COVID-19: EUROPEAN BORDERS ARE SET TO REOPEN ONE STEP AT A TIME FOR INTERNATIONAL TRAVELERS

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European Regulatory Alert

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As recommended by the European Commission, most, but not yet all, European Member States are cautiously easing down the implemented restrictions and are set to reopen their borders on 15 June, just ahead of the summer season in hope to revive the tourism industry and the European economy. However, the final decision on the reopening of the borders lays in the hands of national governments.

Whereas COVID-19 cases in Europe appear to be easing for the time being, they seem to hit worrying landmarks in non-European countries, not allowing a general lifting of traveling restrictions to be considered yet. While caution and distancing measures are highly recommended at all times, the European Commission has set up a concrete guidance to EU Member States as preparation to the next step in view of easing traveling restrictions towards and from non-EU countries.

On 11 June, the European Commission (the Commission) issued a communication strongly encouraging all EU Member States (comprising 27 Member States of the EU) and Schengen Member States (comprising most EU Member States, Norway, Iceland, Switzerland, and Lichtenstein) to lift internal border controls, such as common land or sea country borders and restrictions to free movement, by 15 June 2020 and to gradually lift the remaining non-essential travel restrictions to the EU after 30 June based on a coordinated and uniform approach.

This communication follows up on the Commission's communication of 16 March 2020, introducing a temporary restriction on non-essential travel to the EU for an initial period of 30 days. The latter was subsequently extended twice, through a communication issued on 8 April 2020 and a communication issued on 8 May 2020, whereby Member States were invited to prolong the travel restrictions in place until 15 June 2020.

The Commission recognizes that although the COVID-19 epidemiological situation is slowly improving in most countries worldwide, it still remains critical in specific non-EU countries. Following hereto, the Commission warns that a general lifting of the travel restriction is not recommended at this stage.

This Communication outlines a common approach for a gradual and coordinated phasing out of the remaining travel restrictions. The proposed approach is based on common principles and criteria allowing to identify non-EU countries with which travel restrictions on non-essential travel into the EU and Schengen Member States can be lifted as of 1 July and where impossible, to extend the categories of exempted travelers.

Following the Commission's guiding principles, in order to be effective, coordinated decisions by Member States to lift temporary restriction on non-essential traveling to the EU and Schengen States towards a specific country should be based on:

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Objective criteria: Restrictions should be lifted first towards non-EU countries whose epidemiological situation is similar or better than the EU average and where sufficient capabilities to deal with the virus are in place. In doing so, Member States should consider the non-EU countries' ability to apply containment measures during travel, including potential transit via high-risk areas and whether that specific country has lifted its own travel restrictions towards the EU and Schengen States. These criteria are included in a detailed checklist issued by the Commission, to help Member States reach coordinated decisions.

Where temporary travel restrictions remain applicable, the exemptions listed in the Commission's communication of 16 March should be extended to include: EU and Schengen States citizens and non-EU nationals legally residing (citizens authorized or entitled to stay in the territory of a Member State for more than 90 days, based on EU or national legislation) in the EU and their family members, regardless of whether or not they are returning home. Nevertheless, Member States can maintain appropriate measures, such as self-isolation or similar, provided they impose the same requirements on their own nationals. Moreover, Member States should also exempt non-EU nationals travelling to study and highly qualified non-EU country workers if their employment is necessary from an economic perspective and the work cannot be postponed nor performed abroad.

A coordinated approach: Going forward, the Commission proposes a coordination mechanism whereby it would provide technical support to Member States and Schengen Associated States and facilitate the preparation of a list of countries towards which travel restrictions could be lifted, which will be regularly updated. However, the current restrictions will remain in place towards countries whose situation is worse than in the EU. The Commission reiterates that Member States should adopt such decisions in a coordinated manner and ensure their uniform application across the EU.

The Commission expressed a readiness to closely associate with the Western Balkans region during the implementation of its Joint European roadmap towards lifting containment measures. Following hereto, in line with the checklist, the Commission recommends to lift travel restrictions for Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia as of 1 July, given that their epidemiological situation is similar or better than that of the EU.

The Commission underlines that, if the above-mentioned criteria are no longer met, it will be possible to reintroduce travel restrictions for a specific country. In addition, Member States can still refuse entry to a non-EU traveler, who presents a threat to public health, even upon arrival from a country towards which restrictions were lifted.

Given most Member States suspended the processing of visa applications as a part of COVID-19 related measures, the Commission also published a guidance for a phased and coordinated return of visa operations to normal, in parallel to the current communication. In this context, where decisions regarding the lifting of travel restrictions are in place, Member States should synchronize the resumption of visa operations towards the non-EU countries concerned. Moreover, minimum visa services should be maintained for persons classified as “essential travelers” everywhere, even if travel restrictions remain applicable.

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