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signed by Mr Jordi AYET PUIGARNAU, Director

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PARLIAMENT AND THE COUNCIL State of play and possible ways
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countries in the area of visa policy and assessment of the effectiveness of
the reciprocity mechanism provided for in Article 1(4) of Council Regulation
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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

**State of play and possible ways forward as regards the situation of non-reciprocity with
certain third countries in the area of visa policy and assessment of the effectiveness of
the reciprocity mechanism provided for in Article 1(4) of Council Regulation
(EC) No 539/2001**

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, 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 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. 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 presented three follow-up Communications in July³ and December⁴ 2016, and in May 2017⁵. Besides reporting on the progress achieved, the May 2017 Communication also defined the position of the Commission following the European Parliament's Resolution of 2 March 2017 on 'obligations of the Commission in the field of visa reciprocity in accordance with Article 1(4) of Regulation (EC) No 539/2001' calling 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 latest⁶. In that Communication the Commission considered that particularly in view of the progress achieved during the previous 12 months and the ongoing work, the adoption of a delegated act temporarily suspending the exemption from the visa requirement for nationals of Canada and the United States would have been counterproductive at that moment, and it would not have served the objective of achieving visa-free travel for all EU citizens. At the same time, the Commission committed to continue working closely with both the European Parliament and the Council, with Canada, the United States as well as with the Member States concerned to accelerate progress towards full visa reciprocity, and to report on the developments by the end of December 2017.

This Communication takes stock of progress achieved in this area since May 2017 in discussions with Canada and the United States, and reports that full visa reciprocity with Canada has now been achieved.

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 COM (2017) 227 final of 2 May 2017.

⁶ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0060+0+DOC+XML+V0//EN>

In addition, Chapter IV of this Communication provides the Commission's assessment on the effectiveness of the reciprocity mechanism as set out in Article 1b of the Regulation, and reports on the use of the delegation of power provided in Article 4b(2) of the Regulation.

II. POSITIONS TAKEN IN RESPONSE TO THE LATEST COMMUNICATION

Following up on the Resolution, the Committee on Civil Liberties, Justice and Home Affairs, by a letter dated 2 June 2017, referred to the Legal Affairs Committee of the European Parliament the possible action for failure to act against the Commission before the European Court of Justice, regarding its obligations in the field of visa reciprocity. On 12 July 2017, the Legal Affairs Committee recommended not to bring an action before the European Court of Justice against the Commission for failure to act, noting that it would re-examine the issue in early 2018.

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

III. LATEST DEVELOPMENTS

a. Canada (notified by Bulgaria and Romania)

As regards Canada, the May 2017 Communication already reported significant progress. The Commission welcomed the fact that on 1 May 2017 Canada had lifted the visa requirement for Bulgarian and Romanian citizens who have held a Canadian temporary resident visa in the past 10 years or who hold a valid U.S. non-immigrant visa.

The Commission welcomes the fact that, as of 1 December 2017, Canada grants visa-free access to *all* Bulgarian and Romanian citizens. Full visa reciprocity has thus been achieved with Canada. The result was achieved by extensive political and technical contacts between the Commission, Canada and the governments of Bulgaria and Romania, as well as an information campaign addressed to the citizens of those countries and consultations with major travel agencies and airlines in both Member States.

During the 1st EU-Canada Joint Ministerial Committee Meeting under the Strategic Partnership Agreement with Canada which was held on 4 December 2017 in Brussels, both parties welcomed the full visa lifting for all EU citizens, noting that this will enhance citizens' mobility and further strengthen cultural, political and economic ties between the EU and Canada⁷.

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

In the May 2017 Communication, the Commission reported that political and technical contacts had been stepped up and that the United States interlocutors had agreed to launch a result-oriented process towards bringing the five Member States into the Visa Waiver Program. In addition, the five Member States concerned also committed to working jointly in a constructive and positive spirit, in close cooperation with the Commission and the United States, to achieve full visa reciprocity as soon as possible, including searching for mutually

⁷ <http://www2.consilium.europa.eu/media/32024/20171204-joint-statement.pdf>

acceptable interim steps. An overview of the requirements still to be fulfilled by the five Member States was established.

At the EU-U.S. Justice and Home Affairs Ministerial Meeting of June 2017, Commissioner Avramopoulos and Elaine C. Duke, Deputy Secretary of the U.S. Department of Homeland Security issued a **Joint Statement**⁸ on advancing towards full visa reciprocity between the EU and the United States. The Joint Statement confirmed commitments, such as preserving and expanding visa-free travel between the EU and the United States and stepping up efforts to improve cooperation with a view to assist Bulgaria, Croatia, Cyprus, Poland and Romania in advancing more rapidly towards the fulfilment of the requirements for the Visa Waiver Program.

In line with the Joint Statement, the Commission has continued to use all occasions to reiterate the importance of accelerating progress towards full visa reciprocity between the EU and the United States.

In August 2017, Commissioner Avramopoulos in a meeting with the Coordinator for Counterterrorism of the U.S. Department of State, Nathan A. Sales, recalled the importance of this issue for the EU.

The latest technical **tripartite meeting** on visa reciprocity with the United States and the five Member States concerned took place on 11 September 2017. The participants reviewed the state of play on the remaining Visa Waiver Program requirements, such as the visa refusal rate which is the main obstacle for four Member States; the main grounds of refusals; the situation of visa applications lodged by young people and the possibilities of launching information campaigns to reduce the refusal rate.

The United States also informed about progress in setting up an air exit system that, according to the U.S. Immigration and Nationality Act⁹, once in place, can verify the departure of not less than 97% of foreign travellers. Putting this system in place would grant the Secretary of the Department of Homeland Security discretion to derogate from the 3% visa refusal requirement, and possibility to recommend the admission of countries into the Visa Waiver Program whose refusal rate is less than 10%, provided that they fulfil all security related requirements and the totality of the countries' security mitigation measures ensure that their participation in the Visa Waiver Program would not compromise the security and migratory interests of the United States. The tripartite meeting and the EU-U.S. Justice and Home Affairs Senior Officials' Meeting held on 20-21 September 2017 in Tallinn took stock of the latest developments and progress at the technical level was acknowledged.

Furthermore, between 25 and 29 September, a Commission technical delegation visited Bulgaria, Romania, Cyprus, Poland and Croatia to discuss the state of play regarding the fulfilment of outstanding Visa Waiver Program requirements. The Commission offered assistance to the five Member States to continue working on the fulfilment of the outstanding requirements, including ways of lowering the visa refusal rate. In this regard, the Commission proposed that information campaigns targeting citizens travelling to the United States could be financed from the EU's Internal Security Fund national programmes. In order to further explore the possibilities of launching such campaigns, the Commission organised a follow-up videoconference on 25 October to provide further information on the funding possibilities and

⁸ http://europa.eu/rapid/press-release_STATEMENT-17-1671_en.htm

⁹ <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-4391.html>

to exchange information and best practices on information campaigns that have been launched by Member States in the past. Some of the Member States concerned are currently considering using their national programmes to this end. The Commission stands ready to further assist Member States as needed.

Visa reciprocity was on the agenda of the EU-U.S. Justice and Home Affairs Ministerial meeting held on 17 November in Washington D.C. At the Ministerial meeting, both parties noted the progress in cooperative discussions towards reciprocal and secure visa-free travel under their respective legal frameworks, and committed to continue their engagement in this process.¹⁰

Regarding the outstanding Visa Waiver Program requirements, as reported in the previous Communications, the visa refusal rate¹¹ and the implementation of the Preventing and Combatting Serious Crime (PCSC) agreement¹² remain the two main U.S. requirements to be fulfilled before the process could enter into the next phase, which is the nomination of the country to the Visa Waiver Program by the Department of State, followed-up by a thorough interagency security review. In the past seven months, notable progress has been made by Cyprus and Romania as regards the reporting of lost and stolen travel documents to Interpol. Furthermore, the Romanian Parliament has ratified the PCSC agreement; it is now for the United States to ratify it. Bulgaria, Croatia and Cyprus are committed to the full implementation of their respective PCSC agreements. Contacts are being undertaken by concerned Member States to follow up on this matter.

In the coming months, the Commission in close cooperation with the five Member States concerned, will continue to closely engage with the United States at all levels. The closer cooperation among the five Member States concerned and the United States, duly following-up on the issues identified during the previous tripartite meetings, such as the reporting of lost and stolen travel documents to Interpol, on bilateral information sharing agreements with the United States, pro-active work on the visa refusal rate requirement, including by launching information campaigns, is taking place and progress is noted. The Commission will urge the U.S. counterparts to speed up the process putting in place the air exit system and stands ready to share the EU's experience as regards new technologies and systems currently being developed and established at its external borders (e.g. ABC gates, the future Entry Exit System, ETIAS).

The regular high-level meetings (e.g. the Justice and Home Affairs Senior Officials' Meeting on 27-28 February 2018 and the EU-U.S. Justice and Home Affairs Ministerial Meeting in May 2018) and the technical meetings, such as the next tripartite meeting that should take place during the first half of 2018, will provide occasions to further accelerate progress.

IV. ASSESSMENT OF THE EFFECTIVENESS OF THE RECIPROCITY MECHANISM

According to Article 1b of the Regulation, by 10 January 2018, the Commission shall submit a report to the European Parliament and to the Council assessing the effectiveness of the

¹⁰ http://europa.eu/rapid/press-release_STATEMENT-17-4735_en.htm

¹¹ The U.S. Department of State published in November 2017 the statistics on refusal for Fiscal Year 2017. Bulgaria: 14,97%; Croatia: 5,1%; Cyprus: 1,69%; Poland: 5,92%; Romania: 11,76%.

¹² Agreement on enhancing law enforcement cooperation in order to prevent and combat serious crime.

reciprocity mechanism and, if necessary, submit a legislative proposal amending the Regulation.

Regulation (EC) No 539/2001 was revised in 2013 by Regulation (EU) No 1289/2013, following calls from Member States as well as the European Parliament for a more efficient visa reciprocity mechanism¹³, which would provide for solidarity amongst Member States and for the possibility to adopt stronger measures towards third countries not granting full visa reciprocity. The revised mechanism foresees that Member States have to notify the European Parliament, the Council and the Commission of existing and new cases of non-reciprocity with third countries. Immediately after the publication of the Member States' notifications, the Commission, in consultation with the Member State concerned, has to take steps with the third country concerned, in particular in the political, economic and commercial fields, in order to restore or introduce visa-free travel.

At the latest 6 months after the date of the publication of the notifications and then at regular intervals of up to 6 months, the Commission has to either adopt an implementing act on the temporary suspension of the visa waiver for up to 6 months for certain categories of citizens of the third country concerned, or submit a report to the committee referred to in Article 4a(1) of Regulation (EC) No 539/2001 assessing the situation, and stating the reasons why it decided not to suspend the exemption from the visa requirement. When considering further steps, the Commission has to take into account the outcome of the measures taken by the Member States concerned with a view to ensuring visa-free travel with the third country in question, the steps taken by the Commission in consultation with the Member States concerned, and with the authorities of the third country in question. The Regulation also obliges the Commission to take into account the consequences of the suspension of the visa waiver for the external relations of the Union and its Member States with that third country.

In the second stage of the mechanism, if the third country has not lifted the visa requirement within 24 months of the publication date (in the present case by 12 April 2016), the Commission is obliged to adopt a delegated act on the temporary suspension of the visa waiver for 12 months for nationals of that third country (Article 1(4)(f) of the Regulation).

The Commission received in 2014 **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.**¹⁴

Since then, **Australia** lifted the airport transit visa requirement for Bulgarian citizens in October 2014 and for Croatian and Romanian citizens in June 2015. Full visa reciprocity is thus in place with Australia. **Brunei** (notified by Croatia) has put in place the visa exemption for Croatian citizens and started to grant 90 days visa-free stay for the citizens of Liechtenstein, which was officially notified on 13 April 2016. **Japan** (notified by Romania) informed Romania on 17 December 2015 that the visa-free status for Romanian citizens, including holders of temporary passports, had been extended until 31 December 2018. Full visa reciprocity is thus ensured with Japan until 31 December 2018. **Canada**, as already indicated under point III of this Communication, grants visa-free access to all Bulgarian and

¹³ The previous mechanism, which entered into force in 2005, gave the possibility to the Commission, following Member States' notifications of non-reciprocity cases, to present a proposal providing for the temporary restoration of the visa requirement for national of the third country concerned.

¹⁴ For further details cf. point I.b. of the first reciprocity report - C(2004)7218 final.

Romanian citizens as of 1 December 2017. Full visa reciprocity has thus been achieved with Canada as well.

Assessment

Effectiveness of the mechanism

The number of non-reciprocity cases has been considerably reduced in the last two-and-a-half years, leaving the United States as the only third country in the EU's visa-free list which does not grant visa-free access to the citizens of all Member States. In this light, it can be considered that in general terms **the visa reciprocity mechanism as modified by Regulation (EU) 1289/2013 has been effective**. The current mechanism establishes institutional timeframes and provides for specific measures to respond to cases of non-reciprocity, including to leverage progress in a coordinated manner towards third countries, by setting out clearly and in a transparent way the steps, including the temporary suspension of visa exemptions.

The existence of this mechanism has a preventive effect in cases where a third country is considering to (re)impose a visa requirement for citizens of one or more Member States. The Commission considers that to a certain extent the mechanism has provided incentives to third countries to lift existing visa requirements.

In any case the existence of the mechanism represents a sign of solidarity among the Member States and in light of the progress achieved in the past two-and-a-half years, it can be concluded that the mechanism has contributed to achieve progress towards full visa reciprocity vis-à-vis third countries.

The temporary suspension of the visa exemption for third countries

The temporary suspension of the visa exemption for third countries that do not grant visa reciprocity has been a core element of the visa reciprocity mechanism, but it has never been requested by the Member States concerned (not even in a limited extent, for certain categories of nationals of the third country concerned). For these situations, the Regulation also requires that the Commission takes into account the consequences of the suspension for the external relations of the EU and the Member States. As regards the countries covered by the current visa reciprocity mechanism, in the April 2016 Communication the Commission assessed the consequences and impact of the visa waiver for EU citizens and businesses as well as nationals of third countries concerned. In the April 2016 Communication and the three follow-up Communications presented in July and December 2016, and in May 2017, the Commission maintained that temporarily suspending the visa exemption for specific third countries that do not grant visa reciprocity, in particular in view of progress achieved and ongoing work with a specific third country and the Member States concerned, would be counterproductive and would not serve to achieve the objective of visa-free travel for all EU citizens. It also invited the European Parliament and the Council to discuss the most appropriate way forward.

Procedural shortcomings

Procedurally, shortcomings in the functioning of the visa reciprocity mechanism have been identified in two respects. First, the six month interval for the reporting obligation on the Commission in the first phase of the mechanism is too short given that while non-reciprocity cases may be resolved at political level, more time may be required to implement visa-free travel in practice. Secondly, the maximum – 90 days - deadline for putting in place the visa

requirement might be too short in the particular cases of certain third countries (e.g. it does not appear sufficient to reintroduce *in practice* the visa requirement for U.S. citizens).

In conclusion, given that, despite the above-mentioned shortcomings, the current visa reciprocity mechanism has contributed to resolving the vast majority of non-reciprocity cases in the last two-and-a-half years, the Commission is not, at this point in time, considering a legislative proposal for the revision of the mechanism.

Use of the delegation of power

According to Article 4b of the Regulation, the power to adopt delegated acts referred to in Article 1(4)(f) shall be conferred on the Commission for a period of five years from 9 January 2014 and the Commission shall draw up a *report* in respect of the delegation of power not later than nine months before the end of the five-year period. The Commission hereby reports that it has not used this power.

V. CONCLUSION AND WAY FORWARD

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

The Commission welcomes that, in line with its earlier commitment, on 1 December 2017, **Canada** lifted the visa requirement for *all* Bulgarian and Romanian citizens. **Full visa reciprocity has thus been achieved with Canada.**

The Commission will continue to urge the United States to further cooperate, in the spirit of the Joint Statement adopted in June 2017, with the five Member States concerned and the Commission to accelerate progress towards full visa reciprocity. **This should lead to intensified and concrete action on all sides.**

In light of the fact that full visa reciprocity has been achieved with Canada, and the ongoing work with the United States, as things stand, the Commission maintains its position that cooperation and joint diplomatic engagement continues to be the most appropriate way forward. The Commission also continues to consider that the **adoption of a delegated act temporarily suspending the visa waiver for U.S. citizens would be counterproductive at this moment** and would not serve to achieve the objective of visa-free travel for all EU citizens to the United States. This position can be reviewed in the light of developments.

As regards the Commission's assessment on **effectiveness of the reciprocity mechanism**, the Commission recognises the **progress** achieved since the adoption of the revised mechanism. Although this progress cannot solely be attributed to the mechanism, it does establish an instrument that allows for collective and coordinated EU action in non-reciprocity cases, and it is considered to have proven to be a useful tool towards some third countries. At this point in time, the Commission is not considering to bring forward a legislative proposal for the revision of the mechanism.

The Commission remains committed to working closely with the European Parliament and the Council on the way forward. It will report on the further developments to the European Parliament and the Council at the latest by autumn 2018.