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signed by Mr Jordi AYET PUIGARNAU, Director

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PARLIAMENT AND THE COUNCIL State of play and way forward as
regards the situation of non-reciprocity in the area of visa policy

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

**State of play and way forward as regards the situation of non-reciprocity in the area of
visa policy**

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.¹ 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, the Communication recalled that, 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 2013, obliges the Commission to adopt a delegated act suspending for 12 months the visa waiver for nationals of that third country.² The Regulation also requires that the Commission take into account the consequences of the suspension of the visa waiver for the external relations of the EU and its Member States.

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 four follow-up Communications: in July³ and December⁴ 2016, and in May⁵ and December⁶ 2017. In its latest Communication on visa reciprocity from December 2017, the Commission provided an overview of the state of play and possible ways forward as regards the situation of non-reciprocity with the United States (notified by Bulgaria, Croatia, Cyprus, Poland and Romania), as the only remaining case of non-reciprocity⁷.

When the latest Communication was presented in the European Parliament, some Members of the European Parliament Committee on Civil Liberties, Justice and Home Affairs called on the Commission to adopt a delegated act suspending the visa waiver for nationals of the United States, while others agreed with the Commission on the impact such a suspension would have on transatlantic relations, and acknowledged the ongoing efforts to achieve visa reciprocity. As reported in previous Communications, in the past twelve months, the Council has not discussed the matter.

This Communication takes stock of progress achieved towards visa reciprocity with the United States since December 2017.

II. LATEST DEVELOPMENTS

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

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

² This provision can now be found in Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 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 (codification), OJ L 303, 28.11.2018, p. 39.

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

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

⁵ COM (2017) 227 final of 2 May 2017.

⁶ COM(2017) 813 final of 20 December 2017.

⁷ The previous Communication provided an overview of all the resolved cases of non-reciprocity: 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. On 6 November 2018 Japan informed Romania that the visa waiver for holders of Romanian passports, including temporary passports, which was in force until 31 December 2018, will be made permanent as from 1 January 2019.

Visa Waiver Program requirements are set by the United States and are either stipulated in United States law, which is notably the case for visa refusal rate, or are part of executive requirements introduced by the Department of Homeland Security.

The Visa Waiver Program is seen by the United States not only as a travel facilitation programme, but also as a security programme. The United States strengthened the security elements of the programme, namely by introducing some additional Visa Waiver Program enhancements in December 2017. The enhancements were introduced by the Department of Homeland Security and mainly concerned overstay rates, aviation security and further tightening of security requirements, in particular requiring full implementation of existing information sharing arrangements to systematically screen travellers against United States counterterrorism information⁸. The Commission is closely following these developments, which apply to both current and aspiring members of the Visa Waiver Program, and are now to be considered as ‘baseline requirements’.

When assessing the five Member States concerned, in order for them to be considered for designation to the Visa Waiver Program, the United States has notably focused on the following requirements:

Visa refusal rate

According to United States legislation, as stipulated in the United States Immigration and Nationality Act, the aspiring countries for the Visa Waiver Program shall have a refusal rate for non-immigrant visas less than 3% per year or a 2-years average of less than 2%. According to visa refusal statistics for 2017, four out of five Member States are above the required 3% threshold (Bulgaria 14,97%, Croatia 5,1%, Poland 5,92% and Romania 11,76%). The Member States concerned are actively working towards decreasing the refusal rate. It is noted that progress has been made as visa refusal rates have decreased for several Member States concerned as compared to 2016 figures. Bulgaria has recorded a steady decrease of the visa refusal rate over the last years, with refusals decreasing from 17,3% in 2015, 16,9% in 2016 to 14,97% in 2017. The refusal rate for Croatia also decreased from 6,8% in 2016 to 5,1% in 2017. Cyprus has remained under the 3% threshold, with the refusal rate lowering from 2% in 2016 to 1,69% in 2017⁹. While the visa refusal rate for Poland in 2017 showed a slight increase compared to the previous year (5,4% in 2016), overall figures show a steady downward trend over the last years. The visa refusal rates for Romania have remained steady over the last years, with the 2017 refusal rate witnessing a slight increase compared to 2016 (11,4%).

Several Member States have been conducting information campaigns, with EU financial support, and active participation of local United States consular sections, as a way to raise awareness of conditions to travel to the United States and consequently bringing down the visa refusal rate (this is notably the case for Croatia, Bulgaria and Romania over the course of 2017). Other Member States concerned have also conducted outreach activities: Bulgaria has worked with the local consular United States section to prepare guidelines explaining the United States visa application process, including the visa interview. Other Member States concerned have also conducted similar outreach activities in the past.

⁸ <https://www.dhs.gov/news/2017/12/15/secretary-kirstjen-nielsen-announces-targeted-security-enhancements-visa-waiver>

⁹ While Cyprus already complies 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.

In this respect, a detailed breakdown of visa refusal rates has been requested from the United States authorities for the Member States concerned to better target their outreach campaigns.

Implementation of the Preventing and Combating Serious Crime Agreement

In addition to signing the Preventing and Combating Serious Crime Agreement, the targeted enhancements introduced by the United States Department of Homeland Security in 2017 have made it mandatory for the Preventing and Combating Serious Crime Agreement to be fully implemented for a country to be considered for Visa Waiver Program designation. All Member States concerned have advanced work on the fulfilment of this criterion. Bulgaria, Croatia, Cyprus and Romania have signed and ratified this type of agreement with the United States and have worked on its full implementation in order to meet Visa Waiver Program requirements set by the United States.

At the tripartite meeting in May 2018 (see section II.2 below), Poland announced its intention to restart negotiations with the United States to sign the Preventing and Combating Serious Crime Agreement, which had been initialled in 2013 but had not yet been signed. At the tripartite meeting in October, discussions focused on how to accelerate the work for the signature and conclusion of the Preventing and Combating Serious Crime agreement between the United States and Poland, with end of 2018 set as a target date for the review of the initialled agreement. The Commission supports a swift conclusion of the agreement, as well as its implementation, since this is a requirement set by the United States in order to be considered for designation.

Implementation of Homeland Security Presidential Directive 6 / Terrorist Screening Center Agreement¹⁰

In a similar vein, in addition to signing the Homeland Security Presidential Directive 6 / Terrorist Screening Center Agreement, the executive amendments introduced by the Department of Homeland Security to the Visa Waiver Program in December 2017 have made it mandatory for this agreement to be fully implemented. All Member States concerned have signed and ratified this agreement, however in order to consider this agreement fully implemented, the United States requires more frequent reporting and systematic use of U.S.-provided information. All Member States concerned have advanced work to meet this requirement, for instance by establishing operational information sharing between their national authorities and the United States Terrorist Screening Center.

Reporting of lost and stolen passports

As a security measure, the United States requires that all Visa Waiver Program countries report lost and stolen passports to multilateral organisations such as Interpol no later than 24 hours after becoming aware of the theft or loss. Most Member States concerned already have in place automated solutions for daily reporting. Cyprus is manually reporting lost and stolen passports on a daily basis and is currently working to introduce automated reporting in 2019.

Apart from the measures described above, the progress of the five Member States concerned in meeting the criteria should also be seen as part of the overall EU efforts in areas such as

¹⁰ Homeland Security Presidential Directive 6/Terrorist Screening Center Agreement (HSPD6/TSC) is a security agreement stipulating arrangements to share information about known or suspected terrorists between a Visa Waiver Programme country and the United States Terrorist Screening Center.

aviation security, the fight against terrorism, and document security, where the EU and United States are engaged in a joint global effort and are working together for enhanced global security against shared threats.

Finally, regarding overall developments of the Visa Waiver Program, it is to be noted that the United States Immigration and Nationality Act stipulates that when the U.S. Air Exit System is in place, the Secretary of the Department of Homeland Security would again have the right to derogate from the 3% visa refusal rate threshold. In this case, countries with visa refusal rate of less than 10% could be considered for designation into the Visa Waiver Program, provided that they fulfil all the other requirements. The Commission also notes that the biometric Air Exit System has been flagged as an important issue by many United States lawmakers. However, the United States' authorities have referred to budgetary constraints as a reason for not implementing the Air Exit System yet, with pilot projects having been launched only at some airports. In contacts with the United States, the Commission has pointed out that the EU has adopted a similar system (the Entry/Exit System), which is currently being implemented, and that it stands ready to share its experience with the United States.

Regarding the outstanding requirements for the Visa Waiver Program, the main legal obstacle for four Member States remains the visa refusal rate. In addition, according to the United States authorities, other Visa Waiver Program 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 agreement were still not fully implemented for some of the Member States concerned.

2. Overview of EU-United States contacts

During the preceding 12 months, political and technical contacts have been significantly stepped up and the Commission has continued to urge the United States at all possible occasions to further cooperate with the five Member States concerned and to accelerate progress towards full visa reciprocity. In its contacts with the United States, in coordination with the five Member States concerned, the Commission called for these efforts to lead to intensified and concrete action on all sides, on the basis of objective criteria.

Visa reciprocity was discussed at all official meetings between the EU and the U.S. in particular at the occasion of the two EU-U.S. Justice and Home Affairs Ministerial meetings - held in Sofia in May and in Washington D.C. in November, at the EU-U.S. Justice and Home Affairs Senior Officials' meetings - held in February and in September 2018, and at the tripartite meetings - held between the Commission, the United States and the five Member States concerned in Washington D.C. in May and again in Brussels in October 2018.

Tripartite meeting in Washington D.C.

After six tripartite meetings held in Brussels, at the beginning of May 2018 the tripartite talks took place for the first time in Washington D.C. From the United States, a wide range of experts participated and contacts with senior officials took place, which provided the opportunity for the five Member States concerned and the Commission to engage with key

United States interlocutors. The five Member States concerned completed a self-assessment matrix provided by the Department of Homeland Security on the fulfilment of the Visa Waiver Program requirements in order to assess areas where progress had been made and to accelerate the work on what United States authorities consider to be the outstanding requirements (see section II.1 above).

Side meetings with various stakeholders also took place in Washington D.C., including with Congress officials, in order to raise awareness of the visa reciprocity issue and on extensive measures taken by the EU, including the five Member States concerned, on enhancing security and strengthening external border management.

EU-U.S. Justice and Home Affairs Ministerial in Sofia

At the EU-U.S. Justice and Home Affairs Ministerial held on 22-23 May, both the Bulgarian Presidency of the Council of the EU and the Commission underlined the urgency to advance towards full EU-U.S. visa reciprocity. The United States restated its position that all countries have to meet the United States statutory requirements to join the Visa Waiver Program, which is still not the case for the five Member States concerned, and that the United States would continue to engage with these Member States on this matter. **The joint statement issued after the Ministerial meeting stated that the European Union and the United States took stock of the continuing progress by the European Union and the United States, including that of the five concerned EU Member States, towards meeting the statutory requirements of the Visa Waiver Program, in order to be considered for designation.**

Tripartite meeting in Brussels

The next tripartite meeting took place in October in Brussels. Work to track progress made by each of the Member States continued on the basis of the updated self-assessment matrix. It noted progress achieved since the previous tripartite meeting in May, and focused on efforts towards decreasing the visa refusal rate, on work towards the full implementation of relevant security agreements and obtaining clear and objective guidance from the United States side on what remains to be done to meet the remaining requirements. The conclusion of this tripartite meeting was that progress had been made by some of the Member States concerned towards full implementation of the relevant agreements as part of the requirements.

EU-U.S. Justice and Home Affairs Ministerial in Washington D.C.

The EU-U.S. Justice and Home Affairs Ministerial Meeting took place in Washington D.C., on 9 November 2018, where strong calls for making progress on achieving visa reciprocity were repeated by the Commission and the Austrian Presidency of the Council of the EU. The Commission reiterated the need for concrete and objective benchmarks in order for the Member States concerned to better focus their efforts towards fulfilling the Visa Waiver Program requirements. **The joint statement issued after the Ministerial meeting underlined that both sides agreed on the importance of advancing towards reciprocal visa free travel under their respective legal frameworks and, following the most recent tripartite meeting on visa reciprocity, welcomed the progress of the five concerned Member States towards meeting the statutory requirements of the Visa Waiver Program, in order to be considered for designation in the programme.** The Ministerial meeting recorded progress and resulted in commitment from the United States to work with

the Member States concerned in order to provide further guidance for ongoing work towards meeting the Visa Waiver Program requirements.

III. THE COMMISSION' CONTINUOUS ENGAGEMENT AND NEXT STEPS

1. Support to and coordination with the Member States concerned

While most Visa Waiver Program requirements set by the United States fall under the areas of bilateral cooperation between the United States and each of the Member States concerned, reciprocity is a fundamental principle of EU visa policy, and the Commission will continue to support actively the five Member States and to work closely with them in order to help them to fulfil the requirements for U.S. Visa Waiver Program designation.

In addition to facilitating regular meetings in the established tripartite format, the Commission is continuously coordinating and exchanging information with the five Member States concerned in order to ensure appropriate follow up in the relevant areas and has also made available financial support, where needed. Financial support has been made available under national programmes of the Internal Security Fund. All recent initiatives to strengthen external border management and advance towards a genuine and effective Security Union in the EU area are also highly relevant in this context. The regular information exchange between the Member States concerned and the Commission is enabling to track progress made by the five Member States concerned in their efforts to fulfil the Visa Waiver Program criteria.

2. Upcoming contacts with the United States

Upcoming contacts at all levels, including technical and political – both in tripartite and bilateral contexts, will provide opportunities and occasions to follow up on progress achieved. These contacts include the next EU-U.S. Justice and Home Affairs Senior Officials' Meeting, which will take place in early 2019, as well as a next tripartite meeting.

The next EU-U.S. Justice and Home Affairs Ministerial meeting, which is planned to take place later in spring 2019 in Bucharest, Romania, will offer an opportunity to advance further progress. The five Member States concerned should also use every opportunity offered at bilateral level to engage with the United States and to achieve progress.

IV. CONCLUSIONS

The Commission remains committed to achieving full visa reciprocity for all Member States as a matter of priority. As regards the United States, as the only remaining case of non-reciprocity, the Commission remains engaged in a result-oriented process.

The Commission will continue its engagement with the United States and with the five Member States concerned to accelerate progress towards full visa reciprocity. As things stand, the Commission maintains its position that cooperation and joint diplomatic engagement, where the Commission is in close coordination with the five Member States concerned, continues to be the most appropriate way forward.

Therefore, the Commission still 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 at this moment and it would not serve to achieve the objective of visa-free travel for all EU citizens. This position can be reviewed in light of developments.

In this context, it is essential to continue ensuring that the EU speaks with one voice on this important matter. The Commission will continue to work closely with both the European Parliament and the Council to achieve full visa reciprocity and will report on the further developments in September 2019.