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

**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
(Follow-up of the Communication of 12 April)**

I. INTRODUCTION

On 12 April 2016, the Commission presented a Communication on the state of play and the possible way forward as regards the situation of non-reciprocity with certain third countries in the area of visa policy ("the April Communication"). It described the state of play with the third countries concerned and recalled that the visa reciprocity mechanism envisages that if the third country concerned has not lifted the visa requirement by 12 April 2016, Council Regulation (EC) No 539/2001 of 15 March 2001 ("the Regulation") - as amended by Regulation (EU) No 1289/2013 of 11 December 2013¹ - obliges the Commission to adopt a delegated act suspending for 12 months of the visa waiver for nationals of that third country. The Regulation also requires that the Commission takes into account the consequences of the suspension of the visa waiver for the external relations of the EU and its Member States.

The Communication concluded that with three third countries - Brunei, Canada and the United States - full visa reciprocity had not been achieved by 12 April 2016 and that work should continue to achieve it.

In line with the Better Regulation guidelines, the Commission assessed the consequences and impacts of the suspension of visa waiver and concluded that in addition to the impact on EU citizens and the difficulties in implementation, significant impacts in a wide range of policy areas/sectors should also be considered, notably the impact on the European Union's external relations with Canada and the United States in a year where important agreements in the trade area are at a crucial stage or should be finalised. It also concluded that it is reasonable to expect a decrease in the number of travellers from Canada and the United States, and that this would lead to a considerable economic loss for the EU without achieving the objective of full visa reciprocity for all EU citizens.

The Commission invited the European Parliament and the Council to urgently launch discussions and to take a position not later than 12 July 2016 on the most appropriate way forward in the light of the assessment of the consequences of the suspension of the visa waiver provided in the April Communication.

The present Communication takes stock of the progress achieved since the adoption of the April Communication in discussions with Canada and the United States, reports on the positions taken in response to the Communication and sets out the next steps.

II. DEVELOPMENTS SINCE THE ADOPTION OF THE APRIL COMMUNICATION TO ACHIEVE FULL VISA RECIPROCITY

Brunei (notified by Croatia)

The April Communication stated that while full visa waiver reciprocity had not yet been achieved with Brunei, recent contacts had provided positive signals. On 12 April 2016, in parallel to the adoption of the April Communication, Brunei formally lifted the visa requirement for Croatian citizens and started to grant 90 days visa-free stay for the citizens of

¹ Regulation (EU) No 1289/2013 of the European Parliament and of the Council of 11 December 2013 amending 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, OJ L 347, 20.12.2013, p. 74–80.

Liechtenstein. This was officially notified on 13 April. The Commission welcomes that the non-reciprocity case with Brunei had been resolved².

Canada (notified by Bulgaria and Romania)

In the April Communication, the Commission stressed the need to push for full visa reciprocity and urged Canada to demonstrate its commitment by introducing tangible measures to achieve full visa reciprocity for all 28 Member States of the European Union. To achieve this objective a number of high level meetings with Canada at political level have taken place in the last months. Presidents Juncker and Tusk discussed the matter with Canadian Prime Minister Trudeau in the margins of the G7 meeting in Japan on 27 May. The President of the European Parliament Schulz and Romanian Prime Minister Cioloş had also met with Prime Minister Trudeau on 18 May and 15 June respectively. At Ministerial level, Commissioner Avramopoulos met with the Canadian Immigration Minister McCallum on 23 May and High Representative/Vice-President Mogherini met with Canadian Foreign Minister Dion, Immigration Minister McCallum and Trade Minister Freeland on 8 June.

The significance of the visa reciprocity issue in the perspective of the EU-Canada Strategic Partnership Agreement and in particular of the preparation of the signing and ratification of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) has also been emphasised at the highest political level by Bulgaria and Romania. Both Member States have also argued that the economic benefits that would follow the entry into force of the CETA would be offset by the fact that Bulgarian and Romanian citizens, including businesses people and consumers would not be allowed to travel to Canada without a visa.

In parallel, at technical level, in order to build confidence and to allow Canadian experts to identify possible risks and specify options to mitigate such risks or concerns associated with lifting the visa requirement, a Canadian expert mission took place in Romania between 9 and 15 June. Both sides gave positive feedback on the mission. A similar expert mission has been planned by the Canadian authorities to take place in Bulgaria between 21 and 27 July.

Visa reciprocity was also discussed at the Joint Consultation on Migration and Asylum between representatives of the Canadian Ministry of Immigration, Refugees and Citizenship Canada and the European Commission on 28 June. At this meeting, the Canadian side explained that following the expert missions, the Canadian Minister of Immigration, Citizenship and Refugees will make an assessment of the possibility of lifting the visa requirement for Bulgarian and Romanian citizens.

As outlined in the April Communication, pending progress on full visa reciprocity, one of the elements of the discussions with Canada has been a possibility to put in place an interim technical solution – a gradual expansion of the Electronic Travel Authorisation (eTA) to Bulgarian and Romanian citizens³. The EU objective remains full visa reciprocity for all Bulgarian and Romanian citizens. To this end, the Commission with the concerned Member States is exploring all solutions and options. In this context, the Canadian announcement of 28 June 2016 to lift the visa requirement for Mexican citizens subject to certain conditions and requirements as of 1 December 2016 is a matter to be further discussed with the Canadian authorities.

² See Daily News 14 April 2016.

³ For details: Report from the Commission of assessing the situation of non-reciprocity in the area of visa policy (C(2015) 7455 final of 5.11.2015), p. 4. and COM(2016) 221 final.

The intensive work and constructive discussions prepared the ground for the Ministerial-level meeting with Canada, Bulgaria, Romania and the Commission to review the progress made and to discuss the next steps towards full visa reciprocity, which took place on 11 July in Brussels. In this meeting, Canada undertook to inform in early autumn about the outcomes of the assessments and timelines for lifting the visa requirement, including on the necessary elements of cooperation with Bulgaria and Romania.

Despite the fact that constructive discussions with Canada including at the highest political level have intensified in the last months, Bulgarian and Romanian citizens are still required to have visas in order to travel to Canada. The Commission notes the commitment of the Canadian Government to continue working with the EU towards full visa reciprocity for all EU citizens. The Commission will therefore continue to push for full visa reciprocity in coordination with Bulgaria and Romania to accelerate the delivery of results. The Commission looks forward to the EU-Canada Summit, which will take place on 27 October 2016, as the occasion to confirm tangible progress on the lifting of the visa requirement for Bulgarian and Romanian citizens.

United States (notified by Bulgaria, Croatia, Cyprus, Poland and Romania)

In the April Communication, the Commission stressed the need to push for full visa reciprocity and urged the United States to demonstrate its commitment by introducing tangible measures to achieve full visa reciprocity for all 28 Member States of the European Union. To achieve this objective, contacts with the United States have intensified both at technical and political level.

On 15 April, soon after the adoption of the April Communication, Commissioner Avramopoulos discussed this matter with Secretary of Department of Homeland Security (DHS) Johnson. In parallel, the EU Delegation in Washington regularly stressed the need to move towards full reciprocity in its outreach to Congress.

At the EU-US Justice and Home Affairs Senior Ministerial meeting held on 2 June, visa reciprocity was discussed in detail. While the representatives of United States Administration explained that it remains committed to work with the EU and the five Member States concerned to achieve full visa reciprocity, it noted that the United States Congress has not moved in its position and that there was little chance of evolution before the forthcoming Presidential and Congressional elections. It also cited security concerns as a reason not to expand the U.S. Visa Waiver Program to the five affected EU Member States.

The United States repeatedly cautioned against any EU measures that could have adverse effects beyond the issue of visa reciprocity. It stressed that imposing visas on United States citizens would certainly lead Congress to reintroduce a visa requirement for all EU citizens. Referring to the ideas put forward by the Commission in the April Communication (i.e. extending the United States ESTA to some categories of travellers), the United States side replied that the current legislation does not allow such flexibility and also excluded the possibility of introducing legislative proposals to that effect in the near future. At the same time, recognising the sensitivity of the issue, the United States pointed to some available facilitations regarding the visa application and issuing procedure. These concern the extension of visas, and include providing certain facilitations to visa applicants (i.e. exemption from being fingerprinted and from the interview). However, these elements have been in place already for some time and cannot be considered as progress in terms of achieving full visa reciprocity.

In the United States Congress, since April, there has been no progress of relevance to EU citizens resulting from ongoing United States legislative initiatives, notably the "Jobs Originating through Launching Travel Act of 2015"⁴ and the "Equal Protection in Travel Act of 2016"⁵.

Visa reciprocity was also among the topics raised during the visit of a delegation of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament to Washington on 16-18 May.

It should be noted that the United States Government Accountability Office issued a report on 7 June focusing on how Visa Waiver Program partner countries share information with the United States regarding terrorist identity, criminal history and lost and stolen passports. The report notes that the United States was able to obtain information from Visa Waiver Program partner countries about more than 12,000 suspected terrorists, including almost 5000 previously unidentified by United States authorities. The Commission considers this exchange of information as very significant: it illustrates that the Visa Waiver Program not only facilitates the life of millions of legitimate transatlantic travellers, but also brings important security benefits to the United States. The report also states that the exchange of information has increased exponentially over the last year.

The Commission notes that this was also underscored by Deputy Secretary for Homeland Security Mayorkas and acting Counterterrorism Coordinator Siberell (Department of State) at the United States Senate Homeland Security Committee hearing on 26 May⁶, where the recent achievements of the EU in the area of security, such as the EU Passenger Name Records Directive or the establishment of the European Counter Terrorism Centre within Europol, were also acknowledged.

Despite stepping up political and technical contacts, there have not been comparable indications of progress with the United States as those seen with Canada. During the last three months, the United States has not moved towards lifting of the visa requirement for Bulgarian, Croatian, Cypriot, Polish and Romanian citizens to travel to the United States. The Commission will therefore continue to push for full visa reciprocity in coordination with the five Member States concerned to accelerate delivery of results. In this respect, the Commission will use all opportunities, including the joint breakfast of EU Foreign Affairs Council and Secretary Kerry on 18 July and the next EU-US Justice and Home Affairs Ministerial and senior officials meeting foreseen before the end of 2016 to explore the way ahead and all options or necessary actions to be taken to achieve this objective.

III. POSITIONS TAKEN IN RESPONSE TO THE APRIL COMMUNICATION

In the April Communication, the Commission invited the European Parliament and the Council to urgently launch discussions as regards the current reciprocity mechanism and to take a position on the most appropriate way forward, in light of the assessment provided by the April Communication. It invited the two institutions to inform the Commission on their respective positions not later than 12 July 2016.

⁴ <https://www.congress.gov/bill/114th-congress/house-bill/1401>

⁵ <https://www.congress.gov/bill/114th-congress/house-bill/4380/text>

⁶ <http://www.hsgac.senate.gov/hearings/protecting-america-from-the-threat-of-isis>

As regards the **European Parliament**, no plenary discussion with a view to taking such a position took place. The Chairman of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) sent a letter to the Commission on 7 June requesting the Commission to adopt the delegated acts foreseen by the Regulation as soon as possible. The letter of the LIBE Chairman considered that the Commission is under the obligation to adopt a delegated act pursuant to Article 1(4)(f) of the Regulation temporarily suspending the exemption from the visa requirement for the nationals of the third countries concerned, given that the United States and Canada have not lifted the visa requirement within the period of 24 months from the notification of non-reciprocity by concerned EU Member States. The letter asks the Commission to respect this legal obligation and adopt the necessary delegated acts as soon as possible, recalling that according to Article 265 TFEU action before the Court of Justice of the European Union may be brought by an EU institution should the Commission fail to act.

The **Council** did not put this matter on the agenda of the Council of Ministers and neither the Presidency nor the Council expressed any position on the current reciprocity mechanism in the light of the assessment provided by the Communication.

Among Member States, **Bulgaria and Romania** have been the most vocal in communicating their position to the Commission and to the two third countries concerned, especially to Canada at the highest political level.

Other stakeholders

Some **stakeholders** have also expressed their views on this matter. The **International Air Transport Association** (IATA), which gathers around 260 airlines representing 83% of global air traffic, has referred to the economic consequences of introducing new requirements for travellers from Canada and the United States to the EU⁷. IATA referred to data from the European Travel Commission, according to which more than 30 million Canadian and United States tourists visit Europe each year, spending over USD 54 billion in 2014. Furthermore, 31 representatives of the **tourism industry** addressed a joint letter to the LIBE Committee of the European Parliament stating that the suspension of the visa waiver for Canadian and United States citizens would reverse the positive trends in tourism flows from the United States and Canada, deprive the European travel and tourism sector of essential revenue and put thousands of European jobs at stake⁸.

IV. CONCLUSIONS

The Commission welcomes the achievement of full visa reciprocity with Brunei.

As regards Canada, the Commission notes that despite the intensified and constructive discussions and work with the Canadian authorities to progress on achieving full visa reciprocity in the past three months, Bulgarian and Romanian citizens are still required to have visas to travel to Canada. The Commission will therefore continue to push for full visa reciprocity in coordination with Bulgaria and Romania to accelerate the delivery of results. In this regard, at the 11 July Ministerial meeting in Brussels, Canada undertook to inform in early autumn about the outcomes of the assessments and timelines for lifting the visa requirement, including on the necessary elements of cooperation with Bulgaria and Romania. The Commission looks forward to the EU-Canada Summit, which will take place on 27-28 October 2016, as the occasion to confirm tangible progress on the lifting of the visa requirement for Bulgarian and Romanian citizens.

⁷ <http://www.iata.org/pressroom/pr/Pages/2016-06-02-07.aspx>

⁸ <http://www.tourismmanifesto.eu/#!blank/c20x9>

As regards the United States, the Commission notes that during the last three months the United States has not moved towards lifting of the visa requirement for Bulgarian, Croatian, Cypriot, Polish and Romanian citizens to travel to the United States. The Commission will therefore as outlined earlier use all opportunities to continue to push for full visa reciprocity in coordination with the five Member States concerned to accelerate delivery of results.

The Commission will work closely with both the European Parliament and the Council to ensure that the European Union speaks with one voice on this important matter and will report on the further progress made before the end of the year.
