COMMISSION OF THE EUROPEAN COMMUNITIES

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THIRD REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on certain third countries' maintenance of visa requirements in breach of the principle of reciprocity

in accordance with Article 1(5) of Council Regulation (EC) No 539/2001 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, as amended by Regulation (EC) No 851/2005 as regards the reciprocity mechanism

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I. Introduction

Council Regulation (EC) No 539/2001 of 15 March 2001, listing the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States (Annex I to the Regulation, the "negative list") and those whose nationals are exempt from that requirement (Annex II to the Regulation, the "positive list")[1], as amended by Council Regulation (EC) No 851/2005 of 2 June 2005[2], is the basic instrument for our visa policy and reciprocity mechanism. The first[3] and second visa reciprocity reports[4] provide a full description of this mechanism.

In its second report the Commission concluded:

"*The Commission considers that the dialogue with third countries under the new reciprocity mechanism has already proven effective. The steady and significant fall in the number of "non-reciprocity situations" (cases where a third country maintains a visa requirement for nationals of a Member State) is a remarkable success in the Commission's opinion*[5].

However, progress remains stalled with one third country (United States) while the situation is evolving with regard to Australia, Canada and Brunei. The future developments with these countries will determine the reflection on the appropriate approach that would allow for further and concrete progress towards the realisation of reciprocity.

In view of the importance of achieving full reciprocity, the Commission hereby announces its intention to report to the European Parliament and Council again by not later than 31 March 2007 and to make, where appropriate, concrete proposals if the non-reciprocity situations persist, although formally, under Article 1(5) of the EC Regulation, it is not obliged to present such a report until 30 June 2008."

In its conclusions of 5-6 October 2006, the Council endorsed the Community's need to continue to work towards achieving full visa reciprocity with those third countries for which it had not yet been completed.

In June 2007 the Commission confirmed that the presentation of its third visa reciprocity report was postponed owing to developments in some of these third countries.

The present, third report takes stock of the approaches made by the Commission since the adoption of the Council conclusions of 5-6 October 2006, vis-à-vis third countries on the positive list which continue to require visas from nationals of the Member States.

II. Notifications by Bulgaria and Romania of non-reciprocity situations

As a follow-up to their accession to the European Union as from 1 January 2007, Bulgaria and Romania had to declare their situations of non-reciprocity, in accordance with Article 2 of Council Regulation (EC) No 851/2005.

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1 OJ L 81, 21.3.2001, p. 1.
2 OJ L 141, 4.6.2005, p. 3.
3 COM (2006) 3 final.
4 COM (2006) 568 final.
5 See Annexes 1A and 1B of the report on reciprocity of 10.1.2006.

On 13 February 2007[6], Bulgaria declared a situation of non-reciprocity for the following countries: Australia, Bolivia, Brunei, Canada, Costa Rica, Malaysia, Mexico, New Zealand, Panama, Singapore and the United States of America. Bulgaria also indicated that it has signed non-visa agreements with Israel and Paraguay which have not entered into force, owing to on-going ratification procedures. For the moment, Bulgarian nationals are still subject to visa requirements for these two countries.

On 21 February 2007[7], Romania declared a situation of non-reciprocity for the following countries: Australia, Brazil, Brunei Darussalam, Canada, Israel, Japan, New Zealand, Panama, Paraguay and the United States of America.

III. Results achieved since the Commission's second report on reciprocity

Following the Council's endorsement on 5-6 October 2006 on the need to continue to work towards full visa reciprocity, the Commission actively resumed its efforts.

1. Cases in which it has been assessed that no reciprocity issue is involved

1.1. Bolivia

Notification: Bulgaria

Pursuant to Council Regulation (EC) No. 1932/2006 amending Council Regulation (EC) No. 539/2001[8], Bolivia has been transferred to Annex I with the consequence that a visa requirement has been introduced for Bolivian citizens from 1 April 2007 onwards. Due to this transfer, the reciprocity mechanism no longer applies in the case of Bolivia.

1.2. Costa Rica

Notification: Bulgaria

The Circular of the General Director of Migration and Aliens of 14 July 2006, which has been submitted to the Commission by the authorities of Costa Rica on 20 July 2006, indicates that Bulgaria appears in the First Group of Countries whose citizens may visit Costa Rica without a visa for a maximum stay of up to 90 days.

2. Full reciprocity now in place

2.1. Mexico

Notification: Bulgaria

On 26 February 2007[9], Bulgaria informed the Commission that, as from 11 March 2007, Bulgaria is exempt from visa requirements concerning transit and short-term stays in Mexico for a period of up to 90 days, within six months of the date of first entry.

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6 OJ C 75, 3.4.2007, p. 5.
7 OJ C 75, 3.4.2007, p. 6.
8 OJ L 29, 3.2.2007, p. 10.
9 OJ C 75, 3.4.2007, p. 5.

Assessment

Full visa waiver reciprocity has now been achieved vis-à-vis all the Member States and the associated Schengen countries.

2.2. New Zealand

Notification: Bulgaria and Romania

On 13 March 2007, New Zealand informed the Commission that it has decided to waive the requirement for citizens of Bulgaria and Romania to obtain visitor visas to enter New Zealand for stays of up to three months. The decision is operational as from 30 July 2007.

Assessment

Full visa waiver reciprocity has now been achieved vis-à-vis all the Member States and the associated Schengen countries.

3. Ongoing steps to achieve reciprocity

3.1. Brazil

Steps taken to achieve reciprocity

On 9 July 2007, the Commission adopted a Recommendation to the Council to open negotiations with Brazil on a visa waiver agreement between the European Community and Brazil. This would be the first time that a bilateral visa waiver agreement to be negotiated between the Community and a third country.

3.2. Brunei Darussalam

Notification: Bulgaria and Romania.

Steps taken to achieve reciprocity

On 6 October 2006, Brunei Darussalam informed the Commission of the decision taken by its Government to grant 30 day visa waiver arrangements to all EU Schengen Member States as from 1 October 2006. However, information provided in some of Brunei Darussalam's governmental websites does not announce the visa waiver for all Schengen Member States and associated countries for 30 days. Clarification from the Brunei Darussalam's authorities on the current situation has been requested. In respect of the notification made by Bulgaria and Romania, the Commission requested Brunei Darussalam's authorities to take the necessary measures to grant equal treatment regarding visas to the citizens of Bulgaria and Romania.

Assessment

The assessment can only be made once the reaction from Brunei Darussalam's authorities has been received.

3.3. Israel

Notification: Bulgaria and Romania

Steps taken to achieve reciprocity

On 27 April 2007, Bulgaria informed the Commission that the Agreement between Bulgaria and Israel for abolition of visa requirements had entered into force. Consequently, as from 15 July 2007, Bulgarian nationals are exempt from the visa requirement for transits and short-stay visits not exceeding three months in any half-year.

On 17 July 2007, the Commission requested the Israeli authorities to take the necessary measures to grant a three month visa free stay to the citizens of Romania.

Assessment

For Bulgaria visa waiver reciprocity is already in place. With regard to Romania, the assessment can be made once the reaction from the authorities of Israel has been received.

3.4. Japan

Notifications: Romania

Steps taken to achieve reciprocity

On 6 July 2007, the Commission requested the Japanese authorities to take the necessary measures to grant a three months visa-free stay to the citizens of Romania.

Assessment

The assessment can only be made once the reaction from the Japanese authorities has been received.

3.5. Malaysia

Notification: Bulgaria

Steps taken to achieve reciprocity

On 14 January 2007, the Malaysian authorities informed the Commission that they have extended the visa free stay visits of the citizens of Estonia, Latvia and Slovenia to 90 days on the basis of reciprocity.

In the case of Bulgaria, the Commission asked the Malaysian authorities for a clarification on the length of the period of visa free stay that the Bulgarian citizens are enjoying and for an extension of the visa free stay up to three months, in case the current period of time allowed is shorter.

Assessment

The Commission welcomes the progress of Malaysia to restore full visa reciprocity by granting a visa free stay of three months to the citizens of all Member States and is expecting that, at the earliest possibility, this progress will also be extended to the latest request for achieving full

reciprocity vis-à-vis the citizens of Bulgaria.

3.6. Panama

Notifications: Bulgaria and Romania

Steps taken to achieve reciprocity

On 5 July 2007, the Commission requested the Panamanian authorities to take the necessary measures to grant a three months visa-free stay to the citizens of Bulgaria and Romania.

Assessment

The assessment can only be made once the reaction from the Panamanian authorities has been received.

3.7. Paraguay

Notifications: Bulgaria and Romania

Steps taken to achieve reciprocity

On 9 July 2007, the Commission asked the Paraguayan authorities to take the necessary measures to grant a three months visa-free stay to the citizens of Bulgaria and Romania.

Assessment

The assessment can only be made once the reaction from the Paraguayan authorities has been received.

3.8. Singapore

Current situation

Visa waiver limited to stays of 30 days, but the stay may be extended locally by two periods of 30 days.

Steps taken to achieve reciprocity

In September 2006, the Singapore authorities confirmed that nationals of three countries are granted a visa exemption for a period of 90 days, based on different legal instruments: the Visa Waiver Program for Americans and Free Trade Agreements for Australian and South Korean nationals.

Assessment

Since nationals of three countries benefit from an entry and stay regime which is more favourable than the regime applied to EU-citizens, the reciprocity approach towards Singapore should be reviewed.

The Commission suggests that discussions take place on the most appropriate means of bringing about an alignment consistent with the regime granted to the nationals of the three

countries mentioned. It should be assessed whether this goal can be legally and politically achieved via a unilateral decision of the Singapore authorities. Alternatively, a bilateral visa exemption agreement between the European Community and Singapore should be considered.

4. Further progress on reciprocity since the report of 3 October 2006

4.1. Australia

Current situation

Australia requires an Electronic Travel Authority (ETA) from nationals of 14 Member States (Belgium, Denmark, Germany, Greece, Spain, France, Italy, Luxembourg, Malta, the Netherlands, Austria, Portugal, Finland and Sweden), as well as of Iceland and Norway.

An eVisa (e676) is required from the nationals of 11 Member States (Bulgaria, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Poland, Romania, Slovenia and Slovakia). Nationals of seven of the above, i.e. the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary and Slovenia, are granted a so-called "autogrant facility".

As from 1 July 2007, e676 visas for stays for up to three months and business visitor visas, which can only be granted for a maximum period of three months, are free of charge.

Steps taken to achieve reciprocity

Since the report of 3 October 2006, Australia has provided the "autogrant facility" status to three more Member States: Lithuania as from 1 December 2006, Hungary as from 15 January 2007 and Cyprus as from 1 July 2007.

On 28 March 2007, Bulgaria and Romania received access to the e676 Tourist visa service.

Furthermore, clarification has been provided by the Australian authorities on the four benchmarks used to assess the inclusion of a country in the e676 and thereafter the "autogrant facility". These four benchmarks are:

– Approval of grant rates;

– Modified non-return rates (Mod NRR): visitors overstaying their visas;

– Protection visa rates (PV): visitors arriving on a tourist visa and subsequently applying for a protection visa;

– Cancellation rates.

In addition, the Australian authorities indicated that Bulgaria, Poland, Romania and Slovakia could not yet move to the "autogrant facility", but this would be reviewed again in July/August 2007. They also indicated that although 65-70% of autogrant applications are processed "automatically", some groups of persons (e.g. under-18s and over-70s) cannot be treated automatically due to the need for proof of parental consent or good health respectively. Furthermore, they indicated that the eVisitors system would be in place in mid-2008. All Member States, being the first countries to benefit from this system, would join the eVisitors system regardless of their status.

Assessment

The Commission welcomes the progress achieved by the movement of Bulgaria and Romania to the e676-status, the movement of Cyprus, Lithuania and Hungary to the "autogrant facility" and the abolishment of the visa fee for e676 visas for stays not longer than three months as from 1 July 2007.

Furthermore, it is encouraging that the technical improvements to install the eVisitors system are on track, which would result by mid 2008 in equal treatment of the citizens of all Member States. In the meantime, the Commission will continue to closely monitor the development of the conditions for the granting of visas, in particular coverage of the ETA system and of the e676 autogrant facility.

5. No progress on reciprocity since the report of 3 October 2006

5.1. Canada

Current situation

The visa requirement is maintained vis-à-vis nationals of Bulgaria, the Czech Republic, Latvia, Lithuania, Hungary, Poland, Romania and Slovakia.

Steps taken to achieve reciprocity

In November 2006, the Canadian authorities provided explanations of the main thresholds used with regard to the possibility of lifting the visa requirement: visa refusal rates, immigration violations rates, passport security, passport issuing system, information on lost and stolen passports, security and refugee claims. They indicated that clarifications on these thresholds and their implementation would be presented to the Member States concerned and the Commission, once formally approved.

A new framework for cooperation has been established between the Commission and Canadian services by means of an exchange of letters. As part of this "Joint Consultation on Immigration and Asylum Issues", a Joint Visa Working Group of senior officials was set up to address visa issues and conditions. After a regrettable delay in presenting the clarifications on the thresholds, the first "Joint Consultation on Immigration and Asylum Issues" took place on 20 July 2007. At this meeting, the Canadian authorities outlined their review of visa waiver criteria and declared that they would engage in technical visits to each of the Member States concerned in the coming months. They intend to travel to four Member States in November 2007 and to four others in February 2008 for technical talks. In relation to removals of nationals the Commission had indicated that if Canada would like to engage into readmission agreements, an EC-Canada readmission agreement should be concluded, as the issue of readmission is an EC competence.

The Canadian Prime Minister announced at the EU-Canada Summit in Berlin on 4 June 2007 that he understood the importance for the EU of visa free travel. He indicated that Canada based its decisions on assessment of each country's circumstances, and not on reciprocity, and that, in this respect, cross-border travel between the USA and Canada is a very important consideration. Nevertheless, he also indicated that all remaining Member States are moving in the right direction and that it might be possible to waive the visa obligation for one or two

Member States later this year.

Assessment

Canada has made its visa review process more transparent and provided more information on the thresholds and their implementation, albeit after a considerable delay. The visa requirement has not been lifted for any Member State since Estonia in September 2006.

In light of the statements of the Canadian Prime Minister and explanations provided in technical talks, the Commission expects that the review process with the remaining EU Member States will be taken forward without delay, now that the visa review assessment criteria have been clarified. The Commission would propose that, in order to demonstrate its commitment to resolution of the issue, Canada be urged to lift the visa requirement for one or more EU Member States by the end of the year and to show further tangible progress towards reciprocity in the first half year of 2008. Failing such progress, appropriate steps could be considered against Canada.

5.2. United States of America (USA)

Current situation

Visa requirement maintained for nationals of Bulgaria, the Czech Republic, Estonia, Greece, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Romania and Slovakia.

Steps taken to achieve reciprocity

Immediately after the adoption of the second report by the Commission, Vice-President Frattini sent a letter to Mr Chertoff, Secretary of the U.S. Department of Homeland Security (DHS), in which Mr Frattini stated that no tangible progress could be reported with the USA and stressed that the differentiation among Member States' citizens with regards to the visa obligation is neither understandable nor acceptable. He asked for the establishment of clear and transparent criteria resulting in a series of benchmarks in the road maps clarifying the different phases. The Commission continued to raise the issue at technical and political levels, notably at the EU-US JLS Ministerial Troika on 6 November 2006. On that occasion, Mr Chertoff indicated that the US government was preparing proposals for possible legislative changes to the Visa Waiver Program (VWP), putting greater emphasis on security than previously.

During his visit to Estonia on 28 November 2006, President Bush announced his intention to seek modifications to the VWP that would strengthen the security of VWP travel and allow the USA to accelerate the entry of new countries into the programme. His administration would work closely with the Congress and the USA's international partners to strengthen the programme's security components.

On 8 February 2007, the US Administration submitted draft legislation on modernizing the VWP. Subsequently, several alternative bills were submitted by individual members of the US Congress.

As a follow-up to the JHA Council of 12-13 June 2007, the Commission and the German Presidency sent a letter to Mr Chertoff on 29 June 2007. Further joint letters from the Commission and the Portuguese Presidency were sent to key Members of Congress on 23 July 2007. They recalled that visa reciprocity is part of the EU common visa policy and set out

considerations on several elements of the draft amendments to the VWP under discussion. With regard to readmission it was offered that in case the obligations under international law would not be sufficient, an EC-US readmission agreement could be considered, as the issue of readmission is an EC competence.

On 3 August 2007 President Bush signed into law the "H.R. 1 Implementing Recommendations of the 9/11 Commission Act of 2007". Section 711 of this Act covers the "*Modernization of the Visa Waiver Program*". Its key elements are: the introduction of an Electronic Travel Authorization (ETA) system for which a fee may be charged; flexibility on the non-immigrant visa refusal rate by waiving the three percent rate up to ten percent under certain conditions or using a maximum overstay rate, still to be determined; setting up a biometric air exit system, that can verify the departure of not less than 97 percent of foreign nationals that exit through US airports; the eligibility of travelling to the USA under the VWP is not a determination that the person is admissible to the USA; reporting on lost and stolen passports either through Interpol or other means; third countries should accept repatriation of any citizen, former citizen or national against whom is issued a final executable order of removal; and bilateral agreements on passenger information exchange.

Assessment

Although no tangible progress has been achieved with the USA on visa reciprocity, the Commission is encouraged that the USA had committed itself to reforming its VWP and has effectively done so. There should be full respect of, on the one hand, the USA's protection of its national security and on the other hand, observance of the law and policy of the EU, serving the interest of Member States wanting to join the VWP and not creating a burden for the citizens of those Member States already enjoying the right of travelling under the VWP. The implementation of the amended legislation including all consequences for the EU and the Member States, will be monitored closely, in particular the introduction of an electronic travel authorisation system. The Commission considers that it would not be appropriate to introduce retaliatory measures against the USA at this stage as the new legislation has just been adopted and will be implemented. The Commission expects that assessment missions to the aspirant Member States will start during the implementation period and that the USA will make all efforts to fulfil the announced intention of President Bush that reform of the VWP should enable its accelerated expansion to include the EU Member States not yet covered.

IV. Conclusion

The Commission considers that the dialogue with third countries under the new reciprocity mechanism has proven effective. Since its establishment in June 2005 – in little more than two years – full visa reciprocity has been achieved or is on the way to be achieved with a number of important third countries. This is the case also despite a new challenge with the notifications by Bulgaria and Romania of their cases of non-reciprocity. For example New Zealand and Mexico have abolished visa requirements for Bulgaria and Romania in less than six months from the entry of these two Member States in the EU. The Commission has also achieved significant progress in dialogue with Australia, which is expected to treat equally all Member States' citizens starting from mid-2008. A comprehensive visa waiver agreement should soon be negotiated with Brazil.

As regards the USA, the adoption of new legislation modifying the VWP should pave the way for its extension to all Member States. Now the new legislation is adopted, its conditions and

the timeline for their implementation will be carefully examined. The Commission reserves the right to propose retaliatory measures if expected progress towards full visa reciprocity fails to materialise in good time.

Canada had undertaken to make its visa review process more transparent and provide more information on the thresholds. However, for the moment, no progress has been achieved in lifting visa requirements. The Commission would propose that, in order to demonstrate its commitment to resolution of the issue, Canada be urged to lift the visa requirement for one or more EU Member States by the end of the year and to show further tangible progress towards reciprocity in the first half year of 2008. Failing such progress, appropriate steps could be considered against Canada.

In accordance with Article 1(5) of Regulation (EC) No 851/2005 the Commission will report to the European Parliament and Council again by not later than 30 June 2008.