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Schengen Visa Application A Model For Adoption By African Union

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ABSTRACT
Border management has been strengthen since the establishment of the Schengen area within the European Union (EU). One of its key building blocks is the common policy on visas. This allows in controlling who can have access to the Schengen area for short stays that do not exceed three months over any six-month period. The attempt by the Economic Community of West African State (ECOWAS) through its Protocol of 1979.This paper examines the Schengen states in view of the benefits and possibilities of common policies at the EU level for different immigration categories. It also focuses on how the EU visa policy regime has been influenced by the increasingly developing migratory dynamics towards the EU states and non EU states. The work also looks at some of the challenges faced by the Schengen visa policy and immigration law especially the recent reform of the Common Code on Visa, which has being into force in 2020. It has been argued that the new approach to conditionality in EU migration law has consolidated the intertwining between the EU visa policy and cooperation on readmission. Over the years, the latter has constituted an incentive for the EU in order to offer visa facilitation regimes or specific visa waivers to nationals of third countries. The research methodology used in this work is doctrinal method, consisting largely of primary and secondary sources. After analyzing of relevant materials, the findings exposed the need to reform the immigration law on some of the contradictions and uncertainties introduced by the recent reform which gave the European Commission the mandate to propose specific restrictive measures related to visa processing and visa fee in case of lack of cooperation especially on readmission which makes it difficult to be implemented, there is no control on persons at the internal borders and considering the fact that the Schengen Convention is in force for many years now and there has been no appreciable expansion of the movement of persons its impact can be felt more on the restrictions which have been intensified**.** Flowing from the above, the paper recommended that a principled cooperation with countries in the framework of the Global Approach to Migration and Mobility (GAMM). Further recommendation also gears toward building a stronger Institution in Africa learning from the challenges of Schengen application in EU. In order to make a resume of the impact that Schengen Convention and especially the implications the visa regime has on the free movement of persons, there is need to reform the law on immigration to makes it possible to effectively achieve it aim.

Keywords: Schengen visa policy, migration law, Schengen Convention

1.0 INTRODUCTION

Since the establishment of the Schengen area[1], border management has been having momentum within the EU and has been contributing to the GAMM, the overarching political framework of the EU external migration and asylum policy aimed to establish and consolidate the cooperation with third countries on these policy areas[2]. The free movement of people was originally established in the Rome Treaty in 1957 as part of the internal market[3]. At that time, it covered only the free movement of workers and freedom of establishment.

In 1992, the Treaty of Maastricht introduced the notion of EU citizenship that then formed the basis of the right of persons to move and reside freely within the territory of member states[4]. With the conclusion of the Schengen Agreement, which came into force in 1995 and abolished the EU's internal borders, the free movement of people became effective[5]. This makes Schengen to enable passport-free movement across the Schengen area not only for EU citizens but also for people who are legally present in one Schengen country (meaning that they have a residence permit, a permit to work or a Schengen visa) and for their families in some circumstances.

The conception of free movement of persons has created a distinction between internal borders (i.e. borders between EU countries) and external EU borders (i.e. national borders that also serve as the outer borders of the Union)[6].

The Schengen Agreement signed on June 14, 1985, is a treaty that led most of the European countries towards the abolishment of their national borders, to build a Europe without borders known as the "Schengen Area". Signed in Luxemburg, initially by only five EU countries, the agreement remains one of the world's biggest areas that have ended border control between member countries[7], by providing for controls to be lifted at internal borders within the Union and concomitantly reinforced at the Union's external borders[8]. Despites the advent of a form of 'policing at a distance' aimed at blocking foreigners upstream before they leave their own countries, tracking systems that pick up the traces left by people moving from one country to another, and even, in some countries, moves towards expulsion and forced return, involving inter-State co-operation with countries of transit and origin, there has not been major dip in cross border flow of persons.

Conversely, the ECOWAS has its protocol that predated the EU convention on Schengen visa. In May 1979[9], ECOWAS member states adopted the first protocol relating to the free movement of persons, residence and establishment.

The protocol has three phases of implementation among member states as follows:

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[1]Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Schengen Agreement, 14 June 1985, and Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the Gradual Abolition of Checks at their Common Borders (Schengen Implementation Agreement), 19 June 1990.

[2]Council of the EU, Global Approach to Migration: Priority Actions focusing on Africa and the Mediterranean, Council Conclusions, 17 December 2005, 15914/05; see also European Commission, Global Approach on Migration and Mobility, 18 November 2011, COM(2011)743 final. For references see in particular T. Strik (2017). The Global Approach to Migration and Mobility, 5(2) Groningen Journal of International Law, 311–328, at 322 ff.

[3]Sébastien Le Cœur 'The Impact of Schengen Agreement | Restrictions on Labour Mobility? Schengen Agreement Restrictions & Labour Mobility' *Employment and Labour Lawyers International.*
<The Impact of Schengen Agreement | Restrictions on Labour Mobility? | ELLINT> accessed 17th November, 2022.

[4]Ibid.

[5]Ibid.

[6]D Bigo, 'Immigration controls and free movement in Europe'(2009)*International Review of the Red Cross,* 91, 875, 580.
<Immigration controls and free movement in Europe (cambridge.org)>

[7]Schengen Visa, 'The Schengen Agreement - History and the Definition' <The Schengen Agreement - History and the Definition (schengenvisainfo.com)> Accessed 17th November, 2022.

[8]D Bigo, ibid n 4.

[9] Ecowas/979 Protocol/A/P.1/5/79 Relating to Free Movement of persons, Residence and Establishment
http://documentation.ecowas.int/download/en/legal_documents/protocol

First phase is on free movement, second phase is Residence and the third phase is on establishment.[10]
As part of ECOWAS stride to implement the first phase in the year 2000, the region established a common passport known as ECOWAS travel certificate, additionally, making effort to implement the joint visa.
However, in spite of the action plan for implementation as contained in article 2 of the protocol which was structured to cover a period of 15 years, yet the ECOWAS has not fully implemented the first phase of the implementation plan on free movement let alone, the Residence and Establishment[11]. Years after the treaty the ECOWAS was unable to have a breakthrough of the treaty. While the EU that came After has attained much success in the implementation of the convention.
European immigration policy has been developed at different stages, and on several occasions. The low level of coordination in the early intergovernmental cooperation at European level in the 1970s and early 1980s substantially changed with the creation of the Co-ordinators' Group and then, although not for all EU states, through the Schengen framework.
Note that despites the positive incentive of visa facilitation on the recent reform of the Common Code on visa, which has been in force in 2020, the effectiveness of these instruments, has been questioned which have seriously affected the implementation of the law and makes it impossible to effectively achieve it aim. This paper will examine the Schengen states in view of the benefits and possibilities of common policies at the EU level for different immigration categories. The work will be looking at the EU visa policy regime and how it has been influenced by the increasingly developing migratory dynamics towards the EU states and non EU states. It will make an attempt on analyzing the most recent reform of the Common Code on Visa, which has introduced some contradictions and uncertainties by the recent reform and equally gave the European Commission the mandate to propose specific restrictive measures related to visa processing and visa fee in case of lack of cooperation especially on readmission which makes it difficult to be implemented. This study will examines the Schengen visa of Europe and try to look at its impact on immigration law, challenges of implementation with a view to proffering possible solutions to the menace.

1.2 Schengen Member States

Schengen Area signifies a zone where 26 European countries[12], abolished their internal borders, for the free and unrestricted movement of people, in harmony with common rules for controlling external borders and fighting criminality by strengthening the common judicial system and police cooperation[13].
The Schengen area has common entry and exit requirements. All of these countries are located in Europe. This allows the travelers to move freely between members countries without going through borders controls or getting a visa for each country. The members of the Schengen area are Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, The Netherlands, Norway, Poland, Portugal, Slovkia, Slovenia, Spain, Sweden, Sweitzerland[14].
It is important to note not all Schengen Member States are EU Member States. Likewise, not all EU Member States have signed the Schengen Agreement and are therefore not a part of Schengen. Bulgaria, Cyprus, Croatia, Romania, (the United Kingdom)[15] and Ireland are all EU Member States, but not Schengen Member States. However, once an EU Member State, the nation-state is legally bound to join

[10] Ibid article 2 of the ECOWAS protocol
[11] Aderanti Adepoju, Alistair Boulton and Mariah Lavin. 2010 Promoting integration through mobility: Free movement under ECOWAS. http://www.unchr.org/49e479c811.

[12] 'Schengen Member Countries' *WWI Worldwide Insured Travellers Agency GmbH* <Member Countries of the Schengen Area (schengen-travel.com)>accessed 17th November, 2022.
[13] 'The 26 Countries of the Schengen Area' <Schengen Countries: What Are They? - AXA Schengen (axa-schengen.com)> accessed 17th November, 2022.
[14] Ibid.
[15] Ibid.

the Schengen area, but the aforementioned countries are yet to join due to a variety of political reasons. Norway, Iceland, Switzerland, and Liechtenstein are currently not members of the EU, but have become a part of the Schengen area[16]. For a country to become part of Schengen, it has to give up some degree of national sovereignty in the form of independent control of its national borders and the power to manage the mobility of people and goods crossing its nation state borders, which are now part of the internal Schengen border regime, sharing external borders with all Schengen Member States.

As stated in the Implementing the Schengen Agreement convention of June 1985, the Contracting Parties (Belgium, Germany, France, Luxemburg, and The Netherlands) were to gradually abolish "checks at their common borders"[17]. Thus, crossing the border of one Schengen state is *de facto* like crossing the border to all member states[18]. With regards to admission of individuals into the Schengen area, sharing of external borders comes with common immigration and visa policies, rules and regulations.

Schengen Area covers most of the EU countries, except Ireland and the countries that are soon to be part of the Schengen Area: Romania, Bulgaria, Cyprus, and Croatia[19]. Although not members of the EU, countries like Norway, Iceland, Switzerland and Lichtenstein are also part of the Schengen zone[20].

Currently, 22 members fully implement the Schengen acquis, four of them – members of the EFTA, implement Schengen acquis through specific agreements related to the Schengen agreement[21]. Iceland, Norway, Switzerland and Lichtenstein are associate members of the Schengen Area but are not members of the EU[22]. All are this are part of the EFTA which the implement the Schengen acquis through specific agreements related to the Schengen agreement.

Monaco, San Marino, and Vatican City have opened their borders with, but are not members of the visa-free zone. The Azores, Madeira, and the Canary Islands are special members of the EU and part of the Schengen Zone even though they are located outside the European continent[23].

There are five more EU members that have not joined the Schengen zone: Ireland – which still maintains opt-outs and Romania, Bulgaria, Croatia, and Cyprus – that are seeking to join soon[24].

A holder of a Uniform Schengen visa can travel to all 26 member countries of the Schengen Area[25]:

1.3 EU Visa Policy Regime

European Union policy on short-stay visa,[26] on the Schengen States, that (other than Britain and Ireland) as well as Iceland, Norway and Switzerland. This can be traced back to the 1980s when the Member States established intergovernmental cooperation on justice and home affairs in order to curb illegal migration.

With the conclusion of the Schengen Agreement in 1985, the cooperation was also linked to the establishment of free movement of persons in the EU, followed by the Schengen Implementing Convention in 1990, which required the adoption of 'compensatory' measures by the Member

States, such as common and effective external border controls[27]. The 1997 Amsterdam Treaty incorporated the Schengen acquis into EU law with the so-named protocol[28]. Hence, there are two sources

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[16]M Flensted-Jensen, 'Imageries of the 'Schengen State': A study of everyday encounters between The Schengen visa system and Jordanian visa applicants ' (Master Thesis in Advanced Migration Studies, 2019) 5.

[17] Schengen Agreement 1985: headline in M Flensted-Jensen ibid.

[18]R Zaiotti, *Cultures of Border Control: Schengen and the Revolution of European Frontiers*, (University of Chicago Press 2011) 3.

[19]'Schengen Area – The World's Largest Visa Free Zone'
< Schengen Area - The 26 Member Countries of the Schengen Zone (schengenvisainfo.com)> accessed 16th November, 2022.

[20]Ibid.

[21]Ibid.

[22]Ibid.

[23]Ibid.

[24]Ibid.

[25]Ibid.

[26] The common EU visa policy covers only the regulations on short-term visa (up to 90 days). The issuing of long-term visas is the competence of the Member States, 4.

[27]A Meloni, *Visa policy within the European Union structure*, (Berlin; New York: Springer, 2006). In F Zampagni, 'A Visa for Schengen's Europe Consular Practices and Regular Migration from Senegal to Italy' (2011) CARIM VI Summer School on

for the current law on visa policy: the Union law[29] and secondary legislation stemming from Schengen Agreements. On the basis of former article 100c EC, the Council adopted Regulation 2317/95 which, after it was annulled by a judgment of the Court of Justice (1997), was replaced by Regulation 574/99[30] determining third countries whose nationals must have a visa at the time of the crossing of the external borders of the Member States. The new regulation only includes the common list of the third countries whose nationals are subject to the visa obligation: it set out a list of 101 'risky countries'. For third countries not appearing on the common list, Member States remained free to choose whether to impose a visa obligation or not. But the Schengen States coordinated their visa policy more thoroughly than regulations 2317/95 and 574/99 required. Gradually the Member States reached a harmonized position and two lists were drawn up: the first one of 32 third countries whose nationals where subject to the visa obligation in all the Schengen States; the second list of 44 countries who were not. [31]

The full harmonization of the Member States' visa requirements occurred with Regulation 539/2001 which establishes the exhaustive 'black' and 'white' lists[32]. This appears that favored countries are on the 'white list', which means that their nationals do not require visas to enter the territory of the Union; countries whose nationals are 'suspect' are on the 'black list' and they must always have a visa obtained abroad before arriving at the borders of the Union.

Flowing from above, it is noted that almost all of Africa is in the black list, while most of South America is in the white list. In conclusion, the black list denotes suspicion towards particular cultural identities, countries at war and poor countries[33]. This should be a strong note to take for African Union and member states, because there was no justification to have the list on "white list" and "black list" other than promoting racism rather than integration that the GAMM is advancing. This means that, it is unfeasible to tell which part of which justification is in action. Visa requirements of nationals in the black list assessment is not on Individual behaviour , but on the presumption of risk associated with the applicant country.'[34]

1.3.1 Common Consular Instructions and the Community Code on Visas

On the 5th April, 2010, the Common Consular Instructions (CCI) for diplomatic missions and consular posts, and the Community Code on Visas, came into force. It was set up to govern the issue of uniform visas. An attempt to codify a more coherent legal regime resulted in the adoption of the Common Code on Visa by Regulation 810/2009 (CCV)[35]. This was adopted to establish 'the procedures and conditions for issuing visas for transit through or intended stays in the territory of the Member States not exceeding three months in any six month period'[36]. Such a Regulation, which replaced the previous legislation, has been recently amended by Regulation 2019/1155 that is applicable since 2 February 2020[37].

CCI contain a number of legal and procedural flaws which introduces legal uncertainty into the document and which creates the grounds for different applications by different consular services regardless of being the first substantial document unifying consular visa practices. Even the recent Visa Code, the first legally binding instrument which establishes 'the procedures and conditions for issuing visas for transit through

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Euro-Mediterranean Migration and Development (2010) Best Participant Essays Series AS 2011/59 , *Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute.*

[28]D Bigo, E Guild, 'Controlling frontiers: free movement into and within Europe' (2005) *Aldershot: Ashgate*, 241-242

[29]Former art 62 EC, now art 77, Treaty on the functioning of the European Union, OJ 2010 C 83.

[30]Ibid.

[31] D Bigo, E Guild ibid n 29, 242.

[32] Regulation (EC) 539/2001, OJ 2001 L 81.

[33] HV Houtum, 'Human blacklisting: the global apartheid of the EU's external border regime' (2010) *Environment and Planning D: Society and Space*, 28, 957-976.

[34] COM (2009) 262/4, An area of freedom, security and justice serving the citizen, 19.

[35] Ibid.

[36] Art 1(1) 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), [2009] OJ L243/1.

[37] Regulation 2019/1155, Art 3(2).

or intended stays in the territory of the Member States does not exceed three months. All these do not address the issues.

Visa Code[38] allows for too much discretion by the consular authorities in requesting additional documents that often resulted in very burdensome procedures of obtaining visas and the right to appeal against visa refusal referred to the national legislation of the member States. The Visa Code addresses the lack of procedural harmonization which characterized the previous regime by introducing an obligation for the Member States to motivate visa refusal decisions[39].

The EU Commission has drawn up the 'Handbook for the processing of visa applications and the modification of issued visas' (Commission Decision adopted on 19 March 2010) under article 51 of the Visa Code. It sets up operational instructions providing clear guidance on how consular authorities should issue short-stay visas in each and every individual case that might occur. It should be noted that the text created by the EU Commission neither creates any legally binding obligations upon Member States nor establishes any new rights and obligations for people who might be concerned by it. It rather aimed at ensuring a harmonized application of the legal provisions.

Article 53 of the Visa Code provides that Member States should inform the European Commission of the third countries for which they require prior consultation in the context of a visa application.

The European Commission issues a list containing these countries of origin[40]. The applicants subject to prior consultation are mostly nationals of African, Asian and Arabic-speaking states, including states 'producing' the highest number of refugees[41]. Stateless persons and refugees, regardless which nationality they hold are included in the list as well.

1.3.2Visa Information System (VIS)

Regulation 767/2008 on the Visa Information System (VIS), defines the purpose and functionalities of the computerised system aimed at facilitating the exchange of data between EU Member States and associated countries applying the common visa policy. VIS contains the information on the whole 'visa history' of the applicants, including their biometric and personal data, information on travel documents, dates and places of visa application, type of visa requested, details of the person issuing the invitation, main destination and duration of intended stay, intended dates of arrival and departure, intended border of first entry or transit route, residence, current occupation and previous visa applications. The database will be accessible by visa, immigration and asylum authorities as designated by participating states and competent authorities responsible for carrying out checks at external border and within the national territories. Article 31 of the Regulation relating to the VIS, data 'may be transferred or made available to a third country or to an international organisation listed in the Annex if necessary in individual cases for the purpose of proving the identity of third-country nationals, including for the purpose of return'[42]. Although apparently set up as an administrative file, the VIS system will in practice function as an intelligent tool for the purpose of identifying third-country nationals staying illegally in the territory in order to enforce a return decision or removal order[43].

As recently confirmed by the Court of Justice of the EU (CJEU), the competence to adopt humanitarian visas falls 'solely within the scope of national law'[44]. Interestingly, in the aftermath of the migratory

[38] Art 14 and annex II. In V Shamray, 'EU Visa Policy: on the edge between the EU internal security and foreign policy'(2010), *Budapest: Open Society Institute*.

[39] Art 32(1) and annex VI.

[40] The Migration Law Clinic expert opinion Access to legal remedies against a visa refusal based on an objection of another Member State prepared by students from the Vrije Universiteit Amsterdam for the Joined Cases C-225/19 and C-226/19 R.N.N.S. and K.A. In 2013 , the list consisted of 30 third countries and in the 2017 version, the list had expanded to 38 third countries< https://ec.europa.eu/home-affairs/policies/schengen-borders-and-visa/visa-policy/ decision-visa-application_en > accessed 16th November, 2022.

[41] UNHCR, 'Figures at a glance' <https://www.unhcr.org/figures-at-a-glance.html> accessed 16th November, 2022.

[42] Regulation (EC) 767/2008, OJ 2008 L 218.

[43] Brouwer E. (2008), Digital borders and real rights: effective remedies for third-country nationals in the Schengen information System, Leiden: Martinus Nijhoff Publisher.

[44] Court of Justice of the EU (CJEU), C-638/16 PPU, X and X v État belge, 7 March 2017, para. 44.

emergency of 2015, during the negotiation on the first Commission's proposal to revise the Visa Code[45], the European Parliament had suggested that 'the possibility to apply for a European humanitarian visa directly at any consulate or embassy of the Member States should be established' within the revised CCV[46]. The proposal did not take off, owing to the Council's strong opposition, and it was not included in the final Commission's proposal to revise the CCV. It is worth mentioning that the Court of Justice has obtained full jurisdiction on all the measures adopted under Title V of the TFEU. Before the entry into force of the Lisbon treaty, in December 2009, the jurisdiction of the Court on visas, asylum, immigration and other policies related to free movement of persons was rather limited. In its ruling in Georgescu, in fact, the Court of Justice stated that, on the basis of former Article 68 (1) TEC, it lacked jurisdiction to interpret the Visa Regulation on a preliminary ruling from a national court that was not a court of last instance[47]. The Lisbon Treaty repealed former Article 68 of the TEC thereby removing those restrictions on the jurisdiction of the Court to give preliminary rulings. Even though the case law on visa is still rather limited, this is a significant reform, as it provided for increased uniformity in the application of the legal framework and enhanced judicial protection for individuals.

The Hassani judgment of 2017 on the relevance of the right to appeal against refusal of visa applications confirms the potential of the Court's interpretation of the EU visa acquis[48]. The EU visa policy has been traditionally criticized for being discriminatory[49], as this body of law divides third country nationals in two general categories, including those who need a visa to enter the Schengen territory ('black list') and those who do not ('white list'). Such a divide has sparked lively academic debates about the asymmetrical access to mobility in the Schengen area[50]. This form of 'passport categorization' has been impacting on the overall perception of third country nationals in the EU, with some non-EU citizens that are seen with suspicion rather than as legitimate travellers[51], and has confirmed with the 'general use of visa requirements as a tool for immigration control.'

Also, it has been argued on the fact that the inclusion of a country into the 'black list' was mostly depending on the levels of irregular migrants or asylum seekers from that particular country registered in the previous years[52]. From this perspective, the visa policy responds to the increasing tendency to the securitization of the Schengen area and constitutes an essential component of the externalization of IBM, by which border controls are 'performed anticipatorily beyond the external frontiers of the EU by authorities posted in third countries, including member States' embassies and consulates' personnel'[53]. The European Commission itself has confirmed that the visa policy is a 'vital tool in preventing irregular migration towards the European Union and potential threats to its security'. Nonetheless, it is difficult to evaluate to which extent the provisions of the CCV have contributed to preserving the security of the Schengen external borders, since the full deployment of the VIS, both at consular posts worldwide and at Schengen border crossing points, was completed only in 2016[54]. The Commission's approach to the visa policy as a migration management tool has been even more recently reiterated in its latest Proposal to

[45] European Commission, Proposal for a Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code) (recast) COM(2014) 160 final, 1 April 2014.

[46] Report on the proposal for a regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code) (recast), A8-0145/2016, 22 April 2016, proposed amendment for recital 26.

[47]CJEU, C-51/03 PPU, Georgescu, 31 March 2004. For further details see Meloni (n 22), 96.

[48] CJEU, C-403/16, El Hassani, 13 December 2017.

[49] R Cholewinski, 'Border and Discrimination in the European Union, Brussels: Migration Policy Group' (2002),21. <https://www.migpolgroup.com/_old/wpcontent/uploads/2016/10/152.bordersandDiscrimination_exec_summary01.02.pdf >. Accessed 15th November, 2022.

[50] C Finotelli, G Sciortino, 'Through the gates of the fortress: European visa policies and the limits of immigration control' (2013) *Perspectives on European Politics and Society*, 14, 80–101.

[51] H Houtum, 'Human blacklisting: The Global Apartheid of the EU's external Border Regime' (2010) *Environment and Planning D: Society and Space*, 28 , 957–976.

[52] Finotelli and Sciortino, 85.

[53] J Huysmans, 'The European Union and the securitization of migration' (2000) *Journal of Common Market Studies*, 38, 751–777.

[54]COM(2018) 302 final.

recast the CCV[55]. In this regard, the revision was mostly oriented to the facilitation of visa procedures or to the clarification and streamlining of existing provisions, on the one hand, and to establishing a legal link between visa policy and third countries' cooperation on readmission of irregular migrants, on the other hand.

This reflects the position already expressed by the Council in its mandate to negotiate the first Commission's proposal to revise the CCV and that favoured 'the establishment of a link between third-countries' cooperation on readmission and rules on visa facilitation'. This approach was especially followed in the association process with the Western Balkan countries, in the light of a mechanism triggering a temporary suspension of the exemption from the visa requirement in case of 'a decrease in cooperation on readmission'[56]. Visa facilitation and cooperation on readmission are not directly regulated in the CCV but they are the object of separate agreements between the EU and third countries within broader Mobility Partnerships[57]. The recent amendment to the CCV limits itself to establish that in case of lack of cooperation by certain third countries to readmit those of their nationals in an irregular situation, 'a restrictive and temporary application of certain provisions' of the CCV will be applied'[58]. This combines the '"stick and carrot" practice of the EU to negotiate visa facilitation agreements with third neighbouring countries in exchange for readmission agreements. Such a practice has even furthered the discriminatory nature of the EU visa law's building with a very classification and selectivity of third country nationals. This approach has increased the discriminatory effects of the EU visa policy without ensuring a more effective cooperation on readmission.

1.4 Challenges of the Schengen Visa Policy

Managing migration and the security of its external borders is a challenge for Europe. Up to 1.83 million illegal crossings were detected at the EU's external borders in 2015[59]. Although this figure dropped to about 200,000 in 2021, but as at 2024 is around 4.8 millions, while irregular migrations stood at 178000, albeit it dropped in 2025 to 26% the EU tries to strengthen its external border controls and to deal more efficiently with asylum applications[60]. Some of these challenges have caused great developments in border management policy for instance, the creation of instruments and agencies such as the Schengen Information System, the Visa Information System, the European Border and Coast Guard Agency, or an entry and exit registration system at the Schengen zone's external borders.

In a resolution adopted in July 2021, Parliament approved the renewed Asylum, Migration and Integration Fund (AMIF) budget for 2021-2027, which was increased to €9.88 billion[61]. The fund contributes to strengthening the common asylum policy, develop legal migration, in line with member state needs, support the integration of third-country nationals, and fight irregular migration. It also serves to push member states to share the responsibility of hosting refugees and asylum-seekers more fairly.

The EU visa policy plays a crucial role in developing a principled GAMM as it links the cooperation with third countries with the possibility to regulate access to the Schengen territory through the visa policy. However, the revision of the CCV with its punitive shift relegates the EU visa policy to a mere migrati

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The Schengen Convention was faced with a great criticism such as the secret atmosphere in which it was created, lack of openness it is still surrounded, insufficient democratic control and especially the role of the

[55]N Vavoula 'Of Carrots and Sticks: A Punitive Shift in the Reform of the Visa Code' (2018) *EU Immigration and Asylum Law and Policy*. <https://eumigrationlawblog.eu/of-carrots-and-sticks-a-punitive-shift-in-the-reform-of-the-visa-code/ > accessed 15th November, 2022.

[56] Regulation (EU) 2018/1806, Art 8(2)c.

[57] E Collett, A Ahad, 'EU Migration Partnerships: A Work in Progress, Report' (2017), *Brussels: Migration Policy Institute.* < https://www.migrationpolicy.org/research/eu-migration-partnerships-work-progress> accessed 15th November, 2022. .

[58] Regulation (EU) 2019/1155, recital 13.

[59]'Schengen: a guide to the European border-free zone' (2019), *European Parliament News* <Schengen: a guide to the European border-free zone | News | European Parliament (europa.eu)> accessed 16th November, 2022.

[60]Ibid.

[61]Ibid.

Executive Committee. Another important objection already elaborated, is the absence of a general independent judicial control which can be remedied either by a separate independent judicial body or by expanding the jurisdiction of the Court of Justice to have control in individual matters as well. Further flaw of this Convention is the impact that Schengen Information System has on individual's private life.

Great expectations have been put on the revision of the EU Visa Code, as an 'important additional tool, providing the EU with the possibility to adopt restrictive visa measures for third countries which do not sufficiently cooperate on readmission.

1.5 RECOMMENDATION

a. There is a need to borrow a leaf for African Union and its sub regional unions to build a strong intergovernmental agency that ensure full realization of the Protocol.

b. Build a strong institutions that would provide an enabling platforms and a link to other countries and continents.

1.5 CONCLUSION

The reform of the Visa Code marks another step in the 'less for less' approach to the GAMM, insisting on applying negative incentives to third-country cooperation. Admittedly, readmission is a key policy of the EU and efforts to strengthen cooperation with third countries in this area are necessary. However, this cannot be unfavorable to the effectiveness of other policies' objectives nor can this result in mechanisms infringing upon fundamental legal principles, such as the prohibition of discrimination. A more principled approach to readmission requires more than mere punitive mechanisms.

Instead, taking into consideration that in many cases the lack of cooperation on readmission ensues from the lack of resources or administrative capacity in a third country, more political and possibly economic investments in capacity building or development aid in third countries can determine in the long term more effective and fairer cooperation and a more constructive migration management. In order to make a resume of the impact that Schengen Convention and especially the implications its visa regime has on the free movement of persons, there is need to look at the advantages and disadvantages of this Convention. Certainly this Convention has advantages for aliens already residing in the territory of one of the Contracting States, since there are no visa requirements when they wish to travel within the European Union territory. Also, people admitted for a short visit can travel through the whole Schengen territory with the same visa. An advantage more is that there is no control on persons at the internal borders.

On the other hand, the strengthening of external border controls and of national controls of persons[62] counters this advantages and it is clear that the limitations of the Schengen Convention, in view of free movement of persons specially affect the nationals of third states.

In conclusion, from the discretion authority of the State in views to entry for short visits, which gives the State right to pose additional requirements which go further than ample means and threat to public order. The Signatorie States undertook to pursue a common visa policy without any guarantees that the criteria for issuing the visa will be made public and that the procedural guarantees will be respected accordingly.

It is important to note that the abolition of the right to short visit and the range of the visa obligations represent obstacles to the mobility of persons and exchange of different cultural experiences which is in contradiction with the main aim of the European Community, enlargement of Europe by accepting new countries. It makes more difficult the opportunity people to travel, get education and exchange experiences with people from the European Union which is a loss for both sides.

This European policy may be the result of the fear of EU Countries from the expansion of people from the third countries in their territories resulting in uncontrolled migration. However, considering the fact that the Schengen Convention is in force for many years now and there has been no appreciable expansion of the movement of persons its impact can be felt more on the restrictions which have been intensified.

[62] H Meijers, 'Schengen-Internationalization of central chapters of the law on aliens, refugees, security and the police' (1991)72.