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REPORT FROM THE COMMISSION

**assessing the situation of non-reciprocity with Republic of Korea and Japan in the area
of visa policy**

I. INTRODUCTION AND LEGAL CONTEXT

This report assesses the situation of non-reciprocity with Japan in the area of visa policy. The document also reports on the situation of reciprocity with the Republic of Korea, in which full visa reciprocity has been restored.

The EU's visa reciprocity mechanism is set out in Regulation (EU) 2018/1806¹, which lists the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States for stays of no more than 90 days in any 180-day period (Annex I to the Regulation) and those whose nationals are exempt from that requirement (Annex II to the Regulation). In accordance with Article 7 of Regulation (EU) 2018/1806, where a third country listed in Annex II applies a visa requirement for nationals of at least one Member State, the Member State concerned shall notify the European Parliament, the Council and the Commission in writing. Information about that notification shall be published without delay by the Commission in the *Official Journal of the European Union*, including information on the date of implementation of the visa requirement and the types of travel documents and visas concerned.

The Commission received notifications from Germany regarding the Republic of Korea and Japan and published information on them in the *Official Journal of the European Union* on 8 October 2020². The Commission subsequently received a notification from Poland regarding the Republic of Korea and Japan. Information on this notification was published in the *Official Journal* on 25 March 2021³. Article 7 first paragraph point (g) of Regulation (EU) 2018/1806 provides for the merging into the ongoing procedures of any subsequent notification made by another Member State concerning the same third country during the period of application of measures already adopted with regard to that third country, without the deadlines being extended.

It should also be underlined that the Commission's publication of information about a Member State's notification(s) does not entail an automatic recognition by the Commission of a non-reciprocity case in the meaning of Regulation (EU) 2018/1806.

According to Article 7 first paragraph point (b) of Regulation (EU) 2018/1806, immediately after the publication of a Member States' notifications of visa non-reciprocity cases, the Commission has to engage with the third country in order to restore visa-free travel. If within 90 days of the date of the publication of notifications and despite all the contacts and engagement with the third state, the third country has not lifted the visa requirement, the Member State concerned may request the Commission to suspend the exemption from the visa requirement for certain categories of nationals of that third country. 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

¹ 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.

² OJ C 332, 8.10.2020, p. 3–3.

³ OJ C 103, 25.3.2021, p. 4–4.

in question, as well as any such steps taken by the Commission in consultation with the Member States concerned. It should also take into account the consequences of the suspension of the exemption from the visa requirement for the external relations of the Union and its Member States with that third country. At the latest six months after the date of the publication of the notifications and then with regular intervals of up to six months, the Commission has to either adopt an implementing act on the temporary suspension for up to six months of the visa waiver for certain categories of citizens of the third country concerned, or submit a report to the committee referred to in Article 11 of Regulation (EU) 2018/1806 assessing the situation and stating the reasons why it decided not to suspend the exemption from the visa requirement. This report is submitted to the Committee referred to in Article 11(1) of Regulation 2018/1806, according to Article 7 first paragraph point (e) (ii) of Regulation (EU) 2018/1806.

This report is submitted to the Committee beyond the deadline set by the Regulation (EU) 2018/1806 due to objective reasons such as the uncertain and highly fluid situation linked to COVID-19 pandemic and restrictions on non-essential travel worldwide, which have resulted in extraordinary times for the implementation of visa policies. In addition, the political situation in Japan in the pre-election and transition period was not conducive for forward-looking decisions, including on visas. The Commission invested time to assess the best way forward ensuring that the issue is resolved by the time travel restarts. Furthermore, in the meantime, the Republic of Korea restored visa-free travel, while Japan amended border measures.

II. ASSESSMENT OF SITUATION PER THIRD COUNTRY

The report provides an analysis of the measures taken by the Republic of Korea and Japan which have visa implications, and gives an overview of contacts undertaken to restore visa-waiver reciprocity (which have already led to a successful outcome with the Republic of Korea). Unlike all other previous cases of non-reciprocity⁴, the cases of the Republic of Korea and Japan are fundamentally linked to their respective measures globally in order to fight the COVID-19 pandemic, with an impact for the quasi-totality of Member States, as explained below. On the other hand, the Commission has argued that visa measures, such as suspending the visa exemption, are not an effective way to fight the spread of COVID-19, due to the time-lapse between the time of application for a visa and actual travel.

1. Republic of Korea

Visa measures: Full visa-waiver reciprocity was in place with the Republic of Korea before the outbreak of COVID-19. However, the Republic of Korea introduced a series of measures, with an impact on visa-free travel, which were taken in order to strengthen its borders and fight COVID-19. On 10 April 2020, the Republic of Korea announced⁵ that it was suspending

⁴ For previous cases see reports C(2014) 7218 final, C(2015) 2575 final and C(2015) 7455 final.

⁵ Korean Ministry of Justice – Immigration Service website. Announcement of 10 April 2020, taking effect on 13 April 2020: https://www.immigration.go.kr/immigration_eng/index.do

all visa-free entry and visa-waiver programmes for nationals of countries imposing what the Korean authorities construed as entry bans against Korean nationals. In addition, it suspended all valid short-term visas (single and multiple) that were issued on or before 5 April 2020 worldwide. Korean visa procedures were extended to also comprise a health check: in accordance with the Korean visa legislation, since the introduction of this measure, applicants were required to submit a medical certificate issued within 48 hours before visa application and an agreement to quarantine in Korea. Visa issuance for non-essential purposes, such as tourism, was not permitted. On the other hand, Member States reported different practices.

Overview of contacts: As diplomatic contacts constitute the first step envisaged in the reciprocity mechanism, the Commission has engaged proactively with the Korean authorities. The EU Delegation in Seoul explained to the Korean authorities the measures taken by the EU to restrict non-essential travel⁶. It was stressed that these measures were of a temporary nature and that they did not discriminate among third countries to any degree, as they applied equally to all visa-free and visa-required countries worldwide⁷.

Contacts with the Korean authorities showed that the Korean measures to suspend visa-free travel were taken in response to those countries that imposed what the Korean authorities construed as an entry ban on Korean nationals. They were therefore directed against all Member States, with the exception of Slovenia and Malta, as, according to the Korean authorities, these two Member States did not impose such travel restrictions on Korean nationals. When the travel restrictions at the EU's external borders started to be gradually lifted based on clear criteria and subject to constant monitoring, the Republic of Korea was included on Annex I under Council Recommendation 2020/912⁸, in the list of countries with a good epidemiological situation from which non-essential travel is permitted. Diplomatic contacts continued, at both technical and high-level, raising the importance of restoring visa-free travel.

Restoring visa-free travel: As of 1 September 2021, the Republic of Korea restored visa-free travel for all EU Member States and in parallel introduced the K-ETA (Korean Electronic Travel Authorisation) system of travel authorisations, as a way to manage traveller flows and register incoming travellers⁹. The new K-ETA system applies to all EU Member States, for tourist travels for up to 90 days for ordinary passport holders. Preliminary analysis by the Commission shows that this amounts to restoring visa-free travel. The Commission is monitoring how the implementation of the travel authorisation system is working in practice, in order to ensure that the restoration of visa-waiver reciprocity is maintained.

⁶ COM(2020)115 final of 16 March 2020.

⁷ Council Recommendation (EU) 2020/912 of 30 June 2020 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction, OJ L 208I, 1.7.2020, p. 1

⁸ Council Recommendation (EU) 2020/912 of 30 June 2020 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restrictions, OJ L 208I, 1.7.2020, p. 1.

⁹ Korean Ministry of Justice – Immigration Service website. Announcement of 27 August 2021, taking effect on 1 September 2021: https://www.immigration.go.kr/bbs/immigration_eng/229/551357/artclView.do

2. Japan

Visa measures: After visa-waiver reciprocity with Romania was achieved in November 2018¹⁰, full visa-waiver reciprocity was in place with Japan before the outbreak of COVID-19. However, in April 2020, Japan introduced a series of measures, including some with an impact on visa-free travel, aiming at strengthening its borders and fighting COVID-19. In addition to introducing an entry ban covering travel from the territory of all EU Member States, Japan also suspended visa exemption measures for nationals of all EU Member States. Japan also suspended all valid visas issued by Japanese embassies located in EU Member States. The temporary suspension of the visa-waiver for all EU Member States was initially foreseen to stay in place until the end of May 2020, but was prolonged several times, and currently remains in place. As of 8 April 2022¹¹, the entry ban for foreign travellers that have stayed in the Member States' territory within 14 days prior to entry in Japan has been lifted. Japan maintains an entry ban for tourist travel regardless of the country of departure. However, for Bulgaria, Estonia and Slovakia the entry ban concerns both tourist and non-tourist travel to Japan.

Overview of contacts: The European Union side reached out to the Japanese authorities to raise concerns regarding the Japanese COVID-19 travel measures shortly after their introduction. Diplomatic contacts took place from the outset and are still ongoing at both technical and high level, raising the importance of restoring visa-free travel. Engagement and diplomatic contacts have intensified in response to the new entry restrictions enacted by the Japanese government on 29 November 2021 following the COVID-19 Omicron variant. The high-level efforts have not yet led to a full change of policy, since the Japanese authorities take the view that the measures are needed to fight the spread of COVID-19, prioritising humanitarian and national interests. During the EU-Japan Summit on 12 May 2022, both sides expressed their will to refrain from unnecessary travel restrictions and work to restore visa-waiver reciprocity.

In January 2021, following a review by the Council of the EU, Japan was removed from Annex I under Council Recommendation 2020/912¹² ¹³. It was reinstated on that list in June 2021¹⁴ and subsequently removed again in September 2021¹⁵.

¹⁰ 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, would be made permanent as from 1 January 2019.

¹¹ Ministry of Foreign Affairs website: https://www.mofa.go.jp/ca/fna/page4e_001053.html

¹² Council Recommendation (EU) 2021/89 of 28 January 2021 amending Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction OJ L 33, 29.1.2021, p. 1–3.

¹³ Due to the fact that the number of COVID-19 cases detected in Japan had increased.

¹⁴ Council Recommendation (EU) 2021/892 of 3 June 2021 amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction, OJ L 198, 4.6.2021, p. 1–4.

The Commission fully acknowledges Japan's efforts made in the fight against the spread of COVID-19. Whilst the Commission has no intention to undermine these efforts, it does not consider that the visa measures in question constitute an efficient way to fight the spread of COVID-19. Moreover, given that Japan maintains restrictions on travel to Japan from the territory of three EU Member States and from all of them for tourist purposes, the suspension of the visa exemptions as an additional measure does not appear to be strongly substantiated.

III. CONCLUSIONS

The Commission welcomes the restoration of visa-free travel between the EU and the Republic of Korea. The Commission will continue monitoring the situation in order to ensure that the restoration of visa-waiver reciprocity remains in place.

Regarding Japan, whilst the Commission does not see visa measures, such as suspending the visa exemption, as an effective way to fight the spread of COVID-19, due to the time-lapse between the time of visa application and actual travel, it acknowledges that Japan appears to see such visa measures as an essential part of its COVID-19 response and of controlling the travel flow. In this context, adopting measures based on the visa reciprocity mechanism in order to prompt a policy change in Japan could be seen by the Japanese authorities as an attempt to undermine their efforts to fight the spread of COVID-19. This could negatively affect the external relations of the EU with Japan as a like-minded partner. Whilst the Commission welcomes the lifting of the entry ban for non-tourist purposes for travellers coming from 24 EU Member States, the current entry ban that remains in place for non-tourist travel from Bulgaria, Estonia and Slovakia is affecting business, academic, cultural, and diplomatic relations. Furthermore, Japan maintains an entry ban for tourist purposes regardless of the country of ~~arrival~~ departure. Adopting visa measures based on the visa reciprocity mechanism now would not necessarily bring concrete benefits as long as global travel is largely restricted in the context of COVID-19.

Both the Republic of Korea and Japan have responded constructively to efforts to engage them on the current situation of non-reciprocity. In the case of the Republic of Korea, this is evidenced by a change of policy, which has led to restoring visa-free travel. Furthermore, the Commission notes that, in the case of Japan, although the entry ban for non-tourist purposes for travellers coming from 24 EU Member States has been lifted, it remains in place for travellers coming from Bulgaria, Estonia and Slovakia and travel for tourist purposes is still not permitted. So far, no Member State has requested the Commission to suspend the exemption from the visa requirement for any categories of nationals of Japan. In view of the foregoing, and on account of the fact that bilateral travel remains limited, the Commission considers that, at this stage, it would not be appropriate to adopt suspension measures. Progress can be better achieved through continued engagement and diplomatic contacts. This position may be reviewed in the light of possible developments.

¹⁵ Council Recommendation (EU) 2021/1459 of 9 September 2021 amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction, OJ L 320, 10.9.2021, p. 1–4.

In accordance with Article 7 first paragraph point (e) of Regulation (EU) 2018/1806, the European Parliament and the Council may have a political discussion on the basis of this report. Such a political discussion, if it were to take place, will be taken into consideration by the Commission.

The Commission will continue to actively monitor the situation and will take appropriate action depending on the results of the consultations now taking place and on other developments. In particular, it will step up its diplomatic engagement with Japan, at technical and political level, in order to restore full visa-waiver reciprocity ahead of travel normalisation as well as the lifting of the entry ban for non-tourist purposes for travellers coming from all EU Member States.

The Commission will continue regularly reporting on developments, as required by Article 7 of Regulation (EU) 2018/1806.