

Remobilizing the global workforce — the EU & U.S. perspectives

By Courtney B. Noce, Esq., and Caterina Cappellari, Esq., Greenberg Traurig, and Raquel Gómez Salas, Esq., Newland Chase

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The COVID-19 pandemic had an extraordinary impact on global mobility as we knew it. In early 2019 when the pandemic began to impact Europe and the United States, modern mobility was at a point where both short-term business travel and long-term assignments were commonplace.

While technology offerings made it easier to connect over long distances, the physical movement of people was still critical to normal operations. As we see vaccinations reach a threshold in many countries, companies are eager to remobilize their global workforces but what does this look like as countries lift travel restrictions?

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This article discusses the COVID-19 impact on mobility in the European Union and the United States, with a specific focus on evolving travel restrictions and bans, as well as what the near future may have in store for mobility.

Introduction of restrictions in the European Union & United States

After the initial COVID-19 outbreak in China, infection rates spread quickly to the European Union (EU). As the pandemic reached Europe, the Schengen countries — the 26 European countries that have done away with passports and all other types of border control — reintroduced borders and the EU freedom of movement was seriously disrupted.

Nearly overnight, unilateral decisions by each EU country threatened to undermine the single market. The European

Commission (EC) reacted with proposed travel restrictions and public health measures.

Although not legally binding, the EC guidance was expected to be followed by the majority of the EU+ area, which consists of EU countries (plus Ireland if the country aligns) and the four Schengen Associated States (Switzerland, Norway, Iceland, and Liechtenstein).

Meanwhile, in the United States (U.S.), the government responded to the pandemic in a similar fashion by issuing several Presidential Proclamations starting in January 2020 that restricted travel to the U.S. from countries experiencing widespread transmission of COVID-19.

Going a step further, the U.S. government also introduced proclamations aimed at minimizing job loss to U.S. workers by suspending entry of certain immigrants and nonimmigrants who the government felt were a risk to the U.S. labor market during this period of economic recovery.

While these limitations did not adversely impact workers present in the United States, they did create a significant challenge for foreign national employees seeking to travel abroad and essentially grounded the majority of the foreign national workforce present in the U.S.

The Presidential Proclamations based on health considerations, which continued after President Biden took office, suspended travel to the U.S. for any foreign national who had been in the Schengen Area, the UK, Ireland, China, Brazil, Iran, South Africa, and more recently, India, within 14 days immediately preceding their arrival into the United States.

This strict suspension included those flying through U.S. airports or any airport in a country included in the COVID-19 related Presidential Proclamations, even if the travelers did not leave the airport.

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These proclamations, also known as “NIV bans,” restricted visa entry in select nonimmigrant classifications (including L or H-1B categories) on the basis that their entry presented a risk to the U.S. labor market given the negative effects of the COVID-19 pandemic on the U.S. economy.

Each of the Presidential Proclamations included an exception for “any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their designees.”

In addition to mobility issues created by travel and visa stamping restrictions, the State Department’s services were halted with most locations handling only emergency services.

As countries experienced second and third waves of COVID-19 outbreaks, consular services were further interrupted. As a result, uncertainty surrounding the ability to obtain necessary travel documents, coupled with appointment cancellations resulted in a limited amount of essential-only travel.

Mobility redefined — the EU and U.S. approaches

As the pandemic forged on without an end in sight, countries began to evaluate how they would approach travel. The EU approached restrictions from both an intra-EU and third-country perspective while the United States relied on limited exceptions permitting essential travel.

The lifting of restrictions for intra-EU mobility

In May 2020, the EC released guidelines and recommendations on how to safely resume travel and reboot Europe’s tourism with the focus on lifting internal border controls and harmonizing internal restrictions among member states before reopening the Schengen Area to the rest of the world.

Despite the EC’s efforts, with winter on the horizon, the epidemic threatened to hit Europe again and there was no solid strategy on how to apply travel restrictions in the EU+ area. In response, an EU Council Recommendation was released in October 2020 that outlined a coordinated approach to travel restrictions within the area aimed at safeguarding the freedom of movement for EU citizens and residents.

Since then, the European Centre for Disease Prevention and Control (ECDC) has been classifying regions based on how well the coronavirus pandemic is under control. This classification system, which applies to specific regions, rather than entire countries, has also helped employers with their plans to remobilize their workforces despite travel restrictions imposed by the second and third waves.

The EU’s website, Re-Open EU,¹ is updated regularly with travel restrictions, local epidemiological situations, and public health requirements and is an essential resource for organizations with economic activity in the EU.

With the goal of further facilitating intra-EU mobility, EU Regulations 2021/953 and 2021/954 were adopted on June 14 to implement an EU Digital COVID Certificate starting July 2021.²

This certificate may be issued to EU citizens or residents who have been fully vaccinated with a vaccine approved by the European Medicines Agency (EMA) or the World Health Organization (WHO) at each country’s discretion. The certificate can also be issued to provide proof of recovery from COVID-19 or to show a recent negative COVID-19 test.

The Department of State further updated the list of eligible travelers on April 30, 2021, to include the newly restricted travel of individuals who have been physically present in India.

While the EU Digital COVID Certificate will be officially implemented in July, public health restrictions are already being eased in many member states to travelers with proof of vaccination, recovery, or COVID-19 test, and EU Digital COVID Certificates have already started to be issued.

This is in line with the latest EU Council Recommendation on a coordinated approach to COVID-19 travel restrictions approved on June 14.³ The EU expects that in the near future, fully vaccinated individuals in third countries will also be issued this new digital certificate to travel to the EU.

A common approach to travel restrictions for third countries

The EU Council Recommendation 2020/912,⁴ issued June 30, 2020, proposed the gradual lifting of restrictions on non-essential travel for residents in third countries and lifted the Schengen travel ban for travelers from third countries with an improving epidemiological situation similar to, or better than, the EU average. They also proposed implementing strategies for controlling the virus through medical treatments, contact tracing, testing capacity, and transparency of data, among other strategies.

Initially, non-essential travel restrictions were lifted for residents in 15 countries. However, the list of exempted countries has been considerably reduced over the last year.

The list was recently updated on June 18, 2021, to include the United States, Albania, Lebanon, North Macedonia, Serbia, and Taiwan, in addition to Japan, Australia, Israel, New Zealand, Rwanda, Singapore, South Korea, Thailand, and China, which, with the exception of Hong Kong and Macao, is subject to confirmation of reciprocity.

The most recent recommendation also outlines guidelines for EU nationals, long-term residents, and those with other residence rights in the EU, along with their family members, who are exempt from travel restrictions regardless of their country of residence or purpose of trip.

Public health measures such as COVID-19 tests or quarantining upon arrival may still apply to these categories of travelers, depending on the epidemiological situation of the countries where they reside and travel from. Additionally, travelers with an essential function or need residing in a third country not included in the above list are also exempt from the Schengen travel ban.

On February 2, 2021, the EU Council Recommendation 2020/912 was updated⁵ with specific criteria detailing which countries were allowed to travel to the Schengen Area as follows: “a 14-day cumulative COVID-19 case notification rate of no more than 25 cases per 100,000 inhabitants, a testing rate above 300 per 100,000 inhabitants, and no more than 4% positive tests of all the tests carried out in the previous seven days.”

This new council recommendation further highlighted new virus variants of concern as an important factor to consider when lifting restrictions to third countries.

United States travel — the national interest exemption

While the United States currently requires individuals traveling to the U.S. from abroad to provide a negative COVID-19 PCR test taken within 72 hours of departure, quarantine requirements were placed in the hands of individual states and varied dramatically state by state.

Throughout the pandemic, the primary mechanism for limiting travel in the U.S. continued to be travel and visa bans, and the lifting of restrictions was controlled by the National Interest Exception (NIE).

Initial guidance on what constituted grounds for an NIE was very limited and continued to evolve over time. NIEs for the Schengen Area, the UK, and Ireland initially covered certain technical experts and specialists, senior-level managers and executives, treaty-traders and investors, professional athletes, and their dependents and allowed for job creation and economic impact as a basis for the NIE request.

The NIE guidance was revised on March 2, 2021, rescinding four categories of travelers — technical experts and specialists, senior-level managers and executives, treaty-traders and investors, professional athletes including their dependents — and new criteria was announced covering travelers who provide vital support for critical infrastructure.

Though the criteria for “critical infrastructure” remains vague, the Department of Homeland Security’s Cybersecurity & Infrastructure Security Agency (CISA) includes a list of critical infrastructure sectors.⁶

Additionally, on April 8, 2021, the Department of State announced that immigrants, fiancé(e) visa holders, certain exchange visitors, and pilots/aircrew traveling for training or aircraft pickup, delivery, or maintenance is in the national interest for purposes of approving exceptions under the geographic proclamations restricting travel due to COVID-19 (PP 9984, 9992, and 10143).

In late April 2021, the Department of State announced travelers from China, Iran, Brazil, South Africa, the Schengen Area, the UK, and Ireland who can provide vital support for critical infrastructure, along with journalists, students, and certain academics covered by exchange visitor programs, could qualify for an NIE.

Students and academics in China, Iran, Brazil, or South Africa, may qualify for an NIE if their academic program begins August 1, 2021, or later.

The Department of State further updated the list of eligible⁷ travelers on April 30, 2021, to include the newly restricted travel of individuals who have been physically present in India. On May 12, 2021, the list was expanded to include students whose Optional Practical Training (OPT) begins August 1, 2021, or later, and for travelers who can provide vital support for critical infrastructure supply chains.

To date, NIEs remain available to qualified travelers seeking to enter the United States for purposes related to humanitarian travel, public health response, and national security.

Vaccination programs: The light at the end of the tunnel

As the epidemiological situation has evolved, programs to facilitate travel such as COVID-tested flights, testing facilities implemented at airports, air travel bubbles, COVID-19 recovery certificates, and rapid antigen tests have emerged thanks to the joint efforts of governments and private and public institutions. However, none of these programs have been as promising as the current vaccination rollouts taking place around the world.

On May 20, 2021, the EU Council Recommendation 2020/912 was again amended⁸ to reflect the success of vaccination programs, encouraging member states to lift restrictions on non-essential travel to travelers from third countries who have been fully vaccinated 14 days prior to entry into the EU+ area with a vaccine authorized by the EMA or by the WHO at each EU country’s discretion.

Travelers coming from third countries must show proof of vaccination and member states are to decide based on reciprocity granted to the EU+ area.

The EU Council also proposes allowing travel from countries with a 14-day cumulative COVID-19 case rate of 75 cases per 100,000 people, an increase from 25 cases per 100,000 people, while providing for an emergency break in the event variants of concern are detected in a third country.

The latest amendment of the EU Council Recommendation paves the way for lifting restrictions for travelers from many more third countries with no variants of concern as their epidemiological situation improves and vaccination rollouts continue.

Some of the countries most reliant on tourism such as Spain, Italy, Portugal, Malta, have unilaterally extended their list of exempted third countries, while many EU countries have already implemented new rules to facilitate the entry of vaccinated travelers, either from other EU countries or from third countries.

As travel restrictions into Europe for vaccinated U.S. citizens are eased, the United States will continue to face significant pressure to reciprocate in some fashion. As a result, we anticipate there will be continued modifications to the NIE criteria, as well as possible travel corridors opening up for vaccinated travelers, built around new testing and COVID-free flight initiatives already in place to countries such as Italy and the Netherlands that have allowed travelers to avoid the quarantine requirements upon arrival.

To date, the COVID-free flights coming into the United States have provided more limited benefits due to the state control of quarantine requirements and the continued existence of the travel

bans. However, the program does provide a greater sense of security for those traveling and also ensures testing requirements will be met in the necessary timeframe for travel.

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Notes

¹ <https://bit.ly/3d2hqly>

² <https://bit.ly/3cZELum>

³ <https://bit.ly/3diiYP5>

⁴ <https://bit.ly/3d0MAjx>

⁵ <https://bit.ly/3gMnkA5>

⁶ <https://bit.ly/2TRUwNo>

⁷ <https://bit.ly/3wOuU2x>

⁸ <https://bit.ly/3gPscmz>

About the authors



Courtney B. Noce (L), a shareholder in **Greenberg Traurig's** Atlanta office, focuses her practice on U.S. business immigration, compliance and enforcement actions, as well as global immigration. She represents large multinational companies and small startups on the full range of employment-based immigration, from permanent residence to nonimmigrant visa categories. She is well-versed in working with the retail industry and the ever-evolving challenges it faces. She can be reached at nocec@gtlaw.com. **Caterina Cappellari (C)** is an associate in **Greenberg**

Traurig's Atlanta office who focuses on employment-based immigration as well as nonimmigrant work and investor visas. She can be reached at cappellaric@gtlaw.com. As global immigration counsel at **Newland Chase**, **Raquel Gómez Salas (R)** specializes in European Union immigration, consulting with corporations on employee immigration and mobility, ensuring compliance with changing EU immigration laws, and overseeing necessary in-country filings in the EU. She has 15 years' experience in corporate immigration in countries throughout Europe, including managing and training a team of solicitors and legal consultants. She is based in London and can be reached at raquel.gomez-salas@newlandchase.com.

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