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EU Visa Code reform

Necessary but not easy

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Introduction

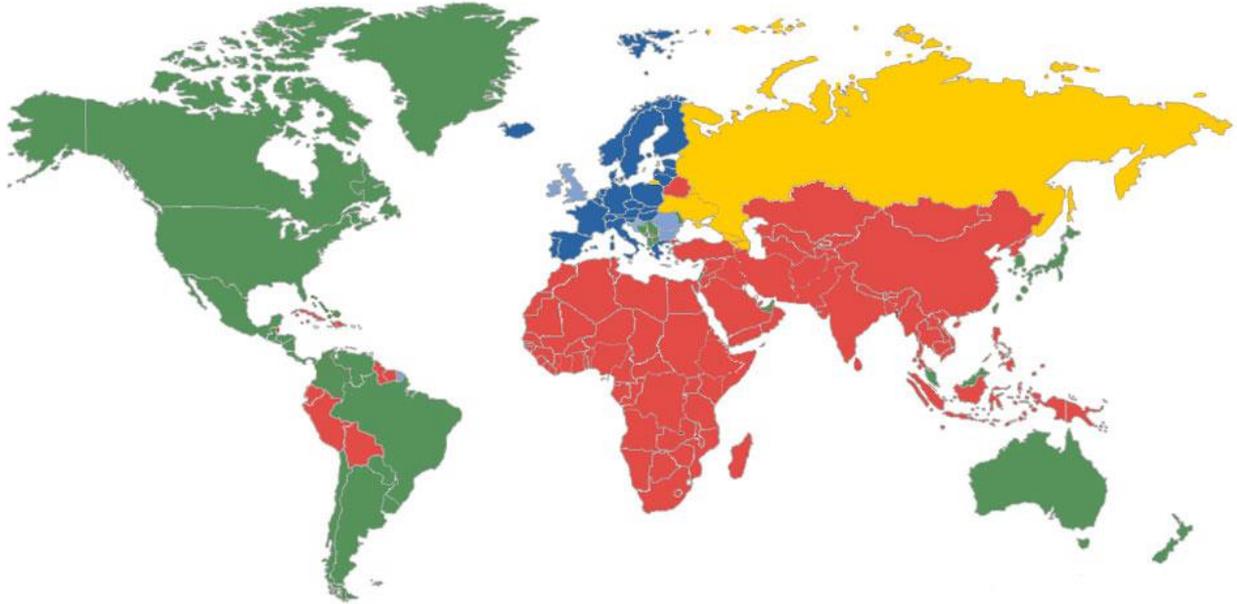
The massive, all-time high inflow of asylum seekers to the European Union in 2015 sparked discussions across the EU on how to deal with the migration challenge. The European Council and the EU Member States proposed a number of measures, from a mandatory quota system to strengthening external borders and a shutdown of the Schengen zone, or at least a limitation of it. In this context, a review of the EU Visa Code which is aimed at introducing more liberal visa procedures for foreigners, which was started in April 2014, might be seen by some as inappropriate.

This view is, however, largely a result of misunderstandings about the nature of existing visa procedures and the difference between flows of irregular (forced) immigration and legitimate travelling. There is no direct link between visa liberalization and the dynamics of long-term migration and asylum requests.

In this paper we discuss the proposal to amend the Visa Code by the European Commission, the outcomes of discussions on this document in the European Parliament and the Council, and the supposed economic benefits for the EU if more liberal visa regulations are adopted. We pay special attention to the Eastern European states, whose nationals receive around half of all Schengen visas issued globally. Therefore, the discussed Visa Code reform is of particular importance for Eastern Europe, especially Belarus, a direct neighbour of the Schengen area.

We take a stance in the discussion on the future shape of the European visa policy in the time of this so-called migration crisis, and on the eve of political decisions about proposed amendments to the Visa Code. Our recommendation is to adopt the proposed changes to the framework regulation on the EU common visa policy. Although our assessment of the European Commission's legislative proposal is generally positive, in this brief we critically review and raise some objections to the amendments made by the Council of the EU.

EU visa relations and visa requirements for the Schengen area.



Red – Schengen visa required, no VFA; **Yellow** – Schengen visa required, VFA in force; **Green** – No Schengen visa required; **Dark blue** – Schengen zone; **Light blue** – EU States not part of Schengen. (Source: European Commission, modified)

EU Regulation No 810/2009 (Visa Code)¹ sets out the procedures for the issuing of short-term (Schengen) visas, meaning that even if a multiple entry visa is granted for 5 years, its holder cannot stay in the Schengen area for more than 3 months in every six-month period. Currently the EU has liberalized the visa regime with about 50 countries, thereby allowing their nationals visa-free travel to the EU for up to 90 days during any 180-day period. For longer trips, it is necessary to apply for a national long-stay visa or residence permit. Furthermore, the EU has functioning **visa facilitation agreements (VFAs)** with a number of countries whose citizens need a Schengen visa, which are five Eastern European countries (Armenia, Azerbaijan, Georgia, Russia and Ukraine) and Cape Verde.²

Visa facilitation agreements complement the Visa Code, providing simplified visa procedures (reduced number of supporting documents, shorter length of procedures for processing visa applications, mandatory issuing of, or a higher chance of receiving, a multiple visa with a longer period of validity, etc.) for certain categories of persons, including close relatives of legal EU residents, pupils, students, journalists, etc. The standard fee for processing visa applications has been reduced from EUR 60, as specified in the Visa Code, to EUR 35, while fees are waived for additional categories. Given the Visa Code's legal nature as a regulation, if it is amended with more liberal provisions, the norms will become binding and directly applicable, taking precedence over the corresponding VFA provisions.

¹ Full name of the document: Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code). Available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009R0810> The Visa Code applies to 22 EU Member States (excluding the UK, Ireland, Croatia, Cyprus, Romania and Bulgaria) and four Schengen associates (Norway, Iceland, Switzerland and Liechtenstein).

² The EU has also concluded visa facilitation agreements with the Balkan countries (Albania, Bosnia and Herzegovina, FYROM, Montenegro, Serbia) and Moldova, all of which now enjoying visa-free regime.

What the European Commission is actually proposing and why

The application of the EU Visa Code was initiated in April 2010 by the Schengen States' Consulates all over the world. It enhanced the harmonisation of visa procedures and introduced a legal framework to facilitate the application process for to all visa applicants. However, the impact assessment done under the supervision of the European Commission has identified three problem areas in the Visa Code.³ *Firstly*, the overall length and costs as well as the cumbersome nature of the procedures. Consulates do not make a sufficient distinction between unknown applicants and those who have a positive visa record (frequent/regular travellers). *Secondly*, insufficient geographical coverage in visa processing. *Thirdly*, the lack of visa or other authorisation allowing travellers to stay more than 90 days out of any 180-day period in the Schengen area.

Therefore, in April 2014, the European Commission proposed amendments to the Visa Code⁴. This proposal takes into account the increased political emphasis given to the economic impact of visa policy on the wider European Union economy. As a result of the lengthy visa application procedure, the need for too many supporting documents and other requirements, the insufficient use of modern technology and the lack of mandatory procedural facilitations for frequent/*bona-fide* applicants, many travellers opt for an alternative destination to the EU and may be deterred from (re)applying for a Schengen visa.

The main elements of the Visa Code proposal are:

- Reducing the deadline for processing a visa application and making a decision;
- Making it possible to lodge visa applications in other EU countries consulates if the Member State competent for processing the visa application is neither present nor represented in the respective country;
- Facilitation of the process for frequent visitors who have shown that they can be trusted, including the mandatory issuing of multiple entry visas valid for three years;
- Simplifying application forms and allowing online applications;
- The possibility for special schemes granting visas at the border which are valid for up to 15 days;
- The possibility to facilitate the issuing of visas for visitors attending major events.⁵

On top of this, the Commission has tabled yet another proposal concerning the introduction of a new type of visa ('touring visa')⁶, which would allow legitimate non-EU nationals entering the Schengen area to travel for up to 1 year within this zone, without staying in one Member State for more than 90 days in any 180-day period. This would, for instance, apply to performing artists touring the Schengen area for a prolonged period of time, as well as individual travellers, such as tourists, researchers and students who wish to spend more time in Europe.

³ See the Executive Summary of the Impact Assessment http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/borders-and-visas/visa-policy/docs/proposal_regulation_union_code_on_visas_-_swd_en.pdf

⁴

http://www.europarl.europa.eu/meetdocs/2014_2019/documents/com/com_com%282014%290164_/com_com%282014%290164_en.pdf

⁵ *More flexible visa rules to boost growth and job creation*. European Commission's press release, 1 April 2014, http://europa.eu/rapid/press-release_IP-14-347_en.htm

⁶ 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. The European Commission, Brussels, 1 April 2014, pp.4-6., http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/borders-and-visas/visa-policy/docs/proposal_regulation_touring_visa_en.pdf

Diverging views on visa facilitation between the Parliament and the Council

Since the European Commission presented its proposals, a series of hearings and deliberations have taken place both in the Parliament and the Council. They showed a clear divergence in views between the two EU bodies. While the responsible Parliament committees are largely positive about the idea of facilitating visa procedures, the Commission's proposals find conditional support from EU Member States, mostly subject to effective third country cooperation on readmission.

The initial report produced within the Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) suggested going beyond the facilitations proposed by the Commission, for example, by adopting a more liberal definition of a **'regular traveller'** within the EU Visa Code. The latter is defined in the Commission's proposal as an applicant who is registered in the Visa Information System and has obtained and lawfully used two visas within the 12 months prior to the application. The LIBE suggested extending that period to 18 months.⁷

Furthermore, the Parliament's Transport Committee released its opinion that just **one visa** lawfully used within 18 months prior to the application, should be enough to qualify as 'regular visitor'. Moreover, an absolute majority of MEPs in the Transport Committee proposed to increase the minimum validity of the multiple entry visas (MEVs) for regular travellers from three years, as the Commission had suggested, to **at least five years**. This, in the Committee's view, *"would also increase the number of visits of third-country nationals to Europe and boost the economy"*.⁸ Finally, the provisional consolidated version of the amendments adopted by the LIBE Committee states that a regular traveller is a visa applicant who has obtained and lawfully used three visas within the 30 months prior to the application or one multiple entry visa.

The EU Member States' representatives in the Council seem, on the contrary, to be largely critical of the idea of the mandatory issuing of MEVs to regular travellers. By June 2015 the Council's Visa Working Party agreed on the definition of the "VIS registered regular traveller".⁹ However, in September 2015, in light of the critical attitude of a number of the EU Member States in the higher Council's body (Permanent Representatives Committee, or Coreper), the EU Presidency suggested that the issuance of MEVs is not made compulsory for VIS registered regular travellers.¹⁰

⁷ Draft Report on the proposal for a regulation of the European Parliament and the Council on the Union Code of Visas (Visa Code) (recast), Committee on Civil Liberties, Justice and Home Affairs. The European Parliament, 31 August 2015, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-557.179+03+DOC+PDF+V0//EN&language=EN>

⁸ Opinion of the Committee on Transport and Tourism for the Committee on Civil Liberties, Justice and Home Affairs on the proposal for a regulation of the European Parliament and the Council on the Union Code on Visas (Visa Code). The European Parliament, 15 October 2015, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-557.413+02+DOC+PDF+V0//EN&language=EN>

⁹ It was defined as a visa applicant whose data is registered in the Visa Information System and who has obtained at least three uniform visas or visas with limited territorial validity issued in accordance with Article 22(3) within the 24 months prior to the application or one multiple-entry uniform visa or visa with limited territorial validity issued in accordance with Article 22(3) valid for at least one year within the 36 months prior to the application.

See: Conseil UE. 9450/15. PR/cr. 1. DG D 1 A. LIMITE EN. Council of the European Union, 9 June 2015, <http://www.statewatch.org/news/2015/jul/eu-council-visa-code-9450-15.pdf>

¹⁰ Conseil UE. 12382/15. PR/lm. 1. DG D 1 A. LIMITE EN. Council of the European Union, 28 September 2015, <http://data.consilium.europa.eu/doc/document/ST-12382-2015-INIT/en/pdf>

In mid-January 2016 the Presidency directed a number of suggestions concerning the connection of readmission with the Visa Code to the Council's Visa Working Party.¹¹ The Council is concerned that if the benefits of visa facilitation have already been included in the Visa Code, then countries might no longer be interested in a separate agreement on readmission. The Presidency proposes to make important facilitations for VIS registered regular travellers (among other things, a reduced list of supporting documents and issuing a multiple entry visa) only available to nationals of third countries that cooperate on return and readmission. Furthermore, the document produced by the Luxembourg presidency in the Council stated that *"it may be appropriate to reconsider if introducing visa facilitations in the Visa Code, which traditionally are granted by means of agreements, is the best way forward in this context at this time"*.¹²

In the end, the Council agreed that that only those VIS registered regular travellers who are nationals of countries that cooperate on readmission shall be issued a multiple-entry visa valid for at least three years. Furthermore, these facilitations may be ignored in the event that *"VIS registered travellers have requested a shorter period of validity of a multiple-entry visa or where the consulate has reasonable grounds to grant a visa with a shorter period of validity"*.¹³ **It is important that an exhaustive list of such "reasonable grounds" is elaborated and made transparent for visa applicants.** Otherwise, the consulates' wide discretion on deciding the duration of validity of multiple-entry visas issued to regular travellers will compromise the adopted legislation.

The European Parliament's LIBE Committee does not link facilitations for regular travellers with readmission agreements between the EU and a third country. In contrast, the parliamentarians propose a positive incentive, namely a visa fee of EUR 40 instead of EUR 60 for the nationals of third countries with which the European Union has signed a readmission agreement.

At the same time, we applaud the long-awaited Council proposal¹⁴ to collect more reliable and detailed visa statistics, including disaggregated data on the length of validity of visas and the reasons of visa refusals. So far, the visa statistics gathered by the Commission do not allow this important data to be seen, which makes the evaluation of the implementation of the Visa Code and VFAs problematic.

Although some proposed amendments to the Visa Code (e.g. facilitations for regular travellers) are more liberal than the respective provisions of the functioning VFAs, especially the older generations (e.g. with Russia), they should not be considered as replacement or undermining of the visa facilitation process, closely connected to readmission and political cooperation between the EU and a third country. Provisions of the amended EU Visa Code are to be applied directly in case they are more liberal than those provided by the VFA. However, the former do not cover a number of areas, which are regulated exclusively by the VFAs. In light of this, proposals to link the application of the liberalised provisions of the Visa Code to readmission cooperation with a third country seem unjustified.

On 16 March 2016, the LIBE Committee of the EP adopted its draft report. At its meeting on 7 April 2016, the Council's Visa Working Party agreed on a compromise text on the basis of which the negotiations with the European Parliament could be started. As we can see, the EU Member States have a defensive attitude towards the proposed facilitation of visa procedures, linking them with practical readmission cooperation

¹¹ Connection between the facilitations set out in the Visa Code and readmission, Presidency of the Council of the EU, 15507/15, 13 January 2016, <http://www.statewatch.org/news/2016/jan/eu-council-visa-code-facil-and-readmission-15507-15.pdf>

¹² *Ibid.*, p.4.

¹³ Proposal for a Regulation of the European Parliament and of the Council on the Union code on Visas (Visa Code) (recast). Council of the European Union, 7714/16, VISA 94 CODEC 397 COMIX 271, Brussels, 12 April 2016, <http://www.statewatch.org/news/2016/apr/eu-council-visa-recast-mandate-negotiations-7714-16.pdf>

¹⁴ *Ibid.*, Annex VIII.

of third countries. Currently, interinstitutional negotiations between the Council and the European Parliament are in progress as for the mutually-agreed text of the legislation.

More tourists mean economic growth and new jobs for the EU

Millions of tourists from Russia, Turkey, China and other states, who could come to the EU if the facilitations to the EU visa rules were adopted, could bring extra money into the EU economy. This is not just wishful thinking but an empirical-based estimation. A 2013 study on the economic impact of short-stay visa facilitation concluded that the number of travellers deterred from coming to the Schengen area by the current visa requirements for the six third countries examined (China, India, the Russian Federation, Saudi Arabia, South Africa and Ukraine) represents a significant direct, indirect and induced lost contribution to GDP. By tackling the main issues with the current visa regime and practices, an increase in trips to the Schengen area of between 30 and 60% could be expected.¹⁵

A conservative estimate of this annual loss is EUR 4.2 billion, while a probable estimate is EUR 12.6 billion. This implies about 80,000 lost jobs from both direct and indirect effects in the Schengen Area under the conservative estimate and about 242,000 under the probable scenario.¹⁶ The most optimistic scenario implies that visa facilitation could bring to the EU as much as EUR 130 billion in total direct spending over five years (in accommodation, food and drink, transport, entertainment, shopping, etc.), and could translate into some 1.3 million jobs in tourism and related sectors.¹⁷

Furthermore, it is estimated that there would be a boost to the EU economy of between EUR 500 million and EUR 1 billion per annum from the touring visa proposal. Yet another recent study estimates that maintaining the visa regime between the EU (Schengen zone) and Russia costed as much as EUR 23 billion in past 10 years, seemingly making the current visa policy one of the most expensive EU policies.¹⁸ It is worth mentioning that the money the EU loses as a result of the current visa procedures for legitimate short-time travellers could, among other things, balance spending on solving the refugee crisis. As the number of refugees to the EU rises, concerns are growing about the costs associated with accommodating them and integrating them into local communities.¹⁹

The mandatory issuing of MEVs to regular travellers is beneficial both for legitimate travellers, who would need to spend less time and money on a cumbersome visa procedure, and the consulates which suffer from an overload of applications. Regular travellers with a positive visa record should be rewarded with easier visa procedures and the mandatory issuing of multiple Schengen visas with a long period of validity (at least three years). Furthermore, for consulates of a number of the EU Member States (e.g. Austria, Belgium, Sweden) the average cost for processing a visa exceeds the standard visa fee of EUR 60, therefore the argument that visa fees bring extra income to the budgets of the EU Member States is often not true.

The Schengen visa rules as a barrier for millions of Eastern European travellers

In 2014 more than a half of all Schengen visas issued globally were issued by the Schengen countries' consulates in just three eastern European states, i.e. Russia, Ukraine and Belarus. Last year these three

¹⁵ *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*. DG Enterprise and Industry, August 2013, p.3.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Andreas Metz and Bruno Merlevede, "The economic effects of visa policy", in *EU-Russia Visa Dialogue Reloaded: the Political, Economic and Social Dimension*, ed. by Jakub Benedyczak, Warsaw, 2015, pp. 15, 18-19.

¹⁹ See a collection of links to the reports discussing the economic impact of the refugees on the EU economy at the Bruegel blog at <http://bruegel.org/2015/10/how-will-refugees-affect-european-economies/>

countries accounted for about 45% of all Schengen visas. In 2015 they were placed 1st, 3rd and 5th in absolute numbers of Schengen visas issued among some 140 third countries whose nationals are subject to visa requirement for short-term travels into the EU.

Belarus is the only Eastern European state without a functioning visa facilitation agreement with the EU, so a standard visa fee of EUR 60 apply for the nationals of Belarus, in contrast to EUR 35 provided by the VFAs²⁰. Therefore, the introduction of proposed amendments into the EU Visa Code is of most importance for Belarusians. On the other hand, negotiations on a readmission agreement between the EU and Belarus have not been finalized either. In its absence, as long as the Council insists on readmission cooperation within the framework of the amended Visa Code, the most important facilitations will hardly be available for Belarusians. However, an interesting fact is, that the nationals of Belarus are issued more Schengen visas per capita (93 Schengen visas per 1000 citizens in 2014, compared to 40 in Russia, 10 in Turkey and just 1 in China) than nationals of any other country. Furthermore, Belarus enjoys the lowest (about 0.3% in 2015) refusal rate globally; Russia (1.3%) and Ukraine (3.4%) are doing noticeably worse.

It should also be taken into account that at least 600,000 local border traffic permits have been issued to the border residents living by the EU eastern frontiers (within 30-50 km of some sections of the EU eastern land border and the whole Kaliningrad region) allowing holders to travel into the adjacent border areas without a visa.²¹ These figures show how important mobility is at the EU eastern land borders.

The rather low visa refusal rates in the Eastern European countries indicate that existing visa rules are not an insurmountable barrier for potential irregular migrants. They can prepare a proper set of documents in order to get a visa with a purpose to overstay it. In its present form, however, visa rules are a barrier for many legitimate travellers. Hundreds of thousands of Eastern European tourists are deterred from travelling to the EU due to the excessive Schengen visa procedures, causing them to either choose other destinations or not travel at all.

The afore-mentioned 2013 research names Russia as the country with the largest share of potential travellers to the EU lost due to the current visa practices.²² The total number of lost travellers from Russia amounts to 4 million annually, whereby 3.5 million are from current travellers that would travel more, and 0.5 million are individuals would begin travelling to the Schengen area if there were no visa requirements.

²⁰ Negotiations started in early 2014 and are reported to be in their final phase. However, no estimated time is given by either side as to when the VFA agreement will actually be initialed or signed. It also remains to be seen how big the practical benefits of this agreement will be, taken into account the expected one-sided facilitations within the amended EU Visa Code. At least, the VFA is supposed to reduce the standard visa fee for a Schengen visa for the nationals of Belarus from EUR 60 to EUR 35.

²¹ Andrei Yeliseyev, *“Keeping the door ajar: local border traffic regimes on the EU's eastern borders”*, Finnish Institute of International Affairs, 25 June 2014, www.fiia.fi/assets/publications/FIIA_Report_41_web.pdf

²² *Study on the economic impact of short stay visa facilitation on the tourism industry*, op.cit., p.93.

Table 1. Travellers lost from six countries due to the current visa practices, in thousands²³

Country	Number of travellers lost among current travellers	Number of first-time travellers lost	Total number of travellers lost
<i>Russia</i>	3 540	463	4 002
<i>Ukraine</i>	941	130	1071
<i>China</i>	597	49	646
<i>India</i>	366	84	450
<i>Saudi Arabia</i>	161	126	286
<i>South Africa</i>	107	35	142
Total, six states	5 712	885	6 597

At the same time, the example of the Republic of Moldova proves that well prepared and properly implemented visa liberalization does not increase migration risks. Since 28 April 2014, citizens of Moldova holding biometric passports are entitled to travel to the Schengen zone without a visa, although they still have to be able to prove the purpose of visit and present medical insurance, as well as the proof of sufficient financial resources at the border checkpoint.

Research conducted one year after the introduction of the visa-free regime for Moldova, concluded that visa liberalisation led to increased number of journeys by Moldovans to the EU, with approximately 460,000 people entering the Schengen area visa-free. At the same time the impact of visa liberalisation on irregular migration and asylum requests proved to be insignificant, both in absolute numbers and compared to other countries. While the number of detected illegal border crossings decreased, the figures of refusals of entry, detected illegal stays and asylum applications grew slightly. To prove the insignificance of these flows, it could be said that all "additional" asylum seekers during the year-long visa-free regime would fit in one Boeing-737.²⁴

Conclusion

The amendments to the Visa Code proposed by the European Commission in April 2014 are meant to ease visa procedures by shortening their length, making a distinction between unknown applicants and those who have a positive visa record (regular travellers), and – among other things – widening the geographical coverage in visa processing. Meanwhile, the Commission provides economic grounds as a justification for its proposal such as boosting tourism and business exchange, and supporting the EU economy. Wider access to multiple entry visas with a longer term of validity and shorter deadlines for processing applications will also likely help strengthen people-to-people contacts and enable civil society activists, amongst other categories of visa applicants, to travel to the European Union easier and cheaper.

It is estimated that over five years, the relaxed visa rules could mean additional EUR 130 billion and the creation of as many as 1.3 million jobs in the EU's tourism and related sectors. Easing the cumbersome and lengthy procedures of applying for a Schengen visa would not affect the substantive criteria and conditions against which visa applications are assessed. The facilitation of visa rules for legitimate travellers would

²³ Ibid.

²⁴ Jakub Benedyczak, Leonid Litra and Krzysztof Mrozek, *Moldova's success story. The visa-free regime with the EU one year on*, Warsaw 2015, <http://www.batory.org.pl/upload/files/Programy%20operacyjne/Otwarta%20Europa/Moldova%20success%20story%20-%20policy%20paper%20-%20SBF%20IWP.pdf>

not aggravate the refugee crisis, but rather help the EU in covering the costs of caring for refugees by bringing money into the EU economy and creating new jobs.

The provision of issuing mandatory multiple-entry long-term visas for regular visitors is among the most important provisions within the legislative proposal. In its absence, the amended EU Visa Code would be largely depreciated. If consulates retain unreasonable discretion in deciding on the length of MEVs for regular travellers, the wider application of MEVs may hardly be used. In this light, we are concerned with the Council's wording that a consulate may grant a visa to regular visitors with a shorter period of validity than envisaged in the regulation, based on "reasonable grounds". If this provision remains in the final text, mutually agreed by the Council and the European Parliament, it is important that an exhaustive list of such exceptional "reasonable grounds" is elaborated and made public.

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