of the EU**, whereas options 3A and 3B would be neutral. It remains unclear, however, how the impact on third countries would be neutral or limited.

The Commission considered other impacts as insignificant, such as those on the environment, on fundamental rights (protection of family life), or on employment (IA, pp. 28-29; see also Annex 3). It is unfortunate that the IA does not provide more detailed explanations in this regard.

## **Subsidiarity/proportionality**

The legal basis of this proposal is Article 77(2)(a) TFEU, which empowers the Union to develop measures concerning 'the common policy on visas and other short stay residence permits.' According to the IA, the problems identified are directly related to the provisions of the visa code, which can only be amended at the EU level (IA, pp. 21-22). The IA states that the short-stay visa in principle allows its holder to circulate freely in the Schengen area, which implies the highest degree of harmonised rules that cannot be solved by Member States acting alone and can only be addressed at EU level (IA, p. 22). Concerning EU added value, the IA indicates that higher visa fees can only be set at EU level and that, with regard to the issuing of MEVs, action taken at national level is likely to aggravate divergent practices. In the Commission's view, it is unlikely that national action will achieve the same leverage as concerted action by all Member States towards third countries that are reluctant on readmission (IA, p. 22). The Commission assesses the proportionality of each of the options (IA, pp. 41, 42, 43). No reasoned opinions from national parliaments have been submitted at the time of writing; the deadline for submission is 6 June 2018.

## **Budgetary or public finance implications**

According to the Commission, the proposal has no implications for the EU budget (explanatory memorandum to the proposal, p. 5). The IA contains little quantification, but the Commission points out that higher visa fees would have a positive impact on Member States' finances. In addition, issuing more long-validity MEV would lead to (limited) net cost savings for Member States, as well as improved irregular migrant return rates (IA, pp. 34-35, 39).

## **SME test/Competitiveness**

The IA provides no specific information regarding impacts on SMEs. The Commission regards economic actors in the EU, which have visa holders as clients or employees, as 'indirectly' affected by visa policy (IA, p. 28; Annex 3). This contrasts sharply with the 2014 Commission's evaluation on the visa code, according to which 'the significant direct, indirect and induced lost contribution to GDP resulting from visa requirements amounts to anywhere between €4.2 to 12.6 billion, translating to between 80 000 and 250 000 lost jobs' (IA, Annex 4, p. 65).<sup>22</sup>

## **Relations with third countries**

The IA acknowledges that 'changes in the visa policy, through their effect on third country nationals' opportunities, will have direct positive or negative impact on the EU's relations with third countries and the EU's image in the world. This is particularly relevant regarding the link between visa policy and readmission policy' (IA, p. 29). The Commission does not specify, however, how such relations would be impacted. The IA omits to discuss the concept of circular migration,<sup>23</sup> in particular in the context of harmonising procedures for issuing MEVs. According to the Commission, circular migration can help Member States address their labour market needs, while exploiting potential positive impacts of migration on development.<sup>24</sup>

## **Simplification and other regulatory implications**

The IA points out that simplification and cost reduction are achieved through MEVs with long validity, which would reduce the number of visa procedures for frequent travellers, and also the measures to be carried over from the 2014 recast proposal, which aim at inter alia simplifying visa procedures and clarifying provisions (IA, p. 45; Annex 7). The Commission highlights that the common visa policy should contribute to growth but also be coherent with other EU policies. Since 2014, the visa code objectives of preventing irregular migration and security risks have taken on greater significance in the Commission's view (explanatory memorandum to the proposal, p. 2).

## **Quality of data, research and analysis**

The IA states that the 2014 Commission evaluation of the visa code was updated with available data and that data from the 2016 questionnaire survey on visa fees were used (see IA, Annexes 4 and 5). According to the Commission, 'serious efforts have been made to collect data, facts and figures to support the problem definition, the baseline scenario, and the assessment of impacts of the various policy options' (IA, Annex 1, p. 47). However, the lack of data and evidence in the IA, about which the Commission is open, is substantial and the baseline option regarding the return of irregular migrants is impossible to assess. The IA is 'to a great extent based on a qualitative assessment of impacts, based on Member States' experiences and the Commission's Schengen evaluation reports' (IA, Annex 1, p. 48). It appears that only some Schengen evaluation reports are publicly available in the Council register, others are classified as 'EU restricted' (see also IA, p. 68). The Commission admits that the information

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<sup>22</sup> See European Commission, A smarter visa policy for economic growth, [COM\(2014\) 165](#), 1 April 2014, p. 3; the Commission refers to an external study commissioned by DG Enterprise and Industry: Ramboll/EurAsylum, [Study on the economic impact of short-stay visa facilitation on the tourism industry and on the overall economies of EU Member States being part of the Schengen Area](#), August 2013; see also M. Czaika and F. Trauner, 'EU visa policy', in A. Ripoll Servent and F. Trauner (eds), *The Routledge Handbook of Justice and Home Affairs Research*, Routledge, 2018, pp. 118-120.

<sup>23</sup> The Commission first defined circular migration in 2007 as 'a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries', see European Commission, On circular migration and mobility partnerships between the European Union and third countries, [COM\(2007\) 248](#), 16 May 2007, pp. 8-9.

<sup>24</sup> *Ibid.*, pp. 2, 7-13; see also A. Geddes, 'Temporary and circular migration in the construction of European migration governance', *Cambridge Review of International Affairs* (2015) Vol. 28, No. 4, pp. 571-588; European Migration Network, [Temporary and Circular Migration: empirical evidence, current policy practice and future options in EU Member States](#), September 2011; Council of Europe, *Economic migration, social cohesion and development: towards an integrated approach*, Council of Europe Publishing, 2009, Ch. 2.

used is 'rather of qualitative than quantitative nature' and that 'even basic data are missing in relation to the three problem areas covered in the impact assessment' (IA, Annex 1, p. 47; IA, pp. 30-32). Due to time constraints, 'it was not possible to conduct an external study to gather more data than those already available' (IA, Annex 1, p. 47). There are no statistics concerning the costs of visa processing or budgetary resources available to Member States' foreign ministries/visa authorities for that purpose (IA, p. 30). Regarding costs and benefits on the applicants' side the IA states that 'recent studies and research only revealed little empirical evidence on this issue. Therefore, it has been impossible to reliably estimate and quantify the scale of effects of policy options (particularly the economic and financial impacts)' (IA, Annex 1, p. 48).

As far as readmission is concerned, the Commission points out that the available data is limited to Eurostat statistics on the number of return decisions taken by Member States and the number of effective returns. The Commission admits that 'even those figures have to be taken with some caution as they do not reflect exclusively the willingness of third countries to cooperate on returns' and makes clear that 'finally – apart from anecdotal experience in the EU with regard to one third country – there is no hard evidence on how visa leverage can translate into better cooperation of third countries on readmission' (IA, p. 31). At times, the Commission fails to underpin its claims with evidence and explanations.<sup>25</sup> The IA refers to some reports on tourism (IA, p. 15; Annex 6), but no further references were made to studies, research or academic literature.

## Stakeholder consultation

The IA identifies the stakeholders affected by the proposed solutions, including visa applicants and Member States, in particular consulates in third countries. As indicated above, the Commission considers economic actors in the EU only as indirectly affected. These include the tourism industry, airlines and other transport companies engaged in international trade. However, the IA recognises that changes in visa policy affect Member States' economies and societies, as well as the EU's relations with third countries (IA, pp. 28-29 and IA, Annex 3). It seems no migrant organisations were consulted for this IA (other than those that replied to the open public consultation).

The Commission conducted a 10-week [open public online consultation](#) between 24 November 2017 and 2 February 2018 (not 12 weeks as required by the Better Regulation Guidelines).<sup>26</sup> This open public consultation received 1 929 replies (1 849 replies from individuals; 80 replies from organisations), however, a large share of those replies is suspected to be part of campaigns (IA, Annex 2, pp. 54 and 59). The IA lists the organisations, which submitted a position paper (IA, Annex 2, pp. 60-61). The questionnaire and the (partly anonymised) responses to the open public consultation are also available on a [dedicated webpage](#). In addition, the Commission organised three consultation meetings with representatives of all Member States, with Members of the European Parliament LIBE Committee, and with stakeholders, namely 12 organisations in the travel, tourism, shipping and air transport industries (IA, Annex 2).

Considering the lack of evidence as to how visa leverage can translate into better third country cooperation in readmission, it is regrettable that the Commission did not undertake any further consultation efforts with relevant stakeholders on the meaning of and (possible unintended) consequences of making visa policy contingent on cooperation in readmission in the visa code. While the IA presents the results of the open public consultation (Annex 2), it is not entirely clear from the IA report which stakeholder group supported which specific option. The consultation 'showed that on a variety of topics, there was a large consensus between stakeholders, including visa applicants.' This concerned notably the lack of harmonisation and predictability regarding long-validity MEVs. Contrary to Member States, applicants were not in favour of increasing the visa fee. However, their responses showed that this is not the decisive factor in the overall travel cost or the visa application. Views differed on inter alia the digitalisation of the visa procedure and the individualisation of visa requirements (IA, Annex 2, p. 59).

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<sup>25</sup> For instance, the claim that the failure to efficiently return irregular migrants to their home country could be an incentive for further irregular migration (IA, pp. 16-17), or that practical implications of the initiative entail that 'European citizens and society at large will benefit from higher rates of return of irregular migrants, resulting in higher security and a deterrent effect on potential future irregular migrants' (IA, Annex 3, p. 62).

<sup>26</sup> See Chapter VII of the [Better Regulation Guidelines](#) on stakeholder consultation.

## Monitoring and evaluation

The Commission will present an evaluation report three years after the entry into force of the proposed regulation. The IA specifies that monitoring will be facilitated by: (i) the Entry/Exit System (EES), which will be operational by 2020; (ii) the revision of the VIS system; and (iii) the revision of the Schengen Information System (SIS) (IA, pp. 45-46). The IA provides a table in which it identifies potential indicators and sources/methods for data collection (IA, p. 46).

## Commission Regulatory Scrutiny Board

The Commission's Regulatory Scrutiny Board (RSB) issued a [positive opinion](#) on 23 February 2018 assessing the IA report as 'reader-friendly and informative.' The RSB made the following recommendations for improvement: (1) better explain which elements the current proposal retains from the 2014 proposal and which are new; (2) conduct a sensitivity analysis of the MCA; (3) examine the potential to simplify processes and reduce administrative burdens. Regarding the return of irregular migrants, the RSB asked for the baseline ('toolbox' approach) to be clarified, but it is surprising that it did not further question the inclusion of readmission elements in visa policy and the lack of data/evidence in this regard. Except for the remark on the 'toolbox' approach, it seems the RSB's comments were taken into account in the final version (IA, Annex 1, p. 47). No information is provided as to how such comments were addressed, although this is a requirement in the Better Regulation Guidelines.<sup>27</sup>

## Coherence between the Commission's legislative proposal and IA

In general, it appears that the Commission's legislative proposal corresponds to the preferred options of the IA. However, regarding the return of irregular migrants, the proposal does not introduce the two phases, which the targeted approach explicitly envisages in the preferred option (option 3C2: negative incentives apply first to holders of diplomatic and service passports, and subsequently to holders of ordinary passports).<sup>28</sup>

## Conclusions

The IA provides a generally convincing analysis of the first two problem areas (insufficient financial resources and diverging practices when issuing MEVs), for which the range of options appears reasonable. The Commission identifies the lack of cooperation of some third countries in readmission matters as the third problem area to be addressed in the visa code. However, as acknowledged in the IA, the visa code was not originally designed for this purpose. One would have expected a more thorough analysis taking into account that, as the Commission admits, there is no hard evidence on how visa leverage can translate into better cooperation of third countries on readmission. Furthermore, the fact that the Commission built options on a baseline that is itself based on a 'toolbox' approach, which can only be sketched vaguely and is not available to the public, does not seem to be in line with the better regulation principles of openness and transparency. The Commission made efforts to consult with relevant stakeholders and provide data, however, the IA displays a general lack of data, statistics and evidence.

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*This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.*

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<sup>27</sup> See [Tool #8](#) of the Better Regulation Toolbox on 'What steps should I follow for an IA?', p. 45.

<sup>28</sup> See Article 25a(5) of the proposal on 'cooperation on readmission'.