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## **REPORT FROM THE COMMISSION**

**assessing the situation of non-reciprocity with certain third countries in the area of visa  
policy**

# Report from the Commission assessing the situation of non-reciprocity with certain third countries in the area of visa policy

## I. Introduction

### *a. The revised reciprocity mechanism*

Council Regulation (EC) No 539/2001 of 15 March 2001<sup>1</sup>, 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") provides also for a reciprocity mechanism for cases where a third country on the positive list maintains or introduces a visa requirement for the citizens of one or more Member States. This reciprocity mechanism was introduced by Council Regulation (EC) 851/2005 of 2 June 2005.<sup>2</sup>

In the last, seventh visa reciprocity report under this mechanism, adopted on 26 November 2012<sup>3</sup>, the Commission concluded that a very limited number of "non-reciprocity cases" continued to exist, with the United States (US) and Canada.

Through Regulation 1289/2013 of 11 December 2013 amending Council Regulation (EC) 539/2001<sup>4</sup>, which entered into force on 9 January 2014, a revised reciprocity mechanism was introduced.

The revised reciprocity mechanism aims for more solidarity among the Member States in the implementation of the common visa policy and provides for a quicker and more efficient reaction in case a third country on the positive list introduces or maintains a visa requirement for one or more Member States.

In accordance with the provisions of the revised mechanism, Member States have to notify the European Parliament, the Council and the Commission of the existing and any new cases of a visa requirement implemented by a third country listed in Annex II.

Immediately after the publication of the Member States' notifications of visa non-reciprocity cases the Commission, in consultation with the Member State concerned, has to take steps with the third country, in particular in the political, economic and commercial fields, in order to restore visa-free travel. The Commission has to inform the European Parliament and the Council without delay about these steps.

At the latest 6 months after the date of the publication of the notifications and then with regular intervals of up to 6 months, the Commission has to either adopt an implementing act on the temporary suspension for up to 6 months of the visa waiver for certain categories of citizens of the third country concerned, or submit a report to the committee referred to in Article 4a(1) of Regulation 1289/2013 assessing the situation and stating the reasons why it decided not to suspend the exemption from the visa requirement. When considering further steps the Commission has to take into account the outcome of the measures taken by the Member States concerned with a view to ensuring visa-free travel with the third country in

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<sup>1</sup> OJ L 81, 21.3.2001, p. 1.

<sup>2</sup> OJ L 141, 4.6. 2005, p. 3.

<sup>3</sup> COM(2012) 681 final.

<sup>4</sup> OJ L 347, 20.12.2013, p. 74

question, the steps taken by the Commission in consultation with the Member States concerned, with the authorities of the third country in question and the consequences of the suspension of the exemption from the visa requirement for the external relations of the Union and its Member States with that third country.

If the third country has not lifted the visa requirement within 24 months of the publication date, the Commission shall adopt a delegated act on the temporary suspension of the visa waiver for 12 months for citizens of that third country.

The Commission, while welcoming the revised mechanism, considers that the co-legislator has not respected the Treaty (Art. 290 and 291 TFEU) when deciding to use the delegated acts procedure to temporarily re-impose the visa obligation, after 24 months from the publication of the Member States' notifications, for citizens of a third country which would still not ensure full visa reciprocity with all EU Member States. For that reason, the Commission brought an action for annulment of Regulation 1289/2013 to the Court of Justice.<sup>5</sup> Pending the Court's decision, the revised mechanism continues to fully apply.

#### ***b. Notifications of non-reciprocity cases***

In accordance with the provisions of the revised reciprocity mechanism, Member States had to notify the European Parliament, the Council and the Commission at the latest on 9 February 2014 of cases where a visa requirement existing on 9 January 2014 is maintained by a third country listed in Annex II.

The Commission received notifications of non-reciprocity situations from five Member States: Bulgaria, Croatia, Cyprus, Poland and Romania. These notifications related to five third countries: Australia, Brunei Darussalam, Canada, Japan and the US.

The Commission published information about these Member States' notifications, including information on the date of implementation of the visa requirement and the types of travel documents and visas concerned, in the Official Journal of the European Union on 12 April 2014.<sup>6</sup>

As specified in this publication, the Commission's publication of information about a Member State's notification(s) does not entail an automatic recognition by the Commission of a non-reciprocity case in the meaning of the provisions of Regulation 539/2001.

In this context the Commission would like to make the following observations.

In its notification of a visa requirement imposed by Japan for Romanian citizens holding temporary passports, Romania also referred to the temporary visa waiver granted by Japan (until 31 December 2015) to holders of ordinary electronic passports.

In the framework of regular tripartite meetings between Romania, Japan and the Commission held since 2011, cooperation has taken place in order to address the Japanese concerns regarding the implementation of the temporary visa waiver with a view to ensure that Romanian citizens continue to benefit from the visa waiver, albeit on a temporary basis, and that it is ultimately converted into a permanent one. The Commission has welcomed the decision by Japan of 19 December 2012 to extend the temporary visa waiver granted for

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<sup>5</sup> Case C-88/14.

<sup>6</sup> OJ C 111, 12.4.2014, p. 1.

Romanian citizens for another three years until 31 December 2015. This decision was the result of the successful tripartite cooperation.

Taking into account that Japan has informed that it does not impose a visa requirement for Romanian citizens holding biometric and non-biometric ordinary passports, the Commission considers that the temporary visa waiver by Japan should not be considered as a non-reciprocity case in the meaning of the provisions of Regulation 539/2001 and should therefore not be pursued further under the new reciprocity mechanism.

Nevertheless, the Commission will continue to fully support regular tripartite meetings with Romania and Japan in order to ensure that the visa-free regime for Romanian citizens holding ordinary passports applies also after 31 December 2015.

With regard to the notification by Romania of the visa requirement imposed by Japan to holders of Romanian temporary passports, the Commission notes that the assessment of this situation should take into account, among others, that other Member States whose citizens holding a non-biometric temporary passport require a visa when traveling to a visa free third country have not notified this under the reciprocity mechanism, and that some Member States do not recognise temporary passports issued by Japan as valid for traveling to their territory.

Concerning Cyprus, which notified a visa requirement by Australia for holders of Cypriot passports, it subsequently informed the Commission that it does not have a specific non-reciprocity issue with Australia but that its notification only referred to Australia's eVisitor system in general. Cyprus confirmed that it does not wish to pursue further its notification vis-à-vis Australia.

Finally, in this context of the Member States' notifications of cases of non-reciprocity, it should be recalled that according to the provisions of the new reciprocity mechanism, a Member State which has notified a case of non-reciprocity may request the Commission to suspend the exemption from the visa requirement for certain categories of nationals of the third country in question if within 90 days of the date of publication of the notification, the third country has not lifted the visa requirement. No Member State has addressed such a request to the Commission.

***c. Visa non-reciprocity situations with third countries, which have not been notified***

In addition to the above-mentioned reciprocity cases notified by the Member States concerned and which are examined under the revised mechanism, the Commission received complaints from some Croatian citizens on situations of non-reciprocity with some small Caribbean countries (Antigua and Barbuda, Barbados and St Kitts and Nevis).

According to the information at the Commission's disposal, these visa-free third countries either impose a visa requirement for all citizens of Croatia (Antigua and Barbuda and St. Kitts and Nevis) or do not provide an equal treatment in terms of the length of the authorised short stay (Barbados).

The Commission contacted the third countries' authorities during May 2014 requesting to ensure full visa reciprocity further to the accession of Croatia to the EU on 1 July 2013, in

accordance with the provisions of the short-stay visa waiver agreements concluded between the EU and the third countries concerned<sup>7</sup>.

The authorities of St Kitts and Nevis informed the Commission on 6 May 2014 that the required legislative changes had already been adopted and that information is now correctly provided on their website.

Barbados and Antigua and Barbuda are currently dealing with the request.

## **II. A new process put on track with the third countries, for which the Commission received notifications**

### ***a. General approach:***

The revised reciprocity mechanism provides for a quicker and more efficient response based on the need for more solidarity in the implementation of the common visa policy. On the other hand, it should be acknowledged that the third countries concerned are implementing their national criteria and procedures for granting the visa waiver. Therefore, the Commission in consultation with the Member States concerned proposed a new, more dynamic and result-oriented approach to be followed with the third countries concerned. It consisted of the establishment of a framework of regular tripartite meetings between the third country, the Member State(s) concerned and the Commission (which can take place at technical and political level). The objective of the meetings is to discuss the state of play and define further steps, possibly accompanied by a timeline, which should lead to achieving full visa reciprocity as soon as possible.

The proposed framework complements the already existing fora of bilateral exchanges with some of these third countries where the Commission discussed and will continue to discuss visa non-reciprocity amongst other issues. It also complements the existing bilateral contacts of Member States with the third countries concerned.

All third countries concerned have agreed to this approach.

When a third country imposes a visa requirement on citizens of two or more Member States, the trilateral meetings take the format of "plenary sessions" and "Member State specific" sessions, the latter allowing discussion on the state of play for each Member State with regard to the visa waiver criteria of the third country in question.

Over the last months, this tripartite approach has been launched with Japan, Australia, the US and Canada.

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<sup>7</sup> OJ L 169, 30.6.2009.

**b. Assessment of situation per third country:**

**i. Japan**

***Notified by Romania: a visa requirement for temporary passport holders***

A first tripartite meeting under the new reciprocity mechanism between Romania, Japan and the Commission took place on 9 July 2014. Japan pointed out that the main reason for which Romanian holders of temporary passports are not covered by the general, temporary visa waiver for Romanian citizens is that in Japan's understanding temporary passports –with a lower level of security than the ordinary passports- should as a matter of principle only be issued in humanitarian and compassionate cases of real emergency. This would not be the case as, according to the information at the disposal of Japan, Romania would have issued more than 300.000 temporary passports in 2010. Japan also stated that the level of protection of travel documents against forgery is one of the criteria when deciding to grant a visa waiver or not. Romania provided information on the emergency cases in which temporary passports are issued and provided Japan and the Commission with specimen of their two types of temporary passports, stressing that their level of security was equal to that of temporary passports issued by other Member States.

These discussions showed that additional and more detailed information both from Japan and Romania is needed in order to assess the situation of the visa requirement imposed by Japan on Romanians holding non-biometric, temporary passports. In conclusion of the meeting it was agreed that information - to the extent that it is available - would be exchanged, and also provided to the Commission:

- by Japan, amongst others, on the exact reasons why Romanian holders of temporary passports are subject to a visa requirement; whether, and if so, why holders of similar documents issued by other Member States are granted a visa waiver; statistical data on visa applications lodged by Romanian citizens holding a temporary passport and on visas issued/refused;

- by Romania, amongst others, on the cases when, and under which conditions, temporary passports can be issued; the technical differences between temporary passports issued by Romania abroad and those issued in Romania; statistical data on the issuing of temporary passports.

This information has been exchanged since then and is being analysed. Discussions will continue at the next tripartite meeting on the basis of this information. The assessment of this situation should also take into account certain other elements, notably that some Member States do not recognise temporary passports issued by Japan as valid for traveling to their territory.

Furthermore, similar cases of non-reciprocity have not been notified by other Member States with regard to other third countries. When waiving the visa requirement for citizens of other countries, including EU Member States, certain third countries only waive the visa requirement for holders of biometric passports; holders of non-biometric passports continue to require a visa. Moreover, the visa waiver offered by certain third countries does not apply to certain travel purposes e.g. officials on mission.

In this context it should be recalled that the citizens of countries on the positive list of Regulation 539/2001 in principle benefit from a general visa waiver i.e. they benefit from the visa waiver whatever the type of travel document they hold and whatever the purpose of travel. Nevertheless, for citizens of certain third countries, Regulation 539/2001 only waives the visa requirement for holders of biometric passports. Moreover, according to Article 4(1) and (3) of this Regulation, a Member State may impose a visa requirement to certain categories of citizens of visa free countries (such as holders of diplomatic, service/official or special passports) or when they come to carry out a paid activity during their stay.

## **ii. Australia**

### ***Notified by: Bulgaria, Romania***

Bulgaria and Romania notified a general visa requirement by Australia without specifying the type of visa(s) concerned. Romania stated in its notification that, although the possibility to use the eVisitor system exists since 27 October 2008, applications by Romanian citizens are processed manually, with the "autogrant" rates ranging only from 20,5% (1<sup>st</sup> quarter of 2013) to 27,2% (3<sup>rd</sup> quarter of 2013).

Consequently the Commission has to assess whether there is a different treatment under the eVisitor system for citizens of Bulgaria and Romania compared to those of other Member States, and whether the conditions and procedures of the eVisitor system in general and the manual processing - mainly applied for applications submitted by the citizens of Bulgaria and Romania – in particular, could be considered as equivalent to the Schengen visa application procedures.

### **- The eVisitor system**

The eVisitor system (i.e. an authorization to visit for tourism or as a business visitor for a stay of up to 3 months within a 12-month period) was introduced by Australia in 2008 in order to ensure equal treatment for EU citizens. The eVisitor system is thus applied to all EU citizens. The average grant rate of eVisitor is very high (99%<sup>8</sup>). A large majority (more than 80%) of the applications are processed through the so-called "autogrant" system, i.e. an automated process by which the electronic eVisitor application is checked against security and immigration risk rules. If the automated checks are satisfied, then eVisitor is granted, usually within minutes.

Based on a preliminary analysis and a comparison of certain elements of the Schengen visa application procedures as defined in Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code)<sup>9</sup> and the eVisitor's "autogrant" system, it can be noted that significant differences exist between both systems. For instance, unlike the Schengen visa application procedures, under the "autogrant" system personal appearance at the consulate (and the collection of biometrics) is not required, and there is no visa fee (the same currently applies also to applications which are processed manually). In addition, no supporting documents are requested from the applicant regarding e.g. the purpose of travel, accommodation and the means of subsistence (however, additional information and documents may be requested from applicants whose applications are processed manually).

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<sup>8</sup> eVisitor statistics as at 30/06/2014 sent by Australia on 15/09/2014

<sup>9</sup> OJ L 243, 15.09.2009, p. 1.

Furthermore, the eVisitor is generally granted within minutes, while applications for a Schengen visa must be decided on as a rule within 15 calendar days.

Taking into account the abovementioned, as a preliminary conclusion, the eVisitor's "autogrant" system in principle should not be considered as equivalent to the Schengen visa application procedures.

However, eVisitor applications which do not satisfy automated checks are referred for manual assessment by a visa processing officer. Applications from citizens of certain Member States (in particular Bulgaria and Romania) are mainly processed manually due to the stated integrity concerns (around 80% for the two Member States).

At the first tripartite meeting between Bulgaria and Romania, Australia and the Commission held on 24 June 2014, the Commission requested from Australia additional information and updates regarding the manual processing of applications, in particular in relation to the risk profiles applied to applications from Bulgarian and Romanian citizens; the decision-making time; the additional documentation requested; and the statistics on the number of cases where such documentation has been requested.

Australia provided already certain information during the meeting of 24 June 2014 and additional information was sent in writing on 15 July 2014.

Australia informed that risk profiles are applied for all Member States; they are not limited to Bulgaria and Romania. Australia considers that the risk profiles used for Bulgaria and Romania seem to be working as the number of applicants whose entry has been refused, who have overstayed, or who have made protection claims after arrival are limited compared to other countries eligible for the same electronic visas. Nevertheless, taking into account the relatively high eVisitor overall grant rates for Bulgarian and Romanian citizens (respectively 81% and 77%), Australia has launched a review of the current risk profiles for Bulgaria and Romania which it expects to finalise in September 2014.

Australia also sent further information concerning the decision-making time for applications processed manually, the additional documentation which may be requested from applicants in some cases concerning e.g. the means of subsistence and the genuine will to return, as well as some statistics on the number of cases where a request for additional information has been made.

The Commission is currently examining this information with a view to checking whether the manual processing of eVisitor applications should be considered as equivalent to the Schengen visa application procedures.

The Commission welcomes the ongoing review of the risk profiles for applications from the citizens of Bulgaria and Romania. The Commission expects that this review should lead to a decrease of the number of the applications from Bulgarian and Romanian citizens being checked manually and an increase of their respective autogrant rates.

#### **- Transit visa requirement**

Australia continues to impose a transit visa requirement for citizens of Bulgaria, Croatia and Romania. Such a visa requirement was not explicitly notified by Bulgaria and Romania and Croatia did not notify a visa requirement by Australia. However, Australian citizens are

exempted from the visa requirement for stays of up to 90 days in any 180-day period with a view to transit through or an intended stay in the Schengen area.

The Commission and the EU Delegation in Canberra, in consultation with the Member States concerned, are closely following this issue. Further to the contacts taken by the Commission and by Bulgarian and Romanian authorities with Australia's Department of Immigration during the first quarter of 2014, the Australian authorities have committed to look into this issue with a view to lifting the transit visa requirement to Romanian, Bulgarian and Croatian citizens as soon as possible. The Commission welcomes this commitment.

### **iii. Canada**

#### ***Notified by: Bulgaria, Romania***

From the three non-reciprocity cases existing at the time of the seventh Reciprocity Report, two still remain: with Bulgaria and Romania. Canada lifted the visa requirement for Czech citizens on 14 November 2013, which is a positive development in the EU-Canada relations. The Commission has welcomed this decision.

The first tripartite meeting between Bulgaria and Romania, Canada and the Commission was held on 29 July 2014. The EU side explained in detail the new reciprocity mechanism and its consequences. The Canadian side recalled its procedures and conditions for granting the visa waiver (which allows a stay of up to six months). The Commission enquired about the possible impact of the "Protecting Canada's Immigration System Act", which entered into force on 15 December 2012, according to which all EU Member States except for Bulgaria and Romania are considered to be "Designated countries of origin" (DCOs), i.e. countries whose citizens are unlikely to apply for asylum, but which do respect human rights and offer state protection<sup>10</sup>. The Commission considers that the implementation of Canada's new asylum legislation should facilitate the decision by Canada to lift the visa requirement for citizens of both Bulgaria and Romania in the near future. Canada explained that being put on the DCO list and inclusion in Canadian visa waiver program are two separate processes (even if certain conditions might be identical in these two processes). Being on the DCO list is not a prerequisite for being admitted in the visa waiver program but, according to Canadian partners it "might help". On the other hand if a country has only a few refugee claims, the fact that it is not on the DCO list does not have a negative impact on the criteria relevant to qualify for the visa waiver programme.

Canada also informed about the publication on 12 June 2014 of a Notice of a proposal to establish an Electronic Travel Authorization (ETA) system. This system, which is similar to the US ESTA and which would apply to all visa free travellers, would become operational in April 2015. This system would make it easier for Canada to lift visa requirements as it will still allow to carry out appropriate risk management, essential to continue ensuring the integrity of the Canadian immigration policy.

The Canadian side explained that there are around 40 criteria to qualify for the visa waiver program. They are grouped into seven categories: socio-economic conditions; immigration issues; travel document integrity; safety and security issues; border management; human rights issues and bilateral considerations.

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<sup>10</sup> See Seventh reciprocity report, COM(2012) 681 final 26.11.2012

A visa policy team reviews all these criteria and issues at the end of the process a recommendation. The criteria are not set like a checklist; they are all taken into account, analysed and an overall decision is taken. This procedure allows therefore for a certain degree of flexibility. In some areas measurable thresholds are set; in other areas there are no such measurable thresholds. The Canadian side stressed that for the moment neither Bulgaria nor Romania are at the stage of the formal review, as not all thresholds are met.

During the Member State-specific sessions, building on bilateral contacts that have already taken place, an in-depth discussion took place on the state of play with regard to the criteria which seem to pose the biggest challenges for each of the two Member States.

The biggest problem for granting the visa waiver relates to the rates of visa refusal and of violation of immigration rules. The threshold of the rate of violation of immigration rules is set at an average of less than 3% over 3 years; the visa refusal threshold is set at an average of less than 4% over 3 years.

For Bulgaria, as regards the immigration rules violation rate, despite a constant decrease over the last few years (7,4% for 2011, 5,58% for 2012 and 4,4% for 2013), the average is still 5,79% for the last three years. The average visa refusal rate for Bulgaria is 15,76% (13,6% in 2011, 18,6% in 2012 and 15,1% in 2013).

For Romania, the average immigration rules violation rate for the last three years is 4,54% (4,41% in 2011, 6,51% in 2012 and 2,7% in 2013), the average visa refusal rate is 15% (with an increase between 2011 (12,95%) and 2013 (16,14%)).

In light of these figures it seems unlikely that both Member States could attain these two thresholds in the coming two years. In this context, it should be recalled that these thresholds are not fixed in the legislation but set as an objective in administrative instructions; they are a very strong indicator but not an absolute criterion. Canada stressed that this leaves a certain margin of political manoeuvre but not when the difference between the threshold and the data for the country in question are too big.

According to the information provided by Canada, most of the visa refusals are based on doubts about the real purpose of travel and the will to return, in light of the economic situation of the applicants.

The Member States could set up awareness raising campaigns about the conditions to travel to Canada. Canada should verify whether the information available on its website should be improved and more adapted to Bulgarian and Romanian applicants (e.g. more clarity about the conditions to be met and the required documents to be submitted).

Other criteria on which Canada expressed concerns with regard to Bulgaria and Romania are the level of corruption and organised crime.

In 2013 Canada registered a significant drop in numbers of asylum claims from Romanian and Bulgarian citizens; therefore this is currently not an area of concern for Canada. However, Canada stressed that both Member States needed to work on the push factors and on integration of minorities in order to avoid abuses of a possible future visa free regime.

Canadian officials expressed their readiness to visit Bulgaria and Romania in late 2014 to further discuss these matters and all other relevant issues, such as the fight against organised crime and the conditions for acquiring Bulgarian and Romanian nationality.

#### **iv. United States of America (US)**

##### ***Notified by: Bulgaria, Croatia, Cyprus, Poland and Romania***

The four cases of non-reciprocity existing with the US at the time of adoption of the seventh Reciprocity Report (Bulgaria, Cyprus, Poland and Romania) continue to exist. A fifth case has been notified by Croatia.

The first tripartite meeting was held on 16 July 2014. The EU side explained in detail the new reciprocity mechanism and its consequences. The US side recalled its procedures and conditions for access to the Visa Waiver Program and referred to ongoing legislative initiatives that might impact on the visa waiver conditions. The current conditions relate to reciprocity, the visa refusal rates, biometric passports, law enforcement and return cooperation, and a security review. The Member State-specific sessions allowed to get an overview of the situation for each of the Member States concerned with regard to the visa waiver conditions and of their bilateral contacts with the US in this regard.

Certain conditions are met by all the Member States concerned as they implement the relevant EU legislation (the visa waiver for US citizens on the basis of Regulation 539/2001; biometric passports being issued on the basis of Regulation 2252/2004 as amended by Regulation 444/2009). Also the operational cooperation on return does not seem to be a matter of concern for the US, as Member States apply their obligation under (customary) international law to take back their own nationals.

With regard to law enforcement cooperation, the situation on the conclusion of the two required agreements (one on "preventing and combating serious crime" ('PCSC agreement') and one on "Terrorist screening information in accordance with Homeland Security Presidential Directive-6" ('HSPD-6 arrangement')) varies from one Member State to the other. Whereas one Member State has already signed the two agreements, another has not yet started the negotiations. In principle, the transmission of data on lost and stolen passports to Interpol is ensured by Member States, but further clarification might be needed about the frequency of transmission of these data by one Member State.

For all five Member States, there are problems with regard to the visa refusal threshold: the visa refusal rate is set by US legislation at 3%. For the fiscal year 2013, the refusal rate was: 4% for Cyprus, 5,9% for Croatia, 10,8% for Poland, 11,5% for Romania, and 19,9% for Bulgaria. As the current US legislation does not allow any flexibility in applying this condition, action should be undertaken both by the Member States in question and the US to decrease these visa refusal rates. Most of the refusal cases (over 90%) are due to the fact that the applicant cannot convincingly demonstrate the willingness to use the visa for the stated purpose and is posing a risk of overstaying or taking up employment. The very complex US visa policy (with a lot of different types of visas depending on the purpose of travel) may also lead to visa refusals. Even if the visa refusal rate is adjusted when a refused person re-applies for the correct type of visa or submits a complete file and is issued a visa, there are cases where no new visa application is lodged as the envisaged visit had a specific purpose and the event has already taken place.

The Member States could set up awareness raising campaigns about the conditions to travel to the US. In order to better target such campaigns, it has been agreed at the tripartite meeting that Member States' authorities will be in contact with the US consular service in their

respective capitals to enquire about categories of applicants that might pose problems and about the refusal grounds.

For its part, in light of the complexity of its visa system, the US side is willing to examine how the information provided to visa applicants could be further improved in the Member States concerned.

In this context it should also be recalled that several legislative initiatives supported by the US Administration have been launched over the last years in order to allow certain flexibility with regard to the visa refusal threshold. Most recently, in the DHS Appropriations Bill, a 10% visa refusal rate is mentioned, allowing some flexibility under certain circumstances. However, the outcome of these initiatives is still unclear.

Finally, with regard to the security review, it is noted that this is an exercise in which certain aspects in the country concerned relating to processes and information dealt with by the intelligence services are being analysed and assessed by US experts. This review can run in parallel to the process of verification of the other Visa Waiver Programme conditions.

During the tripartite meeting, the Commission has again requested information from the US authorities on the date of publication of the Final ESTA Rule, in view of completing its assessment of whether or not the ESTA system is equivalent to the Schengen visa application procedures. The US informed that it would be published in the coming months.

#### **v. Brunei Darussalam**

##### ***Notified by: Croatia***

In line with the approach followed until now with the authorities of Brunei Darussalam in order to ensure reciprocal treatment - successfully achieved for all EU citizens except Croatia - the Commission informally met the Brunei authorities on 12 June 2014 in order to discuss the way to achieve full visa reciprocity for Croatian citizens. The Brunei authorities committed to positively consider the Commission's request to grant a reciprocal visa waiver for citizens of Croatia and to extend the duration of visa-free stay for citizens of Liechtenstein. A formal request to the Brunei authorities to ensure a reciprocal visa waiver for short stays of up to 90 days to Croatian citizens was sent by the Commission on 10 July 2014. In addition, the Commission reiterated its request to the authorities of Brunei to extend the visa waiver to 90 days for citizens of Liechtenstein (still 14 days instead of 90 days).

The Commission is awaiting a reply from the Brunei authorities to its requests.

### **III. Conclusions**

The legislator has established a new reciprocity mechanism in the common visa policy based on solidarity and which should be more efficient in ensuring that third countries whose citizens can come visa-free to the Schengen area for short stays offer visa-free travel to the citizens of all Member States. The Commission is committed to fully exploit the potential offered by the new reciprocity mechanism and achieve fully reciprocal visa-free travel. This requires close, result-oriented cooperation in the framework of the new reciprocity mechanism with the Members States and with the third countries referred to in section II.

In the light of the new mechanism, intensive, constructive work has started in the newly established tripartite framework with all third countries concerned. The first meetings have shown that there is a need for further clarifications and exchanges of information –by the third country and/or the Member State concerned- on a series of issues, before steps could be defined towards full visa waiver reciprocity. These exchanges are actively pursued and the information should be analysed with a view to continuing the tripartite approach in a result-oriented way.

With regard to certain cases that have been notified, the additional information should also enable the Commission to assess whether they are indeed cases of non-reciprocity in the sense of, and to be dealt with under, the new reciprocity mechanism.

On the basis of the confirmation by the third countries of the shared objective of mutual visa free travel, the positive engagement in the tripartite approach and the fact that none of the Member States concerned has requested the Commission to suspend the exemption from the visa requirement for certain categories of nationals of the third country concerned, the Commission considers that at this stage, it would not be appropriate to adopt suspension measures.