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

**Defining the position of the Commission following the European Parliament resolution
of 22 October 2020 on obligations of the Commission in the field of visa reciprocity and
reporting on the state of play**

I. INTRODUCTION

This Communication defines the position of the Commission for the purposes of Article 265 of the Treaty on the Functioning of the European Union following the European Parliament Resolution of 22 October 2020 on ‘obligations of the Commission in the field of visa reciprocity in accordance with Article 7 of Regulation (EU) 2018/1806’. It also reports on the developments in the field of visa reciprocity with the United States since March 2020, when the last Communication was adopted, underlining the continued efforts and engagement of the Commission to address the current situation of non-reciprocity, notwithstanding the COVID-19 pandemic.

The Resolution adopted by the European Parliament on 22 October 2020 represents the follow up to an oral question debated in the European Parliament plenary on 19 October 2020. In its answer to this question, the Commission restated its commitment to achieving visa reciprocity for all Member States as a matter of priority. The Commission also explained that, as regards the United States, it remains fully engaged in a results-oriented process, in close coordination with the Member States concerned, and that the results achieved show that tangible progress towards full visa waiver reciprocity can be achieved through the current route of continued engagement and joint diplomatic contacts. In the Resolution, the European Parliament considers that the Commission is “*legally obliged to adopt a delegated act temporarily suspending the exemption from the visa requirement for nationals of third countries*”, which have not lifted the visa requirement for citizens of certain Member States by the deadline of 12 April 2016. In practice, this refers to the United States only since the citizens of Bulgaria, Croatia, Cyprus and Romania are still visa required when travelling to the United States. It also calls on the Commission, based on Article 265 of the Treaty on the Functioning of the European Union, to adopt the required delegated act within two months from the date of adoption of the Resolution.

II. BACKGROUND

On 12 April 2016, the Commission presented a Communication on the state of play and possible ways forward as regard the situation of non-reciprocity with certain third countries in the area of visa policy.¹ The Communication noted that, with the active support of the Commission, the vast majority of the non-reciprocity cases notified as regard third countries had been solved.² However, it was also recalled that, if the remaining third countries with visa requirements did not lift them by 12 April 2016, the Commission would be obliged to adopt a delegated act suspending the visa waiver for their nationals for a period of 12 months in accordance with Regulation (EC) No 539/2001 of 15 March 2001, as amended by Regulation (EU) No 1289/2013 of 11 December 2013.³ The Regulation also required that the

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

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 six follow-up Communications: in July⁵ and December⁶ 2016, in May⁷ and December⁸ 2017, in December 2018⁹, and in March 2020¹⁰. In the last one, the Commission provided an overview of the state of play and the way forward as regard the situation of non-reciprocity with the United States which still affects citizens of Bulgaria, Croatia, Cyprus and Romania, i.e. the only remaining case of non-reciprocity. It also reported on progress achieved by Poland, which joined the United States Visa Waiver Program in November 2019.

The Communication presented in March 2020 noted the extraordinary situation in terms of implementation of visa policies world-wide, given the proliferation of visa-related measures taken by many countries to fight the COVID-19 pandemic. As of 13 March 2020, the United States imposed temporary travel restrictions on non-essential travel of foreign nationals who, regardless of their nationality, have been physically present in the Schengen area or have visited it 14 days prior to entering United States territory¹¹. These restrictions were extended to Ireland and the United Kingdom on 16 March¹². Since these entry restrictions are based on physical presence in an area rather than nationality, they cannot be considered as linked with visa reciprocity¹³. The European Union took similar steps to restrict non-essential travel into the Union.¹⁴

III. RECENT DEVELOPMENTS

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

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.

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.

¹⁰ COM(2020) 119 final of 23 March 2020.

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

¹² <https://www.dhs.gov/news/2020/03/16/department-homeland-security-outlines-new-process-americans-returning-schengen-area>

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, which has been maintained in the reporting period. As a consequence, routine U.S. visa services worldwide were first temporarily suspended worldwide. As of July, the United States started a phased resumption of visa services, notably emergency and mission critical visa services.

¹⁴ COM(2020) 115 final of 16 March 2020 and Council Recommendation 2020/912 of 30 June 2020 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction.

Although it was not possible to organise physical meetings after March 2020, the issue of non-reciprocity was addressed in all relevant videoconferences between the EU and the United States. It was, most notably, on the agenda of the EU-U.S. Justice and Home Affairs Ministerial meeting, held on 28 May 2020. It was also thoroughly discussed at the EU-U.S. Justice and Home Affairs Senior Officials' meeting on 15 September 2020, and in the tripartite meetings (held between the Commission, the United States and the Member States concerned) on 18-19 June 2020 and 10-11 December 2020.

EU-U.S. Justice and Home Affairs Ministerial meeting (May 2020)

At the EU-U.S. Justice and Home Affairs Ministerial meeting held on 28 May 2020, both the Croatian Presidency of the Council of the European Union and the Commission reiterated the importance of extending the U.S. Visa Waiver Program to all EU Member States. While recalling the progress made through the entry of Poland into the Visa Waiver Program, which demonstrates that joint pragmatic technical and diplomatic engagement is bearing fruit, it was stressed that securing waivers for the four remaining Member States remains a priority. It was agreed that in order to achieve progress, constructive engagement based on tailored work-plans elaborated by the United States for each of the four Member States concerned and guiding them towards full compliance with the U.S. Visa Waiver Program security requirements, should continue.

Tripartite meeting in June 2020

A tripartite videoconference meeting, dedicated to the issue of visa reciprocity, took place on 18-19 June 2020. It brought together representatives from the United States, the Commission and the Member States concerned - Bulgaria, Croatia, Cyprus and Romania. Continued engagement, despite the pandemic and the suspension of all non-essential travel between the EU and United States, showed the importance of the visa reciprocity issue. The participants explored how to continue common work in the COVID-19 context and discussed progress on outstanding U.S. Visa Waiver Program security requirements and on visa refusal rates.

Despite ongoing COVID-19 travel restrictions and the worldwide suspension of most of the U.S. visa service operations since March, representatives of the United States did not envisage changes to the method of calculating how visa-refusal rates are determined for the 2020 fiscal year. The visa-refusal rate is an important legal requirement for any country that aspires to join the U.S. Visa Waiver Program¹⁵.

Regarding the outstanding U.S. Visa Waiver Program security requirements, there was a second round of discussions on the tailored work-plans provided by the United States to the four concerned Member States in 2019. The discussion on the basis of concrete country-specific work plans was considered by the Member States concerned as an improvement compared to the previous approach which was based on a more general assessment of the security requirements. Since the work plans contain guidance which is specific to each

¹⁵ 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%.

Member State, they allow the latter to focus their efforts on meeting the outstanding requirements. The plans, in fact, contain suggested actions to be taken by the Member States to reach compliance, as reported in the March 2020 Communication. The work-plans were revisited during the tripartite meeting and their implementation assessed, with all four Member States demonstrating progress on a range of work-strands. These include implementation of information-sharing agreements (namely Preventing and Combating Serious Crime Agreement), using information provided by the United States for enhanced screening and counter-terrorism efforts, as well as increased national screening capabilities. While acknowledging progress, the United States reiterated that its assessment follows a holistic approach, and it did not consider all the requisite agreements as fully implemented yet¹⁶.

As an outcome of the meeting, all four Member States committed to continue working on various work-strands from their respective work-plans. The United States committed to continue reviewing the respective work-plans and give continuous feedback.

Tripartite meeting in December 2020

Another round of tripartite meeting took place on 10 and 11 December 2020, over videoconference. It served to underline the engagement despite the continued context of a global pandemic. The visa refusal rates for the 2020 fiscal years were not yet publicly available, but the U.S. authorities underlined the that the decline in 2020 also translated in a sharp decline in visa applications.

The meeting therefore focused on the security requirements, by having a third round of discussions on the tailored work-plans provided by the U.S. authorities to each of the Member States concerned. All Member States demonstrated further progress on a range of work-strands. Enhancing the integrity of national passport issuing systems was raised as an issue, to a different degree, for each of the four Member States concerned, with schemes offering expedited ways to citizenship and addressing cases of fraud in the passport offices flagged as a particular area of concern.

As part of the meeting, the Commission services delivered a presentation on European Travel Information and Authorisation System (ETIAS) and overall interoperability of information systems for migration and security, in order to raise awareness of U.S. authorities for this area where EU rules exist.

As an outcome of the meeting, all four Member States committed to continue addressing the suggested actions from the work-plans. The United States committed to refining the respective work-plans, if need be, in light of actions already taken. The Commission committed to subsequently address other horizontal issues, where EU rules exist.

¹⁶ 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.

2. U.S. Visa Waiver Program requirements and developments

Visa refusal rate

As reported in the March 2020 Communication, the visa refusal rate for 2019 showed decreases for all four Member States concerned, bringing some of them close to the legally required 3% threshold. Cyprus remains under 3%, Croatia decreased to 4%, and Bulgaria and Romania both recorded rates under 10% for the first time – i.e. 9.75% for Bulgaria and 9.11% for Romania. The visa refusal rates for the 2020 fiscal year, which ended in September, are not yet available.

Security requirements

As previously reported, Bulgaria, Croatia, Cyprus and Romania have signed and ratified the Preventing and Combating Serious Crime Agreement (PCSC) with the United States, and have worked on its full implementation, which according to United States authorities is not yet the case.

Work on meeting the overall security requirements continues on the basis of the work-plans which the U.S. authorities individually tailored for each Member State concerned (see section II.2). The next tripartite meeting, planned for the spring 2021 will focus on the progress in actions identified in the work-plans.

3. Current political context in the United States and EU-U.S. bilateral relations

Following the Presidential, Congress, State and local elections on 3 November 2020, the United States administration has now entered a transition period. It will last until the Inauguration Day scheduled for 20 January 2021. This means that the incumbent administration is not expected to take any forward-looking policy decisions, including on visa reciprocity. Political engagement will resume after the inauguration of the new President and his Cabinet.

On 2 December 2020, the Commission, together with the European External Action Service, issued a Joint Communication “A new EU-US agenda for global change”¹⁷. The Joint Communication puts forward a proposal for a new, forward-looking transatlantic agenda, conveys a positive political message to the upcoming US Administration, on the importance of renewing our transatlantic partnership and recalls that for people on both sides of the Atlantic, transatlantic ties are a vital element of their societies, identities, economies and personal lives.

As stated in the Joint Communication, the change in administration in the United States provides a unique opportunity to define a new transatlantic agenda for global cooperation. One of the guiding principles of such a partnership should be to work together on solutions to bilateral differences that respect our common values. In this context, it will important to assess the stance of the incoming United States administration to visa reciprocity issues.

¹⁷ JOIN(2020) 22 final

IV. NEXT STEPS AND CONCLUSIONS

The Commission reiterates its intention to continue to actively support the four Member States concerned in order to help them fulfil the requirements of the U.S. Visa Waiver Program.

Upcoming meetings, both technical and political (in tripartite and bilateral formats), will provide opportunities to maintain the momentum. The next regular tripartite meeting, planned for spring 2021, should take forward the technical work based on the work-plans provided by the United States to each of the four remaining Member States, allowing the latter to further operationalise the U.S. Visa Waiver Program security requirements.

The next EU-U.S. Justice and Home Affairs Senior Officials' meeting, expected to take place in early spring 2021, followed by the EU-U.S. Justice and Home Affairs' Ministerial meeting, planned for summer 2021 in Portugal, will allow to assess progress made.

The Commission remains committed to achieving full visa reciprocity for all Member States as a matter of priority. It will continue working with the United States and concerned Member States to advance towards full visa reciprocity building on the momentum created by the joint Communication on a new EU-US agenda for global change. Given the entry of Poland into the United States Visa Waiver Program, the extraordinary context stemming from the COVID-19 pandemic – which has negatively impacted travel and the overall implementation of visa policies world-wide, and the continued progress made by the Member States concerned, the Commission maintains its position that – as long as there is sustained progress – cooperation and joint diplomatic engagement, whereby the Commission works in close coordination with the Member States concerned, continues to be the most appropriate way forward. It has to be noted that the Member States concerned agree to continue dialogue and achieve results with the United States through constructive engagement with the United States and that none of them has invited the Commission to adopt the delegated act temporarily suspending the visa exemption for U.S. nationals.

The Commission also takes into account that suspending the exemption from the visa requirement for nationals of the United States would have significant negative impacts in a wide range of policy areas and sectors, as well adversely affect trans-Atlantic cooperation and our external relations with a strategic partner. It may also endanger visa-free travel to the United States for all other EU citizens, if the United States would follow up on indications repeatedly given that the mere adoption by the Commission of a delegated act on the suspension of the visa waiver for United States' citizens would immediately result in the United States adopting retaliatory measures, reintroducing a visa requirement for all EU citizens.

Against this background, the Commission 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, especially at this point in time and would not best serve the objective of attaining visa-free travel to the United States for all EU citizens.

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 abreast of further developments. It will report on further developments to the European Parliament and the Council by December 2021.