



Brussels, 21.12.2021
COM(2021) 827 final

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

**State of play as regards the situation of reciprocity with the United States in the area of
visa policy**

I. INTRODUCTION

This Communication presents the main developments since December 2020 with regard to the situation of visa reciprocity with the U.S. It follows up on the political commitment expressed in the latest Communication¹, in which the Commission committed to keep the European Parliament and the Council abreast by reporting on further developments in this area by December 2021.

Visa waiver reciprocity is a principle of the EU's common visa policy and an objective, which the Union should pursue in a proactive manner in its relations with third countries, thus contributing to improving the credibility and consistency of the Union's external relations. Such a principle means that the EU, when deciding on lifting the visa requirement for citizens of a third country, takes into consideration whether that third country reciprocally grants visa waiver to nationals of all Member States.

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 U.S., Australia, Brunei and Japan.

On 12 April 2016, the Commission presented a Communication on the state of play and possible ways forward as regard the situation of non-reciprocity with certain third countries in the area of visa policy.² The Communication noted that, with the active support of the Commission, the vast majority of the non-reciprocity cases notified as regard third countries had all been resolved.³ At the time of adoption of this Communication, a situation of non-reciprocity relates to the U.S., as citizens of Bulgaria, Cyprus and Romania are still required to be in possession of a visa when travelling to the U.S.

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 seven follow-up Communications: in July⁴ and December⁵ 2016, in May⁶ and December⁷ 2017, in December 2018⁸, and in March⁹ and December 2020¹⁰, providing an overview of the outreach by the Commission and relevant developments, as well as an assessment of the consequences of a potential suspension. The latest Communication also defined the position of the Commission

¹ COM(2020) 851 final of 22 December 2020.

² COM(2016) 221 final of 12 April 2016.

³ The situations of non-reciprocity with Canada, Australia, Brunei and Japan have all been resolved by achieving full visa waiver reciprocity.

⁴ COM(2016) 481 final of 12 July 2016.

⁵ COM(2016) 816 final of 21 December 2016.

⁶ COM(2017) 227 final of 2 May 2017. This Communication defined 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 reported on the progress achieved.

⁷ COM(2017) 813 final of 20 December 2017.

⁸ COM(2018) 855 final of 19 December 2018.

⁹ COM(2020) 119 final of 23 March 2020.

¹⁰ COM(2020) 851 final of 22 December 2020.

following the European Parliament resolution of 22 October 2020 on obligations of the Commission in the field of visa reciprocity related to the call presented in that resolution for the Commission to adopt a delegated act pursuant to Article 7 of Regulation (EU) 2018/1806¹¹ and reported on the progress achieved. The European Parliament nevertheless referred the Commission to the Court of Justice of the EU by bringing an action for failure to act under Article 265 TFEU on 4 March 2021¹² and the procedure is pending.

II. RECENT DEVELOPMENTS

1. Overview of contacts and their follow-up

Since the last Communication, the issue of visa reciprocity was addressed in all relevant meetings and videoconferences between the Union and the U.S. It was, most notably, on the agenda of the regular EU-U.S. Justice and Home Affairs Ministerial meetings, which were held on 21-22 June 2021 and 16 December 2021. It was also discussed at the EU-U.S. Justice and Home Affairs Senior Officials' meetings on 14-15 April 2021 and 20 September 2021, and in the tripartite meetings (held between the Commission, the U.S. and the Member States concerned) on 9-10 June 2021 and 8 December 2021.

High-level contacts: Vigorous political engagement intensified with the new U.S. administration. Commissioner for Home Affairs Ylva Johansson used her first videoconference meeting with the then newly appointed Secretary of the Department of Homeland Security, Alejandro Mayorkas, on 23 February 2021, to underline the importance of achieving full visa-waiver reciprocity and of cooperating closely to achieve progress towards this goal.

Following that meeting, Commissioner Johansson organised a series of meetings, in February and March 2021, with ministers from the four Member States concerned (relevant Ministers of Foreign Affairs and/or Interior) to discuss a way forward towards achieving full visa reciprocity with the U.S.¹³ At the respective meetings, Ministers reiterated their overall commitment to working jointly in a constructive and positive spirit, in close coordination with the Commission and the U.S., to achieve full visa reciprocity as soon as possible.

The importance of the issue of visa-waived travel was highlighted at the highest political level at the first EU-U.S. summit under the new U.S. administration that took place on 15 June 2021, with the participation of the new U.S. President Joe Biden, the President of the European Council Charles Michel, and the President of the European Commission Ursula von der Leyen. In the joint summit statement, the two sides “welcome progress made by the

¹¹ 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

¹² Case reference C-137/21.

¹³ Meetings took place as follows: with Croatian Minister for the Interior Davor Bozinovic on 18 February 2021; with Bulgarian Minister for the Interior Hristo Terziyski on 26 February 2021 and with Bulgarian Minister of Foreign Affairs Ekaterina Zaharieva on 1 March 2021; with Romanian Minister of Foreign Affairs Bogdan Aurescu on 26 February 2021; with Cyprus Minister for the Interior Nicos Nouris on 1 March 2021.

U.S. and the EU towards additional EU Member States meeting the requirements necessary for visa free travel to the U.S. and intend to continue our dialogue towards visa waiver travel”.¹⁴

Tripartite meeting (June 2021): A tripartite videoconference meeting, dedicated to the issue of visa reciprocity, took place on 9-10 June 2021. It brought together representatives from the U.S., the Commission and the Member States concerned – Bulgaria, Croatia, Cyprus and Romania. The participants discussed progress on outstanding U.S. Visa Waiver Program security requirements and on visa refusal rates. During this meeting, all sides underlined their commitment to an active engagement to achieve visa-waiver reciprocity.

Regarding the security requirements, during the tripartite meeting another round of discussions took place on the tailored work-plans provided by the U.S. authorities to each of the Member States concerned. All Member States were able to demonstrate further progress on a range of work-strands. Nevertheless, some more holistic issues remain to be further addressed. The need to enhance the integrity of national passport issuing systems was raised again by the U.S. authorities, to a different degree, for each of the Member States concerned. Areas of particular concern included: the existence of investor schemes offering expedited ways to citizenship, cases of fraud in the passport offices, various issues with biometric management, and in cases of corruption in the public sector.

As part of the tripartite meeting, the Commission services delivered a presentation on the Schengen evaluation mechanism, in order to raise the U.S. authorities’ awareness of the existence of EU rules and control mechanisms in that area. It was also an occasion to explain the question of whether a Member State fully applies the Schengen acquis and why the Schengen evaluations should be seen as separate from the visa-reciprocity debate.

As an outcome of the meeting, all Member States concerned committed to continue addressing the suggested actions from the work-plans. The U.S. committed to refining the respective work-plans, if need be, in light of actions already taken.

High-level contacts continued with a visit of Commissioner Johansson to Washington D.C. on 27 August 2021 and 2 September 2021, where a series of meetings were held, notably with the Secretary of Department of Homeland Security Alejandro Mayorkas and with Under Secretary of State for Civilian Security, Democracy, and Human Rights at Department of State Uzra Zeya. During the meetings, the need to achieve full visa reciprocity was reiterated and progress reviewed.

EU-U.S. Justice and Home Affairs Ministerial meeting (June 2021): At the EU-U.S. Justice and Home Affairs Ministerial meeting held on 21-22 June 2021 in Lisbon, Portugal, both the Portuguese Presidency of the Council of the European Union and the Commission reiterated the importance of extending the U.S. Visa Waiver Program to all EU Member States. While recalling the progress made, it was stressed that securing visa waivers for the

¹⁴ Link to the summit statementt: <https://www.consilium.europa.eu/en/press/press-releases/2021/06/15/eu-us-summit-statement-towards-a-renewed-transatlantic-partnership/>

remaining Member States remains a political priority for both sides. The joint statement¹⁵ issued after the Ministerial meeting states that “the United States and the European Union welcomed the progress made by the four EU Member States that have not yet been designated to the Visa Waiver Program and reiterated their willingness to pursue ongoing efforts in the context of the tripartite process and bilateral discussions”. In addition, Vice-President Schinas and Commissioner Johansson also raised the issue in bilateral meetings with Secretary of Department of Homeland Security Alejandro Mayorkas that took place in the margins of the Ministerial meeting.

Tripartite meeting (December 2021): Another round of tripartite meeting took place on 8 December via videoconference, bringing together representatives from the U.S., the Commission and the Member States concerned. Following its entry into the Visa Waiver Program, Croatia was invited to share lessons learned, underlining in particular the usefulness of the bespoke work-plans provided by the U.S. authorities as a roadmap for progress. Regarding the outstanding U.S. Visa Waiver Program security requirements, the remaining three Member States were all able to demonstrate further progress on a range of work-strands from their respective work-plans. Nevertheless, some outstanding more holistic issues remained. In order to reflect progress made, the U.S. authorities invited the three Member States to provide updated replies to the U.S. questionnaire, as this will allow the U.S. to re-evaluate the work-plans and identify targeted areas where progress is still needed in order to comply with the U.S. Visa Waiver Program requirements. On visa refusal rates, travel restrictions and low issuance numbers continue to negatively impact the figures.

EU-U.S. Justice and Home Affairs Ministerial meeting (December 2021): Concluding a year of continuous diplomatic contacts, the visa reciprocity issue was discussed at the EU-U.S. Justice and Home Affairs Ministerial meeting, held on 16 December 2021 in Washington D.C. The entry of Croatia into the U.S. Visa Waiver Program was welcomed as a demonstration that the tripartite process and close cooperation based on targeted work-plans can bring tangible results. All sides once again raised the importance of extending the U.S. Visa Waiver Program to all EU Member States.

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

Visa refusal rate

While the visa refusal rate for 2019 showed decreases for all four Member States concerned, visa refusal rates for the 2020 fiscal year¹⁶ painted a different picture. Croatia’s rate decreased from 4% to 2.69%, thus bringing it under the legally required 3% threshold. On the other hand, the remaining three Member States recorded increases. After consistently complying with the 3% refusal rate threshold for several years, Cyprus recorded an increase to 6.21%. For Bulgaria and Romania, which both recorded rates under 10% for the first time in 2019, the refusal rates for 2020 showed increases: 10.14% for Romania and 12.52% for

¹⁵ Link to the joint statement: <https://www.consilium.europa.eu/en/press/press-releases/2021/06/22/joint-eu-us-statement-following-the-eu-us-justice-and-home-affairs-ministerial-meeting/>

¹⁶ Refusal rates published by U.S. authorities are available here: <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/RefusalRates/FY20.pdf>

Bulgaria. This increase could be due to the statistical irregularities in a year characterised by widespread travel restrictions and low visa issuance numbers.

Security requirements

As previously reported, Bulgaria, Cyprus and Romania have signed and ratified the Preventing and Combating Serious Crime Agreement (PCSC) with the U.S., and are working towards its full implementation.

Work towards meeting the overall security requirements continues on the basis of the work plans which the U.S. authorities individually tailored for each Member State concerned (see section II.1), with the Commission coordinating and exchanging information with the Member States concerned in order to ensure appropriate follow up in the relevant areas. The next tripartite meeting, planned for spring 2022 will focus on assessing progress regarding actions identified in the work-plans.

3. Designation of Croatia into the U.S. Visa Waiver Program

Following the numerous contacts with the U.S. on various levels both by the Commission and by Croatia, on 2 August 2021, the U.S. Secretary of State Antony Blinken nominated Croatia for entry into the Visa Waiver Program, and on 28 September 2021, after having certified that Croatia fulfils the necessary statutory and policy requirements, Homeland Security Secretary Mayorkas announced that Croatia was designated into the U.S. Visa Waiver Program. As of 23 October 2021, Croatian nationals can travel to the U.S. for tourism or business purposes for up to 90 days without being required to obtain a U.S. visa for short stays.

The Commission welcomes Croatia's entry into the Visa Waiver Program, which is the result of an active diplomatic engagement and full cooperation from all sides that contributed to the fulfilment by Croatia of the necessary requirements related to counterterrorism, law enforcement, immigration enforcement, document security, border management as well as to achieving a rate of non-immigrant visa refusals below three percent. This approach was instrumental for resolving previous non-reciprocity cases, such as the case of Poland, whose nationals have been able to benefit from visa-free travel to the U.S. since 11 November 2019. The results achieved provide a clear demonstration that tangible progress in this regard can be achieved through continued engagement and diplomatic contacts.

4. Judicial action by the European Parliament against the Commission

The European Parliament referred the Commission to the Court of Justice of the EU by bringing an action for failure to act on 4 March 2021.¹⁷

According to the Parliament, the Commission is under an obligation 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, pursuant to Article 7 of Regulation 2018/1806. By resolution of 22 October 2020¹⁸, the

¹⁷ Case reference C-137/21.

¹⁸ P9_TA(2020)0283.

Parliament called on the Commission to adopt the act in question by 22 December 2020 at the latest. The Commission responded to the Parliament's call for action by defining its position in the Communication of 22 December 2020. Nevertheless, the Parliament decided to bring an action for failure to act under Article 265 TFEU.

The Commission will present its position on the pending case in Court and remains fully committed to the ongoing results-oriented process with the U.S., in coordination with Bulgaria, Cyprus and Romania, as well as the European Parliament and the Council, to advance towards full visa reciprocity.

5. Current state of EU-U.S. bilateral relations

The EU-U.S. summit of 15 June 2021 not only reaffirmed the importance of the issue of visa-waived travel at the highest political level, but also injected new momentum into the transatlantic partnership, endorsing a renewed Transatlantic Agenda for the post-pandemic era and announcing a number of joint actions and new initiatives. These address notably, but not exclusively, the COVID-19 pandemic; trade and technology issues; climate, environment and energy; as well as foreign policy and security. Good progress has been made since then, in particular in the area of trade and technology, climate, as well as in terms of joined up efforts to fight the pandemic and address pressing global issues and foreign policy challenges. This illustrates the general positive developments in a range of sectors with the U.S. People-to-people contacts are a significant part of the EU-U.S. strategic partnership and current cooperation frameworks. In order to enable all EU citizens to benefit seamlessly from people-to-people contacts, achieving full visa reciprocity with the U.S. for all its Member States remains a priority for the European Union.

III. NEXT STEPS AND CONCLUSIONS

The Commission reiterates its intention to continue supporting actively the three Member States concerned in order to help them fulfil the requirements of the U.S. Visa Waiver Program. Upcoming meetings, both technical and political (in tripartite and bilateral formats), will provide opportunities to maintain the momentum following not only the admission of Croatia to the U.S. Visa Waiver Programme, but also the general positive developments in a range of sectors with the U.S. in general. The next regular tripartite meeting, planned for spring 2022, will take forward the technical work based on the work-plans provided by the U.S. to each of the remaining Member States, allowing these States to reach compliance with the U.S. Visa Waiver Program security requirements.

Considering the progress made with the U.S. with regard to the entry of Poland and Croatia into the U.S. Visa Waiver Program, as well as the continued progress made by the remaining three Member States, the Commission remains of the view that temporarily suspending the visa waiver for U.S. citizens would be counterproductive. Furthermore, the COVID-19 pandemic triggered an extraordinary context that has negatively impacted travel and the overall implementation of visa policies worldwide. Whilst the situation is improving, the impact on travel is not yet over, and a temporary suspension risks being particularly damaging for overall transatlantic economic activity.

Furthermore, such a suspension would have far-reaching negative political, economic, financial, social and other impacts for the Member States, as well as for citizens and businesses on both sides of the Atlantic. It would not serve to achieve the objective of visa-free travel for all EU citizens to the U.S., and may endanger visa-free travel to the U.S. for all other EU citizens, if the U.S. would follow up on indications repeatedly given that the mere adoption by the Commission of a delegated act on the suspension of the visa waiver for U.S. citizens would immediately result in the U.S. adopting retaliatory measures, reintroducing a visa requirement for all EU citizens. The results achieved with the recent inclusion of Croatia in the U.S. Visa Waiver Programme show that tangible progress towards full visa waiver reciprocity can be achieved through continued engagement and joint diplomatic contacts.

In implementing the visa reciprocity mechanism, the Commission must take into account the outcome of the measures taken by the Commission and the Member States and the possible consequences for the external relations of the EU and its Member States. The Commission has therefore assessed the positive results of the actions undertaken at EU and at national level, notably the fact that Croatia and Poland achieved visa-free access in 2021 and 2019 respectively, as well as the continued progress made by the other Member States concerned.

The Commission has also examined the expected negative consequences of visa suspension in a wide range of policy areas and sectors, as well the adverse effect on transatlantic cooperation and the EU's external relations with a key strategic partner, against the backdrop of a renewed momentum and general positive developments in a range of sectors with the U.S., as explained above. As long as the Commission continues to see sustained progress through its engagement with the U.S., it considers that full visa reciprocity for all EU nationals can be best achieved through continued diplomatic cooperation with the U.S., and in close coordination with the Member States concerned. The U.S. remains strongly committed to such continued engagement, notably in the context of bilateral high-level contacts as well as dedicated tripartite meetings, to achieve mutually beneficial goals.

It should be noted that the Member States concerned agree to continue dialogue with a view to achieving results with the U.S. through constructive engagement with the U.S. and that none of them has contacted the Commission about an adoption of a delegated act temporarily suspending the visa exemption for U.S. nationals.

Against this background, the Commission considers that the adoption of a delegated act temporarily suspending the exemption from the visa requirement for nationals of the U.S. would be counterproductive at this point in time and would not serve the objective of attaining visa-free travel to the U.S. for all EU citizens. It would also negatively impact the EU's external relations with a key strategic partner, at a time of general positive developments in a range of sectors with the U.S.

In 2022, the EU-U.S. Justice and Home Affairs Senior Officials' meeting followed by the EU-U.S. Justice and Home Affairs' Ministerial meeting will further assess progress made.

The Commission remains committed to achieving full visa reciprocity for all Member States as a matter of priority. It will continue working with the U.S. and concerned Member States to advance towards full visa reciprocity.

To this effect, the Commission will continue to work closely with the European Parliament and with the Council to achieve full visa reciprocity and will keep the European Parliament and the Council abreast of further developments. The Commission will continue regularly reporting on further developments.