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Visa Policy and Transportation Security: Ensuring the Right Balance

Sally McNamara

Visa policy is a strategic public policy that America must get right. It is a critical tool for promoting American public diplomacy, economic growth, and international alliance-building.

The exclusion of many of America's closest Central and Eastern European allies from the Visa Waiver Program (VWP) has undoubtedly been an obstacle to building enduring bilateral alliances with European nations. In late 2007, Congress passed legislation allowing for expansion of the VWP, and its implementation must now make progress.¹

Policymakers must implement these visa reforms along with wider reforms of transportation security policy. The devastation of 9/11 looms large, and it is incumbent on nations on both sides of the Atlantic to ensure that travel is safe as well as open. However, it is equally incumbent on nations to ensure that new policies genuinely contribute to increased security and are formulated in the spirit of transatlantic cooperation, without European Union obstructionism.

Expanding the Visa Waiver Program. Under the VWP, most visitors from 27 partner nations are allowed to enter the United States for up to 90 days without a visa if they have valid passports. The policy has been a resounding success, encouraging travel, commerce, and unprecedented levels of people-to-people exchanges. In that respect, it has been a brilliant tool of public diplomacy. A 2007 survey from the Pew Global Attitudes Project shows that those who have visited the U.S. and interacted with Americans consistently feel more positive about America than those who have not: that "familiarity

breeds favorability."² At a time when America's image has hit rock bottom among many Europeans, it is essential to strengthen its existing successful tools of international diplomacy.

The VWP is a relic of the Cold War era rather than the 9/11 era, and under legislation signed into law by President Bush on August 3, 2007, six countries are likely to become VWP partner countries in the near future based on the new set of criteria on visa rejection rates and overstays.

The legislation also creates a new path for aspirant countries with higher visa-refusal rates, such as Poland and Bulgaria, eventually to gain admission. Despite overly restrictive amendment language requiring countries to achieve visa refusal rates below 10 percent, the legislation allows for flexibility if all other administrative and technical requirements are met. Crucially, every aspirant country except Romania is reducing its visa-refusal rate.³

America has moved in the right direction on visa waiver reform. In December 2007, Congress funded two new security systems mandated by the legislation, and even the "10 percent rule" looks to be less problematic in light of administrative and technical progress.

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214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

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Country	Visa Refusal Rate 2006	Visa Refusal Rate 2007
Bulgaria	17.5%	14.3%
Cyprus	2.2%	1.8%
Czech Republic	9.4%	6.7%
Estonia	7.1%	4.0%
Greece	2.2%	1.6%
Hungary	12.7%	10.3%
Latvia	21.6%	11.8%
Lithuania	27.7%	12.9%
Malta	2.8%	2.7%
Poland	26.2%	25.2%
Romania	34.1%	37.7%
Slovakia	16.0%	12.0%

Source: U.S. Department of State, Report of the Visa Office, at <http://travel.state.gov/pdf/FY07.pdf> and <http://travel.state.gov/pdf/FY06.pdf>.

The EU Interferes. Just as the United States is moving from the political to the technical, the European Union has intervened in a calculated move that has grossly inflamed the issue. It has put inordinate pressure on EU member states not to sign bilateral agreements and is even promoting retaliatory action at the EU level.⁴ The EU's desire to supranationalize visa policy in such a confrontational manner is nothing new: In 2006, the European Commission threatened reprisals against U.S. diplomats based in Schengen-area countries in retaliation for not extending visa waivers to EU accession countries.

The VWP should not, however, be considered an EU issue. Extending visa waivers to all EU member

states would allow Brussels to decide to which countries America opens its doors and would set a powerful precedent for automatically extending the VWP to future EU accession countries like Turkey.⁵ Participation has never been decided on an EU-wide basis. For example, Greece is not a visa waiver participant, but Slovenia has been since the program's inception in 1986.⁶ In fact, U.S. diplomats working in many EU countries (e.g., France and Spain) already have to apply for visas.

The EU's supranational drive is the latest in a protracted power grab for control over member states' borders. The EU's contention that member states be treated equally is deeply hypocritical in two ways.

First, the vast majority of EU-15 member states imposed extensive employment derogations against EU-10 accession countries in 2004. Ireland, Sweden, and the United Kingdom were the only countries that granted unrestricted work rights to workers from the EU-10 accession states upon their full membership in 2004.

Second, the EU is proposing its own plans for a biometric entry system for non-EU nationals.⁷ The EU's concern is not data protection, ease of travel, or European solidarity, but rather the centralization of a key element of national power.

The United States' ability to attract investment, commerce, and tourism is a vital tool in combating growing anti-Americanism on the European continent. Sadly, the European Union does not share this goal. In its effort to become a superstate with all the trappings of nationhood, it is more interested in demonstrating its willingness to confront, oppose, and frustrate American policy.

1. Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53.
2. Pew Global Attitudes Project, "Rising Environmental Concern in 47-Nation Survey," June 27, 2007, p. 18, at <http://pewglobal.org/reports/pdf/256.pdf> (February 12, 2008).
3. U.S. Department of State, Visa Statistics, at http://travel.state.gov/visa/frvi/statistics/statistics_1476.html (February 12, 2008).
4. Ian Traynor, "Bush Orders Clampdown on Flights to the U.S.," *The Guardian*, February 11, 2008.
5. EU candidate countries are Turkey, Croatia, and the Republic of Macedonia.
6. U.S. Department of State, Bureau of Consular Affairs, "Visa Waiver Program (VWP)," October 2006, at http://travel.state.gov/visa/temp/without/without_1990.html#countries (February 12, 2008).
7. Stephen Castle, "EU Plans to Require Biometrics of All Non-European Visitors," *International Herald Tribune*, February 10, 2008.

Transportation Security Policy. Every international traveler that comes to the U.S., regardless of his or her country of origin, undergoes terrorist and criminal screening through the Advance Passenger Information System. The United States now wants to increase the amount of information it gets in advance of passengers' travel.

As part of visa reform, the United States is proposing additional security measures for both existing and aspirant VWP participants, to be negotiated on a bilateral basis. The U.S. has proposed a new electronic travel authorization system whereby passengers provide detailed personal and booking information in advance of travel, including place of birth and previous citizenships.

This system has likely been proposed in response to the European Union's unwillingness to cooperate effectively on data sharing. For instance, the 2007 Passenger Name Records Agreement (PNR) reduced—from 34 to 19—the pieces of intelligence that are kept on European airline reservation databases and are accessible by U.S. Customs and Border Protection (CBP). Under the new policy, airlines “push” or send data to CBP; the U.S. is not allowed to “pull” or access PNR data electronically. The amount of time that data can be retained has also been limited.⁸

America's ability to access this information is critical. These indicators are run against lists of known and suspected terrorists and analyzed against the traveling patterns of other known terrorists. Such information is valuable for counter-terrorist purposes, as Secretary of Homeland Security Michael Chertoff states: “It simply gives us a way of analyzing their behavior in conjunction with other things we know so we can pursue further inquiry when they appear at our airports.”⁹

The Administration is dealing with its allies on a bilateral basis, where it will certainly find better traction. It is essential that any new system is workable and efficient and does not merely add

another layer of hassle for travelers from existing VWP countries.

For example, the system must have an extended timeframe of eligible travel for previously registered frequent travelers. Also, it should not require that information be submitted more than 48 hours in advance of travel. Participating countries must work closely with travel agencies and Internet booking agents to ensure that passengers are aware of the new rules, because the booking process is the most convenient time to provide such information. By sharing information through an electronic questionnaire at the time of booking, passengers will not be overly inconvenienced.

Too much hassle would exclude last-minute legitimate travelers who are vital to maintaining healthy transatlantic relations. Business executives, for example, should not be required to re-register for every visit. With sensible and workable measures that simply heighten information sharing between trusted allies, a new system can increase security and ensure the buy-in of partner nations.

The United States must be careful not to pass measures that are seen as discriminatory or unfair. If the new system is cumbersome and restrictive, America's enduring allies will be tempted to use the EU's retaliatory clout as a blunt negotiating instrument against the United States.

Air Marshals: An Insurance Policy. According to *The Guardian*, the United States is also demanding that European countries put air marshals on flights from Europe to the United States as part the new package of security measures.¹⁰

The United States cannot compel or oblige any sovereign nation to put armed air marshals onto flights, and it is inconceivable that the U.S. would allow diplomatic relations to suffer on this issue alone. It is equally unlikely that any cost-benefit analysis would bear out the cost of having air marshals on every transatlantic flight. The discretionary

8. *Official Journal of the European Union*, August 4, 2007, p. L204/18, at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_204/l_20420070804en00180025.pdf (February 12, 2008).

9. Michael Chertoff, remarks to European Parliament, May 15, 2007, at www.dhs.gov/xnews/speeches/sp_1180627041914.shtm (February 12, 2008).

10. Traynor, “Bush Orders Clampdown on Flights to the U.S.”

use of air marshals, already practiced by several European countries, including France and Germany, will likely increase anyway as a result of the policy's success.

Air marshals help to ensure safe transatlantic travel. They are used either randomly or, in some cases, as an alternative to cancelling higher-risk flights. Air marshals also create a general deterrent factor. In addition to the many elements of international transport security—data sharing, intelligence analysis, passenger, cargo and luggage screening—air marshals simply provide an insurance policy as a last line of defense against terrorists.

Conclusion. The key to protecting the homeland is targeting terrorists, not hassling genuine travelers. A new passenger screening system must strike a balance between information sharing and ease of travel. A workable and efficient system that disrupts terrorists from moving freely across inter-

national borders but allows the vast majority of genuine travelers to continue their business unhindered can be achieved by enhanced cooperation between allied countries such as Britain and America.

Extending visa-free travel privileges to countries that are partners in the war on terrorism will undoubtedly strengthen bilateral relationships and give impetus to legitimate travel among pro-American citizens from the European continent.¹¹ The EU's interjection at this critical stage demonstrates its ambition to become a global power that can frustrate U.S. policy. The United States must remember this lesson when dealing with the EU and orient its policy toward strengthening its bilateral relations in Europe.

—Sally McNamara is Senior Policy Analyst in European Affairs in the Margaret Thatcher Center for Freedom at The Heritage Foundation.

11. Public Law 110-53, § 711(a)(1)(B).