

Extension of the Visa Waiver Program with the USA is under threat

1. Current situation / initial position

In 1986, the US introduced the Visa Waiver Program VWP, allowing citizens of 36 countries to enter the US without a visa. After the terror attacks on the World Trade Center, the US Congress enacted the “9/11 Act of 2007”. In order to increase security, this law requires from all VWP countries striving for an extension of this program after December 31, 2012, to “enter into an agreement with the United States to share information regarding whether citizen and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States or its citizens”.

Requirements for the VWP countries are the negotiation and conclusion of two agreements:

- Preventing and Combating Serious Crime Agreement (PSCS) (concerning the bilateral exchange of information on major criminals)
- Homeland Security Presidential Directive 6 (HSPD6) (concerning the bilateral exchange of information on terrorists)

2. Facts on the importance of the VWP for Switzerland

Last year, about 380,000 Swiss citizens traveled to the USA, an estimated 340,000 of them under the VWP (i.e. without a visa). The majority of these travelers belonged to one of the following groups:

- Employees of Swiss companies with large investments in the US. Swiss companies invest approximately USD 220 billion in the US. This equals about 45% of the total of Switzerland’s Foreign Direct Investments, making the US the most important destination for investments of Swiss companies, by far.

- Employees of Swiss companies with large exports to the US. With more than 10%, the United States are the second most important export market for Swiss goods, behind Germany but well ahead of our neighboring countries Italy and France. For the majority of the globally active companies the US market is the most important one, and a very profitable one.
- Employees of US companies based in Switzerland. These companies generate about 7% of the Swiss GDP (roughly the same as the banking industry!). Particularly for the economy of cantons such as Geneva, Vaud, Zug and Zurich, these companies are pivotal.
- Tourists who want to spend their vacation in the US and who want to benefit from an open and well-connected Switzerland.

3. Status quo as of end of April

Since the 9/11 Act came into force, the majority of the VWP countries have successfully concluded the negotiations with the USA on PSCS and HSPD6. 30 out of the 36 countries have signed the two required agreements, among them countries that have similarly strict regulations on data privacy as Switzerland such as Germany, Finland, the Netherlands and Austria. Five of the remaining six countries are in final negotiations. There is but one country left – Switzerland – that has not even started negotiations!

As per legislation, the US government must let the VWP expire by the end of 2012 for those countries that have not achieved at least “serious progress” by end of June, 2012.

4. What exactly does the USA require?

In December 2011, some Swiss media reported that the US was blackmailing Switzerland by demanding direct access to all databases of national and cantonal police forces. This was blatantly wrong. Such a request was never made, neither towards Switzerland nor in any negotiation with the other 35 VWP countries.

Required is a limited and strictly controlled bilateral exchange of data under full compliance with the respective national laws of the partner country. The clear intention is that each country is granted access by its partner to a fingerprint database for a “hit or miss” query. In case of a positive “hit”, the partner can require further information on this particular person via especially defined channels.

The negotiations concluded as of today contain verification processes, data correction instructions and measures to prevent abuse. Data protection on the US side is comparably strict as it is in Switzerland: Privacy Act of 1974, Freedom of Information Act FOIA and E-Government Act of 2002.

In the negotiations with the 30 countries that have already signed the agreements, the US always showed a great deal of flexibility to find ways to fully comply with the PSCS and HSPD6 requirements as well as with the respective national legislations of the partner countries. Therefore there is no reason to fear that this would be any different in discussions with Switzerland.

5. What would the consequences be for Switzerland?

In case there is no “serious progress” achieved by end of June:

- Insecurity for a lot of people will rise massively. The US embassy in Berne will be flooded with people trying to apply for a visa. At the same time, bookings for USA trips in 2013 with airlines and travel agencies will plummet. In the light of looming travel restrictions to and from the most important destination of their investments, companies will start to get nervous. The media will loudly declare their dismay, and the political parties are likely to misuse the topic for domestic policy issues. Switzerland will be forced to find an (emergency-) solution with disputable result, given the narrow time frame and the political and public pressure.

In case there will not be a final settlement by the end of the year – Switzerland is in for a debacle:

- Probably as the only country, Switzerland would lose the VWP status. As the Embassy has no spare capacity for additional visa, hundreds of thousands of tourists as well as the tens of thousands of business travelers will be stranded in Switzerland. As an internationally open and well-connected country, Switzerland would look ridiculous. And most probably, Swiss politicians would loudly demand a visa requirement for US citizens in retaliation. This would inevitably lead to a massive weakening of the business location Switzerland as well as harm the already challenged Swiss tourism industry.

6. The Swiss-American Chamber of Commerce demands fast actions within the Swiss Law

The Swiss-American Chamber of Commerce represents roughly 2,400 members. 2/3 of them are Swiss companies with significant investments and operations in the US, 1/3 of them are US companies with significant investments and operations in Switzerland. We are convinced that Switzerland and the USA can find a solution which not only fully complies with Swiss legislations but which also further strengthens Switzerland’s security thanks to the data received from the USA.

We strongly urge an immediate start of negotiations with the specific goal of conclusion in due time. It is absolutely crucial to at least achieve the requested “serious progress” by end of June.

This is not an issue for domestic infighting but a matter of pivotal importance for the Swiss economy! A matter that can be solved in complete accordance with Swiss legislation – but time is up for any further delaying tactics!

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