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Judgment of the Court in Case C-137/21 | Parliament v Commission (Visa exemption for nationals of the United States)

The Commission was not required to suspend the exemption from the visa requirement for US nationals due to a lack of reciprocity in this matter

The Commission enjoys political discretion to decide whether such a suspension is appropriate where a third country makes nationals of one or more Member States subject to a visa requirement

Union law aims to ensure complete reciprocity in the field of visas. Thus, in principle, only third countries which grant an exemption from the visa requirement to all nationals of EU Member States may benefit from such an exemption for their own nationals. However, where a third State benefiting from such an exemption decides at a given time to subject the nationals of one or more Member States to a visa requirement, the Commission enjoys discretion to decide whether a suspension of that exemption is justified. It is therefore not automatically required to suspend the exemption from the visa requirement for nationals of the third country concerned. The Court thus dismisses an action for failure to act brought by the European Parliament against the Commission. The Parliament sought a declaration that the Commission should have temporarily suspended the exemption from the short-term visa requirement for United States nationals since that country imposed a visa requirement on Bulgarian, Croatian, Cypriot and Romanian nationals.

The question whether nationals of a given third country need a visa when crossing the external borders of a Member State is governed in a uniform manner at EU level. The EU legislature, namely the European Parliament and the Council, adopted a regulation ¹ listing the third countries whose nationals require a visa and a list of those whose nationals are exempt from it.

In the event that a third country whose nationals are exempt from the visa requirement decides to subject the nationals of one or more Member States to such an obligation, the regulation provides for a 'reciprocity mechanism', structured in several stages, which makes it possible to act in solidarity at the EU level. Some of these actions are delegated to the Commission, such as the temporary suspension of exemption from the visa requirement.

United States nationals benefit from such an exemption. However, given that that third country made Bulgarian, Croatian, Cypriot and Romanian nationals subject to a visa requirement, the Parliament called on the Commission, in October 2020, after submitting a similar request in 2017, to temporarily suspend that exemption. The Parliament took the view that under the regulation, the Commission was obliged to do so. The Commission considered it inappropriate to suspend, at that stage, the exemption at issue, in particular because of the harmful political and economic consequences that such a suspension might entail for the Union. That led the Parliament to bring an action for failure to act against the Commission before the Court of Justice of the European Union.

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 (OJ 2018 L 303, p. 39).

By today's judgment, the Court, sitting as the Grand Chamber, dismisses the Parliament's action.

According to the regulation, **the Commission is not automatically required to suspend the exemption, but enjoys political discretion in relation to this.** In that regard, the Commission must take account of three criteria:

1. the outcome of the measures taken by the Member State concerned with a view to ensuring visa-free travel with the third country in question;
2. the steps it has taken with the authorities of the third country in question in particular in the political, economic and commercial fields, with a view to reinstating or introducing the visa exemption for all nationals of the Member States;
3. the consequences of the suspension of the exemption from the visa requirement for the external relations of the European Union and its Member States with the third country in question.

The Court observes that the Commission took those three criteria into account before reaching the conclusion to not suspend the exemption from the visa requirement at issue. In particular, the Commission had considered, as regards relations with the United States, that the suspension would have significant negative impacts in a wide range of policy areas and sectors.

The Commission therefore did not exceed its discretion in taking the view that it was not required to suspend the exemption of United States nationals from the visa requirement, with the result that it cannot be accused of having failed to act.

NOTE: An action for failure to act enables the lawfulness of the failure of the Union institutions to act to be reviewed. Such an action may be brought only after the institution concerned has been called on to act. Where the failure to act is held to be unlawful, it is for the institution concerned to put an end to the failure by appropriate measures.

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The [full text and an abstract](#) of the judgment are published on the CURIA website on the day of delivery.

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