



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.1.2006
COM(2006) 3 final

REPORT FROM THE COMMISSION TO THE COUNCIL

on visa waiver reciprocity with certain third countries

**in accordance with Article 2 of Council Regulation (EC) No 851/2005 of 2 June 2005
amending 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 regards the reciprocity
mechanism**

TABLE OF CONTENTS

I. Introduction.....	3
II. implementation of the new reciprocity mechanism:.....	3
III. results of the new reciprocity mechanism.....	5
1. With certain third countries, a positive outcome has already been achieved:	5
1.1. Costa Rica	5
1.2. Nicaragua	5
1.3. Panama	6
1.4. Venezuela.....	6
1.5. Brazil.....	6
2. With a series of other third countries, the solution of the non-reciprocity problems has already been announced, but needs further implementation and/or verification...	7
2.1. Brunei Darussalam.....	7
2.2. Malaysia	8
2.3. Singapore	8
2.4. Uruguay.....	9
3. With three third countries, we are significantly further from a solution to the issue of non-reciprocity.....	9
3.1. Australia	9
3.2. United States of America	11
3.3. Canada.....	13
Annex 1A	17
Annex 1B.....	18
Annex 2	20

I. INTRODUCTION

Council Regulation (EC) No 539/2001 of 15 March 2001 is at the heart of the common EU visa policy, listing the third countries whose nationals must be in possession of visas when crossing the external borders (Annex I to the Regulation) and those whose nationals are exempt from that requirement¹ (Annex II to the Regulation).

The United Kingdom and Ireland are not bound by Council Regulation (EC) No 539/2001. The reciprocity mechanism and consequently this report covers all other Member States including those who acceded in 2004 plus Iceland and Norway that are bound by Regulation (EC) No 539/2001 because of their association with the Schengen acquis.

Council Regulation (EC) No 851/2005 of 2 June 2005 amending Regulation (EC) No 539/2001 includes a new reciprocity mechanism² aiming at establishing reciprocity through appropriate measures towards third countries still requiring a visa from Member States citizens for stays of less than 90 days while the EU Member States concerned do not apply such visa requirements towards the citizens of these third countries. This new reciprocity mechanism is being implemented as follows:

- Member States had to notify by 24 July 2005 all existing non reciprocity situations and these notifications have been published on 11 October in the Official Journal;
- Following this publication, the Commission, in consultation with the Member States, had to take immediately the necessary steps with the authorities of the third countries not applying reciprocity, in order to restore visa-free travel;
- Within three months from the publication of the notifications in the Official Journal, the Commission has to present a report to the Council, possibly accompanied by a proposal providing for the temporary restoration of the visa requirement for nationals of the third countries concerned. This report is the subject of this communication.

In addition, a Council and Commission joint declaration (OJ C 172, 12.7.2005, p. 1) refers to the possibility of taking other provisional measures towards the countries concerned, particularly in political, economic and commercial fields.

II. IMPLEMENTATION OF THE NEW RECIPROCITY MECHANISM:

Notifications of non-reciprocity situations existing at the time of entry into force of the new Regulation (24 June 2005) were made by 18 Member States, namely Austria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Slovakia, Slovenia and Sweden. Iceland and Norway also submitted notifications.³

¹ OJ L 81 of 21.3.2001, p.1

² On the former reciprocity mechanism, see the Commission Staff Working Paper on the reciprocity in visas (Document JAI-B-1 (2004) 1372, 18.2.2004).

³ They informed the Council in accordance with Art (2a) of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis that they

The first notifications were published in the Official Journal on 11 October 2005⁴. This publication started the 90 day period within which the Commission was to take steps with the authorities of the third countries concerned in order to convince them to abolish the visa obligation they still impose on nationals of certain Member States and to report to the Council. However, several Member States had not submitted the notifications by the deadline; consequently, their notifications were published later (on 10 November 2005 for the Austrian, Danish and Swedish notifications⁵ and on 8 December 2005⁶ for the Norwegian and Icelandic notifications⁷).

In the light of the number of cases notified, it has to be acknowledged that the situation as regards reciprocity has very much improved since the period which directly followed the last enlargement of the EU. On the basis of informal information collected by the Commission, among the 33 third countries that appear on Annex II of Council Regulation 539/2001, 22 countries required visas from one or more new Member States. Altogether there were 112 cases of non-reciprocity towards new Member States as at 1 May 2004 (see Annex 1 A).

The notification system introduced in the framework of the new reciprocity mechanism shows that the number of non-reciprocity cases has fallen significantly since enlargement (see Annex 1 B). Only 13 third countries were notified, and 5 among the 13 were notified for reasons other than imposing a visa requirement. In reference to these 13 third countries 75 cases were notified and, among these, 18 cases concerned the limitation of the period of stay under the visa waiver (less than 90 days) and 4 concerned specific formalities for border crossing or short stay.

The improvement of the situation is a result of the diplomatic efforts of the Commission and the Member States since 1 May 2004 and confirms the efficiency of the method on which the new reciprocity mechanism is based, including dialogue and diplomatic contacts with the third countries concerned.

In response to the notifications the Commission sent letters to the Member States, Iceland and Norway inviting them to supply further information on the non-reciprocity cases with special regard to the possible reasons for being subject to the visa obligation and the bilateral steps taken in order to remedy the situation. On the basis of the information received the Commission, where appropriate, further consulted the Member States in order to clarify inconsistencies. The Commission regularly updated the Council on the state of play.

Following these notifications and on the basis of the information received by the Member States, Iceland and Norway, the Commission delivered verbal notes to the third countries concerned and held a series of bilateral meetings with their authorities.

accept the content of Council Regulation (EC) No 851/2005. Consequently the reciprocity mechanism is applicable to these countries. Iceland has submitted its non-reciprocity notification on 25 October and Norway on 15 November 2005.

⁴ OJ C 251 of 11.10.2005 [publication of the initial CZ notification, OJ C 163 of 5.7.2005]

⁵ OJ C 277 of 10.11.2005

⁶ OJ C 310 of 8.12.2005

⁷ The follow up of the notifications by Iceland and Norway is ensured in the same procedure as the non-reciprocity cases notified by Member States, however, due consideration needs to be taken with regard to the legal constraints on the external representation of Norway and Iceland by the Commission.

III. RESULTS OF THE NEW RECIPROCITY MECHANISM

As a result of the above-mentioned contacts with third countries authorities, the Commission distinguishes three categories of third countries according to the level of achievement⁸:

1. WITH CERTAIN THIRD COUNTRIES, A POSITIVE OUTCOME HAS ALREADY BEEN ACHIEVED:

1.1. Costa Rica

Notifications: Slovakia and Estonia (visa waiver limited to visits of 30 days).

Costa Rica's authorities provided the Commission with the "General Rules of visas for non-residents" dated 22 November 2005, according to which Slovakia and Estonia enjoy a visa waiver for stays of up to 90 days in Costa Rica. When verifying these general rules, the Commission noted that Iceland was the only Schengen State not included in the list of countries benefiting from a visa waiver for stays up to 90 days. The Commission drew the attention of the Costa Rican authorities to this and was told that Iceland will enjoy the same status soon. An amendment of the above-mentioned "General Rules" to that end has been announced.

Assessment

The Commission considers that, according to the information provided by the Costa Rican authorities, citizens from all Member States and associated countries – including, in the very near future, Iceland - are now exempt from the visa obligation.

1.2. Nicaragua

Notifications: Latvia (requirement to procure a tourist card upon arrival), Austria (visa waiver for stays up to one month) and Iceland (visa requirement).

The Nicaraguan authorities provided information to the Commission regarding their national legislation ("*Decreto Presidencial n°57-2005*"), which entered into force on 5 September 2005, exempting from the visa obligation *inter alia* the citizens of all Member States and associated countries for stays of up to 90 days. Citizens of all countries which are not subject to the visa requirement have to pay a tax and are issued a tourist card upon entry into the country.

Assessment

According to the information provided by the Nicaraguan authorities, citizens from all Member States and associated countries are now exempt from the visa obligation.

⁸ Paraguay was notified by Iceland (visa requirement). Because of the late arrival of this notification, the *verbal* note was sent to Paraguayan authorities only on 5 December 2005. No reply has yet been received. The specific case of Bolivia deserves further explanation. Bolivia was notified by three Member States (Malta, Estonia, Latvia). However, the Commission did not include this country in its demarches pursuant to the new reciprocity mechanism with regard to its forthcoming proposal to transfer Bolivia to Annex I of Regulation (EC) n° 539/2001.

1.3. Panama

Notifications: Estonia, Malta, the Slovak Republic, Iceland and Norway (visa requirement). Estonia, the Slovak Republic and Malta subsequently informed the Commission that Panama had exempted their nationals from the visa obligation.

Panama's authorities confirmed that citizens of Estonia, Malta and Slovakia are not required to hold a visa to enter Panamanian territory. Additional information was sent to the Commission regarding a list of countries ("*clasificación migratoria*") dated 10 June 2005, stating that citizens from all Member States, as well as from Iceland and Norway are exempt from the visa obligation.

Assessment

The Commission considers that, according to the information provided by the Panamanian authorities, citizens from all Member States and associated countries are now exempt from the visa obligation.

1.4. Venezuela

Notifications: Austria (visa waiver only for stays of up to 60 days), Germany (visa requirement when entering Venezuela by land or sea), Latvia and Sweden (requirement of a tourist card).

The authorities of Venezuela provided the Commission with a document produced by the country's Foreign Ministry (General Directorate of Consular Relations) and available for public consultation on the Ministry's website, in which appears the list of Countries whose citizens do not require a visa for a period of less than 90 days. All Member States appear in the list as do Iceland and Norway.

The citizens of all countries on the list are required to complete the Tourist Card DEX-2 before or during entry controls. The Card is composed of two elements: one is kept by the immigration officer and the other is returned to the person. The Venezuelan authorities maintain this measure for statistical reasons. It was confirmed to the Commission, that under the current visa and border control system no distinction exists any longer between air, land and sea entries to the country

Assessment

The Commission considers that, according to the information provided by the authorities of Venezuela, citizens from all Member States as well as Iceland and Norway are now exempted from the visa obligation. The Tourist Card DEX-2 required upon arrival in Venezuela does not correspond to a visa obligation. It is uniformly applied to all citizens of countries which are not subject to visa requirement travelling to Venezuela; it corresponds to a disembarkation card or a declaration of arrival and it is free of charge.

1.5. Brazil

Notification: Austria, Cyprus, the Czech Republic, Estonia, Latvia, Lithuania and Malta (visa requirement).

The Brazilian authorities have already expressed and formally confirmed their political willingness to exempt from the visa requirement the citizens of those Member States who are still under such an obligation. In this context, Brazil sent to the Commission in July 2005 a draft agreement with the European Community to exempt nationals of those Member States that are still required to hold a visa to enter Brazil from this requirement, leaving the existing bilateral agreements with other Member States unaffected.

The Brazilian authorities informed the Commission that according to the Brazilian Constitution, as a visa exemption entails a loss of fiscal revenues, it requires the approval of the Brazilian Parliament. Therefore, an international agreement has to be negotiated. Brazil also informed the Commission of the difficulties, from a political point of view, of replacing or amending the existing bilateral agreements with other Member States.

Assessment

Given the exclusive external competence of the Community in this area, the conclusion of a visa waiver agreement between the EC and Brazil, which would be applicable only to a limited number of Member States, is not possible. When the Community exercises its external competence, it exercises this competence for the whole Community, subject only to the opt-out provisions concerning Ireland and the United Kingdom.

Therefore, taking into account the political commitment of the Brazilian authorities to ensure full reciprocity with all Member States regarding the exemption from the visa requirement, it should be further examined how these legal and political obstacles could be overcome. It is the Commission's intention to present a recommendation to the Council aiming at obtaining negotiating directives for a visa waiver agreement between the European Community and Brazil covering all Member States and which will replace the existing bilateral visa waiver agreements with Member States.

2. WITH A SERIES OF OTHER THIRD COUNTRIES, THE SOLUTION OF THE NON-RECIPROCITY PROBLEMS HAS ALREADY BEEN ANNOUNCED, BUT NEEDS FURTHER IMPLEMENTATION AND/OR VERIFICATION

2.1. Brunei Darussalam

Notification: Czech Republic, Estonia, Latvia, Lithuania, Malta, Portugal, Slovenia, Finland and Iceland (visa requirement); Italy, Cyprus, Hungary, Slovakia, Sweden and Norway (visa-free stay limited to 14 days); Germany, Greece and Austria (visa free stay limited to 30 days).

At technical level, Brunei authorities acknowledged the differences in treatment of the Member States and announced that the competent authorities are to reflect on possible solutions which would provide for the equal treatment of all Member States. While noting that the citizens of Brunei benefit from a visa free stay of 90 days within the territory of the Member States, it was stressed that Brunei is a small country, which does not grant visa free stays beyond 30 days even to its Asian neighbours (according to information at the Commission's disposal there is only one third country, the US, which benefits from a 90 day visa exemption by Brunei).

Assessment

Although a visa free stay of less than 90 days for citizens of Member States (and with the same period of stay for all Member States' citizens) cannot be considered a granting of full reciprocity, Brunei offered to apply as favourable conditions to all EU citizens as it applies vis-à-vis its closest Asian partners. The equal treatment between Member States would thus be guaranteed. Taking into account the size of Brunei Darussalam, the small number of EU citizens concerned and its approach towards the citizens of the neighbouring countries, it should be discussed with Member States whether a limited period of visa free stay – up to 30 days - would not be sufficient for the professional and private needs of EU citizens. In any case, a visa free stay for all Member States and associated countries albeit limited in time to less than 90 days still needs to be confirmed by the authorities of Brunei Darussalam.

2.2. Malaysia

Notifications: Greece, Latvia and Estonia (visa waiver limited to visits of less than 30 days).

The Commission received assurances from the Malaysian side that they do not see major difficulties in extending the visa waiver for visits of up to 90 days to this three Member States and to Portugal which apparently is in the same situation. The Malaysian authorities informed that they are examining this issue and that they would come back with an official reply, which has not been received yet.

Assessment

Following the encouraging contacts with Malaysian authorities, the Commission considers that this matter should be followed up in order to ensure full reciprocity regarding the visa waiver regime for the citizens of all Member States and associated countries.

2.3. Singapore

Notification: Estonia (visa requirement for visits of more than 30 days).

The Singaporean authorities informed the Commission that at the moment of entry into its territory, Singapore provides an endorsement in the passport of the citizens of the Member States in which their entitlement to remain is specified as 30 days. A citizen of the Member States may then apply for two extensions of 30 days each. This application is simple and free of charge. This procedure applies to the citizens of all countries benefiting from a visa waiver regime. The Singaporean side justified this procedure with the legitimate interest of Singapore to know the reasons of a person who wishes to stay in Singapore for more than one month given the relatively small size of the country.

Assessment

The Commission considers that, taking into account the circumstances in which the initial visa waiver stay is limited to 30 days (in particular: equal treatment of all nationals exempt from the visa obligation; easy procedure for visa-free prolongation of stay; size of the country) and the principle of proportionality, there is no reason to pursue this matter further.

2.4. Uruguay

Notification: Estonia (visa requirement).

The Uruguayan authorities have orally informed the Commission that there is no legal objection to the waiving of the visa requirement for Estonian citizens and that, as a consequence, a decree establishing reciprocity has been prepared and should be approved soon.

Assessment

The Commission considers that, according to the information provided by the authorities of Uruguay, reciprocity for all Member States will be effective soon. The Commission will keep the Council informed concerning the entry into force of the decree announced by the Uruguayan authorities.

3. WITH THREE THIRD COUNTRIES, WE ARE SIGNIFICANTLY FURTHER FROM A SOLUTION TO THE ISSUE OF NON-RECIPROCITY.

Australia, Canada and the United States are examining all Member States not currently benefiting from visa reciprocity on a case by case basis in accordance with their applicable laws and other, non-statutory criteria. While it is recognised that the concerned Member States need to take measures to meet those criteria, it is essential that each country is provided with a set of comprehensive, specific and measurable criteria which need to be met, thereby providing them with a pathway towards achieving visa reciprocity.

3.1. Australia

All non-citizens⁹ must obtain a visa before travelling to Australia. Depending on the nationality of the person concerned, the visa application must be made electronically -an Electronic Travel Authority (ETA) or an eVisa (for details see Annex 2)- or at a diplomatic mission. In addition, nationals of several countries need to be in possession of a transit visa for transiting Australia on the way to another country.

Australia requests only an ETA from nationals of 14 Member States (Belgium, Denmark, Germany, Greece, Spain, France, Italy, Luxembourg, Malta, Netherlands, Austria, Portugal, Finland, Sweden), as well as the associated States Iceland and Norway. An eVisa is requested from the nationals of 9 Member States (Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia). Since 1 November 2005 all transit visa requirements, which had been requested from nationals of these 9 Member States submitted to the eVisa, have been abolished.

Australia was thus notified for two different reasons of non reciprocity: seven Member States as well as the associated States Norway and Iceland notified the Electronic Travel Authority (ETA) system, nine Member States notified for being submitted to a visa obligation going beyond the ETA obligation.

⁹ Only New Zealand citizens who hold a valid New Zealand passport do not need to obtain a visa before travelling to Australia, unless there are health or character concerns. On arrival in Australia, New Zealand citizens are automatically granted a Special Category Visa which is recorded electronically.

The eVisa has been available for nine Member States since 1 July 2004 (for stays of up to three months, and since 1 July 2005 for stays of up to twelve months for all Member States), and out of them three Member States (Estonia, Latvia and Slovenia) benefit from the “autogrant” facility.

Australian authorities stress that, compared with the European Union, their “visa” policy is not focused on a short stay of three months, but it offers a more generous approach for stays of up to twelve months including generous and facilitated entry and stay conditions. These include on-line visa applications for visas valid for up to twelve months as of July 2005 (for all Member States), working holiday arrangements (11 Member States and Norway), on the basis of which travel funds can be supplemented through incidental employment, facilitation for visas for students and simplification through issuance of permits covering both residence and work.

In several informal and formal contacts between the Commission services and the Australian authorities, the latter underlined that Australia’s universal visa regime is a proportionate and cost-effective response to its geographic position and security concerns. Australia finds it necessary to check passengers prior to departure at least via the ETA, in order to avoid on the one hand any security risks (also for the sake of co-travellers) and on the other hand in order to avoid major inconvenience which could be caused to travellers, if they were refused entry after a long journey.

Australia stressed that it reacted positively to the accession of ten new Member States in May 2004 and has provided for facilitation of visa issuing since then.

As far as the differences in treatment between the Member States are concerned, Australia justifies the need to maintain its current eVisa system for short stays towards nine Member States as follows: three Member States have shown an increase in the overstay rate since the introduction of the eVisa in July 2004; three new Member States do not have a system allowing to distinguish online between travel documents issued to EU citizens and those issued by EU Member States to non-citizens; for six Member States the use of fraudulent supporting documents is high; in addition, Australia mentioned visa cancellation rates and visa refusal rates for several Member States.

However, in its very comprehensive reply to the Commission’s verbal note, Australia also underlined its commitment to continue reviewing its procedures on a country by country basis within the first semester of 2006: “Australia continues to consider actively the issues that have been raised by the Commission including the question of the Visa Application Charge (VAC), further reduction of documentation requirements and other refinements to the electronic visa facility that will continue to strengthen people movement between Australia and the EU. We will continue to make progressive adjustments to our systems to achieve this goal, and will ensure the Commission and Member States are kept regularly informed of developments.” In meetings with Commission services, Australian authorities have indicated that they will provide a timetable for the introduction of these stream lining measures.

“The Australian Government is committed to this process of continuous improvement and any possibility of extending ETA to the remaining 9 EU Member States currently without ETA access will need to be considered as part of this process, taking into account the current security environment.”

The Australian authorities have indicated that the visa reciprocity issue would require a broad cross-government approach and that the subject would be addressed during the first half of 2006.

Assessment

It needs to be acknowledged that Australia while maintaining its current visa system shows willingness and openness to facilitate entry into Australia for nationals of those Member States who do not yet benefit from access to the ETA system and to facilitate the entry and stay conditions in general also for stays going beyond three months. A series of facilitating measures have indeed already been taken such as the abolition of the remaining transit visa requirements (nine Member States), and the use of the eVisa, even with autogrant facility. In this context, more clarity and transparency should be demanded from the Australian authorities with regard to the applicable criteria, the exact sequencing of the streamlining measures, and the steps which would need to be taken by the parties concerned in order to achieve progress.

The Commission has the intention to continue the result-oriented dialogue with Australia.

A certain number of issues should be further clarified with the Australian authorities, such as the distinction in the electronic system between different kinds of passports issued by a Member State and the efficiency, criticised by certain Member States, of certain facilities offered under the eVisa system. For the Commission the first priority is to achieve equal treatment of the citizens of all Member States by bringing those currently subject to the eVisa within the scope of the ETA system. The issue of the ETA system – the ETA being a visa, i.e. an authorisation to be obtained before travelling, however without the inconveniences of submitting a visa application – can be pursued at a later stage. It cannot be denied that in particular the Australian conditions and procedures for entry and stays going beyond three months are favourable to travellers and less complex than the respective rules within the EU.

3.2. United States of America

Ten Member States (Czech Republic, Greece, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland and Slovakia) notified that the US imposes a visa requirement on their citizens.

The US Visa Waiver Program¹⁰ (VWP) allows nationals from 27 participating countries to enter the US as temporary visitors for business or leisure without first obtaining a visa from a U.S. consulate abroad.

The countries participating in the programme are designated by the Secretary of Homeland Security in consultation with the Secretary of State. The conditions for participation in the VWP are established by US law¹¹ and are summarised in Annex 2.

¹⁰ The Visa Waiver Program (VWP) was established as a temporary program by the Immigration Reform and Control Act of 1986 (P.L. 99- 603). Congress periodically enacted legislation to extend the program's authorization. Finally, the program gained permanent status on 30 October 2000, by the adoption of the Visa Waiver Permanent Program Act (P.L. 106-396).

¹¹ The conditions are set by the Immigration and Nationality Act (U.S.C. 1187), the Border Security Act, and the Enhanced Border Security and Visa Entry Reform Act

The US emphasises “that the requirements for a country’s acceptance into the United States Visa Waiver Program (VWP) have been established by Congress as a matter of law ... Countries desiring to participate in the Visa Waiver Program must individually satisfy all of these criteria. Any changes to the current criteria would require an Act of Congress.” The EU Member States that are not yet part of it do not fulfil all of those criteria, consequently it is not possible to include them in the VWP in the short term. The US does not consider membership of the European Union as, in itself, sufficient ground for VWP eligibility.

US officials have noted consistently that in the aftermath of the terrorist attacks on 11 September 2001, Congress has shown no enthusiasm for softening the VWP eligibility criteria. Nevertheless, there has been a public acknowledgement by the US authorities of the desirability of bringing the new Member States and Greece into the VWP should they meet the criteria. With this in mind, in February 2005, President Bush proposed a “roadmap” framework to focus and guide these joint efforts toward the goal of potential future participation in the Visa Waiver Program. Nine of the 10 European Member States concerned (Cyprus is the exception) now have such roadmaps. Joint consular working groups have now been established in all of the new EU member states and these groups are meeting regularly to develop roadmaps and to advance this agenda.

The roadmaps are shaped to the circumstances of each country but contain a number of common elements, including:

- A US agreement to look at the visa application review process;
- Removing all pre-1989 cases from overstay calculations;
- The need for the government concerned to meet the well-established technical requirements of US legislation (eg.: overstay and non-immigrant visa refusal rates, biometrics, lost and stolen passport reporting, etc)
- The need for governments to promote public awareness campaigns to increase awareness of the requirements and obligations associated with travel to the US.

The US has acknowledged that the current roadmaps are not comprehensive (i.e. that is they do not cover all the criteria which are applied to a judgement on a country’s VWP eligibility) and that in some cases criteria are essentially subjective. In addition, some of the statistical data on which the criteria are measured (e.g. overstays) are imperfect.

The issue of visa reciprocity has been put by the EU side on the agenda of EU-US meetings at all levels up to and including the Summit. The matter was also discussed at the 18 October 2005 meeting between President Barroso and President Bush in Washington. In its written reply to the Commission’s note verbale, the US authorities acknowledged the importance of the issue in EU-US relations, recognised the Community aspects of the issue, and agreed to provide the Commission with quarterly updates on progress on the VWP roadmaps. Nevertheless, the US continues to stress that it “will continue to evaluate individually the progress of countries toward VWP membership as required by law”.

In a formal follow-up to the note verbale, the Commission met with senior US officials in Washington in November to further explain the nature of the amended reciprocity mechanism and to press for progress on the problem of non-reciprocity. Commission officials also held a useful exchange with Washington representatives of the 10 Member States currently outside

the VWP. This was helpful in exploring the possibility of a more consistent and coherent approach to achieving a common objective.

Assessment

The Commission recognises the US commitment at the highest political level to the VWP roadmap process.

Considering the reaction of Member States and the realities of US visa policy, the Commission believes that the VWP roadmap process could be an adequate means for ensuring visa exemption for all EU citizens in the medium term and is willing to endorse this approach. However, to make this approach fully effective we need greater specificity and consistency in setting goals and measurements in these roadmaps. This has been accepted by the US administration in the framework of the Joint EU-US Work Programme of November 2005 in view of the Implementation of the Economic Initiative of the June 2005 EU-US Summit: one of the objectives is to “establish clear and comprehensive Country Road Map processes for all non-Visa Waiver Programme (VWP) EU Member States providing a pathway for non-VWP EU Member States to meet the requirements and to join the US VWP.”

The specific activities include: efforts to “develop and implement comprehensive and specific country road maps for all non-VWP EU Member States covering statutory and non-statutory aspects, with appropriate benchmarks”, and to “work together to promote visa waiver status and use consular committees in all EU Member States seeking entry into the VWP to further refine individual country plans, including mechanisms for measuring progress.”

The US has so far shown no willingness to consider interim facilitation measures such as visa fee exemption. Nevertheless, the US should continue to be pressed at least to streamline some aspects of the visa application process.

3.3. Canada

Seven Member States (Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland and Slovakia) notified that Canada imposes a visa requirement on their citizens.

The approach of the Canadian authorities concerning visa exemption for EU Member States is similar to that of the US. Canada evaluates visa exemption for a country individually and does not grant a block exemption on the basis of EU Membership. In Canada clear criteria as to the preconditions for visa waiver are not legally defined. As the Canadian authorities put it in their reply of 13 December 2005 to the Commission’s note verbale: “Canada’s visa review is an administrative process founded on an objective assessment of the risks and benefits associated with the movement of a country’s citizens.” The assessment criteria are outlined in Annex 2.

In 2004 Citizenship and Immigration Canada (CIC) undertook a review of its visa waiver scheme. The seven Member States concerned received questionnaires differing rather significantly in terms of content. Canadian authorities confirmed that “the review was conducted on a country-by-country basis and took into consideration the extensive reforms and fast pace of change within the affected new Member States”. There was considerable disappointment when it was announced in May 2005 that none of the seven would have the visa requirement waived as a result of this evaluation. The Canadian authorities gave various

reasons as to why these decisions had been taken, such as passport and document security and related fraud, high refusal rates of visa applications, organised crime, economic migration, government corruption, labour market liberalisation in the EU¹², unemployment and wage rates, social disparities, refugee claims and links with US policy¹³.

Visa reciprocity has been put on the agenda of EU-Canada meetings at all levels by the EU side and it was clarified that the EU considers that it is an issue of EU-Canada relations.

The leaders of the EU and Canada agreed, on the occasion of the video conference summit on 24 November 2005, *“to take forward a transparent process of intensified dialogue on establishing visa-exempt travel for citizens of all EU Member States and Canada”*.

Canada confirmed its commitment to continue the dialogue and *“to continue to monitor the progress being made and to begin another comprehensive visa review in 2007 for countries which have not gained visa-free status by then. ... The timing of Canada’s next review will follow the Schengen evaluation process when it is expected that the new Member States will have assumed full membership in the Schengen border-free area.”*

In the framework of this dialogue Canadian authorities conducted, in November 2005, technical visits to the Baltic States and Poland and propose further visits to Hungary, Slovakia and the Czech Republic in January 2006. Canada confirmed that the seven Member States are at different level of compliance and *“Canada is monitoring developments on an on-going basis and remains open to taking action towards visa waiver in advance of the 2007 review should the developments in any new Member State allow it to do so. New Member States are welcome to share with Canada any developments of which they would like it to be aware at any time.”*

Canada also refers to its joint commitments with the US with regard to security and border management issues: *“Canada and the US are committed to the close coordination of our distinct visa policies. While each country continues to maintain independence in the development of their own visa policy and requirements, each country has agreed to consider the implications of anticipated changes to their visa policy and/or requirements on the other. We therefore consult one another regularly to ensure that the direction we are seeking continues to meet our mutual objectives and interests.”*

The abolition or substantial reduction of visa fees suggested by the Commission as a first step in the process leading to visa exemption was rejected.

Assessment

Canada has engaged in a dialogue on establishing mutual visa free travel, however without real progress until now. It remains open for further dialogue and confirmed its readiness in principle to waive the visa requirement for nationals of all EU Member States in due course.

¹² Canadian authorities stated that *“worker registration programs in Ireland, UK and Sweden have demonstrated that the populations in the new Member States are mobile and seeking employment opportunities out-of-country”*.

¹³ It was recalled that Canada abolished the visa requirement for Hungary in 1994 and for the Czech Republic in 1996. However it was reintroduced for the Czech Republic in 1997 and for Hungary in 2001 following an influx of asylum seekers from these countries. Canadian authorities emphasised that thorough evaluations are necessary before lifting the visa requirement again, in order to avoid the repetition of such a situation.

The Commission believes that the dialogue initiated with Canada must continue but that this dialogue should become more result-oriented. Therefore, a transparent process with clear benchmarks should be established that leads to a visa waiver for the citizens of all Member States.

IV. Conclusions:

The Commission considers that the dialogue with third countries under the new reciprocity mechanism has already proven its efficiency:

- For four third countries - Costa Rica (if confirmation is given regarding Iceland), Nicaragua, Panama and Venezuela - visa waiver reciprocity has already been achieved; for Brazil, the legal solution has already been announced.
- For four third countries - Brunei Darussalam, Malaysia, Singapore and Uruguay - the solution to the non-reciprocity problems is already in sight, but further implementation and/or verification is required in the coming months.
- For three other third countries, while some progress has been made on issues of transparency, there has been no movement yet in terms of extending visa waivers to cover the citizens of all EU Member States.

As regards Australia, there is no immediate prospect of having the ETA system applied to the citizens of all Member States. However, Australia has already introduced a certain number of facilitations in the procedure for issuing visas to citizens of Member States that do not benefit from the ETA system and expressed its willingness to further streamline its visa issuing procedures. This is already a positive step but it can only be considered as a transitional measure, our first objective remaining the participation of all Member States in the ETA and thus equal treatment of all EU citizens (without prejudging the EC's final position on the ETA).

Following discussion at the highest levels, the Commission has seen a political commitment from the United States and Canada to continue the dialogue and to become more transparent and precise on the requirements for the Member States concerned for obtaining the visa waiver. The Commission will continue to engage with US and Canadian interlocutors to ensure that these commitments are fulfilled and to explore concrete ideas for resolving the non-reciprocity problem. We should also continue to explore with these countries possibilities for facilitating visa issuance as an interim measure.

After this first round, which has brought some success, it is important that both the Commission and the Member States remain committed, involved and united towards the achievement of the common objectives in this area. The full support of the Member States to the Commission, their contribution at every stage of the process, and the solidarity between all of them remains absolutely essential to achieve the expected results.

According to Article 1§5 of Regulation 539/2001 as amended by Regulation 851/2005, the Commission will prepare by July 2006 a second report monitoring whether the solutions announced by certain third countries have materialised in the meantime and whether further dialogue with others has opened up the perspective of reciprocal visa free travel.

The Commission considers that taking into account the progress made with our partners, albeit at variable rates, there is no need at this stage to accompany this report by draft measures such as those provided by Article 1§4c of Regulation 539/2001 as amended by Regulation 851/2005 or by the joint declaration made by the Council and the Commission at the time of the adoption of Regulation 851/2005.

However, the Commission will continue to monitor progress carefully, to ensure that existing commitments by our partners are fulfilled. With regard to those countries where full resolution of non-reciprocity issues is not imminent progress in implementation of the criteria will be essential. While recognising this will require efforts on both sides, the Commission recalls that Article 4 of Regulation 539/2001 and the joint declaration of the Council and the Commission concerning Regulation 851/2005 refer to specific measures in view of facilitating the achievement of reciprocal visa free travel.

Annex 1A

Visa requirement imposed by third countries listed in Annex II to Regulation No 539/2001 upon nationals of the new Member States on 1 May 2004.

	CY	CZ	EE	HU	LT	LV	MT	PL	SI	SK
Andorra										
Argentina										
Australia	V	V	V	V	V	V	*	V	V	V
Bolivia		V		V		V	V			V
Brazil	V	V	V		(V)	V	V			V
Brunei	V	V	V	V	V	V			V	V
Bulgaria										
Canada		V	V	V	V	V		V		V
Chile										
Costa Rica	V				(V)		V		V	(V)
Croatia										
Guatemala	V		V	V	V	V	V	(V)	V	V
Holy See										
Honduras	V			V						
Hong Kong SAR										
Israel										
Japan										
Macao SAR						V				
Malaysia					V					
Mexico			V		V	V	V			V
Monaco										
New Zealand	V		V		V	V		V		V
Nicaragua	V						V			
Panama		V	V			V	V		V	V
Paraguay	V	V	V		V	V	V	(V)	V	V
Romania			(V)		(V)					
Salvador		V	V	V	V	V	V	(V)	V	V
San Marino						V				
Singapore					V					
South Korea										
United States	V	V	V	V	V	V	V	V		V
Uruguay			V							V
Venezuela	V		V			V	V	(V)		V

* ETA required. (V) : visa exemption agreement not yet entered into force.

Annex 1B

Visa requirement imposed by third countries listed in Annex II to Regulation No 539/2001 upon EU citizens on 24 June 2005.

	CY	CZ	EE	EL	FI	HU	LT	LV	MT	PL	PT	SI	SK	DE	AT	IT	SW	DK
Andorra																		
Argentina																		
Australia ¹	V	V	V	V		V	V	V	V	V		V	V	V	V	V	V	V
Bolivia			(V)					(V)	V									
Brazil	V	V	V				V	V	V						V ⁴			
Brunei	(V)	V	V	(V)	V	(V)	V	V	V		V	V	(V)	(V)	(V)	(V)	(V)	
Bulgaria																		
Canada		V	V			V	V	V		V			V					
Chile																		
Costa Rica			(V)										(V)					
Croatia																		
Guatemala																		
Holy See																		
Honduras																		
Hong Kong SAR																		
Israel																		
Japan																		
Macao SAR																		
Malaysia			(V)	(V)				(V)										
Mexico																		
Monaco																		
New Zealand																		
Nicaragua								V ³							(V)			
Panama			V						V									
Paraguay																		
Romania																		
Salvador																		
San Marino																		
Singapore			(V)															
South Korea																		
United States	V	V	V	V		V	V	V	V	V			V					
Uruguay			V															
Venezuela								V ³						V ²	(V)		V ³	

V : visa requirement

(V) : visa exemption for a period of less than 90 days.

1. Australia : Electronic Travel Authority (ETA) is required from citizens of EL, FI, MT, PT, DE, AT, IT, SW, DK, IS, NO as well as from citizens of the other Member States not indicated in the table

2. in case of entry at land and sea borders

3. tourist card is required upon entry

4. visa is required from business travellers

IS notified the following cases of non-reciprocity: Australia, Brunei, Nicaragua, Panama and Paraguay

NO notified the following cases of non-reciprocity: Australia, Brunei (for stays exceeding 14 days), Panama (visa issued free of charge on arrival)

Annex 2

Australian visa procedures

The two visa procedures subject of the notifications can be summarised as follows:

The ETA: Before travelling and before an air ticket is issued, the traveller himself/herself, or the travel agent/airline on his/her behalf, sends an electronic application for an ETA to the relevant Australian authorities. This involves entering in the ETA system data identifying the traveller and details of his/her passport. The data are compared with an on-line file held by the relevant Australian authorities (Department of Immigration and Multicultural and Indigenous Affairs, DIMIA) on persons whose entry into Australia is undesirable (Movement Alert List, MAL).

The response is almost immediate. If the response is positive, i.e. if consultation of the file does not produce an alert with respect to the traveller or his/her passport, an ETA number is assigned electronically and the air ticket can be issued. If the response is negative, no ETA number can be assigned and the traveller is asked to contact the Australian consular authorities. On arrival in Australia, the immigration authorities check that the passport holder has an ETA.

The eVisa (e676 visa): applicants or travel agents can apply for a visa on the internet. The applications are processed in Australia and, depending on the risk assessment level further supporting documents can be required from the applicant. If the risk is low, they can be granted more or less automatically (“autogrant” facility).

US Visa Waiver Programme

To qualify for the VWP, a country must: offer reciprocal privileges to United States citizens; have had a non-immigrant refusal rate of less than 3% for the previous year; certify that the country issues machine-readable passports; have a program to incorporate biometric identifiers into the passports; certify that it reports the theft of blank passports on a timely basis to the U.S. authorities.

In addition the Department of Homeland Security in consultation with the Secretary of State has to prepare an evaluation report on the effect that a country’s designation as a VWP participant would have on the law enforcement and security interests of the United States, including interests related to enforcement of immigration laws and the existence and effectiveness of extradition agreements and procedures. In order for a country to be designated as a VWP participant, a determination must be made that such interests would not be compromised by the designation of the country.

Furthermore there are specific factors that are considered but are not established in the legislation: security of a country’s passport application, production and issuing process; security of passports and other documents used to demonstrate identity and citizenship, and incidence of fraud or misuse involving such documents; nationality and citizenship laws, and their implementation; existence of security and law enforcement threats in the country (terrorist activities, organised crime, money laundering, human and drug trafficking, etc.), and efforts to address such threats; immigration controls and alien smuggling activities in the country, and efforts to address such threats; stability of the government politically and economically; degree of cooperation with the U.S. and other international partners on law enforcement issues, including extradition.

Canadian assessment criteria for visa exemption

The Canadian authorities take into consideration the complex push and pull factors that trigger migration movements, from broad socio-economic conditions to specific regional issues. The country assessment of risks and benefits includes many factors, such as (but not limited to):

- Immigration issues (i.e. non *bona-fide* refugee claimants and clandestine or undocumented migrants),
- public safety and security issues (i.e. organized crime and counter terrorism, the trafficking and smuggling of persons and goods, serious criminal activity, health risks and concerns),
- the stability of government and public institutions (level of public confidence in institutions, legal system, police and security agencies, immigration and asylum systems, protection of human rights),
- the health and stability of the economy, such as unemployment rates and regional disparities,
- the social and human rights environment,
- the trends and patterns related to incidences of application fraud, passport fraud and visa refusal rates.

Factors are reviewed to ensure that they are consistent with Canadian immigration program and the broader mandate, objectives and priorities of the Government of Canada. Decisions to change the visa status of a given country are well-informed and are made after a comprehensive review of key considerations and upon extensive internal consultation.