

# RESTREINT UE



COUNCIL OF  
THE EUROPEAN UNION

Brussels, 11 April 2008

8089/08

RESTREINT UE

JAI	154
USA	20
RELEX	199

## NOTE

from : Presidency  
to : Council

No. Cion prop. : 7512/08 JAI 129 USA 14 RELEX 171 (RESTREINT UE) (SEC(2008) 335 final)  
Prev. doc. : 8081/08 JAI 151 USA 18 RELEX 197 (RESTREINT UE)  
8088/08 JUR 149 JAI 153 USA 19 RELEX (RESTEINT UE)

Subject : **Draft Council Decision authorising the Commission to open negotiations for the conclusion of an agreement between the European Community and the United States of America regarding certain conditions for access to the United States' Visa Waiver Program in accordance with Section 711 of the "Implementing Recommendations of the 9/11 Commission Act of 2007"**

The Permanent Representatives Committee examined on 9 April 2008 the above draft Council Decision on the basis of 8081/08 JAI 151 USA 18 RELEX 197 (RESTREINT UE) and 8088/08 JUR 149 JAI 153 USA 19 RELEX (RESTEINT UE).

The attached revised text is subject to the following:

- General reservations by CZ/MT/SK/EE/HU/LT/LV.
- Suggestions by CZ on individual points as indicated in footnotes in the attached text. The other delegations and the Commission preferred to keep the present text.

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With regard to the text on "information exchange", it is noted that the negotiating directives only give a mandate to explore the scope for agreement. In the event that, following the exploratory talks, it is found that there is a need for an agreement with the US on the matter, the adoption of further negotiating directives may be considered for that purpose.

The Council is invited to examine the outstanding questions with a view to the formal adoption of the draft Council Decision.

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Draft

Council Decision

authorising the Commission to open negotiations for the conclusion of an Agreement between the European Community and the United States of America regarding certain conditions for access to the United States' Visa Waiver Program in accordance with Section 711 of the "Implementing Recommendations of the 9/11 Commission Act of 2007"

The Council hereby:

- recalls that in order to enable the designation of all EU Member States to the US Visa Waiver Programme (VWP), there is common agreement that:
  - Member States may initiate or develop bilateral commitments with the USA in this context, including any legally binding implementing arrangements, in accordance with<sup>1</sup> the Common approach agreed on 5 March 2008, it being understood that Community law will be strictly respected and that the Commission will be kept fully informed<sup>2</sup>;
  - the EC track to be negotiated by the Commission will follow the attached negotiating directives.
- authorises the Commission to open negotiations for the conclusion of an Agreement between the European Community and the United States of America regarding certain conditions for access to the United States' Visa Waiver Program in accordance with Section 711 of the "Implementing Recommendations of the 9/11 Commission Act of 2007", hereinafter referred to as "the Agreement";
- decides that the Commission will conduct these negotiations, on behalf of the European Community, in close consultation with relevant bodies of the Council. The Commission will regularly report back to the Council;
- lays down that the negotiations shall be conducted in accordance with the following negotiating directives:

<sup>1</sup> CZ proposed to replace "in accordance with" by "under guidance of".

<sup>2</sup> CZ proposed to add "on matters falling within EC competence".



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## 1. PURPOSE AND SCOPE OF THE AGREEMENT

The purpose of the Agreement shall be to agree, in respect of matters of Community competence, reasonable and appropriate conditions for the inclusion of all EU Member States in the VWP, thereby securing visa waiver for short stays for citizens of EU Member States when entering the territory of the U.S.A., as is already the case for U.S.A. citizens when entering the territory of EU Member States.

## 2. SPECIFIC OBJECTIVES

The negotiations shall aim to attain a series of specific objectives which are set out below:

- As regards the **Electronic System of Travel Authorisation (ESTA)**, the nature of the system and the modalities for its implementation should be explored in accordance with the outcome of the EU-US Ministerial Troika meeting in Slovenia on 13 March 2008. The Agreement should accordingly recall that once all technical and practical details of the system and its nature have been established, the Community reserves the right to impose any comparable measures<sup>1</sup>, in accordance with the principle of reciprocity
- With regard to **Information exchange**, the Commission should explore the scope for agreement strictly limited to the requirements as laid down in the provisions of Section 711 of the 9/11 Act and the purpose and scope of this Agreement, to share information collected by Member States<sup>2</sup> for the purposes of crossing the common external border and the management of the Schengen area, fully respecting the principle of reciprocity.

<sup>1</sup> CZ proposed to replace "impose any comparable measures" by "develop comparable mechanisms".

<sup>2</sup> CZ proposed to limit the text to "...share information transmitted by Member States to another Member State or to the EU institutions/shared within the EU only for the purposes...".

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Any agreement between the EC and the US should be based on the principle of reciprocity and comply with fundamental rights and freedoms of individuals, as enshrined in Article 6(2) of the EU Treaty, including the rights to privacy and data protection provided for in Articles 7 and 8 of the Charter of Fundamental Rights.

Any agreement between the EC and the US should provide legal certainty and safeguard privacy by complying with the Community's high standards of data protection laid down by Directive 95/46/EC and specific rules of Community law on the transfer of personal data collected by Member States for the purpose of crossing the common external border and the management of the Schengen area, to third Countries. It should fully respect the rules and limitations of the Council of Europe Convention 108 and its Additional Protocol 181 and other applicable international agreements, in particular the Convention on International Civil Aviation, also known as the Chicago Convention.

- As to **repatriation**, a provision in the Agreement could recall the obligations of the USA and of the Member States under customary international law to take back their own nationals.

- With regard to **enhanced Standards for Travel Documents** the Agreement should contain a provision recalling that that EU nationals in possession of valid machine readable passports issued before 26 October 2005, or valid machine readable passports with a digital photograph issued before 26 October 2006, or valid biometric passports issued after 26 October 2006, will be allowed to travel to the U.S.A. under the VWP.

- The Agreement should state that Member States may opt only for valid biometric passports issued after 26 October 2006. The Agreement should aim at eventually achieving the same rights for all nationals of EU Member States as regards the status of their passports. Furthermore, the Agreement should refer to the principle of reciprocity in this area.

- As regards **airport security**, the Agreement could refer to the International Standards of the ICAO as minimum benchmarks.



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- The Agreement to be negotiated should cover any necessary **implementing arrangements** concerning matters specifically covered by these negotiating directives.

### 3. MANAGEMENT OF THE AGREEMENT

The Agreement should contain a provision setting up a Committee of experts. The Committee shall be composed by representatives of the European Community and of the U.S.A. The Community shall be represented by the Commission. The Commission will regularly report back to the Council. The meetings of the Committee of experts shall take place where necessary at the request of one of the Contracting Parties.

The Committee of experts shall in particular have the task:

- to monitor the implementation of the Agreement;
- to propose amendments and additions to it.

### 4. RELATION WITH EXISTING BILATERAL AGREEMENTS BETWEEN MEMBER STATES AND THE U.S.A.

The Agreement should contain a clause whereby, from its entry into force, its provisions shall take precedence over the provisions of any bilateral agreements or arrangements concluded between individual Member States and the U.S.A, insofar as the provisions of those bilateral agreements and arrangements cover issues dealt with by this Agreement.