



National Security Exemptions in Visa Waiver Program Countries

Australia • Brunei Darussalam • Germany • Greece
Singapore • South Korea • European Union

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Australia

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SUMMARY Australia does not operate a visa waiver program but offers Electronic Travel Authority (ETA) visas to passport holders from specific countries, including the United States. One of the criteria for granting an ETA is that the applicant not be assessed by the Australian Security Intelligence Organisation as being a direct or indirect risk to security. This criterion is implemented through various checks, including the comparison of applicant data with the country's Movement Alert List.

I. Electronic Travel Authority Visas

Australia operates a universal visa system, which means that “[a]ll travellers to Australia, other than Australian and New Zealand citizens, are legally required to hold a valid visa to travel to Australia.”¹ Instead of a visa waiver program, Australia has a system that permits passport holders from certain countries, including the United States, to apply for an Electronic Travel Authority (ETA) prior to departing for Australia.² Applications can be made through an authorized travel agency or airline, or via the Department of Immigration and Citizenship (DIAC) website.³

An ETA is essentially an electronically stored authority for travel to Australia. It grants the holder the right to enter and remain in Australia as a short-term visitor (either as a tourist or for business) for up to three months on each visit made within twelve months of the visa being granted.⁴ According to the DIAC, “[m]ost ETAs are issued immediately by computer links between the Department of Immigration and Citizenship, travel agents, airlines and specialist service providers around the world. In a small number of cases, some additional processing is required.”⁵

¹ *Managing Australia's Borders: Air Travel—Electronic Travel Authority*, DEPARTMENT OF IMMIGRATION AND CITIZENSHIP (DIAC), <http://www.immi.gov.au/managing-australias-borders/border-security/air/eta/> (last visited May 7, 2013). New Zealand citizens are granted a special visa on arrival in Australia.

² *See Visitor Visas: Electronic Travel Authority (Subclass 601)—For Electronic Travel Authority Applicants*, DIAC, <http://www.immi.gov.au/visas/visitor/601/applicants.htm> (click “Who can apply” for a list of eligible passports) (last visited May 7, 2013). In addition, an eVisitor visa is available for passport holders from specified European countries. *See Visas, Immigration and Refugees: Visitor Visas—eVisitor (Subclass 651)*, DIAC, <http://www.immi.gov.au/visas/visitor/651/applicants.htm> (last visited May 7, 2013).

³ Only specified countries can apply using the DIAC website. *See Electronic Travel Authority*, DIAC, <https://www.eta.immi.gov.au/ETA/etas.jsp> (click on “Applying online” for a list of eligible countries) (last visited May 7, 2013).

⁴ *Visitor Visas: Electronic Travel Authority (Subclass 601)—For Electronic Travel Authority Holders*, DIAC, <http://www.immi.gov.au/visas/visitor/601/holders.htm> (last visited May 7, 2013).

⁵ *Fact Sheet 55—The Electronic Travel Authority*, DIAC, <http://www.immi.gov.au/media/fact-sheets/55eta.htm> (last reviewed Mar. 2013).

The Australian government recently (in March 2013) amended the relevant regulations, the Migration Regulations 1994 (Cth), to streamline three ETA visas into one visa: the subclass 601 (Electronic Travel Authority) visa.⁶

II. National Security Considerations for ETAs

In addition to requiring that an applicant hold an “ETA-eligible passport,” the Migration Regulations 1994 (Cth) specify particular criteria that apply to the granting of subclass 601 (ETA) visas. ETA applicants must satisfy “public interest criteria 4002, 4003, 4004, 4005, 4013, 4014 and 4020.”⁷ The relevant public interest criteria are set out in part 1 of schedule 4 of the Migration Regulations 1994 (Cth).⁸ Public interest criterion 4002 requires the following:

The applicant is not assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security, within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*.⁹

“Security” is defined in the Australian Security Intelligence Organisation Act 1979 as meaning

- (a) the protection of, and of the people of, the Commonwealth and the several States and Territories from:
 - (i) espionage;
 - (ii) sabotage;
 - (iii) politically motivated violence;
 - (iv) promotion of communal violence;
 - (v) attacks on Australia’s defence system; or
 - (vi) acts of foreign interference;whether directed from, or committed within, Australia or not; and
- (aa) the protection of Australia’s territorial and border integrity from serious threats; and
- (b) the carrying out of Australia’s responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a) or the matter mentioned in paragraph (aa).¹⁰

⁶ *Simplified Visitor Visas*, DIAC, <http://www.immi.gov.au/legislation/amendments/2013/130323/lc23032013-05.htm> (last visited May 7, 2013).

⁷ Migration Amendment Regulations 2013 (No. 1) (Cth) reg 601.213, <http://www.comlaw.gov.au/Details/F2013L00486>.

⁸ Migration Regulations 1994 (Cth) sch 4 pt 1, http://www.comlaw.gov.au/Details/F2013C00062/Html/Volume6#_Toc347394698.

⁹ *Id.* reg 4002. Criterion 4003 further requires that the applicant has not been determined by the Foreign Minister to be, for example, someone “whose presence in Australia is, or would be, contrary to Australia’s foreign policy interests” and “whose presence in Australia may be directly or indirectly associated with the proliferation of weapons of mass destruction.” “Special return criteria” 5001 and 5002 (schedule 5 of the Migration Regulations 1994) also apply to applications for ETAs. These criteria relate to people that have previously been removed or deported from Australia, or who have previously had a visa cancelled. In addition, in accordance with condition 8528 (schedule 8 of the Migration Regulations 1994) holders of ETAs must “not have one or more criminal convictions, for which the sentence or sentences (whether served or not) are for a total period of 12 months duration or more, at the time of travel to, and entry into, Australia.”

¹⁰ Australian Security Intelligence Organisation Act 1979 (Cth) s 4, <http://www.comlaw.gov.au/Details/C2012C00260>. Part IV of the ASIO Act sets out the functions and powers of ASIO in relation to conducting

III. ETAs and Border Security

In implementing criterion 4002, along with other relevant criteria, Australia's Movement Alert List (MAL) is automatically checked when a person (or a travel agent or airline on behalf of the person) applies for an ETA.¹¹ Where an application "triggers an alert of possible national security interest, it is referred to ASIO for advice. A visa is only issued once a non-prejudicial response is received."¹² A Security Referral Service allows electronic processing between the DIAC and ASIO.¹³

Other layers of checks are also used as part of Australia's border security system. For example, the DIAC states:

- In November 2011, the department deployed a sophisticated statistical Risk Scoring System (RSS). The RSS deploys statistical risk models built on departmental data holdings and can identify high risk visa applications as they are being processed through the Generic Visa Portal (GVP).
- Since March 2011, DIAC has also been testing risk scoring for inbound travellers. Data is collected at check-in at the overseas airport. Statistical risk models then evaluate every traveller for risk.¹⁴

Australia also has a network of Airline Liaison Officers at various overseas airports and utilizes an Advance Passenger Processing (APP) system, which includes a Regional Movement Alert System (RMAS) that "provides checks on all United States and New Zealand passports used to travel to Australia."¹⁵

security assessments for government agencies. *See also* AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION, ASIO'S SECURITY ASSESSMENT FUNCTION, <http://www.asio.gov.au/img/files/Security-Assessment-Function.pdf> (as at Jan. 29, 2013).

¹¹ *Fact Sheet 77—The Movement Alert List (MAL)*, DIAC, <http://www.immi.gov.au/media/fact-sheets/77mal.htm> (last reviewed June 2012). The MAL is a computer database of details on people and travel documents of immigration concern and is the DIAC's "primary tool for protecting the country from those people who may pose a serious threat to the Australian community." *Managing Australia's Borders—Movement Alert List (MAL)*, DIAC, <http://www.immi.gov.au/managing-australias-borders/border-security/systems/mal.htm> (last visited May 7, 2013).

¹² This information was provided by the DIAC in response to a question from Senator Trood, a member of the Senate Standing Committees on Legislation and Constitutional Affairs, as part of a 2010–11 Additional Budget Estimates Hearing on Feb. 21, 2011. The question (no. 139) and answer are available at http://www.apf.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/add_1011/diac/139.pdf.

¹³ *Fact Sheet 70—Managing the Border*, DIAC, <http://www.immi.gov.au/media/fact-sheets/70border.htm> (last reviewed Dec. 2012).

¹⁴ *Id.*

¹⁵ *Id.*

Brunei Darussalam

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In order for foreign nationals to enter Brunei Darussalam, they must have valid visas obtained from diplomatic missions abroad, except for specific countries with which Brunei Darussalam has visa exemption arrangements.¹

Under Section 8 of the Immigration Act 1956, the Controller of Immigration can refuse entry to any foreign national who is considered a member of any of the prohibited immigrant classes as defined under section 8(2) of the Act.² Among other considerations based on public morality and health, section 8(2) excludes certain persons who pose a threat to public safety, political stability, or national security. The section prohibits entry to any person

- who has been convicted in any country or state of an offence for which a sentence of imprisonment has been passed for any term.³
- who believes in or advocates the over-throw by force or violence of the Government of Brunei Darussalam or of the Government of any territory within the Commonwealth or of constituted law or authority or who disbelieves in or is opposed to organised government, or who advocates the assassination of public officials, or who advocates or teaches the unlawful destruction of property.⁴
- who is a member of or affiliated with any organisation entertaining or teaching disbelief in or opposition to organized government or advocating or teaching the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or officers generally, of the Government of Brunei Darussalam or of the Government of any territory within the Commonwealth or of any other organised government, because of his or their official character, or advocating or teaching the unlawful destruction of property.⁵

Also, under section 9 of the Immigration Act 1956, the Minister of Home Affairs has the power, by order, to prohibit or limit persons from entering the country “where he deems it expedient to do so in the interests of public security or by reason of any economic, industrial, social,

¹ *Visa Information*, MINISTRY OF FOREIGN AFFAIRS AND TRADE, BRUNEI DARUSSALAM, <http://www.mofat.gov.bn/index.php/visa-information> (last visited May 7, 2013). See also *Immigration Procedures*, MINISTRY OF FOREIGN AFFAIRS AND TRADE, BRUNEI DARUSSALAM, <http://www.mofat.gov.bn/index.php/investing-in-brunei-darussalam/immigration-procedure> (last visited May 7, 2013).

² Immigration Act, No 23 of 1956, LAWS OF BRUNEI (2002), ch. 17, § 8, available at <http://www.commonlii.org/bn/legis/i17181/>.

³ *Id.* § 8(2)(d).

⁴ *Id.* § 8(2)(i).

⁵ *Id.* § 8(2)(j).

educational or other conditions in Brunei Darussalam.”⁶ The prohibition can apply to the entry or reentry of any person or class of persons for a stated period or permanently.⁷

⁶ *Id.* § 9.

⁷ *Id.* § 9(1)(a)(i).

Germany

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SUMMARY As a member of the Schengen border regime, Germany must refuse entry to any citizens of a visa waiver country for whom a refusal of entry alert is listed in the Schengen Information System II (SIS II). Germany contributes to SIS II by entering alerts about persons who are to be refused entry according to German law. The German domestic grounds for refusing entry include the Schengen criteria for refusing entry and the existence of a ground for expulsion according to German law. The latter includes convictions for various offenses and, in addition, calls for expulsion (and thereby refusal of entry) if a justified suspicion exists that the alien belongs to or supports a terrorist organization, endangers the free democratic order of Germany or German national security, participates in the commission of acts of violence in the pursuit of political goals, or publicly incites or threatens the use of violence.

I. Germany's Participation in the Schengen Regime

Germany is a participant in the Schengen border control regime, and it refuses entry to citizens of non-Schengen countries who are on the Schengen visa waiver list¹ in accordance with the criteria set forth in the Schengen Borders Code.² Germany exerts an influence on who can be admitted into the Schengen area in that persons for whom Germany has issued an alert of entry refusal cannot be allowed to enter the Schengen area.³ This type of information is communicated by Germany to the Schengen Information System II (SIS II) in accordance with the SIS II Regulation⁴ and EU Council Decision 2007/533,⁵ which Germany implemented through the SIS II Act of 2009.⁶ This Act entered into force on April 4, 2013, the day that SIS II

¹ Council Regulation (EC) No. 539/2001 of 15 March 2001 Listing the Third Countries Whose Nationals Must Be in Possession of Visas When Crossing the External Borders and Those Whose Nationals Are Exempt from That Requirement, 2001 O.J. (L 81) 1, Annex II, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:081:0001:0007:EN:PDF>.

² Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 Establishing a Community Code on the Rules Governing the Movement of Persons Across Borders (Schengen Borders Code), 2006 O.J. (L 105) 1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:EN:PDF>.

³ *Id.* art. 5(d) & (e).

⁴ Regulation (EC) No. 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the Establishment, Operation and Use of the Second Generation Schengen Information System (SIS II), 2006 O.J. (L 381) 4, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:381:0004:0023:EN:PDF>.

⁵ Council Decision 2007/533/JHA of 12 June 2007 on the Establishment, Operation and Use of the Second Generation Schengen Information System (SIS II), 2007 O.J. (L 205) 63, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:205:0063:01:EN:HTML>.

⁶ DIS-II-Gesetz, June 6, 2009, BUNDESGESETZBLATT [BGBl.] I at 1126, *as amended*, <http://www.gesetze-im-internet.de/bundesrecht/sisii/gesamt.pdf>.

became operational. Germany implements article 13 of the Schengen Border Code, which deals with the refusal of entry, by applying German domestic provisions on refusing entry to aliens,⁷ in particular section 15 of the German Act on Residence.⁸

II. Domestic Provisions on Refusal of Entry for National Security Reasons

A. Threats to National Security

Germany has comprehensive rules for refusing entry to persons from outside the Schengen area, and these address national security concerns in various ways. Specific provisions on denying entry or requiring expulsion to counteract threats to national security were first enacted in the aftermath of the terrorist attacks of September 11, 2001, in the Act to Combat International Terrorism of September 1, 2002.⁹ These provisions are now contained in sections 54(5) and 54(5a) of the Residence Act of 2004¹⁰ and were expanded through the enactment of section 54(5b) in 2009.¹¹ They have been translated as follows:

Section 54. Regular expulsion

A foreigner will generally be expelled if

[1.–4. omitted]

5. facts justifiably lead to the conclusion that he or she belongs to or has belonged to an organisation which supports terrorism or supports or has supported such an organisation; expulsion may only be based on membership or supportive acts in the past insofar as they form the basis for a currently prevailing danger,

5a. he or she endangers the free democratic basic order or the security of the Federal Republic of Germany, participates in acts of violence or publicly incites violence in pursuit of political objectives or threatens the use of violence,

5b. facts justifiably lead to the conclusion that he or she is preparing or has prepared a serious violent offence endangering the state as specified in Section 89a (1) of the Criminal Code pursuant to Section 89a (2) of the Criminal Code; expulsion may only be based on preparatory acts in the past insofar as they form the basis for a special clear and present danger.

[6. omitted]

⁷ JAN BERGMAN ET AL., AUSLÄNDERRECHT KOMMENTAR 355 (2011).

⁸ Aufenthaltsgesetz [AufenthG] [Residence Act], July 30, 2004, BGBl. I at 1950, *as amended*, up-to-date translation at http://www.gesetze-im-internet.de/englisch_aufenthg/index.html.

⁹ Gesetz zur Bekämpfung des internationalen Terrorismus [Act on Combating International Terrorism], Sept. 1, 2002, BGBl. I at 361, enacting Aufenthaltsgesetz 2002, § 54(5) & (5a); *see also* MARTIN KEICHER, DAS EUROPÄISCHE VISUMSRECHT 176 (2012).

¹⁰ AufenthG § 54(5) & (5a).

¹¹ Gesetz, July 30, 2009, BGBl. I at 2437.

7. he or she belonged to the leadership of an organisation which has been unappealably banned because its purpose or activities are in breach of the criminal laws or he or she opposes the constitutional order or the concepts of international understanding.¹²

Although these provisions on their face apply only to expulsion, they apply equally to the refusal of entry, as is explained immediately below.

B. The German Entry Refusal System

The German authorities deny entry to aliens in accordance with section 15 of the Residence Act, and its provisions apply to all types of entrants, irrespective of the title under which they seek entry.¹³ According to section 15, the German authorities may deny entry to anyone against whom a reason for expulsion exists, who is suspected of intending to stay in Germany for reasons other than those stated at the time of entry, for being suspected of intending to work in Germany without a proper residence permit, and for not fulfilling the conditions of article 5 of the Schengen Borders Code. Any alien can or must be refused entry if one of these grounds of refusal exists, and this applies equally to Schengen visa and Schengen visa waiver entrants.¹⁴

The reasons for expulsion are listed in sections 53 through 55 of the Residence Act. Of these, section 53 describes the conditions for mandatory expulsion, which exist if offenses of a certain type or severity are committed. Section 54 describes the conditions for regularly recommended expulsion. These also list certain offenses and, in addition, describe in paragraphs 5, 5a, and 5b the circumstances that give rise to a suspicion of terrorist endangerment. Section 55 describes the conditions under which a decision on expulsion is discretionary for the authorities. Included in this category is the commission of lesser offenses either in Germany or abroad; also included, however, is conduct that in Germany would qualify as the offense of inciting to hatred or violence. If an alien is subject to expulsion under any of these three provisions (articles 53–55), he may be refused entry into Germany.¹⁵

If reasons for expulsion according to article 5 of the Schengen Borders Code exist, it is the German understanding that Germany must refuse entry to the alien, in observance of its obligations toward the Schengen system, even though German authorities otherwise have discretionary powers over refusals.¹⁶ Article 5 specifically states that its conditions for granting entry to the Schengen area apply to third-country nationals who have a Schengen visa as well as to those who are exempt from the visa requirement.¹⁷ According to article 5(d), entry is not granted to those against whom an alert is listed in the Schengen Information System, and according to article 5(e), entry may not be granted to persons who are “considered to be a threat

¹² Translation by the Language Service of the Ministry of the Interior, http://www.gesetze-im-internet.de/englisch_aufenthg/index.html (last visited May 8, 2013).

¹³ BERGMAN, *supra* note 7, at 355.

¹⁴ *Id.*

¹⁵ *Id.* at 360.

¹⁶ *Id.* at 356.

¹⁷ Schengen Borders Code, *supra* note 2, art. 5.

to public policy, internal security, public health or the international relations of any of the Member States.”

In addition to the provisions of section 15 of the German Residence Act, entry is also denied in accordance with its section 11. The latter denies entry to anyone who has previously been deported from Germany, and if the alien had been deported for crimes against humanity or for being suspected of posing a terrorist threat, the German decision to refuse entry remains in existence forever and cannot be rescinded.¹⁸

¹⁸ AufenthG § 11 in conjunction with § 58a.

Greece

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SUMMARY Greece is a member of the Schengen area and participates in the Visa Waiver Program instituted by the United States. Conditions of entry for non-EU citizens are based on Schengen rules and National Law No. 3386/2005. National and public security concerns constitute grounds to refuse a visa or a visa waiver entry into Greece. The Minister of Public Order maintains a Register of Unwanted Aliens. Non-EU citizens who pose a security threat pursuant to Schengen and Greek rules are included in the Register. The names of those included are also forwarded to the Schengen Information System to ensure that such persons are precluded from entering the Schengen area.

I. Introduction

Greece, as member of the Schengen area, is bound by the Schengen rules on entry conditions for third-country nationals. In addition, third-country nationals who wish to enter Greece are subject to National Law No. 3386/2005 on Entry, Residence and Social Integration of Third-Country Nationals on Greek Territory, as amended.¹ This Law has transposed a number of EU directives pertaining to entry and residence of non-EU citizens in Greece.

Greece has been participating in the Visa Waiver program with the United States since 2010.² Consequently, citizens of Greece and the United States may enter the respective territories for tourism or business purposes for a period of up to ninety days without obtaining a visa.

II. Conditions on Entry and Residence of Third-Country Nationals

Pursuant to Law 3386/2005, a third-country national who wishes to enter Greece must possess a passport or other valid travel document. Visas are issued by consular authorities of the place where the applicant resides with due consideration to public policy and the protection of national security.

Law No. 3386/2005 also provides that third-country nationals not subject to a visa may enter and remain within Greece for a period of up to three months overall, or for a total of three months within six months of their initial entry, provided that they hold a valid passport or other travel document.³

¹ Law No. 3386/2005 on Entry, Residence and Social Integration of Third-Country Nationals on Greek Territory, *as amended*, EPHEMERIS TES KYVERNESEOS TES ELLENIKES DEMOKRATIAS [E.K.E.D.] [GAZETTE OF THE GREEK REPUBLIC] 2005, A:212 (in Greek).

² Press Release, Department of Homeland Security, Secretary Napolitano Announces Greece's Designation as a Member of the Visa Waiver Program (Mar. 9, 2010), <http://www.dhs.gov/news/2010/03/09/greece-designated-member-visa-waiver-program>.

³ Law No. 3386/2005 art. 6, para. 5.

A. Refusal of Entry

Consular authorities may deny a visa for reasons of public policy and the protection of national security.⁴ In addition, Greek border authorities may justifiably prohibit the entry into Greece of a third-country national who holds a visa if at least one of the following requirements are met:

- The person is included on the list of unwanted aliens, as provided by article 82 of Law No. 3386/2005
- The person's entry may pose a threat to public policy and security or public health
- The person's passport or other travel document does not ensure his return to the country of origin.⁵

Even though the Greek law only addresses the granting of visas, Greece's participation in the Schengen regime ensures that the same requirements are applied to those who are allowed to enter without a visa. (as described immediately below).

B. Register of Unwanted Aliens

The Minister of Public Order maintains a Register of Unwanted Aliens. The criteria for entering the names of individuals and removing them from the Register are determined by a 2006 joint ministerial decision of the Ministers of Interior, Public Administration and Decentralization, Foreign Affairs, National Defense, and Public Order, which implements article 82 of Law No. 3386/2005 and Schengen rules.

The 2006 ministerial decision⁶ lists as grounds for including a third-country national in the register the situation where his presence poses a threat to public or national security or public order. Such a threat exists when there are clear indications that the individual has committed or intends to commit serious offenses, as provided by Regulation No. 1987/2006 on the Establishment, Operation and Use of the Second Generation Schengen Information System.⁷ Individuals who are entered in the Register are also entered into the Schengen Information System to ensure that such persons are prevented from entering the Schengen area.⁸

⁴ *Id.* art. 8, para. 1.

⁵ *Id.* art. 8, para. 2.

⁶ Joint Ministerial Decision, No. 4000/4/32-1β on Conditions and Procedure for Entering the Register of Unwanted Aliens, E.K.E.D. 2006, B:1353, http://www.et.gr/index.php?option=com_wrapper&view=wrapper&Itemid=104&lang=el (in Greek).

⁷ Regulation (EC) No. 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the Establishment, Operation and Use of the Second Generation Schengen Information System (SIS II), 2006 O.J. (L 381) 4, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:381:0004:0023:EN:PDF>.

⁸ *Id.* art. 1(b).

Singapore

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I. Visa Requirements

Singapore does not appear to be operating a visa waiver program for entry purposes, but foreigners from most countries including the United States do not need a visa to enter Singapore. Only passport holders from certain countries categorized under “Assessment Level I Countries” and “Assessment Level II Countries” require a visa to enter; lists of such countries are available on the website of the Immigration and Checkpoints Authority (ICA) of the Ministry of Home Affairs.¹

II. Entry Requirements

According to the Immigration Act, a Singapore visa that is in effect is not a pass or other permission for, and does not confer any right on, the holder to enter Singapore.² “Pass” under the Act refers to a pass issued under the immigration regulations entitling the holder to remain, or enter and remain, temporarily in Singapore.³

All travelers are required to go through immigration clearance upon arrival in Singapore. The granting of visit passes to visitors is determined by the ICA officers at the point of entry. In addition to a valid visa where applicable, visitors must satisfy other entry requirements before they can be considered for entry into Singapore, including (1) a valid passport, (2) sufficient funds, (3) a confirmed onward/return ticket, and (4) a visa to their next destination.⁴

III. Power to Prohibit or Limit Entry into Singapore

The Immigration Act grants power to the Minister of Home Affairs to issue orders prohibiting or limiting entry of any person into Singapore for public security reasons in general, subject to exceptions prescribed by the Act. Section 9 of the Immigration Act states as follows:

¹ *Countries Requiring Visa*, IMMIGRATION & CHECKPOINTS AUTHORITY, http://www.ica.gov.sg/services_centre/overview.aspx?pageid=252 (last updated Feb. 1, 2013).

² Immigration Act (Cap 133) (Original Enactment: M. Ordinance 12 of 1959) (rev. ed. 2008), § 9C(1), <http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=DocId%3Ad0fd4d9d-0e2f-462f-a0df-0df7ecdc86d1%20Depth%3A0%20ValidTime%3A09%2F05%2F2013%20TransactionTime%3A09%2F05%2F2013%20Status%3Ainforce;rec=0;resUrl=http%3A%2F%2Fstatutes.agc.gov.sg%2Faol%2Fsearch%2Fsummary%2Fresults.w3p%3Bpage%3D0%3Bquery%3DDocId%253Ad0fd4d9d-0e2f-462f-a0df-0df7ecdc86d1%2520Depth%253A0%2520ValidTime%253A09%252F05%252F2013%2520TransactionTime%253A09%252F05%252F2013%2520Status%253Ainforce>.

³ *Id.* § 2.

⁴ *Entry Requirements*, IMMIGRATION & CHECKPOINTS AUTHORITY, <http://www.ica.gov.sg/page.aspx?pageid=95> (last updated Oct. 18, 2012).

- (1) The Minister may, by order —
- (a) where he thinks it expedient to do so in the interests of public security or by reason of any economic, industrial, social, educational or other conditions in Singapore —
 - (i) prohibit, either for a stated period or permanently, the entry or re-entry into Singapore of any person or class of persons;
 - (ii) limit the number of persons of any class who may enter Singapore within any period specified in the order;
 - (iii) limit the period during which any person or class of persons entering or re-entering Singapore may remain therein.

(1A) No order made under subsection (1)(a), except an order made in the interests of public security, shall apply to any person outside Singapore at the time when the order is made and who is in possession of a valid re-entry permit lawfully issued to him.

(2) An order made under subsection (1) shall not apply to any citizen of Singapore or to any person seeking to enter Singapore under and in accordance with any pass lawfully issued to that person.

(3) Every order made under subsection (1)(a) which relates to a class of persons, except an order made in the interests of public security, shall be presented to Parliament as soon as possible after publication in the *Gazette* and if a resolution is passed within the next 3 months after the order is so presented disapproving the order or any part thereof, the order or such part thereof, as the case may be, shall thenceforth cease to have effect but without prejudice to the validity of anything previously done thereunder.

...⁵

⁵ Immigration Act (Cap 133), §9.

South Korea

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A foreign national from a country that has concluded a visa waiver agreement with the Republic of Korea (South Korea) who is subject to exemption under the agreement may enter the Republic of Korea without a visa.¹ However, the Minister of Justice may prohibit a foreigner from entering South Korea if the Minister finds one of the following, among other things:

- The foreigner is “deemed highly likely to commit any act detrimental to the interests of South Korea or public safety.”²
- The foreigner is “deemed highly likely to commit any act detrimental to the economic or social order or the good morals.”³

¹ Immigration Control Act, Act No. 4522, Dec. 8, 1992, *last amended by* Act No. 10282, May 14, 2010, art. 7, para. 2, item 2. The English translation of the Act is available on the Korean Legislation Research Institute’s online database at http://elaw.klri.re.kr/eng_service/main.do.

² *Id.* art. 11, para. 1, item 3.

³ *Id.* art. 11, para 1, item 4.

European Union

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SUMMARY The Schengen area is a territory established by twenty-six European countries that includes the common external border of those countries but no internal borders. Current members include all the EU Members with the exception of the United Kingdom and Ireland, and four non-EU Members. Participating states are required to implement the Schengen rules on freedom of movement and border control.

Third-country nationals (non-EU nationals) who pose a security threat or for whom an alert has been issued by participating Schengen Members are precluded from entering the Schengen area. Such a rule is included in two regulations: (a) Regulation No. 562/2006 Establishing a Community Code on the Rules Governing the Movement of Persons Across Borders (Schengen Borders Code); and (b) Regulation No. 1987/2006 on the Establishment, Operation and Use of the Second Generation Schengen Information System (SIS II).

The United States is a country whose citizens do not need a visa to enter the Schengen area. A number of the Schengen Members participate in a Visa Waiver Program with the United States, but restrictions on entering the Schengen area apply to all third-country nationals irrespective of whether their country participates in this program. Thus, third-country nationals who otherwise meet the requirements for entry, such as a valid passport, but have been subject to an alert are prevented from entering the Schengen area. Alerts are entered by the Schengen Members in accordance with Schengen and national criteria on who poses a threat to national security.

I. Schengen Area Overview

The Schengen area comprises twenty-six European countries¹ and is characterized by no internal borders; a common external border; and free movement of EU citizens, their families, and qualified third-country nationals.² The external borders of the Schengen area are controlled and secured by the participating States,³ which retain primary responsibility for the security and surveillance of their borders. To achieve this objective, they are required to secure their external borders by applying strict land, sea, and airport border controls; issue a uniform set of visas; and

¹ Four countries of the Schengen area are not EU Members—Iceland, Norway, Switzerland (which joined the Schengen area in 2008), and Liechtenstein (which joined in 2011). Two EU Members, Ireland and the United Kingdom, have opted out.

² *The Schengen Area and Cooperation*, EUROPA, http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33020_en.htm (last updated Mar. 8, 2009). See also *Schengen, Borders & Visas*, EUROPEAN COMMISSION, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/index_en.htm (last updated Nov. 29, 2012).

³ I VISAS AND BORDER CONTROLS: EU IMMIGRATION AND ASYLUM LAW 119 (Steve Peers et al. eds., 2012).

ensure border collaboration among law enforcement authorities.⁴ A European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), established in 2005, is also responsible for the effective application of EU rules related to external border management.⁵

Persons who pose a security threat are prevented from unauthorized entry into the Schengen area through a system of alerts issued by the Schengen Members and entered into the Schengen Information System (SIS). This system is used by national customs, police, judicial authorities, and border guards to retrieve and exchange information on wanted or missing persons and stolen, misappropriated, or lost vehicles or identity documents, among other things.⁶

II. National Security Exceptions Preventing Entry into the Schengen Area

All third-country nationals (that is, non-EU citizens) who wish to enter the Schengen area must fulfill the entry requirements contained in two main regulations, which are directly binding on Schengen Members. Among the requirements are having a valid travel document such as a passport, a visa, and means of support. There is a common list of countries whose citizens must have a visa when crossing the external borders, as well as a list of countries whose citizens are exempt from that requirement. These lists are set out in Regulation No. 539/2001,⁷ as amended. The United States is included in the list of countries whose citizens may enter without a visa. A number of Schengen countries participate in the Visa Waiver Program with the United States. Restrictions on entry for individuals posing a security threat apply to all third-country nationals. The regulations discussed below do not make a distinction as to whether individuals originate from countries participating in visa waiver programs.

The following two EU regulations contain a requirement that third-country nationals who pose a security threat or for whom an alert has been issued in the SIS system are refused entry to the Schengen area:

⁴ EUROPA, *supra* note 2.

⁵ Regulation (EC) No. 2007/2004 Establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 2004 O.J. (L 349) 1, http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_349/l_34920041125en00010011.pdf.

⁶ *Schengen Information System (SIS)*, EUROPEAN COMMISSION, HOME AFFAIRS, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system/index_en.htm (last updated Apr. 9, 2013).

⁷ Council Regulation (EC) No. 539/2001 of 15 March 2001 Listing the Third Countries Whose Nationals Must Be in Possession of Visas When Crossing the External Borders and Those Whose Nationals Are Exempt from That Requirement, 2001 O.J. (L 81) 1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:081:0001:0007:EN:PDF>.

A. The Schengen Code

Regulation No. 562/2006 Establishing a Community Code on the Rules Governing the Movement of Persons Across Borders (Schengen Borders Code [SBC])⁸ contains detailed rules governing border controls for persons crossing the external borders of the EU Member States.

Article 5, para. 1 of the SBC provides that for stays not exceeding a total of three months per six-month period, the entry conditions for third-country nationals include the following:

- (a) they are in possession of a valid travel document or documents authorising them to cross the border;
- (b) they are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, except where they hold a valid residence permit;
- (c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully;
- (d) They are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry;
- (e) They are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds.⁹

Based on the above, the entry requirements apply to all non-EU citizens, including those whose country is in the list of countries whose citizens do not need a visa, such as US citizens. Certain exceptions are provided, however. For instance, a person who does not meet all the requirements of article 5, para. 1, but holds a residence permit or reentry visa may be authorized to enter the Schengen area for transit purposes in order to enter the territory of the Member State that issued the permit or visa. However, if the name of that individual is listed in the national alert lists of the Member States whose external borders the individual intends to cross in order to reach his final destinations, then he is refused entry, even when other requirements are met.¹⁰

Article 13 of the SBC specifies that third-country nationals who do not meet the above requirements “shall be refused entry to the territories of the EU Members.”¹¹

⁸ Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 Establishing a Community Code on the Rules Governing the Movement of Persons Across Borders (Schengen Borders Code [SBC]), 2006 O.J. (L 105) 1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:EN:PDF>.

⁹ *Id.* art. 5, para. 1.

¹⁰ *Id.* art. 5, para. 4(a).

¹¹ *Id.* art. 13.

Public security considerations of a Member State are grounds for allowing the Member to reintroduce border controls even at its internal borders, which are otherwise free of border checks within the Schengen area.¹² Members must notify the Commission when they reintroduce such border controls.

B. Second Generation Information System

Regulation No. 1987/2006 on the Establishment, Operation and Use of the Second Generation Schengen Information System (SIS II)¹³ establishes the requirements and procedures for the entry of third-country nationals and the processing in SIS II of alerts pertaining to them. It also provides for the exchange of supplementary information and data for the purpose of refusing entry into, or preventing further stay in, a Member State.¹⁴

Mandatory alerts are issued by the EU Members to refuse entry or stay when a third-country national poses a threat to public security, safety, or national security.¹⁵ Article 24, para. 2 of Regulation 1987/2006 provides that mandatory alerts shall be issued in the case of

- (a) a third-country national who has been convicted in a Member State of an offence carrying a penalty involving deprivation of liberty of at least one year; [and]
- (b) a third-country national in respect of whom there are serious grounds for believing that he has committed a serious criminal offence or in respect of whom there are clear indications of an intention to commit such an offence in the territory of a Member State.¹⁶

Alerts may be issued when a third-country national has been the subject of expulsion, refusal of entry, or removal, or when a third-country national has not complied with domestic regulations on entry and residence of foreigners.¹⁷

Finally, alerts are issued regarding third-country nationals who are subject to a travel ban or to restrictive measures intended to prevent entry into or transit through a Member State, based on decisions issued by the United Nations Security Council. Sanctions or restrictive measures are taken within the framework of the Common Foreign and Security Policy.¹⁸

¹² *Id.* art. 23.

¹³ Regulation (EC) No. 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the Establishment, Operation and Use of the Second Generation Schengen Information System (SIS II), 2006 O.J. (L 381) 4, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:381:0004:0023:EN:PDF>.

¹⁴ The SIS II has a central system containing the SIS II database, a national system in each Member State (the “N.SIS II”) that communicates with the central database, and a communications infrastructure between the central and national systems that provides an encrypted virtual network. *Id.* art. 4.

¹⁵ *Id.* art. 24, para. 2.

¹⁶ *Id.*

¹⁷ *Id.* art. 24, para. 3.

¹⁸ *Sanctions or Restrictive Measures*, EUROPEAN UNION, EXTERNAL ACTION, http://eeas.europa.eu/cfsp/sanctions/index_en.htm (last visited May 8, 2013).