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Report from the Commission

of 22.4.2015

**assessing the situation of non-reciprocity with certain third countries in the area of visa
policy**

I. Introduction

Council Regulation (EC) No 539/2001 of 15 March 2001¹ provides for a reciprocity mechanism in the event that a visa-free third country maintains or introduces a visa requirement for the citizens of one or more Member States.

Regulation (EU) No 1289/2013 of the European Parliament and of the Council of 11 December 2013 established a revised reciprocity mechanism. Within six months of the date of publication of a Member State's notification of non-reciprocity and then at 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 assessing the situation and stating the reasons why it decided not to suspend the exemption from the visa requirement. If the third country has not lifted the visa requirement within 24 months of the publication date, the Commission is obliged by the Regulation to adopt a delegated act on the temporary suspension of the visa waiver for 12 months for citizens of that third country.

On 12 April 2014² the Commission published the notifications of non-reciprocity situations it had received from five Member States: Bulgaria, Croatia, Cyprus, Poland and Romania. These notifications related to five third countries: Australia, Brunei Darussalam, Canada, Japan and the United States of America (US).

As specified by the Commission when it published the Member States' notifications, such publication does not entail automatic recognition by the Commission of a non-reciprocity case in the meaning of the provisions of Regulation 539/2001.

The Commission, in consultation with the Member States concerned and in agreement with the third countries in question, proposed in spring 2014 to establish a framework of regular tripartite meetings between each third country and the Member State(s) concerned plus the Commission. The purpose of these meetings is to discuss the state of play and define further steps, possibly accompanied by a timeline, which should lead to achievement of full visa reciprocity as soon as possible.

The first tripartite meetings with the third countries concerned took place in July and August 2014 and showed a need for further clarifications and exchanges of information on a number of issues. Furthermore, with regard to certain cases that had been notified, additional information had to be exchanged in order to enable the Commission to assess whether they were indeed cases of non-reciprocity in the sense of, and so to be dealt with under, the new reciprocity mechanism. Taking into account the constructive engagement and commitment on the part of all the third countries concerned, in working towards the shared objective of mutual visa-free travel, and the fact that none of the Member States concerned had requested the Commission to suspend the exemption from the visa requirement, the Commission considered that at that stage, it would not be appropriate to adopt suspension measures. Consequently, the Commission adopted on 10 October 2014 a report assessing the situation of non-reciprocity with certain third countries in the area of visa policy.³

¹ OJ L 81, 21.3.2001, p. 1. This Regulation also lists the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States and those whose nationals are exempt from that requirement.

² OJ C 111, 12.4.2014, p.1.

³ C(2014) 7218 final of 10.10.2014.

Against this background, the Commission now wishes to assess the progress made, taking into account the cooperation received from the third countries concerned, in the tripartite framework over the past six months.

II. Steps taken since the adoption of the *Report assessing the situation of non-reciprocity with certain third countries*

a. Assessment of the situation per third country for which the Commission has received one or more notifications:

i. Australia

Notified by: Bulgaria, Romania

Bulgaria and Romania notified the eVisitor system, stating that a high number of applications from their citizens were being processed manually, rather than via 'autogrant'⁴. On the basis of the information provided during the first tripartite meeting between the Commission, Australia, Bulgaria and Romania on 24 June 2014 the Commission's preliminary conclusion was that eVisitor's 'autogrant' treatment in principle should not be considered as equivalent to the Schengen visa application procedures, as defined in Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code)⁵. More information from Australia was needed in order to assess whether eVisitor's 'manual processing' treatment could be considered as equivalent to the Schengen visa application procedures.

Although not formally notified, Australia continued to impose a transit visa requirement for citizens of Bulgaria, Croatia and Romania.

The second tripartite meeting was held on 30 January 2015 in Brussels in order to take stock of the progress achieved and to examine the additional information provided by Australia on its eVisitor system.

- Transit visa requirement

Australia lifted the transit visa requirement for Bulgarian citizens in October 2014. Therefore only Romania and Croatia remain subject to this requirement.

Australia informed the Commission that, according to its legislation, a country must make a formal request before it can start to consider lifting the transit visa requirement imposed on that country.

Romania repeated its request to lift this requirement, and Croatia made such a request in November 2014. Australia undertook to proceed with its assessment of these requests as soon as possible while underlining the need to follow its internal procedures in order to reach a decision. The Commission is looking forward to swift completion of these assessments by Australia while noting that, according to the statistics provided by Australia, the number of transit visas issued to these citizens is quite low (around 260 annually per country).

⁴ For a description of the eVisitor system, see C(2014) 7218 final of 10.10.2014, page 7.

⁵ OJ L 243, 15.9.2009, p.1

- The eVisitor system

Australia provided additional information on 15 July 2014. Based on a preliminary comparison of a number of elements of the two systems, the Commission considers that eVisitor's 'manual grant' treatment cannot be considered as equivalent to the Schengen visa application process. For example, while a comprehensive set of supporting documents has to be provided when applying for a Schengen visa, under the eVisitor 'manual grant' system additional information is only requested on an ad-hoc basis. Furthermore, no fee is charged under eVisitor's manual processing and there is no requirement for personal appearance at the consulate. This shows that the 'manual grant' treatment operates differently from the Schengen visa application procedures.

Furthermore, Australia has clarified that 'autogrant' treatment is the general rule for the eVisitor applications from all EU citizens. However, under the eVisitor system a number of risk profiles have been created which apply to all eVisitor applicants irrespective of their country of origin. If an application corresponds to a specific risk profile or a combination of risk profiles it is then automatically 'pulled out' for manual processing.

Australia regularly reviews these risk profiles. Despite a review having been finalised towards the end of 2014, the risk profiles that lead to manual treatment of a high percentage of applications from Bulgarian and Romanian citizens are being maintained. This is mainly due to criteria used in the risk profiles which are linked to organised crime activities and identity fraud. In this context, the Commission strongly encourages the authorities of these Member States and Australia to explore as soon as possible ways of cooperating, including on law enforcement, which could lead to a reduction of these risks and consequently to an adaptation of the risk profiles. This in turn should lead to increased 'autogrant' treatment of applications from Bulgaria and Romania. A possible avenue for such cooperation could be provided by setting up regular bilateral consular consultations based on the example of some existing consultations with other third countries where visa waiver reciprocity is discussed. Furthermore, launching of public awareness-raising activities could be considered in order to inform citizens about the conditions for entry to and stay in Australia.

Taking into account the fact that there are also other Member States which have quite high manual processing rates under the eVisitor system (but have not notified this to the Commission), the Commission intends to continue to monitor closely the implementation of eVisitor's 'manual processing' treatment, with a view to making a final assessment of it. The Commission has requested Australia to continue providing statistics on the autogrant rate for Bulgarian and Romanian citizens in order to assess the situation, while respecting Australia's request on the limits of the publication of these statistics.

ii. Brunei Darussalam

Notified by: Croatia

Two non-reciprocity cases with Brunei Darussalam were mentioned in the October 2014 Commission report, namely a visa requirement for citizens of Croatia, and a duration of authorised visa-free stay limited to a maximum of 14 days for citizens of Liechtenstein.

The Commission has continued to hold regular informal contacts with the Brunei authorities.

By letter of 11 February 2015 the Brunei authorities replied to the Commission's request of 26 November 2012, stating that holders of ordinary, diplomatic and official passports issued by Liechtenstein can now stay for up to 90 days visa-free.

The Brunei authorities are still examining the Commission's formal request of 10 July 2014 to ensure a reciprocal visa waiver for up to 90 days to Croatian citizens.

While respecting the internal procedures that the Brunei authorities have to observe in order to adopt a positive decision in this regard, the Commission will continue to press the Brunei authorities for a swift solution.

iii. Canada

Notified by: Bulgaria, Romania

The first tripartite meeting between the Commission, Canada and the two Member States took place on 29 July 2014. A second tripartite meeting took place in Brussels on 14 January 2015, primarily to look at all the steps taken and the progress made by all sides since the first meeting.

It was noted that intensive bilateral exchanges had taken place after the first tripartite meeting, both in the two capitals of the Member States and in Ottawa. In this regard, a high-level Canadian delegation visited Sofia and Bucharest in February 2015, a sign of the commitment of all sides to move the process forward. These visits cannot, however, be regarded as the official final review under the Canadian visa policy. Rather, they constitute a dialogue, allowing for detailed discussion on several relevant matters. The Commission also discussed visa issues with senior Canadian officials in the Joint Consultations on Migration which took place on 6 February 2015 in Brussels.

The last six months have seen significant developments. For example, Romania is now a Designated Country of Origin (DCO) which is, under the Canadian system, the official acknowledgment that a country is not 'producing' refugees. This leaves Bulgaria as the only EU Member State which is not on the Canadian DCO list. According to the explanations given by Canada during the second tripartite meeting, Bulgaria cannot be considered for inclusion in the list as long as certain thresholds related to the percentage of recognition of asylum claims are not met. Canada pointed out that the process whereby a country is put on the DCO list is separate from the one under the visa waiver policy and that a country can therefore benefit from a visa waiver without being on the DCO list. Another important development was the launching of a 'business express program' for Bulgarian and Romanian citizens in October 2014, which applies only to those two countries and aims at facilitating business travel to Canada.

Regarding the key criteria under the visa policy which still pose a problem for the Canadian side, new statistics presented by Canada for the first six months of 2014 showed a slight increase in both refusal and immigration violation rates, for both countries. A refusal rate of 16% and an immigration violation rate of 7.8% for Bulgarian citizens (compared to 15.1% and 4.4% in 2013), and a refusal rate of 13.8% and an immigration violation rate of 4.6% for Romanian citizens (compared to 16.1% and 2.7% in 2013), are percentages which make convergence towards the required average over three years of less than 4% for refusal rates and less than 3% for violation of immigration rules quite difficult. As these percentages are a real concern for all sides, discussions have focused on possible awareness-raising campaigns that could help reduce these percentages. Romania, Bulgaria and also the Commission have

presented examples of successful campaigns that were put in place with regard to other third countries. Canada, despite its initial reluctance about the usefulness of such campaigns, is willing to look at this possibility in more detail. Regarding the fight against corruption – considered by Canada as an issue of concern and one of the criteria to be assessed under the Canadian visa policy – Canada acknowledges that in both countries progress is being made and mentions in this regard the declarations of the newly elected Romanian President and the new Bulgarian Prime Minister and Minister of Justice.

Regarding the establishment by Canada of an Electronic Travel Authorization (eTA) system, which will apply to all visa free travellers, it is expected that travellers will be able to apply for it in 2015; however the system will not be mandatory until 2016.

iv. Japan

Notified by Romania: a visa requirement for temporary passport holders

A second tripartite meeting between the Commission, Japan and Romania took place on 5 February 2015 in Brussels.

After the first tripartite meeting a list of questions and additional information requests were sent both to Japan and to Romania. The discussion on 5 February 2015 took stock of the information exchange and the possible impact of this information on the visa obligation for holders of Romanian temporary passports. The discussion showed that although the Romanian side had provided the Japanese side with the necessary technical information related to Romanian temporary passports (the text of the law, specimens, statistics), the Japanese side was still questioning the reasons behind the large number of temporary passports issued. Partially this question mark seems to stem from a different understanding on the Japanese side of the notion of a 'temporary passport', which in the case of Japan is only issued abroad as an emergency passport and under very strict conditions. Only a very small number of such passports are thus issued by Japan each year. Romania and the Commission, on the other hand, were particularly interested in finding out why this specific category of Romanian citizens would pose a problem to the Japanese authorities (as compared to ordinary passport holders). The Japanese side could not provide any statistics which differentiate between Romanian holders of ordinary passports and temporary passports to support its risk assessment; these statistics are either not gathered by the Japanese authorities or cannot be made public for security reasons. It was agreed that more information would have to be exchanged, which should lead to a better understanding of the different approaches in Romania and Japan in relation to temporary and emergency documents and might enable Japan to assess the Romanian legislation and its implementation independently of its own legislation. It was also agreed that Japan would try to provide to the extent possible further data and statistics which could help in assessing the potential risk which holders of Romanian temporary passports pose to Japan.

Notwithstanding the progress achieved in the discussions held with both countries, the question of whether the situation concerning Romanian holders of temporary passports falls within the scope of the reciprocity mechanism – raised in the Commission's report of October 2014⁶ – still requires clarification.

⁶ See C(2014) 7218 final of 10.10.2014, pages 6 and 7.

v. United States of America (US)

Notified by: Bulgaria, Croatia, Cyprus, Poland and Romania

During the second tripartite meeting on 13 January 2015 the progress achieved since the first meeting in July 2014 was discussed for each Member State concerned with regard to the visa waiver conditions set out in the US legislation i.e. reciprocity, the visa refusal rates, biometric passports, law enforcement and return cooperation, and a security review.

During the first meeting it had been suggested that in order to reduce the visa refusal rates the Member States could set up awareness-raising campaigns about the conditions governing travel to the US, in cooperation with the US consular services in their respective capitals, which could provide information about categories of applicants that might pose problems and about the refusal grounds. In addition, in light of the complexity of its visa system, the US side could examine how the information provided to visa applicants could be further improved in the Member States concerned.

The data on visa refusal rates for 2014 show a significant improvement compared to 2013 for four out of five Member States concerned: Cyprus 3.5% (previously 4%), Poland 6.4% (10.8%), Bulgaria 15.2% (19.9%), Romania 9.8% (11.5%). For Croatia the refusal rate showed a slight increase: 6.1% (5.9%). This means that while none of the Member States concerned meets the legally required 3% threshold, at least one Member State is very close to this target.

The drop in the refusal rates is a result of increased cooperation between the Member States' authorities and the US consular services in their respective capitals. Thanks to improvement of the visa information provided by the US consular services, successful awareness-raising activities have been introduced, such as a programme providing visa information and assistance to business travellers, press interviews and posting of videos on YouTube on how to prepare for a visa interview. These actions are expected to lead to a further reduction of the refusal rates, as applicants will be better prepared.

The Commission strongly encourages the Member States concerned and the US consular services in the respective capitals to strengthen their ongoing cooperation with a view to identifying the specific categories of applicants that pose problems and the grounds for refusal, and to set up or to continue with targeted awareness-raising campaigns which could help in further reducing the refusal rates.

Several legislative initiatives supported by the US Administration have been launched recently in order to allow some flexibility with regard to the visa refusal threshold. The outcome of these initiatives is uncertain, also in the context of the phenomenon of foreign fighters and the January 2015 Paris attacks. Following the US elections in autumn 2014, these initiatives would have to be re-introduced in the new Congress in order to be considered. Moreover, several draft measures have been introduced in Congress to tighten VWP (Visa Waiver Program) eligibility criteria and providing DHS (Department of Homeland Security) with the power to suspend countries participating in the VWP; these initiatives will also need to be re-introduced in Congress in order to be considered.

In this respect it should be noted that the US Administration is implementing, in the light of the foreign fighters issue, new measures which became effective from 3 November 2014

regarding enhancement of the ESTA procedure applicable to all VWP countries, which enables vetting of prospective VWP applicants to determine whether they present a security threat.

During the second tripartite meeting, the Commission has again requested information from the US authorities on the date of publication of the Final ESTA Rule, in view of completing its assessment of whether or not the ESTA system is equivalent to the Schengen visa application procedures. The US informed that the final ESTA rule has to take into account the new requirements introduced in November 2014; it is not clear when it will be published.

Concerning the two required bilateral agreements in the area of law enforcement cooperation, negotiations are being continued by those Member States that have not yet concluded such agreements. As regards the exchange of notes concerning the transmission of data on lost and stolen passports to Interpol and the practical implementation of this agreement, two Member States have solved this issue in the meantime and one Member State will do so shortly.

b. Assessment of visa non-reciprocity situations with third countries which have not been notified

In addition to the reciprocity cases notified by the Member States concerned and which are examined under the revised mechanism, two outstanding issues of non-reciprocity for Croatian citizens remained with Antigua and Barbuda (general visa requirement) and Barbados (unequal treatment in terms of duration of authorised stay).

The Commission contacted the authorities of these third countries in May, August and December 2014, requesting that full visa reciprocity be ensured in accordance with the provisions of the visa waiver agreements concluded between the EU and the third countries concerned.⁷

At the first meeting of the Visa Reciprocity and Visa Suspension Committee on 6 November 2014, Croatia pointed out that its citizens no longer require a visa to enter Antigua and Barbuda.

The Commission is in regular contact with the Barbadian authorities. At the beginning of 2015 the Commission sent an explanatory note to the Embassy of Barbados in Brussels, containing a number of clarifications on the interpretation and practical application of the short-stay visa waiver agreement concluded between the EU and Barbados, in particular as regards its scope of application. The Commission hopes that these additional clarifications will enable the Barbadian authorities to ensure as soon as possible equal treatment for Croatian citizens in terms of the duration of authorised stay.

III. Conclusions

Since the adoption of the first Report under the revised reciprocity mechanism in October 2014, intensive and constructive cooperation has continued with all parties concerned in the tripartite framework and through bilateral contacts. Information has been exchanged as agreed at the first tripartite meetings and the information has been analysed with a view to continuing the tripartite approach in a result-oriented way.

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OJ L 169, 30.6.2009.

This cooperation has led to the lifting of a transit visa requirement by Australia for the citizens of Bulgaria and to assurance of equal treatment in terms of the duration of authorised stay by Brunei Darussalam for the citizens of Liechtenstein. Furthermore, full visa waiver reciprocity has now been established for all EU citizens by the third countries which were not notified under the new mechanism but were identified on the basis of citizens' complaints, with the exception of Barbados.

The tripartite framework has also produced fruitful exchanges of information with the third countries concerned for assessing whether a notified non-reciprocity case is indeed a non-reciprocity case in the sense of, and thus to be dealt with under, the new mechanism. In this context **the Commission concludes that the Australian eVisitor's 'manual processing' treatment should not be considered as equivalent to the Schengen visa application procedures and thus will not be covered by the reciprocity mechanism.** Nevertheless, the Commission will continue to monitor the implementation of the eVisitor system and in particular its 'manual processing' treatment.

Some progress has been achieved with the remaining countries (Canada, Japan, the US and Brunei Darussalam) on actions agreed in order to try and fulfil the visa waiver criteria, set out in the legislation and/or administrative rules of the third country concerned. However, in the cases of Canada and the US it seems unlikely that all criteria, including the quantitative thresholds set for visa refusal and/or immigration violation rates, could be met by all Member States concerned by the next deadline of October 2015 when the Commission will again have to assess the situations of non-reciprocity and either adopt a temporary measure suspending the exemption from the visa requirement, or submit a report. Regarding Japan, the Commission intends to discuss before the next deadline with the Parliament and the Council the issue of Romanian holders of temporary passports under the scope of application of the reciprocity mechanism.

While the Commission cannot yet say what position it will take on the non-reciprocity cases by the next deadline, the possibility of adopting a 'temporary measure' for one or more third countries concerned and a 'report' for other third countries could be considered. On the basis of the successful ongoing cooperation with, and the continued commitment of, the third countries concerned to achieve full visa waiver reciprocity, which has already led to the resolution of some of the non-reciprocity cases, and taking into account also the fact that none of the Member States concerned has requested the Commission to suspend the exemption from the visa requirement for certain categories of nationals of any of the third countries concerned, **the Commission considers that it would not be appropriate to adopt suspension measures at this time.**