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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

State of play as regards the situation of non-reciprocity in the area of visa policy

I. INTRODUCTION

On 12 April 2016, the Commission presented a Communication on the state of play and the possible ways forward as regards the situation of non-reciprocity with certain third countries in the area of visa policy.¹ In that Communication it was noted that with the active support of the Commission, the vast majority of the non-reciprocity cases notified as regards third countries had been solved.² However, the Communication recalled that, if the third country concerned had not lifted the visa requirement by 12 April 2016, Council Regulation (EC) No 539/2001 of 15 March 2001, as amended by the European Parliament and Council by Regulation (EU) No 1289/2013 of 11 December 2013, obliged the Commission to adopt a delegated act suspending for 12 months the visa waiver for nationals of that third country.³ The Regulation also required that the Commission take into account the consequences of the suspension of the visa waiver for the external relations of the EU and its Member States.⁴

The April 2016 Communication assessed the consequences and impact of the suspension of the visa waiver for EU citizens and businesses as well as nationals of the third countries concerned, and invited the European Parliament and the Council to discuss the most appropriate way forward. The Commission subsequently presented five follow-up Communications: in July⁵ and December⁶ 2016, in May⁷ and December⁸ 2017, and in December 2018⁹. In its latest Communications on visa reciprocity from December 2017 and December 2018, the Commission provided an overview of the state of play and the way forward as regards the situation of non-reciprocity with the United States (notified by Bulgaria, Croatia, Cyprus, Poland and Romania), as the only remaining case of non-reciprocity.

On 15 January 2019, the latest Communication was presented the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

This Communication takes stock of progress made towards visa reciprocity with the United States since December 2018, and in particular reports on progress achieved by Poland which joined the United States Visa Waiver Program in November 2019.

This Communication comes at a time of proliferation of visa-related measures taken by many countries to fight the COVID-19 global pandemic. Measures temporarily restricting non-

¹ COM(2016) 221 final of 12 April 2016.

² In 2014, the Commission received notifications of non-reciprocity situations from five Member States: Bulgaria, Croatia, Cyprus, Poland and Romania. These notifications related to Canada, the United States, Australia, Brunei and Japan. The situations of non-reciprocity with Canada, Australia, Brunei and Japan have all been resolved by achieving full visa waiver reciprocity.

³ See Article 1(4) of that Regulation. The same obligation is now provided for by Article 7 of Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (codification), OJ L 303, 28.11.2018, p. 39, which codified Regulation 539/2001.

⁴ See now Article 7 of Regulation 2018/1806.

⁵ COM(2016) 481 final of 12 July 2016.

⁶ COM(2016) 816 final of 21 December 2016.

⁷ COM(2017) 227 final of 2 May 2017.

⁸ COM(2017) 813 final of 20 December 2017.

⁹ COM(2018) 855 final of 19 December 2018.

essential travel on a global level have become widespread. As of 13 March 2020, the United States imposed temporary travel restrictions for foreign nationals, regardless of their nationality, who have been physically present in the Schengen area or who have visited it during the previous 14 days¹⁰. These restrictions were extended to Ireland and the United Kingdom on 16 March¹¹. These measures are linked to entry restrictions to the United States based on the physical presence in the areas concerned, and not the nationality of the travellers and are therefore not linked with visa reciprocity. The European Union has taken similar steps to restrict non-essential travel from third countries¹². This Communication must be read taking into account this current rapidly evolving situation¹³.

Extraordinary as the times may be in terms of implementation of visa policies world-wide, the Commission considers it still of importance to report in the present Communication on the steps taken in the reporting period, especially during the course of 2019 before the COVID-19 global pandemic erupted, to achieve full visa reciprocity with the United States for all Member States. These efforts will resume once the present exceptional situation returns to normality.

¹⁰ <https://www.dhs.gov/news/2020/03/11/homeland-security-acting-secretary-chad-f-wolf-s-statement-presidential-proclamation>

¹¹ <https://www.dhs.gov/news/2020/03/16/department-homeland-security-outlines-new-process-americans-returning-schengen-area>

¹² COM(2020) 115 final of 16 March 2020.

¹³ As of 19 March, the United States issued a global health advisory for the entire world as level 4, its highest level, advising against travelling. As a consequence, routine U.S. visa services worldwide are temporarily suspended worldwide.

II. DEVELOPMENTS IN THE REPORTING PERIOD

1. Designation of Poland into the United States Visa Waiver Program

When a country appears to meet all the Visa Waiver Program requirements, the U.S. Department of State can formally nominate it for entry into the Visa Waiver Program. The U.S. Department of Homeland Security then determines whether the country meets the requirements and assesses that the country's designation into the Visa Waiver Program would not detrimentally affect the United States interests, after which the Secretary of Department of Homeland Security can designate a country into the Visa Waiver Program.

On 4 October 2019, the U.S. Department of State formally nominated Poland for entry into the Visa Waiver Program. On 6 November 2019, the U.S. Department of Homeland Security, after having certified that Poland fulfils the necessary statutory¹⁴ and policy requirements, designated Poland into the Visa Waiver Program. As of 11 November 2019, citizens of Poland are able to apply to travel to the United States for tourism or business purposes for up to 90 days without obtaining a U.S. visa.

The Commission welcomes Poland's entry into the Visa Waiver Program, which is the result of active diplomatic engagement and full cooperation with all sides. This approach was instrumental for resolving previous non-reciprocity cases, and also bore fruit in the case of the United States. The results achieved show that tangible progress in this regard can be achieved through continued engagement and diplomatic contacts.

2. Overview of EU-United States contacts and their follow-up

During the reporting period, political and technical contacts between the EU and the United States continued at a high pace. The Commission continued to urge the United States at all possible occasions to further cooperate with the Member States concerned and to accelerate progress towards full visa reciprocity. In coordination with the Member States concerned, the Commission renewed calls for these efforts to lead to intensified and concrete action on all sides, on the basis of objective criteria.

In this context, visa reciprocity was discussed at all relevant official meetings between the EU and the United States during the reporting period, particularly at high political level at the bi-annual EU-U.S. Justice and Home Affairs Ministerial meetings held in Bucharest in May 2019 and in Washington D.C. in December 2019. The matter was also thoroughly discussed at technical levels, at the occasion of the bi-annual EU-U.S. Justice and Home Affairs Senior Officials' meetings – held in Bucharest in February 2019, in Brussels in September 2019, and in Rovinj in March 2020, and the tripartite meetings (held between the Commission, the United States and the Member States concerned) in Washington D.C. in May 2019 and in Brussels in November 2019.

¹⁴ Visa refusal rate for Poland for fiscal year 2019 dropped from 3.99% to 2.76%, bringing it under the legally required 3% threshold. Poland and United States signed the required Preventing and Combating Serious Crime Agreement on 12 June 2019, paving the way to increased cooperation in the area of public security and migration between the two countries.

Tripartite meeting in Washington D.C. (May 2019)

The tripartite meeting held at senior management level, took place in a constructive atmosphere in Washington D.C. in May 2019. This was the second time that the tripartite talks had taken place in Washington D.C., at the invitation of the United States side, a gesture which was welcomed by the EU side as it enabled further contacts with a wide range of U.S. counterparts and other key interlocutors. The Commission explained the political context of the then upcoming European Parliament elections and the urgent need to make further progress. The meeting addressed the technical requirements of the Visa Waiver Program, as well as the political significance of achieving full visa reciprocity.

In line with the commitments to provide more concrete guidance to the Member States concerned, the United States presented a detailed questionnaire (developed by the Department of Homeland Security)¹⁵ in order to map technical Visa Waiver Program security requirements in a more transparent way. Compared to the self-assessment matrix, provided in 2018 to the Member States concerned to be able to track the fulfilment of basic Visa Waiver Program requirements, the questionnaire provides a much more in-depth overview of those requirements. Acknowledging that the questionnaire provides further transparency and clarity on all the aspects of Visa Waiver Program security requirements, it was agreed that the Member States concerned would provide replies to the questionnaire within an agreed deadline. As the next step, the United States would then assess these replies in order to identify possible areas where work remains to be done towards meeting the Visa Waiver Program requirements. A follow-up discussion would take place at the next tripartite meeting in November 2019, with the objective of taking action in those areas.

The participants at the tripartite meeting acknowledged that the visa refusal rate is not encompassed by the questionnaire, even though it is one of the main legal obstacles to join the Visa Waiver Program for the majority of the Member States concerned. The United States explained the United States is engaged with the Member States concerned through consular sections of the United States embassies in the respective capitals. The consular sections are cooperating with the local authorities with a view to bring the visa refusal rate down, while safeguarding the independence of United States' consular officers in their work of adjudicating visa applications. While acknowledging the ongoing consular cooperation and the need to safeguard the visa decision-taking independence of United States' consular staff, the Commission and Member States concerned again called on the United States to provide a detailed breakdown of visa refusal rates. Such a breakdown, with figures on specific locations or trends in key consulates with a high refusal rate, would notably help the Member States to better target their outreach campaigns and in this way bring the visa refusal rate down further.

Side meetings were held with various stakeholders, including with Congress staffers, to raise awareness of the visa reciprocity issue, regarding the measures taken by the EU to reinforce the EU external borders and internal security. As United States interlocutors explained, the United States sees the Visa Waiver Program not only as a travel facilitation program, but also

¹⁵ The questionnaire will also be a tool used to monitor the continued fulfilment of Visa Waiver Program requirements by *all* current Visa Waiver Program members. Visa Waiver Program membership is regularly reviewed by the United States, and members need to continue fulfilling the requirements of the Program.

as a security program. The EU side pointed to the security benefits for the United States resulting from the extension of the Visa Waiver Program to all EU Member States.

EU-U.S. Justice and Home Affairs Ministerial meeting in Bucharest (June 2019)

At the EU-U.S. Justice and Home Affairs Ministerial meeting that was held in Bucharest on 19 June 2019, both the Romanian Presidency of the Council of the EU and the Commission reiterated the urgency of extending the Visa Waiver Program to all EU Member States. The meeting recognised the progress made, took note of the process which was agreed at the May 2019 tripartite meeting and approved the way forward, i.e. the United States' assessment of the Member States' replies to the U.S. questionnaire would serve as the basis for future discussions, with the aim to lead to concrete actions. Both sides committed to work on this basis and to report back to the political level on progress made.

It was also acknowledged that numerous Visa Waiver Program requirements fall within the remit of bilateral cooperation between the United States and individual Member States. Work will therefore continue in parallel – at bilateral level and in tripartite meetings involving the Commission.

The joint statement¹⁶ issued after the Ministerial meeting states that the EU and the United States agree on the importance of advancing further towards reciprocal visa-free travel under their respective legal frameworks. It also welcomes the progress of the Member States concerned towards meeting the requirements of the Visa Waiver Program, which will enable them to be considered for designation into the programme.

Tripartite meeting in Brussels (November 2019)

The tripartite meeting, which took place in Brussels on 13 November 2019, was the occasion to report on the entry of Poland into the United States Visa Waiver Program. Polish representatives were encouraged to share their experiences with the remaining Member States concerned regarding their successful approach to addressing the Visa Waiver Program requirements.

Both the United States and the Commission committed to continuing the work with the remaining four Member States concerned. Discussions focused on the tailored work-plans, which were provided by U.S. authorities to each of the four Member States concerned, based on their respective national replies to the detailed U.S. questionnaire. The work-plans contain actions for Visa Waiver Program compliance regarding security requirements. While all four Member States concerned and the Commission welcomed the delivery of the work-plans, acknowledging the transparency they bring to the process, the Member States expressed their wish for the actions to be accompanied by time-lines. All four Member States concerned committed to working on the basis of the work-plans, to providing further comments to the U.S. and to starting a continuous dialogue on the actions suggested in the respective work-plans. The Commission suggested that the next tripartite meeting should be the occasion to take stock of progress.

¹⁶ <https://www.consilium.europa.eu/en/press/press-releases/2019/06/19/joint-eu-u-s-statement-following-the-eu-u-s-justice-and-home-affairs-ministerial-meeting/>

EU-U.S. Justice and Home Affairs Ministerial meeting in Washington D.C. (December 2019)

At the EU-U.S. Justice and Home Affairs Ministerial meeting that was held in Washington D.C. on 11 December 2019, both the Finnish Presidency of the Council of the EU and the Commission reiterated the importance of achieving full visa-waiver reciprocity with the United States. While welcoming the entry of Poland into the Visa Waiver Program as a significant matter of progress, it was stressed that securing waivers for the four remaining Member States remained a priority.

It was acknowledged that the tailored work-plans elaborated by the U.S. for the four Member States concerned was a good way to advance, as they provide much needed clarity and concrete guidance towards reaching compliance with the Visa Waiver Program security requirements.

The next tripartite meeting to be held in spring 2020¹⁷ would be an occasion to revisit progress made on the work-plans by each of the four remaining Member States, and the issue will be revisited, to monitor progress, at the next Ministerial meeting in Croatia in May 2020.

In the joint statement¹⁸ issued after the Ministerial meeting, the European Union and the United States welcomed Poland's designation into the Visa Waiver Program, reminding that this underscores the usefulness of the tripartite process and the encouraging progress made by four other Member States towards reciprocal visa free travel under the respective legal frameworks. Both sides committed to continue working together, in the appropriate frameworks, to support the remaining four EU Member States concerned in their efforts towards designation into the Visa Waiver Program.

3. U.S. Visa Waiver Program – requirements and developments

The Communication hereby presents developments regarding the most relevant U.S. Visa Waiver Program requirements and outlines the progress made by the Member States concerned in the reporting period towards fulfilling U.S. Visa Waiver Program requirements.

Visa refusal rate

According to United States legislation, as stipulated in the United States Immigration and Nationality Act, the aspiring countries for the Visa Waiver Program must have a refusal rate for non-immigrant visas of less than 3% per year or a two-year average of less than 2%. According to visa refusal statistics for the fiscal year 2019, the visa refusal rates for three of the four Member States concerned remain above the required 3% threshold (Bulgaria 9.75%, Croatia 4.02% and Romania 9.11%). However, overall progress can be noted, with a general downward trend observed over the last years.

Croatia registered a marked decrease from 5.92% in 2018 to 4.02% in 2019, bringing it close to the 3% legal threshold.

¹⁷ Tentatively planned, bearing in mind the exceptional situation of global COVID-19 global pandemic.

¹⁸ <https://www.consilium.europa.eu/en/press/press-releases/2019/12/11/joint-eu-us-statement-following-the-eu-us-justice-and-home-affairs-ministerial-meeting/>

Bulgaria has recorded a steady decrease of the visa refusal rate over the last years, with refusals decreasing from 17.3% in 2015, 16.9% in 2016, 14.97% in 2017, 11.32% in 2018 to 9.75% in 2019. Romania has also recorded a decrease, from 11.76% in 2017 and 10.44% in 2018 to 9.11% in 2019. This brings both Bulgaria and Romania under 10% for the first time. Cyprus remained under the 3% threshold, with the refusal rate at 2.78%¹⁹.

The United States publishes visa refusal rates for all countries worldwide at the end of the fiscal year²⁰. However, the non-immigrant visa refusal rate for countries with visa-free travel to the United States is not a comparable indicator. For countries that are already members of the U.S. Visa Waiver Program, the visa requirement applies only to travellers who are not eligible to apply through the Electronic System for Travel Authorization (ESTA).

Visa Waiver Program security requirements

As previously reported, in addition to signing the Preventing and Combating Serious Crime Agreement (PCSC), the targeted enhancements introduced by the United States Department of Homeland Security in 2017 have made it mandatory for this Agreement to be fully implemented for a country to be considered for Visa Waiver Program designation. All Member States concerned have advanced their work on the fulfilment of this criterion. Bulgaria, Croatia, Cyprus and Romania have already signed and ratified this agreement with the United States and have continued to work towards its full implementation²¹.

Following the political endorsement of the way forward at the EU-U.S. JHA Ministerial meeting in June 2019, work on security requirements continued on the basis of the United States questionnaire (see section II.2) and work-plans individually tailored for each Member State concerned. The next tripartite meeting, planned for the spring 2020 circumstances allowing, will focus on the progress in actions identified in the work-plans. The Commission will continue to coordinate and assist in this process as appropriate, in close cooperation with the Member States concerned.

Overall, the fact that one Member States recently joined the U.S. Visa Waiver Program and the ongoing results-oriented process underway for the remaining Member States shows there is a concrete perspective for all four Member States concerned to continue making progress based on objective requirements. Among the four Member States, some appear to be closer to fulfilling these requirements and to be considered for designation into the Visa Waiver Program, however there are concrete prospects of progress for all of them, notwithstanding the current exceptional situation of COVID-19 global pandemic.

III. NEXT STEPS AND CONCLUSIONS

¹⁹ While Cyprus already complies with the 3% visa refusal rate requirement, the United States signalled that they are looking the totality of all relevant circumstances and the division of the island remains a particular challenge.

²⁰ Available at State Department website: <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/RefusalRates/FY18.pdf>

²¹ Poland and United States signed the required Preventing and Combating Serious Crime Agreement on 12 June 2019 and successfully worked towards its full implementation.

The Commission reiterates its intention to actively support the four Member States concerned and to work closely with them in order to help them fulfil the requirements for U.S. Visa Waiver Program designation. Although most of the requirements fall under bilateral cooperation between the United States and the Member State concerned, visa reciprocity is a fundamental principle of EU visa policy, which warrants the Commission's ongoing involvement and engagement.

After they are resumed, upcoming contacts at all levels, including technical and political – both in tripartite and bilateral formats, will provide opportunities to maintain the momentum. The next tripartite meeting planned for spring 2020, circumstances allowing, should take forward the technical work based on the work-plans provided by the United States to each of the four remaining Member States, and allow the Member States to operationalise the Visa Waiver Program security requirements.

The next EU-United States Justice and Home Affairs Ministerial meeting, planned in May 2020, circumstances allowing, will be an opportunity to assess progress made on the political level. The Commission remains committed to achieving full visa reciprocity for all Member States as a matter of priority.

As soon as the exceptional situation regarding the COVID-19 global pandemic returns to normality, the Commission will continue its engagement with the United States and with the Member States concerned to accelerate progress towards full visa reciprocity. As things stand, especially in the light of the entry of Poland into the United States Visa Waiver Program, and the continued progress made by the other Member States concerned, the Commission maintains its position that cooperation and joint diplomatic engagement, where the Commission is in close coordination with the Member States concerned, continues to be the most appropriate way forward.

Against this background, the Commission currently considers that the adoption of a delegated act temporarily suspending the exemption from the visa requirement for nationals of the United States would be counterproductive at this point in time and it would not serve to achieve the objective of visa-free travel for all EU citizens.

In this context, it is essential that the EU continues to speak with one voice on this important matter. The Commission will continue to work closely with the European Parliament and with the Council to achieve full visa reciprocity and will keep the European Parliament and the Council informed on the further developments.