



**COUNCIL OF
THE EUROPEAN UNION**



Brussels, 5 March 2008
7338/08 (Presse 66)

US Visa Waiver Program Legislation

The Mixed Committee (at the level of Ambassadors) today discussed the question of US Visa Waiver Program (VWP) legislation.

The aim is to have all EU Member States participating as quickly as possible in the US VWP in order to ensure full reciprocal visa free travel and equal treatment for all EU citizens.

The manner in which the VWP legislation is implemented is a matter of common interest for the EU and its Member States. The Committee accordingly agreed on an approach (see annex) to be taken for the purpose of discussion on the issue at the forthcoming EU-US JHA Ministerial Troika meeting on 13 March 2008 in relation to the VWP and its implementation .

The Presidency will report back to the Committee on the outcome of the discussions with the US.

The Commission and the Council will also continue to examine the issue.

In their contacts with the US, the EU and its Member States will be guided by the agreed approach.

P R E S S

1. Common Visa Policy¹ is a matter of Community competence². Furthermore Member States are obliged to respect the principle of solidarity in accordance with Article 10(2) TEC.
2. The aim of the Community, with regard to the US Visa Waiver Programme (VWP), is to have all EU Member States participating as quickly as possible in order to ensure full reciprocal visa free travel and equal treatment for all our citizens.
3. The new US VWP legislation has implications for both existing and future participants in the VWP and its implementation has the potential to impact on several other matters which the US connects with the participation in the VWP but which fall within the competence of the EC/EU and on which the EC/EU may already have adopted internal legislation or concluded agreements with the USA and in respect of which the Member States are therefore constrained as regards their freedom to act.
4. The manner in which the VWP legislation is implemented should therefore be properly regarded as a matter of common interest for Member States, particularly to the extent that they are participating in the relevant aspects of the EU acquis, and it is agreed therefore that the EU and its Member States take a common approach for the purpose of discussions with the US in relation to the VWP and its implementation.
5. The Commission and the relevant working bodies of the Council are requested to urgently examine the different elements of the ongoing implementation of the VWP legislation with a view to establishing such a common approach as appropriate. In the meantime, in their contacts with the US on the matter,³ Member States should be guided by the following elements:

¹ The United Kingdom and Ireland are not participating in the Common Visa Policy. Their situation is different in some respects and will require separate analysis in due course.

² Article 1(4) 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 (OJ L 81, 21.3.2001, p. 1) as amended by Council Regulation (EC) No 851/2005 as regards the reciprocity mechanism (OJ L 141, 4.6.2005, p. 3).

³ The US has in bilateral contacts with Member States proposed memoranda of understanding related to the VWP.

- a. Regarding passenger record data, the recently signed EU-US PNR Agreement¹ should suffice and no additional requirements should be added as compared with that Agreement.
- b. No commitments as to access for the US to EU/EC data bases or information systems.
- c. Concerning exchange of data on lost and stolen passports, Common Position 2005/69/JHA on exchanging certain data with Interpol² should be sufficient. Any extension of the reporting data to Interpol should be agreed commonly by the EU.
- d. Airport security in accordance with ICAO standards is sufficiently guaranteed by existing EC rules (US inspections might be agreed to, if there are direct flights between those airports and the US).
- e. Participation in the VWP should eventually create the same rights for all citizens of EU Member States as regards the status of their passports.
- f. It may be recognised as principle of international law that a State should take back its own citizens and permanent residents expelled by the US. Any formal agreement on this would only be acceptable on the basis of reciprocity, to be negotiated and concluded between the EC and the US.
- g. Information sharing with the US of PNR data obtained from third countries should be consistent with the EU/US PNR agreement.
- h. The issue of allowing US Air Marshals onboard US air vessels landing in, or departing from Member States falls under the competence of each Member State.
- i. The possibility for the EC/EU to impose obligations on Member States which they will have to comply with (including obligations relating to the possible introduction of electronic system for travel authorisations for US citizens travelling to the EU) should be recognised.

¹ OJ L 204, 4.8.2007, p. 16

² OJ L 27, 29.1.2005, p. 61

6. The Presidency is requested to report back to Coreper regularly. The Commission will present its next visa reciprocity report in June 2008.
 7. The Commission and the Presidency are invited to convey this agreed line at the next EU-US Ministerial Troika meeting which will take place 13 March 2008 in Slovenia.
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