



Council of the  
European Union

Brussels, 23 December 2016  
(OR. en)

15809/16

VISA 419  
CDN 37  
USA 67  
COMIX 859

#### COVER NOTE

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 22 December 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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No. Cion doc.: COM(2016) 816 final

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Subject: 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 to the Communication of 12  
April)

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Delegations will find attached document COM(2016) 816 final.

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Encl.: COM(2016) 816 final

I.



Brussels, 21.12.2016  
COM(2016) 816 final

**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 to the Communication  
of 12 April)**

## **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<sup>1</sup>. In this Communication it was noted that with the active support of the Commission, the vast majority of the non-reciprocity cases notified with eight third countries have been solved. However, 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 obliges the Commission to adopt a delegated act suspending for 12 months 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. Therefore, the April Communication also highlighted the importance of full involvement of the European Parliament and of the Council in the application of the reciprocity mechanism and given the particularly sensitive political nature of the suspension of the visa waiver, assessed the consequences and impacts of the suspension of the visa waiver for nationals of the third countries concerned and invited the European Parliament and the Council to urgently launch discussions in light of the assessment provided and to take a position on the most appropriate way forward.

As a follow up, in July 2016 the Commission took stock of progress achieved between April and July and set out the next steps on how to achieve full visa reciprocity.<sup>2</sup> It welcomed the achievement of full visa reciprocity with Brunei. In relation to Canada, the Commission looked forward to the EU-Canada Summit as the occasion to confirm tangible progress on the lifting of the visa requirement for Bulgarian and Romanian citizens. It also noted that the United States had not moved towards lifting of the visa requirement for Bulgarian, Croatian, Cypriot, Polish and Romanian citizens. The Commission committed itself to using all opportunities to continue to push for full visa reciprocity with Canada and the United States in coordination with the Member States concerned to accelerate the delivery of results, and to reporting on the further progress made before the end of the year.

This Communication takes stock of further progress achieved since July 2016 in discussions with the two remaining countries. In particular, the Communication reports on tangible progress achieved with Canada, the state of play on discussions with the United States, and sets out the next steps.

## **II. DEVELOPMENTS SINCE THE JULY FOLLOW-UP COMMUNICATION IN PROGRESSING TOWARDS FULL VISA RECIPROCITY**

### ***Canada (notified by Bulgaria and Romania)***

As regards Canada, the July follow-up Communication noted that constructive discussions including at the highest political level had intensified in the preceding months, as well as the commitment of the Canadian government to continue working with the EU towards full visa reciprocity for all EU citizens. The Commission continued to push for full visa reciprocity in coordination with Bulgaria and Romania to accelerate the delivery of results, and looked forward to the EU-Canada Summit as the occasion to confirm tangible progress on the lifting of the visa requirement for Bulgarian and Romanian citizens.

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<sup>1</sup> COM(2016) 221 final of 12 April 2016 ("the April Communication").

<sup>2</sup> COM(2016) 481 final of 13 July 2016 ("the July follow-up Communication").

Following these intensive and coordinated efforts and sustained engagement between the EU and Canada, ahead of the 16<sup>th</sup> EU-Canada Summit on 30 October 2016 in Brussels, Canada provided a clear timeline for achieving full visa waiver reciprocity.

The Canadian government has announced<sup>3</sup> that it intends to implement a partial visa lifting for eligible Romanian and Bulgarian citizens travelling to Canada. From 1 May 2017, Romanian and Bulgarian citizens who have held a Canadian temporary resident visa in the past 10 years or who currently hold a valid U.S. non-immigrant visa would not require a temporary resident visa and would be able to travel to or transit through Canada with an Electronic Travel Authorization instead of a visa. The Canadian government intends to lift the visa requirement for Bulgarian and Romanian citizens on 1 December 2017. This decision of Canada to lift, in 2017, visa requirements for all Bulgarian and Romanian citizens was confirmed in the Joint Declaration<sup>4</sup> of the EU-Canada Summit.

**The Commission welcomes Canada's decision to lift the visa requirement for all Bulgarian and Romanian citizens travelling to Canada as from 1 December 2017. The Commission will now engage with both Member States and Canada in order to ensure that full visa reciprocity will be put in place within the agreed timeframes.**

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

The July follow-up Communication noted that, despite stepping up political and technical contacts, there had not been comparable indications of progress with the United States as those seen with Canada. The United States had not moved towards lifting of the visa requirement for Bulgarian, Croatian, Cypriot, Polish and Romanian citizens to travel to the United States. The Commission has therefore continued to push for full visa reciprocity with the United States in coordination with the five Member States concerned in all relevant fora, using all opportunities to explore the way ahead and all options or necessary actions to be taken to achieve this objective.

The conditions of access to the U.S. Visa Waiver Program are determined in legislation by the Congress. The Administration implements the programme and under the current legislation it has no prerogative to allow the expansion of the programme to new partner countries unless they meet the legislative criteria.

At the EU-U.S. Justice and Home Affairs Senior Official meeting held on 8 September 2016, while the EU side called for full visa reciprocity, the United States pointed out that the focus of the Department of Homeland Security is to ensure that the U.S. Visa Waiver Program is maintained and that it fulfils its role in ensuring the security of the United States. For that purpose, the Department of Homeland Security is working on the full implementation of the security enhancements to the Visa Waiver Program decided by the Congress in December

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<sup>3</sup> <http://news.gc.ca/web/article-en.do?nid=1145359>.

<sup>4</sup> Paragraph 20 of the Joint Declaration states: "*We welcome and recognize the value of enhanced mobility, including through visa-free travel between the European Union and Canada for all of our respective citizens, as envisaged in the Canada-EU Strategic Partnership Agreement. The decision of Canada to lift, in late 2017, visa requirements for all Bulgarian and Romanian citizens will further facilitate the strong cultural, educational, family and business relations that exist between Canada and Europe.*" (<http://www.consilium.europa.eu/en/press/press-releases/2016/10/30-eu-canada-declaration/>).

2015. The Department of Homeland Security underlined that the programme remains under close scrutiny of the Congress, which in several hearings has expressed criticism on the use by the U.S. Administration of the visa waivers provided by the legislation. The Department of Homeland Security showed appreciation for EU efforts in strengthening EU external border management and new legislative instruments in the area of security. However, it also pointed out that in the short term it is not expected that the five Member States under the visa requirement will join the Visa Waiver Program. These Member States do not meet the 3% visa refusal rate requirement established in the U.S. law, and thus are not eligible to become members of the Visa Waiver Program. The Department of Homeland Security also reiterated that temporarily suspending the visa waiver for U.S. citizens would be highly counterproductive to the achievement of a reciprocal visa waiver.

These positions were confirmed at the EU-U.S. Justice and Home Affairs Ministerial Meeting held on 4-5 December 2016 in Washington D.C. The European Union stressed again the importance of achieving full visa reciprocity with the United States as soon as possible. It was decided to continue this work with the new U.S. Administration.

**As in the previous reporting period, there has been no progress towards lifting of the visa requirement for Bulgarian, Croatian, Cypriot, Polish and Romanian citizens to travel to the United States. Presidential and congressional elections were held on 8 November 2016. The Commission will relaunch without delay its efforts with the new U.S. Administration, once it is fully in place, to push for full visa reciprocity in coordination with the five Member States concerned.**

**The next EU-U.S. Justice and Home Affairs Ministerial and Senior Officials meeting expected to take place in the first half of 2017 will provide the occasion to agree with the new Administration on a way forward to achieve this objective. Given the central role of the U.S. Congress in finding a solution, the Commission also recommends that parliamentary contacts (by the European Parliament and national parliaments) be used to their fullest extent.**

### **III. POSITIONS TAKEN IN RESPONSE TO THE APRIL COMMUNICATION AND ITS FOLLOW-UP REPORTED IN JULY**

On 12 October 2016, the Commission provided a state of play in the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament. The Chair summarised the Committee's position by concluding that the Commission is obliged by EU law to adopt delegated acts suspending the visa waiver for the citizens of visa-free countries to travel the EU, for those third countries which do not apply a reciprocal visa waiver. A further exchange of views on this matter took place on 14 December 2016 at the occasion of an oral question in the Plenary of the European Parliament, where a majority of members who intervened repeated the same position, although the impact on transatlantic relations of a suspension of the visa waiver and the need for institutions to work together were also acknowledged.

As in the previous three months, the Council has not discussed the matter.

### **IV. CONCLUSION**

The Commission welcomes the decision by the Canadian government to lift the visa requirement for all Bulgarian and Romanian citizens by December 2017 and will now engage

with both Member States and Canada in order to ensure that full visa reciprocity is put in place within the agreed timeframe. This progress, achieved on the basis of the way forward set out in the April Communication and of good cooperation with the governments of Bulgaria and Romania and also members of the European Parliament, shows that tangible progress towards full visa waiver reciprocity can be achieved with continued engagement and patient diplomatic contacts.

As regards the United States, the Commission notes that, as in the previous reporting period, during the last five months the United States, also due to the electoral calendar, has not moved towards lifting of the visa requirement for Bulgarian, Croatian, Cypriot, Polish and Romanian citizens to travel to the United States. Once the new U.S. Administration is in place, the Commission will relaunch without delay its efforts to push for full visa reciprocity in coordination with the five Member States concerned and will aim to agree in the first half of 2017 on a way forward to achieve this objective.

The Commission will continue to 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 June 2017.