

US Congress modifies Visa Waiver Program

The United States Visa Waiver Program (VWP) has allowed millions of citizens of European and other countries to travel to the US, and to remain there for as long as 90 days without requiring a visa, provided that they meet certain requirements. The recent terrorist attacks in Europe, as well as the presence of Western foreign fighters in Syria and Iraq, have reignited debate in Congress over US domestic security. While recognising the importance of the VWP for transatlantic relations, Congress stressed the need to prevent terrorists from exploiting potential vulnerabilities in the programme. This has prompted Congress to modify the VWP to require certain travellers, previously exempt, to apply for a visa in order to enter the US.

What is the Visa Waiver Program?

Founded in 1986, the [VWP](#) allows citizens of certain countries, many of them EU Member States, to enter and travel within the United States without a visa, for a period of up to 90 days for tourism or business purposes. In exchange, the US Government asks VWP-member governments to take certain measures, such as sharing counter-terrorism intelligence. Twenty-three EU Member States are among the 38 countries benefitting from the VWP, while the remaining five (Bulgaria, Croatia, Cyprus, Poland, and Romania) are all considered as [potential](#) members of the programme. Although individuals travelling under the VWP are not required to obtain a visa from a US consular post abroad, the programme includes significant screening and security procedures. In fact, individuals travelling using the VWP programme now have to go through an electronic screening process through the [Electronic System for Travel Authorisation](#) (ESTA) before arriving in the US. ESTA became operational in January 2009, and since then over [80 million](#) ESTA applications have been approved; while over 4300 were denied as a result of vetting against the US Government's known or suspected terrorist 'watchlist'. Individuals denied an ESTA authorisation are referred to the appropriate US embassy or consulate for a visa-vetting process, under which the prospective traveller undergoes the comprehensive biographical, biometric, and inter-agency screening applied to all US visa applicants. Under ESTA, prospective travellers must provide biographical, passport and travel information prior to embarking. Upon arrival in the US, all VWP applicants are questioned at the port of entry by Customs and Border Protection officers, and their passports are checked as would be the case for any other passenger. In principle ESTA approval is valid for two years and for multiple entries but it can be revoked at any time.

The political debate

Approximately 20 million people entered the US under the VWP in [FYs 2013](#) and 2014. The US Department of Commerce [estimates](#) that, in 2014, VWP travellers injected approximately US\$84 billion (€77.2 billion) into the US economy, reflecting the importance of visa-free travel for American tourism and business. The debate in Congress, however, has mostly focused not on the economic benefits but on the [security issue](#) (i.e. to what extent the VWP strengthens or weakens US national security). Some note that ESTA is a purely biographical system which does not include biometric data such as fingerprints; while others argue that US security is reinforced because VWP members must, among other criteria, share counter-terrorism information. Moreover, the VWP reduces the [workload](#) for consulates, which consequently can focus on travellers from nations presenting greater risks. While Congress was debating possible modifications to the programme, in November 2015 the White House announced a number of [enhancements](#) to the VWP, and specifically to ESTA in order to ensure that US 'apparatus continues to adapt in the face of evolving threats'. At the same time, a [letter](#) signed by the Ambassadors of the 28 EU Member States and the EU Ambassador to the United States was published in *The Hill*. The letter defined the VWP as 'an essential tool in



transatlantic relations', and re-stated its importance not only for business and tourism purposes but for ensuring greater security among allies.

How countries join or are removed from the VWP

Prospective countries are selected according to a set of requirements related to various [criteria](#): notably VWP members must offer reciprocal privileges to US citizens, issue machine-readable passports, meet various counter-terrorism requirements (e.g. make available through Interpol information about [theft or loss](#) of passports) and have a non-immigrant refusal rate below 3% in the previous year. Under certain circumstances, countries can be placed in a probationary period before a decision on whether or not their continued participation in the VWP is in the interests of the US. This was the case for [Belgium](#) in 2003 following concerns regarding the integrity of non-machine-readable Belgian passports. Countries can also be removed from the VWP list if they fail a regular review. This was the case with Argentina, which lost VWP status in 2002 after severe financial problems in the country, resulting in an increasing number of Argentinians seeking to remain illegally on US territory beyond the 90-day period.

Why is the Visa Waiver Program changing?

Recent events linked to terrorism and migration have added to concern in the US that foreigners with ties to terrorist groups, or who have returned from fighting abroad in support of ISIL/Da'esh could enter the US without a visa due to having single or dual nationality of a VWP country. The discussion resulted, in 2015, in the introduction of bills to modify the VWP, both in the House of Representatives ([H.R. 153 – Miller](#)) and in the Senate ([S.2337 – Feinstein](#)). In the aftermath of the November attacks in Paris, several US media sources pointed to the French or Belgian origins of terrorists. Public discourse focused on how many such EU citizens influenced by extremist ideology pass through ISIL/Da'esh training camps in Syria or Iraq before returning to Europe to instigate terrorist attacks. Most recently, the [Entry/Exit Overstay Report](#) for FY 2015 prepared by the Department of Homeland Security found that no departure was recorded for over 150000 individuals who entered the US on the VWP (representing 0.65% of the expected departures). These data were [considered](#) by some to confirm the weakness of the system and the fact that it might be exploited by terrorists. Fearing that the programme as such could pose a threat to the security of the US, Congress adopted new rules tightening the current programme for certain individuals, with the aim of reducing the risk of admitting potentially dangerous aliens onto US territory. The new rules were included in the omnibus bill which funds government agencies for [2016](#), under the title 'Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015', and were enacted in December 2015.

What do the new rules say?

According to the *Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015*, the US Government will require a visa in order to enter the United States for citizens of VWP countries who:

- hold dual nationality of Iraq, Iran, Syria, or Sudan, or
- have travelled to or been present in Iran, Iraq, Sudan, or Syria on or after 1 March 2011 (with some exceptions for travel for diplomatic or military purposes).

As of January 2016, EU citizens included in one of the two categories will be prevented from entering the US without a visa as they had previously been able to do. This was recently the case for a BBC [journalist](#) with dual British and Iranian nationality who was prevented from boarding a plane to New Jersey by US authorities at London's Heathrow airport. Although the law is meant to prevent terrorists from entering the US, some argue that it will affect many others who may have dual nationality or who may have recently travelled to designated countries for reasons unrelated to involvement with terrorist organisations.

Exemptions

On 21 January, the State Department added some clarity on the [exemptions](#) that may be granted to certain travellers on a case-by-case basis when this is in the interest of the US. Individuals who have travelled to Iraq, Iran, Syria, or Sudan on behalf of international organisations, regional organisations, sub-national governments or humanitarian NGOs on official duty, as well as journalists visiting these countries for reporting purposes, may still benefit from the VWP. Individuals who have travelled to Iran for legitimate business-related purposes following the conclusion of the [Joint Comprehensive Plan of Action](#) and those visiting Iraq for legitimate business-related purposes may benefit from the exemptions too. The [State Department](#) is to further clarify the exceptions for diplomatic and military-related travel provided for in the act in late February 2016.