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signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
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Subject: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL defining the position of the
Commission following the European Parliament resolution of 2 March 2017
on obligations of the Commission in the field of visa reciprocity and
reporting on the progress achieved

Delegations will find attached document COM(2017) 227 final.

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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 2 March 2017 on obligations of the Commission in the field of visa reciprocity and
reporting on the progress achieved**

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 policy¹. 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 eight third countries had been solved. However, 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 2013² 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. That Communication assessed the consequences and impacts of the suspension of the visa waiver for EU citizens and businesses as well as nationals of the third countries concerned. In that Communication the Commission also invited the European Parliament and the Council to discuss the most appropriate way forward.

The Commission then presented two follow-up Communications in July³ and December⁴ 2016. The December follow-up Communication welcomed that Canada had provided a clear timeline for achieving full visa reciprocity for all EU citizens. As regards the United States, the Commission committed to re-launching without delay its efforts with the new Administration to push for full visa reciprocity in coordination with the five Member States concerned with the aim to agree in the first half of 2017 on a way forward to achieve this objective. In addition, the Commission committed to continuing 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 to report on further progress before the end of June 2017.

This Communication defines the position of the Commission in the sense of Article 265 TFEU following the European Parliament Resolution of 2 March on 'obligations of the Commission in the field of visa reciprocity in accordance with Article 1(4) of Regulation (EC) No 539/2001'⁵ and, as a follow-up to the earlier Communications, takes stock of the developments in this area since December 2016.

II. POSITIONS TAKEN IN RESPONSE TO THE COMMUNICATIONS

On 2 March 2017 the European Parliament adopted a non-legislative Resolution on 'obligations of the Commission in the field of visa reciprocity in accordance with Article 1(4) of Regulation (EC) No 539/2001'. 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. It also calls on the Commission, on the basis of Article 265 TFEU, to adopt the required delegated act within two months from the date of adoption of the Resolution at the latest.

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

² Regulation (EU) No 1289/2013 of the European Parliament and of the Council of 11 December 2013 amending 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 and those whose nationals are exempt from that requirement, OJ L 347 of 11.12.2013, p. 74.

³ COM(2016) 481 final of 12 July 2016.

⁴ COM(2016) 816 final of 21 December 2016.

⁵ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0060+0+DOC+XML+V0//EN&language=EN>.

As previously reported, also in the past four months, the Council has not discussed the matter.

III. DEVELOPMENTS AND THE WAY FORWARD

Canada (notified by Bulgaria and Romania)

As regards Canada, the December follow-up Communication reported significant progress. Ahead of the 16th EU-Canada Summit held on 30 October 2016 in Brussels, Canada provided a clear timeline for achieving full visa reciprocity. The Canadian government announced the lifting of the visa requirement from 1 May 2017 for Bulgarian and Romanian citizens who have held a Canadian temporary resident visa in the past 10 years or who currently hold a valid United States non-immigrant visa. As a second step, Canada also committed to granting visa-free access to all Bulgarian and Romanian citizens from 1 December 2017.

The Commission welcomes the fact that, in accordance with its commitment, on 1 May 2017 Canada lifted the visa requirement for the above mentioned categories of Bulgarian and Romanian nationals. These travellers are now able to travel to or transit through Canada with an Electronic Travel Authorization (eTA) instead of a visa. The visa lifting was preceded by extensive political and technical contacts between the Commission, Canada and the governments of Bulgaria and Romania, as well as an information campaign for citizens of those countries and consultations with major travel agencies and airlines in both Member States.

An update on the state of play of the implementation of the lifting of the visa requirement was provided by Canada during the Joint Consultations on Migration and Asylum held on 28 April 2017 in Brussels between the Commission and Immigration, Refugees and Citizenship Canada.

The Commission will remain in close contact with Bulgaria, Romania and Canada, both at technical and political level, to ensure that full visa reciprocity is achieved by 1 December 2017.

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

The December follow-up Communication noted that the United States had not moved towards lifting of the visa requirement for Bulgarian, Croatian, Cypriot, Polish and Romanian citizens. Therefore, the Commission committed to re-launching its efforts to push for full visa reciprocity, in close coordination with the five Member States concerned with the aim to agree in the first half of 2017 on a way forward to achieve this objective.

During the last months, political and technical contacts have been stepped up. Commissioner Avramopoulos reiterated the EU call for full visa reciprocity at his meeting with Secretary for Homeland Security Kelly held in Washington on 8 February 2017. Commissioner Avramopoulos also had a constructive follow-up discussion with interlocutors from the United States Department of State. The United States interlocutors agreed to launch a result-oriented process towards bringing the five Member States into the Visa Waiver Program.

In addition, Commissioner Avramopoulos organised a meeting with Ministers of the five Member States concerned to discuss a way forward towards achieving full visa reciprocity with the United States. At the meeting, Ministers committed to working jointly in a

constructive and positive spirit, in close coordination with the Commission and the United States, to achieve full visa reciprocity as soon as possible, including searching for mutually acceptable interim steps. The Commissioner discussed with Ministers steps that could be taken on the EU side to achieve full visa reciprocity for the mutual benefit of the EU and United States' citizens, as well as for close strategic relations more widely.

At technical level, visa reciprocity was also discussed during the EU-U.S. Justice and Home Affairs Senior Officials' Meeting held in Malta on 1-2 March 2017, where the United States reconfirmed its commitment to admit the five Member States to the Visa Waiver Program. However, the United States also underlined that these Member States do not yet meet all the requirements as laid down in the United States' legislation. The United States side also indicated 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, by reintroducing the visa requirement for all EU citizens. It was also recalled that the Visa Waiver Program as implemented under the current legislation does not allow admitting new countries unless they meet all requirements.

In order to establish an overview of the requirements still to be fulfilled by the five Member States, the Commission launched an exercise to collect information from the Member States and the United States.

The latest tripartite meeting with the United States took place on 25 April 2017. Its objective was to assess the state of play regarding the Visa Waiver Program requirements and to accelerate the work on the outstanding ones. While the main obstacle for four Member States remains the 3% visa refusal rate⁶ threshold which is set out in the U.S. Immigration and Nationality Act, other requirements such as reporting to the Interpol Stolen and Lost Travel Documents' database on a daily basis and the signature and full implementation of the Preventing and Combatting Serious Crime agreement⁷ were still not in place for some of the Member States concerned. During the meeting it was agreed with the United States to accelerate the work on the outstanding Visa Waiver Program requirements in the coming weeks.

In the coming weeks, the Commission in close cooperation with the five Member States concerned will work with the United States on the consolidation of a way forward, to be endorsed in a Joint Statement by the EU-U.S. Justice and Home Affairs Ministerial Meeting in June 2017. High-level contacts and meetings, e.g. the NATO Summit and the G7 Summit in May, the EU-U.S. Justice and Home Affairs Ministerial Meeting in June, the G20 Summit in July and the Justice and Home Affairs Senior Officials' Meeting in September will provide the opportunities and occasions to ensure progress.

⁶ Among others, at the tripartite meeting, the United States presented visa refusal statistics for 2016: Bulgaria: 16.86% (2015:17.26%); Croatia: 6.78% (2015: 5.29%); Cyprus: 2.03% (2015: 3.53%); Poland: 5.37% (2015: 6.37%); Romania: 11.43% (2015: 11.16%). While Cyprus complied 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.

⁷ PCSC Agreement on enhancing law enforcement cooperation in order to prevent and combat serious crime.

IV. CONCLUSION

The Commission remains committed to achieving full visa reciprocity for all Member States as a matter of priority.

The Commission welcomes the fact that, in line with its commitment, on 1 May 2017 Canada lifted the visa requirement for Bulgarian and Romanian citizens who have held a Canadian temporary resident visa in the past 10 years or who currently hold a valid United States non-immigrant visa. The Commission will continue to engage with Bulgaria, Romania and Canada, to ensure that the 1 December 2017 deadline for achieving full visa reciprocity will also be met.

As regards the United States, the Commission notes the result-oriented process that has been launched. The Commission considers that this process, which the Commission is handling in close cooperation with the five Member States concerned, is as things stand, the most appropriate way forward. This will accelerate progress if all parties are committed to this process and work constructively. In this context, it is essential to ensure that the European Union speaks with one voice on this important matter.

The Commission therefore considers, in particular in view of the progress achieved during the last year and the ongoing work, that the adoption of a delegated act temporarily suspending the exemption from the visa requirement for nationals of Canada and the United States would be counterproductive at this moment and it would not serve to achieve the objective of visa-free travel for all EU citizens.

The Commission will continue to work closely with both the European Parliament and the Council to achieve full visa reciprocity and report on the further developments before the end of December 2017.