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**FOURTH REPORT FROM THE COMMISSION TO THE COUNCIL AND THE
EUROPEAN PARLIAMENT**

**on certain third countries' maintenance of visa requirements in breach of the principle
of reciprocity**

**in accordance with Article 1(5) of Council Regulation (EC) No 539/2001 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, as amended by
Regulation (EC) No 851/2005 as regards the reciprocity mechanism**

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I. INTRODUCTION

Council Regulation (EC) No 539/2001 of 15 March 2001, listing the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States (Annex I to the Regulation, the “negative list”) and those whose nationals are exempt from that requirement (Annex II to the Regulation, the “positive list”)¹, as amended by Council Regulation (EC) No 851/2005 of 2 June 2005², is the basic instrument of our common visa policy, providing also a reciprocity mechanism for cases where a third country on the positive list maintains or introduces a visa obligation for the citizens of one or more Member States. The first³ and second visa reciprocity reports⁴ provide a full description of this mechanism.

In its third report⁵ in 2007, the Commission concluded that dialogue with third countries under the new reciprocity mechanism has proven effective. Full reciprocity was achieved with New Zealand and Mexico. Significant progress was achieved in dialogue with Australia. Furthermore, a comprehensive visa waiver agreement should soon be negotiated with Brazil. However, with regard to Canada and the United States of America (USA) it was concluded that little progress had been made. If this continued to be the case, appropriate retaliatory measures could be considered.

In its conclusions of 18 September 2007, the Council took note of the Commission's report and indicated that the competent Council bodies will continue the discussion.

The present, fourth report takes stock of the approaches made by the Commission since September 2007 vis-à-vis third countries on the positive list which continue to require visas from nationals of one or more Member States.

II. RESULTS ACHIEVED SINCE THE COMMISSION’S THIRD REPORT ON RECIPROCITY

Following the presentation of the third report in the Council on 18 September 2007, the Commission actively resumed its efforts.

1. Full reciprocity now in place

1.1. Israel

Notification: Romania

On 1 March 2008, the "Entry into Israel Order" (visa exemption) (Amendment 5768-2008) entered into force which provides that all Romanian citizens are exempted from the visa requirement when entering Israel for a short stay.

Assessment

Full visa waiver reciprocity has now been achieved vis-à-vis all Member States and associated countries.

¹ OJ L 81, 21.3.2001, p. 1.

² OJ L 141, 4.6.2005, p. 3.

³ COM(2006) 3 final.

⁴ COM(2006) 568 final.

⁵ COM(2007) 533 final.

1.2. Malaysia

Notification: Bulgaria

On 21 January 2008⁶, Bulgaria informed the Commission that, as from 18 December 2007, Bulgarian citizens are exempted from the visa requirement when entering Malaysia for short-stays.

Assessment

Full visa waiver reciprocity has now been achieved vis-à-vis all the Member States and the associated Schengen countries.

1.3. Paraguay

Notifications: Bulgaria, Romania

Bulgaria informed the Commission that a visa waiver agreement between Bulgaria and Paraguay signed on 17 March 2006 has entered into force on 27 March 2008⁷. As a result, Bulgarian citizens are not required to be in possession of a visa when entering Paraguay for a short stay. On 10 August 2007, the authorities of Paraguay informed the Commission that pursuant to Decreto No 1038 of 17 May 2007, Romanian citizens are not required to be in possession of a visa when entering Paraguay.

Assessment

Full visa waiver reciprocity has now been achieved vis-à-vis all the Member States and the associated Schengen countries.

2. Further progress on reciprocity since the report of 13 September 2007

2.1. Australia

Current situation

Australia requires an Electronic Travel Authority (ETA) from nationals of 14 Member States (Belgium, Denmark, Germany, Greece, Spain, France, Italy, Luxembourg, Malta, the Netherlands, Austria, Portugal, Finland and Sweden), as well as of Iceland and Norway.

An eVisa (e676) is required from the nationals of 11 Member States (Bulgaria, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Poland, Romania, Slovenia and Slovakia). Nationals of all these 11 Member States are granted a so-called "autogrant facility" (see Annex 2 of the first visa reciprocity report for further explanation of the eVisa and the "autogrant facility"⁸).

Steps taken to achieve reciprocity

Since the report of 13 September 2007, Australia has provided the "autogrant facility" status to the remaining four Member States: Slovakia as from 20 March 2008 and Bulgaria, Poland and Romania as from 16 June 2008.

Australia postponed the introduction of the eVisitors system from mid-2008 to October 2008. All Member States including the associated Schengen countries, regardless of their present status, will be the first countries to benefit from this eVisitors system.

⁶ OJ C 62, 7.3.2008, p. 2.

⁷ We are waiting for the official notification of Bulgaria

⁸ COM(2006) 3 final.

According to the information received from the Australian Department of Immigration and Citizenship (DIAC), the eVisitors system provides that:

- The eVisitor is an authority to visit Australia for tourism or business purposes for a maximum period of three months on each entry.
- The eVisitor will be valid for 12 months from the date it is granted.
- The eVisitor applications are made online and are free of charge.

Assessment

The Commission welcomes the movement of Bulgaria, Poland, Romania and Slovakia to the "autogrant facility". This means that all Member States either enjoy the "autogrant facility" or need an ETA.

The Commission is looking forward to the implementation of the eVisitors system as this would result in equal treatment of all Member States. Nevertheless, the Commission will closely monitor the implementation of the eVisitors system in order to ensure that it provides equal treatment in practice as well. Once all information on the eVisitors system is available the Commission will prepare an assessment on whether or not this system is tantamount to the Schengen visa application process as defined in the Common Consular Instructions.

2.2. Brazil

Current situation

The citizens of five Member States, namely Cyprus, Estonia, Latvia, Lithuania and Malta, still require a visa when entering Brazil.

By Verbal Note No 9752 of 7 November 2007⁹ Romania informed the Commission that, following the entry into force of the Agreement between the Government of Romania and the Government of the Federative Republic of Brazil concerning the abolition of the visa system, as of 11 November 2007, Romanian citizens are exempt from the visa obligation for transit and journeys of short duration.

Steps taken to achieve reciprocity

On 18 April 2008, the Council adopted a decision authorizing the Commission to open negotiations on the conclusion of a short-stay visa-waiver agreement between the European Community and Brazil. On 2 July 2008 the Commission met the Brazilian Mission to the EU in order to open the negotiations for a short stay visa waiver agreement. During the meeting the two parties agreed on an agenda on pursuing these negotiations with the purpose of signing the agreement as soon as possible.

Assessment

The Commission welcomes the opening for the negotiations on a short-stay visa waiver agreement and will do its utmost to conclude the agreement as soon as possible.

2.3. Brunei Darussalam

Current situation

All Member States and associated countries benefit from a 30 day visa waiver.

Steps taken to achieve reciprocity

⁹ OJ C 19, 25.1.2008, p. 1.

By Verbal Note No 3668 of 22 April 2008 Romania informed the Commission that, following the decision of the Government of Brunei Darussalam concerning the abolition of the visa obligation, as of 1 February 2008 Romanian citizens are exempt from the visa obligation for a stay of up to 30 days. The website of the Ministry of Foreign Affairs of Brunei Darussalam indicates that all Member States and associated countries benefit from visa waiver for stays up to 30 days.

Assessment

Brunei Darussalam grants a visa waiver for 30 days to most of the countries with which it has a visa waiver arrangement. According to information provided on the website of the Ministry of Foreign Affairs of Brunei Darussalam, a 90 day visa waiver arrangement is granted only to holders of ordinary U.S. machine readable passports. Since nationals from one third country benefit a more favorable regime, the Commission will seek clarification from Brunei Darussalam's authorities on this differentiation and will assess the situation with Brunei Darussalam once this clarification has been provided.

2.4. Canada

Current situation

A visa requirement is maintained for nationals of Bulgaria and Romania.

Steps taken to achieve reciprocity

Since the 2007 report, Canada has lifted the visa requirement for nationals of six Member States: for the Czech Republic and Latvia on 31 October 2007 and for Hungary, Lithuania, Poland and Slovakia on 29 February 2008. With regard to Lithuania and Poland, as from 1 January 2009 only their nationals holding biometric passports will be able to travel without a visa to Canada.

A Canadian delegation conducted technical visits to Romania on 14 to 16 April 2008 and to Bulgaria on 17 and 18 April 2008 to review the visa requirement. The final reports of these technical missions are expected to be completed in August 2008.

Assessment

The Commission welcomes the lifting of the visa requirement for nationals of the Czech Republic, Hungary, Latvia, Lithuania, Poland and Slovakia. The Commission will continue to pursue discussions with Canada with a view to lifting visa requirements for Bulgaria and Romania. The Commission will also work towards the objective of achieving the same rights for all nationals of EU Member States as regards the status of their passports in order to achieve full reciprocity with Canada.

3. No progress on reciprocity since the report of 13 September 2007

3.1. Japan

Current situation

The visa requirement is still maintained for the citizens of Romania.

Steps taken to achieve reciprocity

By letter of 10 April 2008, the Ambassador of Japan to the European Union informed the Commission that the Japanese authorities are currently examining the possibility of taking measures to extend visa exemption to Romanian nationals for short stays in Japan. The Japanese authorities invited the Commission and Romania to cooperate in the collection of

relevant information to remove some of the concerns of the Japanese authorities before extending the visa waiver.

Assessment

The Commission notes the Japanese answer sent on 10 April 2008 but looks forward to a full reply to its own note of July 2007. In line with the text agreed at the 2008 EU-Japan Summit, the Commission reiterates its request for full visa waiver reciprocity with respect to the citizens of all EU Member States and underlines the importance both EU and Japanese leaders attached to resolving this issue.

3.2. Panama

Current situation

The visa requirement is still maintained for the citizens of Bulgaria and Romania.

Steps taken to achieve reciprocity

Further to verbal notes of 5 July 2007 and 10 April 2008 by which they were requested to waive the visa requirement for Bulgarian and Romanian citizens, the authorities of Panama replied on 7 May 2008 that the administrative procedures for waiving the visa requirement for the citizens of Romania and Bulgaria have been initiated.

Assessment

The authorities of Panama have confirmed their intention to waive the visa requirement for citizens of Bulgaria and Romania and have initiated their internal procedures to that end. The Commission considers that a reasonable time should be given to the authorities of Panama to finalize these administrative procedures. However, this process should be closely monitored in order to encourage a fast resolution of this outstanding visa reciprocity issue.

3.3. Singapore

Current situation

The visa waiver is limited to stays of 30 days if arriving by air and 14 days if arriving by sea or land which can be extended locally for two periods of 30 days in accordance with the general visa waiver scheme. However, the citizens of three countries (Australia, South Korea and the United States of America) enjoy a preferential 90 day stay in Singapore.

Steps taken to achieve reciprocity

On 13 February 2008, the Commission invited the Singaporean authorities to a meeting at technical level in order to discuss the possibilities for restoring full reciprocity in accordance with the line proposed in the third reciprocity report: either a unilateral waiver of three months or the signing of a visa waiver agreement.

On 1 April 2008, the authorities of Singapore informed the Commission that no change to their visa programme would be introduced. Furthermore, they pointed out that visa waiver agreements are being negotiated with the Czech Republic, Estonia and Bulgaria to allow the citizens of those Member States to enter Singapore for a period of 90 days without needing to apply for an extension. The Czech Republic and Bulgaria informed the Commission that no negotiations are currently taking place with Singapore. Estonia has not yet provided any information.

Assessment

The Commission regrets that a three month visa free stay for the citizens of the EU has not been granted, while Singaporean citizens enjoy a "three months within six months" visa-free stay in the EU. Furthermore the Commission observes that there is no indication that the visa waiver for the EU citizens will reach the level of the three countries enjoying a preferential treatment.

Therefore, the Commission suggests that, while analyzing the information received by Singapore and the Member States with respect to the negotiations of visa waiver agreements, consideration should be given to the introduction of retaliatory measures in accordance with Article 1 paragraph 4 of Council Regulation 539/2001.

3.4. United States of America (USA)

Current situation

The visa requirement is maintained for nationals of Bulgaria, the Czech Republic, Estonia, Greece, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Romania and Slovakia.

Steps taken to achieve reciprocity

The Commission continued to raise the issue of non-reciprocity energetically with U.S. authorities at technical and political levels, notably at the EU-US JLS Ministerial Troika on 10-11 December 2007, the EU-US Justice and Home Affairs Ministerial Troika meeting on 12-13 March 2008, and the EU-US Summit on 10 June 2008.

On 30 January 2008, the U.S. authorities gave the Commission two draft Memoranda of Understanding (MoU) which the US intended to sign respectively with Visa Waiver Program (VWP) candidate countries and those countries already in the VWP. The draft MoU contained several elements of EC responsibility, e.g. the Electronic System for Travel Authorization (ESTA), enhanced standards for travel documents and provisions of information generated by Schengen rules.

On 12 March 2008, the Committee of Permanent Representatives (Coreper) agreed to pursue a twin track approach: *"In order to enable the designation of all EU Member States in the U.S. VWP, there was common agreement that Member States may initiate or develop bilateral commitments with the USA. In this context, it is being understood that EC law will be respected and that the Commission will be kept fully informed. The EC track to be negotiated by the Commission will follow the common approach agreed on 5 March 2008."* At the EU-US Justice and Home Affairs Ministerial Troika meeting on 12-13 March 2008, the EU and the US agreed in a statement to follow such a twin track approach: *"Those matters that fall within national responsibilities will be discussed with national authorities while those that fall within EU responsibility will be discussed with EU authorities."*

As regards the EC-US track of this twin track approach, on 18 April 2008, the Council adopted a mandate for the Commission to negotiate an agreement between the European Community and the USA regarding certain conditions for access to the U.S. VWP in accordance with Section 711 of the "Implementing Recommendations of the 9/11 Commission Act of 2007". In line with this mandate the Commission drafted an EC-US agreement, endorsed by Member States. The purpose of this agreement is to record satisfaction of U.S. legal requirements which fall under EC competence for entry or continued participation in the VWP. This draft agreement served as the basis for the first meeting between the Commission and U.S. authorities on the conditions of the U.S. VWP falling under EC competence on 29 April 2008. At that meeting the USA confirmed its commitment to cooperate on the development of the EC track.

Information exchange is of key concern for U.S. authorities within the EC track. However, the Commission and the Member States do not consider it possible to exchange information from EU databases (e.g. Eurodac and SIS) with third countries due to legal constraints. Nevertheless, the Commission is committed to exploring further in parallel the possibilities for information sharing with U.S. authorities. This was reiterated in the letter Vice-President Barrot sent to Secretary Chertoff on 25 June 2008 in which he outlined the need to record satisfaction of U.S. legal requirements which fall under EC responsibility (repatriation, enhanced travel documents and airport security) for entry into or continued participation in the VWP. The USA has not yet responded to this letter.

As part of the EC-track, the Commission also needs to assess whether the travel authorization under the ESTA is tantamount to a visa requirement or not. On 9 June 2008, the Interim Final Rule for the ESTA was published in the Federal Register. The Commission will provide its preliminary assessment on the basis of this Interim Final Rule as to whether the ESTA is tantamount to the Schengen visa application process as defined in the Common Consular Instructions or not, together with an analysis of the implications of ESTA for the protection of personal data. However, the Commission will be able to give a final assessment, only once the Final Rule has been published in the Federal Register; i.e. 60 days before its entry into force.

As regards bilateral arrangements, seven Member States have signed a MoU with the USA: the Czech Republic on 27 February 2008, Estonia and Latvia on 12 March 2008, Hungary, Lithuania and Slovakia on 17 March 2008, and Malta on 11 April 2008. Furthermore, Bulgaria signed an interim declaration outlining the security requirements of the VWP with the USA on 17 June 2008. In order to improve cooperation in combating terrorism, including cooperation between intelligence communities in sharing information regarding terrorist threats, the US is seeking bilateral arrangements with some Member States. For instance, Germany signed an agreement on enhancing cooperation in preventing and combating serious crime on 11 March 2008 and Hungary signed on 20 May 2008 an agreement with the USA on exchange of screening information concerning known or suspected terrorists.

Assessment

Since the report of 13 September 2007, the USA has signed seven MoU with Member States and an interim declaration with another Member State; it has engaged in negotiations on the EC-track and it has announced the Interim Final Rule for the ESTA. However, no additional Member State has joined the VWP. The EU and the USA have affirmed repeatedly their common goal to achieve secure visa-free travel, in full compliance with applicable laws, between the Member States and the USA as soon as possible. This was reiterated most recently at the 10 June 2008 EU-US Summit at which the jointly agreed Summit statement said: *"We will work together to enhance the security of visa-free travel and the US remains committed to expand its Visa Waiver Program to all EU Member States as soon as possible, including bringing additional EU Member States into the Visa Waiver Program this year."*

In the light of the above, the Commission believes that if the USA does not live up to its promises to bring additional EU Member States into the VWP before the end of this year, appropriate steps vis-à-vis the USA should be considered in order to expedite progress towards full reciprocity. The Commission will propose retaliatory measures, e.g. temporary restoration of the visa requirement for U.S. nationals holding diplomatic and service/official passports, as from 1 January 2009, unless additional EU Member States have been brought into the VWP by the end of 2008. This temporary measure would be lifted once tangible progress towards visa reciprocity with the USA has been achieved. With regard to the ESTA, the Commission will provide a preliminary assessment and a final assessment once the Final Rule is published in the Federal Register.

III. Conclusion

The Commission considers that since the last report of 13 September 2007 the dialogue with third countries under the new reciprocity mechanism has once again proven effective. Further full visa reciprocity has been achieved with three third countries (Israel, Malaysia and Paraguay). Furthermore, the Commission has achieved significant progress in the dialogue with Canada, for which only Bulgaria and Romania remain under the visa obligation. In the dialogue with Australia the Commission has achieved access for all Member States to the "autogrant facility" and equal treatment for the nationals of all Member States from October 2008. Nevertheless, the implementation of the Australian eVisitors system will be monitored carefully. The negotiations for a short-stay visa waiver agreement between the European Community and Brazil have started, in order to achieve full visa reciprocity with Brazil.

No progress has been achieved with Japan, Panama, Singapore and the USA. With regard to Singapore the Commission suggests that retaliatory measures should be introduced if within a reasonable time no full reciprocity has been achieved.

Regarding the USA, despite all efforts of the Commission and individual Member States and the promises by the USA to bring additional EU Member States in the VWP this year, no tangible progress has been made. Therefore, the Commission will propose retaliatory measures –e.g. temporary restoration of the visa requirement for U.S. nationals holding diplomatic and service/official passports– as from 1 January 2009 if no progress has been achieved. With regard to the U.S. ESTA, the Commission will prepare a preliminary assessment and a final assessment once the Final Rule is published in the Federal Register.

In view of the importance of achieving full reciprocity, the Commission hereby announces its intention to report to the European Parliament and Council again by not later than 30 June 2009, although formally, under Article 1(5) of Council Regulation (EC) No 851/2005, it is not obliged to present such a report until 30 June 2010.