



EU-RUSSIA CIVIL SOCIETY FORUM  
ГРАЖДАНСКИЙ ФОРУМ ЕС-РОССИЯ

**EU-Russia**  
**Visa Facilitation and Liberalization**

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**State of Play and Prospects for the Future**

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## Foreword: Why progress in the visa dialogue matters for civil society?

By Yuri Dzhibladze (*Member of the Steering Committee of EU-Russia Civil Society Forum, President of the Centre for the Development of Democracy and Human Rights, Moscow*)

The EU-Russia Civil Society Forum has considered progressive facilitation of the visa regime between Russia and the EU and concluding an agreement on visa waiver for short travel of outmost importance for civil society and public interests from the very beginning of the Forum's existence in 2011. Civil society groups and the public need elimination of barriers hampering cooperation and human connections. Otherwise, reaching the Forum's goals of building a common European continent based on common values is not possible. The founding statement of the Forum affirmed "the key role of civil society and people-to-people cooperation in the peaceful development of the European region and in the overcoming of dividing lines across Europe."

Realization of civic activists' idealistic vision about a "world without borders" where cooperation, humanistic values and public interests take precedent over narrowly defined national interests and state sovereignty requires hard work. It cannot be left to governments alone to negotiate about and agree upon. Members of the public which are directly affected by dividing lines have an important role to play in pushing politicians and governments to negotiate, ratify and implement agreements that would allow people to freely travel, cooperate, learn from each other, and work together towards a better future. At the European continent we are still far from this ideal. Despite of the progress made in recent years, the existing visa regime between the EU and Russia is still a huge barrier for human contacts, civil society activity, business, scientific, and cultural cooperation.

Non-governmental organizations have become more actively engaged lately in reflection, debate and advocacy on the visa issue. With the goal of providing civil society's views to the EU and Russia policy-makers, the EU-Russia Civil Society Forum produced in 2011 and 2012 two policy papers addressed to participants of EU-Russia summits, issued two public statements on the visa issue, and lobbied for the release of the *Common Steps* towards reaching a visa-waiver agreement for short travels and for progress in negotiations on adoption of an amended Visa Facilitation Agreement. Members of the Forum have met with EU and Russian officials involved in the visa dialogue to present their positions.

In order to provide professional and more in-depth policy recommendations based upon independent research, the Forum established at the beginning of 2013 an Expert Group on Visa Issues comprised of academics and civic activists from Russia, Poland, Belgium and Germany.<sup>1</sup> In March 2013 the Expert Group held a seminar in Moscow which resulted, among other things, in production of a policy brief with recommendations on visa facilitation and progress towards visa-free short-term travel of Russian and EU citizens. The policy brief was released and presented to policy-makers and the public in April 2013.<sup>2</sup>

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<sup>1</sup> Members of the Expert Group on Visa Issues are: Joanna Fomina (*Stefan Batory Foundation, Warsaw*), Oleg Korneev (*Marie Curie Fellow, Department of Politics, University of Sheffield*), Aigulle Sembaeva (*Nemecko-Russki Obmen, St. Petersburg*), Peter Van Elsuwege (*European Institute, Ghent University*) and Vadim Voynikov (*EU Centre, Baltic Federal University, Kaliningrad*). In addition, the Steering Committee wants to thank Prof. Olga Potemkina (*Institute of Europe, Russian Academy of Sciences*) and Prof. Paul Kalinichenko (*Moscow State Law Academy*) for their cooperation and constructive feedback.

<sup>2</sup> [http://eu-russia-csf.org/fileadmin/Docs/Visa/CSF\\_visa\\_policy\\_brief\\_April\\_2013\\_eng\\_01.pdf](http://eu-russia-csf.org/fileadmin/Docs/Visa/CSF_visa_policy_brief_April_2013_eng_01.pdf)

This new report commissioned by the Steering Committee of the Forum is a result of intensive work of the Expert Group based on its study of existing visa regulations in the EU and Russia, agreements between the two parties as well as their agreements with other countries, and analysis of best practices and shortcomings of the current visa arrangements. Importantly, it contains specific recommendations for further visa facilitation and progress towards visa liberalization between the EU and Russia. The Expert Group has worked independently and has not been controlled by the Steering Committee in any way. Therefore, views expressed in this report represent those of the authors and do not constitute an official position of the Forum. The Steering Committee, however, endorses the report and considers it as an excellent basis for more active engagement on the visa issues between civil society and government representatives for the benefit of the public.

A few words of caution are necessary. The Civil Society's Forum's guiding principle in addressing the visa issue is that the public interests should always come first. Using negotiations on visa facilitation and liberalization as EU leverage for addressing important human rights problems in Russia is a tempting idea. Indeed, the visa problem is seen by quite a few stakeholders in the EU within a wider context of EU-Russia relations and as leverage to put pressure on Russia. This is especially evident in the increasingly influential European Parliament whose approval is necessary for any visa agreements. As much as we in the Forum strongly share human rights concerns, we consider this approach to be counter-productive. Putting visa negotiations on hold because of serious human rights problems in Russia would, in our view, punish the Russian public whose very interests such position intends to protect. Instead, it is the human rights violators in the governments that should be held accountable. While millions of Russian and EU citizens should benefit from progress in the visa dialogue, more effective and targeted mechanisms should be applied to bring the perpetrators of human rights violations to justice. We have demanded for a long time that human rights issues should be given a higher priority on the agenda of EU-Russia dialogue. However, we believe that there should be no direct conditionality between implementation of human rights commitments and reaching agreements on the visa issue. In addition, we believe that the more Russians travel to Europe and vice versa, the more chances there are that respect for democratic and human rights values in Russia will increase.

Guided by the same principle, the Steering Committee of the Forum believes it is of utmost importance that negotiations on the amended Visa Facilitation Agreement (VFA) do not put interests of the service passport holders first but are aimed at improving the situation of ordinary citizens. Granting the privilege of visa free movement to government officials and members of similar privileged categories, even under certain conditions and limitations, is only acceptable when the visa regime for ordinary citizens is substantially facilitated.

The Civil Society Forum remains committed to closely following developments in the process of visa facilitation and liberalization between the EU and Russia and intends to continue providing constructive policy recommendations and advocate for further progress in this area for the benefit of the public.

## Executive summary

On the occasion of the May 2003 Saint Petersburg EU-Russia Summit, the EU and Russia agreed to examine the conditions for visa-free travel as a “long-term perspective”. Ten years later, preparations for the introduction of a visa-free regime still continue within the context of the EU-Russia visa dialogue. The most important outcome of this dialogue is the adoption of ‘Common Steps towards visa free short travel of Russian and EU citizens’ in December 2011. The Common Steps, which were released to the public only in March 2013, include a list of actions to be implemented by Russia and the EU in preparation of negotiations for the conclusion of a visa waiver agreement providing for the abolition of the visa requirement for holders of biometric passports and limited to short-term travels (stays of maximum 90 days in every 180 day period).

In anticipation of the start of negotiations on such an EU-Russia visa waiver agreement, both partners aim at the further facilitation of the existing visa regime. A ‘first generation’ visa facilitation agreement (VFA) entered into force in 2007, in parallel with an agreement on readmission. An upgrade of the VFA in order to further simplify visa requirements for short-term travels is currently on top of the agenda of the EU-Russia Strategic Partnership and is one of the (many) obstacles on the bumpy road towards visa free travel in the future.

Despite the flexibilities offered within the context of the Schengen *acquis*, Russian legislation and the EU-Russia VFA, travelling between Russia and the EU remains a complex exercise. Based upon an analysis of existing practice, a number of remaining challenges can be identified. *First*, the use of harmonized lists of documents and procedures could be further improved in order to ensure the equal treatment of all visa applicants. It is argued that an effective facilitation of the entire application procedure requires a more efficient use of electronic means of communication. *Second*, the EU Member States and Russia increasingly rely on external service providers which *de facto* increases the cost of the visa application procedure and entails risks for the equal treatment of visa applicants. Hence, it is of crucial importance that the staff working at visa centers is well-trained and aware of the sometimes subtle interpretations of the EU-Russia VFA and relevant national legislation. *Third*, multiple-entry visas with a long term of validity (up to 5 years) are rarely used under the existing visa arrangements. Yet, the more flexible use of such multiple entry visas could significantly facilitate the life of frequent travelers, on the one hand, and limit the workload of consulates and visa centers, on the other hand. *Fourth*, visa applicants are often unaware about their rights or the options to benefit from a facilitated regime, including the possibility to apply for a multiple entry visa. Moreover, notwithstanding the existence of a formal right of appeal against visa application refusals, it appears very difficult in practice to launch such a procedure due to a number of practical obstacles such as lack of information, language barriers etc. Hence, there is a need to even better inform visa applicants about their rights and to provide alternative methods to ensure that these rights are respected in practice.

With regard to the process of visa liberalization, there is a clear discrepancy in the position of the Russian Federation and the European Union concerning the interpretation of the Common Steps, in particular as far as the fourth block on ‘external relations’ is concerned. Whereas from a Russian perspective, the latter block is more political in nature and, therefore, considered of less importance in comparison to the technical preparations for introducing the visa free regime as defined within the other three blocks, considerations such as respect for fundamental rights and

freedoms are crucial concern for many EU Member States and representatives within the EU institutions. It is argued in this report that only the use of clearly defined benchmarks, essentially focusing on the management of migration flows and security, can make the introduction of a visa free regime for short-term travel a realistic perspective.

## Introduction

Already at the 1990 Copenhagen meeting of the Conference on Security and Co-operation in Europe (CSCE), the participating states promised to strive for efficient visa application procedures and reduced visa fees to ensure freer movement of persons.<sup>3</sup> Questions about movement of persons gained particular importance in the context of the EU's eastward enlargement policy, which started after the 1993 Copenhagen meeting of the European Council.<sup>4</sup> As part of their preparations for membership, the candidate countries were required to adopt and implement all EU legislation (the so-called *acquis communautaire*), including the EU's Schengen rules on external border controls and common visa requirements for nationals of non-EU Member States.<sup>5</sup> This had significant consequences for Russia as a number of agreements on simplified border crossing had to be annulled.<sup>6</sup> For instance, it implied that residents of Russia's Kaliningrad region – cut from Russian mainland by the territory of new EU Member States – lost their right of visa-free travel through the territory of Lithuania. It is in this context that Russian President Vladimir Putin launched a proposal in August 2002 to reciprocally abolish the visa requirement between Russia and the EU.<sup>7</sup>

In its Communication on the Kaliningrad transit problem, the European Commission referred to this Russian initiative rather positively, noting “*with interest the Russian proposal to open discussions on defining the conditions necessary for the eventual establishment of a visa-free travel regime*”.<sup>8</sup> Nevertheless, the Commission also referred to existing technical and political obstacles related to the introduction of a visa free regime, such as questions of passport security and migration control. Specially, it was observed that “*before the EU and Russia are able to identify and carry out the measures needed to set the conditions for abolishing the visa regime, co-operation on crime and illegal migration should be stepped up immediately, including preparation of a readmission agreement.*” Therefore, the main conclusion was that “*it would be premature at this stage to foresee a specific timetable for the abolition of the visa requirement.*”<sup>9</sup>

Even though the 2002 Putin proposal did not yield any immediate results, it nevertheless opened the gates to more profound discussions on enhanced cooperation in the field of Justice and Home Affairs. This resulted in a compromise on facilitated transit to Kaliningrad<sup>10</sup> and in the

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<sup>3</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, available at: <http://www.osce.org/odihr/elections/14304>.

<sup>4</sup> On the EU's eastward enlargement and its implications for Russia, see e.g. P. Van Elsuwege, *From Soviet Republics to EU Member States. A Legal and Political Assessment of the Baltic States' Accession to the EU*, Boston-Leiden, Martinus Nijhoff, 2008, pp. 399-462.

<sup>5</sup> A recent example is the introduction of a visa regime between Russia and Croatia on 1 April 2013 as part of Croatia's preparations for accession to the EU, which took effect on 1 July 2013. See: Republic of Croatia, Ministry of Foreign and European Affairs, ‘Visa requirements overview’, at: <http://www.mvep.hr/en/consular-information/visas/visa-requirements-overview/>.

<sup>6</sup> See: O. Potemkina, ‘Some Ramifications of Enlargement on the EU-Russia Relations and the Schengen Regime’, *European Journal of Migration and Law* 5 (2003), 229-247.

<sup>7</sup> О посланиях Президента России В.В.Путина Председателю Комиссии Европейских сообществ и главам государств-членов Евросоюза [On communications of President of the Russian Federation Vladimir Putin to the President of the European Communities and to the Heads of State of the European Union Member States], available at the official website of the Russian MFA:

<http://www.mid.ru/bl.nsf/4d6cf8cbe426a71743256918006895e7/ef66e4aefcfa887b43256c23002de579?OpenDocument>

<sup>8</sup> COM (2002) Communication from the Commission to the Council “Kaliningrad: Transit”, COM (2002) 510 final, Brussels, 18.09.2002.

<sup>9</sup> *Ibid.*

<sup>10</sup> P. Van Elsuwege, *From Soviet Republics to EU Member States. A Legal and Political Assessment of the Baltic States'*

formal recognition that visa-free travel is a ‘long-term objective’ of EU-Russia co-operation.<sup>11</sup> In the short term, the aim was to facilitate the visa application procedures as much as possible. In this respect, the EU and Russia launched negotiations on a visa facilitation agreement (VFA), which entered into force in 2007, in parallel with an agreement on readmission.<sup>12</sup> This parallelism between facilitation of the visa procedures, on the one hand, and a legally binding framework for readmission of irregular migrants, on the other hand, is no coincidence. Already in a Joint Declaration to the EU-Russia Partnership and Cooperation Agreement (PCA), signed in 1994, it was recognized that progress in facilitating the administrative procedures for the issuing of visas and residence permits to businessmen depended on the timely conclusion of readmission agreements between Russia and the EU Member States.<sup>13</sup>

In contrast to the EU, Russia was eager to abolish the visa regime at the time of the negotiations for a readmission agreement. As a compromise formula, the road map for the establishment of a Common Space of Freedom, Security and Justice, adopted on the occasion of the 2005 Moscow EU-Russia summit, refers to the short term objectives of visa facilitation and readmission, on the one hand, and to the long-term objective of full visa liberalization, on the other hand. In order to achieve the latter objective, a visa dialogue, co-chaired by Russia’s MFA Special Representative, Anwar Azimov, and European Commission Director-General for Home Affairs, Stefano Manservigi, started its work in 2007.

At the June 2010 EU-Russia Summit in Rostov, Russian President Dmitry Medvedev proposed to his EU partners a draft agreement on mutual visa waiver.<sup>14</sup> This unexpected move of the Russian diplomacy was not welcomed by the EU side that continued to insist on gradual rapprochement in the framework of the visa dialogue. Nevertheless, this situation contributed to an intensification of the discussions on visa liberalization with the most important outcome being the adoption of a list of ‘Common Steps towards Visa-Free Short Travel of Russian and EU Citizens’ on the occasion of the December 2011 EU-Russia summit.<sup>15</sup> For more than a year, this document was not open for the general public. The release of the Common Steps in March 2013 gave some hope for further progress in the visa dialogue.

The ‘Common Steps’ are not included in a legally binding document but rather provide a policy framework setting out a common methodology and an enumeration of measures to be implemented with regard to four ‘blocks’ of issues: (i) document security, including biometrics, (ii) illegal immigration, including readmission, (iii) public order and security; (iv) external relations. It aims to prepare the start of negotiations on a visa waiver agreement abolishing the visa requirement for holders of biometric passports. There is no official target date nor does the full implementation of the Common Steps automatically lead to the start of such negotiations. At the EU side, this will require a formal Council decision in accordance with the provisions of Article 218 TFEU (cf. *infra*).

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*Accession to the EU*, Boston-Leiden, Martinus Nijhoff, 2008, pp. 335-345; H. Burkhart, Integrated Border Management on the Russian-EU Border: the Kaliningrad Pilot. East-West Institute Policy Brief, 2005, Brussels.

<sup>11</sup> Joint Statement 2003 EU-Russia Summit Saint Petersburg, available at:

[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/er/75969.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/75969.pdf).

<sup>12</sup> Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation, OJ (2007) L 129/27; Agreement between the European Community and the Russian Federation on readmission, OJ (2007) L 129/40.

<sup>13</sup> Joint Declaration in relation to Articles 26, 32 and 37 of the EC-Russia PCA, OJ (1997) L 327/3.

<sup>14</sup> News Conference following EU-Russia Summit, 1 June 2010, <http://eng.kremlin.ru/transcripts/322>

<sup>15</sup> For the text of the Common Steps, see: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/russia/docs/common\\_steps\\_towards\\_visa\\_free\\_short\\_term\\_travel\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/russia/docs/common_steps_towards_visa_free_short_term_travel_en.pdf)

While the preparations for the introduction of a visa-free regime for short-term travel continue within the context of the EU-Russia visa dialogue and are discussed on a regular basis within the Permanent Partnership Council on Freedom, Security and Justice and at the EU-Russia Summits, there is a commitment to further simplify visa requirements for short-term travels. In this respect, both partners aim at the conclusion of an updated visa facilitation agreement. Hence, the processes of visa liberalization and facilitation are both to be considered as self-standing and reciprocal processes, which proceed in parallel. Of course, there is a certain connection between the two in the sense that the effective implementation of the (updated) visa facilitation agreement is considered by the partners as a precondition for progress towards further visa liberalization.<sup>16</sup> However, it is only one element in a much more complex process ultimately leading to the final objective of visa free short term travel in the future.

Discussions about further visa facilitation and liberalization cannot be disconnected from the general context of EU-Russia relations. It is no secret that the EU and Russia have different perceptions on a number of outstanding issues, including *inter alia* the scope of a new bilateral framework agreement, the implications of the EU's competition rules for EU-Russia energy cooperation and the existence of competing neighborhood strategies.<sup>17</sup> Of utmost importance for the visa discussion are certainly the different visions on the interpretation of fundamental values such as respect for the rule of law, democracy and human rights. Since the entry into force of the Lisbon Treaty, this 'value' dimension has been given a more prominent place in the EU's legal order as well as in its external action.<sup>18</sup> This is also illustrated in the relations between the EU and Russia. The European Parliament's strong condemnation of the irregularities in the preparation and conduct of the latest Russian parliamentary and presidential elections;<sup>19</sup> the open letter of European Council President Herman Van Rompuy criticizing the state of the rule of law and judiciary in the Russian Federation in the context of the Magnitsky case;<sup>20</sup> the strong public statement of the EU's High Representative for Foreign Affairs Catherine Ashton in support of the 'Pussy Riot' punk band members<sup>21</sup> as well as the most recent European Parliament resolutions and debates on the state of affairs in Russia following the adoption of legislation on the registration of NGOs and the banning of 'homosexual propaganda'<sup>22</sup> all illustrate that 'values' are at the core of contemporary relations between the EU and Russia. This is particularly the case because the European Parliament, which is traditionally more sensitive to human rights issues, has become a more active actor in the EU's

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<sup>16</sup> This is evident from the text of the Common Steps: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/russia/docs/common\\_steps\\_towards\\_visa\\_free\\_short\\_term\\_travel\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/russia/docs/common_steps_towards_visa_free_short_term_travel_en.pdf)

<sup>17</sup> For a general discussion on the challenges in contemporary EU-Russia relations, see: Van Elsuwege P. (2012), 'Towards a Modernisation of EU-Russia Legal Relations', *CEURUS EU-Russia Papers* No 5, available at: <http://ceurus.ut.ee/wp-content/uploads/2011/06/EU-Russia-Paper-51.pdf> and Casier, T. (2013) 'The European Union and Russia: partners by default?', in: Cierco, T. (ed.) *The European Union Neighbourhood: Challenges and Opportunities*. Farnham: Ashgate. pp. 123-141.

<sup>18</sup> For comments, see e.g. E. Herlinn-Karnell, 'EU Values and the Shaping of the International Legal Context', in: D. Kochenov and F. Amtenbrink (eds.), *The European Union's Shaping of the International Legal Order*, Cambridge, Cambridge University Press, forthcoming.

<sup>19</sup> European Parliament (2012), Resolution of 15 March 2012 on the outcome of the presidential elections in Russia, P7\_TA(2012)0088.

<sup>20</sup> A Rettman (2012), EU President: Magnitsky case is 'emblematic' for Russia, at: <http://euobserver.com/magnitsky/115968>.

<sup>21</sup> Statement by EU High Representative Catherine Ashton on the sentencing of 'Pussy Riot' punk band members in Russia, 17 August 2012, A 370/12, at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/132192.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/132192.pdf).

<sup>22</sup> European Parliament Resolution of 13 June 2013 on the rule of law in Russia, P7\_TA(2013)0284.

external action. This also has direct implications for EU-Russia visa relations as the European Parliament will have to give its consent to the conclusion of international agreements leading to further visa facilitation and, ultimately, visa waiver.<sup>23</sup> Moreover, Russia's complicated bilateral relationship with certain EU Member States<sup>24</sup> as well as widespread fears within the Union that an abolishment of the visa requirement will increase migratory pressure and organized crime implies that delivering on the 'long-term' promise of visa free travel is not evident.<sup>25</sup>

In what follows, a more detailed analysis of the parallel yet distinctive processes of visa facilitation and liberalization is offered. After clarifying the legal framework of the EU-Russia visa regime (I), specific attention is devoted to the practice of EU-Russia visa relations (II) and the prospects of a visa free regime in the future (III). Based upon this analysis and including a reference to 'best practices', a number of policy recommendations are formulated (IV).

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<sup>23</sup> This is a direct result of the procedure for concluding international agreements as laid down in Article 218 TFEU (cf. *infra*).

<sup>24</sup> For instance, on intricate and often ambiguous relationships between Central European countries and Russia see Dangerfield, M. (2012) 'Visegrad Group Cooperation and Russia', *Journal of Common Market Studies*, Vol.50, No.6. Pp. 958-974. For a detailed overview of all EU Member States' positions vis-à-vis Russia see David, M., Gower, J. and Haukkala, H. (2013) *National Perspectives on Russia. European Foreign Policy in the Making?* Abingdon: Routledge. 298p; Lobjakas, A., Mölder, M. (eds.) (2012), *EU-Russia Watch 2012*, University of Tartu, Centre for EU-Russia Studies (CEURUS), available at: [http://ceurus.ut.ee/wp-content/uploads/2011/06/EU-Russia-watch\\_1-20121.pdf](http://ceurus.ut.ee/wp-content/uploads/2011/06/EU-Russia-watch_1-20121.pdf).

<sup>25</sup> See also: M.M. Salminen, A. Moshes, *Practice what you preach. The prospects for visa freedom in Russia-EU relations*, FIIA Report, 2009 at: [http://www.fiaa.fi/assets/events/FIIA\\_Report\\_18\\_2009.pdf](http://www.fiaa.fi/assets/events/FIIA_Report_18_2009.pdf).

## Part I The Legal Framework of the EU-Russia Visa Regime

### 1. Relevant EU legislation

Pursuant to Article 77 of the Treaty on the Functioning of the European Union (TFEU), the EU has the competence to develop a common policy on visas and other short-stay residence permits.<sup>26</sup> This is a direct and logical consequence of the Schengen rules, which essentially provide for the abolition of internal border controls between the participating Member States together with a common external border management.<sup>27</sup>

The EU's common visa policy is essentially based on three legal instruments. First, *Regulation 539/2001* defines 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.<sup>28</sup> Russia is one of the countries figuring on the so-called 'black list' of countries whose nationals are under a visa requirement to enter the territory of the EU. Second, *Regulation 1683/95* lays down a uniform format for visas including technical specifications of the Schengen visa sticker and a procedure to adopt supplementary measures against counterfeiting and falsification of the visa.<sup>29</sup> Third, *Regulation No 810/2009* establishing the EU visa code sets out all procedures and conditions for issuing 'short stay visas', i.e. for intended stays in the territory of the Member States not exceeding three months in any six-month period, and for 'airport transit visas'.<sup>30</sup> The issuing of long-stay visas (beyond 90 days) falls outside the scope of application of the EU visa code. Such long-stay visas as well as residence permits are issued by the Member States on the basis of national legislation. Yet, holders of long-term visas or a residence permit from one of the Schengen countries are entitled to move freely within the Schengen area for a period of three months during any six-month period.<sup>31</sup>

The EU visa code aims to ensure the equal treatment of all visa applicants through the harmonization of the application procedures.<sup>32</sup> The Member State whose territory constitutes the sole or main destination of the visit is responsible for examining the visa application. If the main

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<sup>26</sup> It is noteworthy that before the entry into force of the Lisbon Treaty, the term short-term stay was defined as 'for an intended stay of no longer than three months'. Such an explicit definition is no longer mentioned in the TFEU, which leads Steve Peers to the conclusion that "it is interesting to speculate whether, in practice, the EU might wish to offer to certain third countries, and/or to provide to certain categories of individuals, the issue of visas for more than three months or short-stay permits of a longer validity". See: S. Peers, *EU Justice and Home Affairs Law*, Oxford, Oxford University Press, 2011, p. 233.

<sup>27</sup> The Schengen rules, including a common borders code and a common visa policy for short-term stays, entered the EU framework with the Treaty of Amsterdam of 1997. The Schengen area encompasses most EU Member States, except for Ireland and the United Kingdom ('opt-out'), Cyprus, Bulgaria, Romania and Croatia (Schengen candidate countries). Four non-EU Member States (Iceland, Norway, Liechtenstein, Switzerland) are part of the Schengen area. For more information on the background of the Schengen cooperation and the Schengen area; see: General Secretariat of the EU Council, *Schengen. Your Gateway to Free Movement in Europe*, Luxembourg, Publications Office, 2013.

<sup>28</sup> OJ (2001) L 81/1.

<sup>29</sup> OJ (1995) L 164/1.

<sup>30</sup> OJ (2009) L 243/1.

<sup>31</sup> Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa, OJ (2010) L 85/1.

<sup>32</sup> To ensure the uniform implementation of the EU visa code, the European Commission has adopted a Handbook for the processing of visa applications and the modification of issued visas and a Handbook for the organization of visa sections and local Schengen cooperation. Both Handbooks include a set of operational instructions to be applied by the Member States' relevant authorities.

destination cannot be determined, the Member State of first entry into the Union is competent.<sup>33</sup> Regulation 810/2009 lays down common rules on *inter alia* the required supporting documents, the visa fee, the maximum processing period of a visa request and the grounds for refusing a visa. Of particular significance are the provisions on the so-called 'Local Schengen Cooperation' (LSC) among Member States' consulates and the European Commission.<sup>34</sup> The aim of this cooperation is to guarantee a consistent implementation of the EU visa code, taking into account local circumstances. For this purpose, there is a regular exchange of information on the number of visas issued, refusal rates, the use of false, counterfeit or forged documents and other aspects necessary for the assessment of migratory and/or security risks. A concrete outcome of the LSC is the adoption of a harmonized list of supporting documents to be submitted by applicants for a Schengen visa in the Russian Federation<sup>35</sup> together with an information sheet about the general rights and conditions related to a uniform Schengen visa.<sup>36</sup> Both documents, in force since 14 January 2013, aim to ensure greater transparency and help to prevent visa shopping and the different treatment of visa applicants.

## 2. Relevant Russian legislation

The Russian Federal Law "on the Order of Departure from the Russian Federation and Entrance to the Russian Federation" lays down all basic information regarding the different types of visa and the conditions for the issuance of visas by Russian consular missions.<sup>37</sup> A separate Government Regulation<sup>38</sup> contains all information regarding the visa application procedure and forms, together with the above mentioned Federal Law, the counterpart of the EU visa code.

Depending on the purpose of entrance of a foreign citizen to the Russian Federation and the purpose of his stay, a visa can either be diplomatic, service, ordinary, transit or for temporary residence. Ordinary visas are further subdivided in private, business, tourist, educational, working, humanitarian and entry visa for reception of a refugee. A special invitation from an inviting party in Russia (company, organization, tourist agency, private person) is required to obtain a Russian visa together with guarantees of financial, medical and residential security for the period of the foreigners' stay in the Russian Federation. The invitation should contain detailed information regarding the invited person, the purpose of his trip, the period of stay and the intended places of visit in the Russian Federation.

Russian law<sup>39</sup> requires foreign visitors to register their Russian visas with the Federal Migration Service. Before amendments in the legislation, which came into effect on 20 March

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<sup>33</sup> Article 5 of the EU visa code.

<sup>34</sup> See Title V of the EU visa code.

<sup>35</sup> The list is available at:

[http://eeas.europa.eu/delegations/russia/documents/eu\\_russia/visa\\_harmlist\\_docs\\_en.pdf](http://eeas.europa.eu/delegations/russia/documents/eu_russia/visa_harmlist_docs_en.pdf).

<sup>36</sup> This information sheet is available at:

[http://eeas.europa.eu/delegations/russia/documents/eu\\_russia/visa\\_gen\\_info\\_en.pdf](http://eeas.europa.eu/delegations/russia/documents/eu_russia/visa_gen_info_en.pdf).

<sup>37</sup> Федеральный закон от 15.08.1996 N 114-ФЗ «О порядке выезда из Российской Федерации и въезда в Российскую Федерацию», "Собрание законодательства РФ", 19.08.1996, N 34, ст. 4029.

<sup>38</sup> Постановление Правительства РФ от 9 июня 2003 г. № 335 «Об утверждении Положения об установлении формы визы, порядка и условий ее оформления и выдачи, продления срока ее действия, восстановления ее в случае утраты, а также порядка аннулирования визы», *Собрание законодательства РФ*, 16.06.2003, № 24, ст.2329. English language version available at: <http://en.russia.edu.ru/information/npb/fzakon/post/335/index/>.

<sup>39</sup> Федеральный закон от 18.07.2006 N 109-ФЗ "О миграционном учете иностранных граждан и лиц без гражданства в Российской Федерации", "Собрание законодательства РФ", 24.07.2006, N 30, ст. 3285.

2011<sup>40</sup> all foreigners had to be registered within 3 working days and then the migration service had to be notified of their departure within the same period. Due to the amendments, the last requirement is abolished and the period within which foreigners must be registered is extended to 7 working days. Registration can be carried out by the hotel where a foreigner is staying or by the company/organization/individual which issued the visa invitation.

In principle, all foreign citizens and stateless persons need a visa for entry and exit from the territory of the Russian Federation. However, exceptions to this basic rule can be established either by federal law, presidential decree or international agreements. Abolishment of the visa requirement through a federal law or presidential decree is normally used in the context of sport or political events and is applicable for a limited period of time.<sup>41</sup> A special visa free regime has also been introduced according to a presidential decree for the stateless persons, living in Latvia and Estonia, who had the citizenship of the USSR.<sup>42</sup> In all other cases, visa liberalization in Russia is based on international agreements concluded on a reciprocal basis.<sup>43</sup> Accordingly, Russia established a visa free regime with several countries.<sup>44</sup> In addition, international agreements on the facilitation of the existing visa regime have been concluded with the EU (cf. *infra*) and, separately, with members of the Schengen area which are not covered by this agreement (Denmark, Norway, Iceland, Liechtenstein and Switzerland).<sup>45</sup> More recently, Russia established visa facilitation agreements (VFAs) with other developed countries such as Japan, the Republic of Korea and the United States of America (USA).

Before analyzing in more detail the EU-Russia VFA, it is noteworthy that this agreement does not apply to the United Kingdom (UK) and Ireland because those countries are not part of the Schengen area. Moreover, they refused to sign similar agreements at a bilateral level.<sup>46</sup> For the EU

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<sup>40</sup> Федеральный закон Российской Федерации от 20 марта 2011 г. N 42-ФЗ "О внесении изменений в Федеральный закон "О миграционном учете иностранных граждан и лиц без гражданства в Российской Федерации" и отдельные законодательные акты Российской Федерации" <http://www.rg.ru/2011/03/23/migranty-site-dok.html>

<sup>41</sup> See Указ Президента РФ от 08.05.2013 N 484 "О порядке въезда в Российскую Федерацию и выезда из Российской Федерации иностранных граждан и лиц без гражданства в связи с проведением международных спортивных соревнований", "Собрание законодательства РФ", 13.05.2013, N 19, ст. 2381. Указ Президента РФ от 05.06.2012 N 777 "О порядке въезда в Российскую Федерацию и выезда из Российской Федерации иностранных граждан - владельцев карт для деловых и служебных поездок в страны - участницы форума "Азиатско-тихоокеанское экономическое сотрудничество", "Собрание законодательства РФ", 11.06.2012, N 24, ст. 3136.

<sup>42</sup> Указ Президента РФ от 17.06.2008 N 977 "О порядке въезда в Российскую Федерацию и выезда из Российской Федерации лиц без гражданства, состоявших в гражданстве СССР и проживающих в Латвийской Республике или Эстонской Республике" "Собрание законодательства РФ", 23.06.2008, N 25, ст. 2959.

<sup>43</sup> According to Article 15 1 (a) of the Federal Law on International agreements, the ratification procedure is obligatory for international agreements on visa liberalization. See: Федеральный закон от 15.07.1995 N 101-ФЗ "О международных договорах Российской Федерации", "Собрание законодательства РФ", 17.07.1995, N 29, ст. 2757.

<sup>44</sup> A distinction can be made between countries whose citizens can be admitted on the basis of a domestic Identity Card (civic passport) and countries whose citizens can be admitted on the basis of a valid international passport. The first group includes Russia's closest allies within the Commonwealth of Independent States (CIS): Belarus (no border control exists due to the Union State of Russia and Belarus), Ukraine, Kazakhstan, Kyrgyzstan, Tajikistan, and several states with limited recognition: Abkhazia, South Ossetia, Transnistria. The second group includes other CIS countries (Armenia, Azerbaijan, Uzbekistan and Moldova) as well as most of Latin American countries, Turkey, Egypt, Morocco, Israel, some countries of South-East Asia and Africa and special administrative regions of China – Hong Kong and Macau.

<sup>45</sup> Such separate agreements were necessary with Norway, Iceland, Liechtenstein and Switzerland because those Schengen countries are not EU Member States and with Denmark as this EU Member State is not covered under the EU-Russia VFA due to its separate status within the Schengen regime under Protocol No 22 to the Treaty on European Union.

<sup>46</sup> However, in the UK, there is an opportunity to use the 'transit without visa' concession if a citizen needs to transit through the territory of the UK and has to travel between different airports or even cities to do so. In order to qualify for this regime one must arrive and depart by air and the onward flight must be confirmed and must depart within 24 hours;

Member States that do not yet fully apply the Schengen *acquis* after their accession to the EU (Romania, Bulgaria, Croatia and Cyprus), a protocol to the EU-Russia VFA provides that those countries can only issue national visas the validity of which is limited to their own territory.<sup>47</sup> Significantly, a special facilitated regime applies in the context of Russia's relations with Cyprus: Russian citizens only need to apply online for a so-called e-ProVisa on the website of the Ministry for Foreign Affairs of this Republic, and usually it is granted within 24 hours and printed out by the applicant to show at the border.<sup>48</sup> A ProVisa is valid for a direct single-entry trip from Russia to the Republic of Cyprus, for a maximum duration of ninety days within a six-month period. In this case the basic rule of reciprocity does not apply as Cypriot citizens need to go through a formal visa application procedure for visits to Russia.<sup>49</sup>

### 3. *The EU-Russia Visa Facilitation Agreement*

The visa facilitation agreement (VFA) between the European Community (now European Union) and the Russian Federation entered into force on 1 June 2007. It was the first VFA ever negotiated between the EU and a third country. The essential aim of the agreement is to facilitate the issuance of short-stay visas to the citizens of both parties on the basis of reciprocity.<sup>50</sup> The VFA introduces a list of 'privileged categories' of citizens<sup>51</sup> that can obtain a visa with fewer documents against a reduced or even waived visa fee<sup>52</sup> and within a shorter period of time than allowed under the EU visa code and the relevant Russian legislation.<sup>53</sup> The VFA also provides that the diplomatic missions and consular posts of the Member States and the Russian Federation shall issue multiple-entry visas with a term of validity ranging between one to five years to the defined categories of privileged citizens.<sup>54</sup>

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finally, one must have proper documentation for the destination, including a visa if required. See: <http://www.ukba.homeoffice.gov.uk/visas-immigration/transitthroughtheuk/visa-to-transit-landside/>.

<sup>47</sup> OJ (2007) L 129/35.

<sup>48</sup> The required application form is available at:

<http://www.mfa.gov.cy/mfa/embassies/moscowembassy.nsf/all/31d36e30c855de72c225759800292a92?OpenDocument=&highlight=pro+visa/>

<sup>49</sup> Also in its relations with Georgia, Russia does not apply the reciprocity principle. Georgia unilaterally abolished the visa regime for Russian citizens on 29 January 2012 but according to the official Russian position the visa regime for Georgians in Russia can only be abolished after the restoration of diplomatic relations which were halted following the outbreak of violence in the breakaway regions of South-Ossetia and Abkhazia in August 2008.

<sup>50</sup> On the EU side, however, the agreement does not apply with regard to the United Kingdom, Ireland and Denmark as a result of those countries' special status under the Schengen regime.

<sup>51</sup> The following categories are mentioned: (i) members of official delegations participating in meetings, consultations, negotiations or exchange programs; (ii) business people and representatives of business organizations; (iii) drivers conducting international cargo and passenger transportation services; (iv) members of train, refrigerator and locomotive crews in international trains; (v) journalists, (vi) persons participating in scientific, cultural and artistic activities; (vii) pupils, students, post-graduate students and accompanying teachers participating in educational training or exchange programs; (viii) participants in international sports events and their accompanying persons, (ix) participants in official exchange programs organized by twin cities; (x) close relatives and (xi) persons traveling for the purpose of visiting military or civil burial grounds.

<sup>52</sup> VFA, Art. 6. The standard price is 35 € under the regular procedure of 10 calendar days and € 70 for processing visas when the application and the supporting documents have been submitted within three days before the date of departure. Fees for processing the visa application are waived for certain categories of persons, including close relatives, members of official or parliamentary delegations, students, disabled persons, humanitarian aid workers, participants in youth international sport events and persons participating in scientific, cultural and artistic activities.

<sup>53</sup> The EU visa code foresees a standard visa fee of € 60 and a decision within 15 calendar days (see arts 16 and 23 of the EU visa code).

<sup>54</sup> Art. 5 of the VFA.

Negotiations on an upgraded version of the VFA, still ongoing at the time of writing of this contribution, aim to extend the categories of beneficiaries of visa facilitations amongst others to representatives of civil society organizations and a broader spectrum of family members. Under the new regime, wider groups of visa applicants will be able to benefit from visa fee waivers and will get easier access to long-term multiple entry visa of longer duration.<sup>55</sup> A similar upgrade of the visa facilitation regime was recently agreed with Ukraine and entered into force on 1 July 2013.<sup>56</sup> Unfortunately, no final agreement on upgrading the VFA with Russia could be achieved on the occasion of the 3-4 June 2013 Yekaterinburg EU-Russia Summit due to different perspectives on the granting of a visa exemption to holders of service passports. Under the 2007 VFA only holders of valid diplomatic passports have a right to visa-free travel.<sup>57</sup> Extending this privilege to service passport holders, an explicit Russian demand, is for the EU difficult to accept. According to the European Commission, such passports are widespread in Russian public administration and, therefore, difficult to control. Hence, the EU is reluctant to offer a *carte blanche* on this issue and insists that only a limited number of holders of valid biometric service passports can be exempted from the visa requirement. Again, the upgraded VFA with Ukraine may serve as an example. Also in this case, the extension of a right to visa free travel to service passport holders was granted under strict conditions. It is, for instance, noteworthy that an EU declaration to the amended agreement explicitly provides for a possibility to partly suspend the agreement if the implementation of the provision on service passport holders “is abused by Ukraine or leads to a threat to public security”.<sup>58</sup>

It is regrettable that the amendment of the 2007 EU-Russia VFA is blocked due to different perspectives on service passports. As a result, ordinary citizens are prevented to benefit from an upgraded visa facilitation regime.<sup>59</sup> Taking into account the importance of facilitated travel, and as an intermediary step towards full visa liberalization (cf. *infra*), the conclusion of an amended VFA is a short-term priority for EU-Russia relations. From the EU side, this will require not only the agreement of the Council (by qualified majority voting) but also the consent of the European Parliament (by ordinary majority). Against the background of the June 2013 Yekaterinburg EU-Russia Summit, a group of 47 members of the European Parliament (MEPs) already announced that they would veto the amended VFA unless the EU implements sanctions against Russian officials involved in the Sergei Magnitsky case.<sup>60</sup> Hence, there is a risk that the entire process of further visa facilitation is put on hold as a result of the linkage between discussions surrounding service passports and concerns about the state of the rule of law in Russia

#### 4. Local Border Traffic and Kaliningrad Transit

As part of the EU Schengen *acquis*, a Local Border Traffic (LBT) regime has been established for border residents who frequently need to cross the external borders of the Union.<sup>61</sup> Accordingly, EU

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<sup>55</sup> EU-Russia Summit, Yekaterinburg, 3-4 June 2013, MEMO/13/485, available at: [http://europa.eu/rapid/press-release\\_MEMO-13-485\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-485_en.htm).

<sup>56</sup> Agreement between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation on the issuance of visas, OJ (2013) L 168/11.

<sup>57</sup> Art. 11 VFA.

<sup>58</sup> EU Declaration on Article 10 (2) of the amended VFA with Ukraine.

<sup>59</sup> See: [http://visa-free-europe.eu/wp-content/uploads/2013/04/CSF\\_visa\\_policy\\_brief\\_April\\_2013\\_eng.pdf](http://visa-free-europe.eu/wp-content/uploads/2013/04/CSF_visa_policy_brief_April_2013_eng.pdf).

<sup>60</sup> European Parliamentarians Plan to Veto EU-Russia Agreement on Visa-free Travel for Russian Officials unless EU Implements Magnitsky sanctions, <http://lawandorderinrussia.org/2013/european-parliamentarians-plan-to-veto-eu-russia-agreement-on-visa-free-travel-for-russian-officials-unless-eu-implements-magnitsky-sanctions/>.

<sup>61</sup> Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down

Member States can conclude bilateral agreements with their neighboring non-EU countries allowing for simplified border crossings for residents living, in principle, no more than 30 km or exceptionally 50 km from the border. Persons living within this area and which are not considered to be a threat to the public policy, internal security, public health or the international relations of any of the Member States qualify for a LBT permit, which is valid for a minimum of one year and a maximum of five years.<sup>62</sup> In comparison to the facilities offered under the VFA, the LBT regime offers significant additional advantages. For instance, applicants do not have to prove sufficient means of subsistence, the LBT permit may be issued free of charge and specific border crossing points can be set up to ensure the smooth movement of persons. Moreover, all *bona fide* border residents can benefit from this regime whereas the VFA only applies to specific categories of persons (cf. *supra*).

Russia has LBT agreements with Poland,<sup>63</sup> Norway<sup>64</sup> and Latvia<sup>65</sup> and a LBT is considered in relation to Lithuania. Of particular significance is the Russian-Polish LBT agreement of 14 December 2011 covering the whole area of the Kaliningrad region and a corresponding territory on the Polish side including cities such as Olsztyn, Elblag and Gdansk.<sup>66</sup> As this territorial area goes beyond the standard 30 km on both sides of the border it required a prior amendment of the EU's LBT regulation.<sup>67</sup> This elegant solution avoided a situation where the Kaliningrad region would be divided into three main parts, including separate visa free local border regimes with Lithuania and Poland in the north and in the south respectively and with a central part falling outside any LBT regime.

The importance of the LBT regime between Russia and Poland should not be underestimated. Apart from the expected economic and social benefits of increased cross-border movement, it also illustrates how the relevant actors (Russia, the EU Member States and EU institutions) can overcome existing legal and political obstacles. Even though the effective implementation of the LBT regime is formally disconnected from the process of visa liberalization between Russia and the EU,<sup>68</sup> it may be regarded as a 'confidence building measure' between the partners. Moreover, it opens the gates to further initiatives such as the establishment of joint border crossing points.

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rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention, *OJ (2006) L 405/1*.

<sup>62</sup> Art. 9-10 of Regulation (EC) No 1931/2006.

<sup>63</sup> Agreement between the Government of the Republic of Poland and the Government of the Russian Federation on the Rules of Local Border Traffic, available at: <http://www.msz.gov.pl/resource/630c9ccb-acd7-45e5-89bf-8f9e529a3b05>

<sup>64</sup> Agreement between the Government of the Kingdom of Norway and the Government of the Russian Federation on Facilitation of Mutual Travel for Border Residents of the Kingdom of Norway and the Russian Federation, [электронный ресурс] [http://www.regjeringen.no/upload/JD/Vedlegg/Grenseboeravtale\\_ENG.pdf](http://www.regjeringen.no/upload/JD/Vedlegg/Grenseboeravtale_ENG.pdf).

<sup>65</sup> "Соглашение между Правительством Российской Федерации и Правительством Латвийской Республики об упрощении взаимных поездок жителей приграничных территорий Российской Федерации и Латвийской Республики" (заключено в г. Москве 20.12.2010). Соглашение ратифицировано Федеральным законом от 28.02.2012 N 13-ФЗ, "Собрание законодательства РФ", 05.03.2012, N 10, ст. 1161.

<sup>66</sup> J. Fomina, "Local border traffic agreement for the Kaliningrad region: a success story of the Polish presidency and a trust-building exercise for Poland and Russia", Batory Foundation, Policy Brief, December 2011, available at: <http://www.batory.org.pl>.

<sup>67</sup> Regulation (EU) # 1342/2011 of the European Parliament and of the Council of 13 December 2011 amending Regulation (EC) No 1931/2006 as regards the inclusion of the Kaliningrad oblast and certain Polish administrative districts in the eligible border area, *OJ (2011), L 347/41*.

<sup>68</sup> The common steps towards visa free short travel between citizens of the EU and Russia do not include a single reference to the implementation of the local border traffic regime.

With regard to Kaliningrad, the inclusion in the LBT regime comes on top of the special rules for facilitated transit, which has been developed in the context of Lithuania's accession to the EU. According to this mechanism the transit of Russian nationals between the Kaliningrad region and mainland Russia through Lithuanian territory is realized on the basis of a Facilitated Transit Document (FTD) and a Facilitated Rail Transit Document (FRTD).<sup>69</sup> Despite the general satisfaction with this transit regime,<sup>70</sup> the travel time by train between Kaliningrad and Moscow has increased from 17 hours to 22-23 hours as a result of additional security border checks. Hence, a further reduction of the time for examination of the FTD/FRTD, e.g. through inspection controls during the train trip rather than at the border, would help to further improve the situation. Moreover, the facilitated transit regime could be extended to the territory of Latvia. The shortest direct train connection between Kaliningrad and Saint-Petersburg goes via Daugavpils (Latvia). This route was used before 2003 but due to its accession to the EU, Latvia established visa requirements for the railway transit from Kaliningrad to Saint-Petersburg. As a result, Russian passengers have to use another route via Belarus, which is much longer.

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<sup>69</sup> Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual, OJ (2003) L 99/1.

<sup>70</sup> Report from the Commission of 22 December 2006 on the functioning of the facilitated transit for persons between the Kaliningrad region and the rest of the Russian Federation COM (2006) 840.

## Part II The EU-Russia Visa Regime in Practice: Challenges and Directions of Improvement

Despite the flexibilities offered within the context of the Schengen *acquis*, Russian legislation and the EU-Russia VFA, travelling between Russia and the EU remains a complex exercise. The standard procedure requires an invitation letter, a special health insurance, a rather detailed itinerary and at least two visits to the consulate or visa handling center in order to get the necessary stamps.<sup>71</sup> Based upon an analysis of existing practice, a number of remaining challenges can be identified with regard to, respectively, the use of harmonized lists of documents and procedures (1), the role of external service providers (2), the issuance of multiple entry visa (3), and the rights of visa applicants (4).

### *1. The use of harmonized lists of documents and procedures*

The recent adoption of a harmonized list of documents that are required from Russian visa applicants travelling to the EU<sup>72</sup> is a very important step forward towards a more coherent and transparent EU visa policy. However, even a brief monitoring of the information presented on the EU Member States consular missions' or visa centers' websites shows that there are still considerable differences in practice. In many cases these requirements are not fully respected. For example, although according to the harmonized list of documents the travel insurance should cover only the "period of intended stay",<sup>73</sup> the consulates of Finland demand that the travel insurance covers "the whole period of the visa validity as well as all days of the intended stay".<sup>74</sup> In case of visas of longer validity this becomes unnecessarily expensive, a person applying for a 5-year visa should buy insurance for 2,5 years (they can stay for 90 days within each 180-days' period).

Moreover, requirements with regard to the format of particular documents may depend on Member States' national legislation, making the actual application of the harmonized list of documents very varied from country to country. For example, people travelling for tourism or paying private visits need to present confirmation of accommodation which can be a letter of invitation. However, some countries accept just a copy of an email from the host or sponsor (e.g. Finland), other countries demand an officially certified invitation, the issuance of which may require up to 30 days (e.g. Poland) and involves the payment of a fee.<sup>75</sup>

As the European Commission concluded at the end of 2012 "the legal framework for structured LSC has not yet delivered its full potential".<sup>76</sup> For instance, the role of EU delegations in monitoring the uniform implementation of the EU visa code among the Member State consulates could be further enhanced. Despite the existence of harmonized rules for the handling of short-term

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<sup>71</sup> For an overview of required documents to travel between Belgium and Russia, see: <<http://www.vhs-belgium.com/visa-Requirements/>> and <<http://belgiumvac-ru.com/requisitedocuments.aspx>>.

<sup>72</sup> [http://eeas.europa.eu/delegations/russia/documents/eu\\_russia/visa\\_harmlist\\_docs\\_en.pdf](http://eeas.europa.eu/delegations/russia/documents/eu_russia/visa_harmlist_docs_en.pdf).

<sup>73</sup> [http://eeas.europa.eu/delegations/russia/documents/eu\\_russia/visa\\_harmlist\\_docs\\_en.pdf](http://eeas.europa.eu/delegations/russia/documents/eu_russia/visa_harmlist_docs_en.pdf)

<sup>74</sup> „полис должен покрывать весь период действия запрашиваемой визы и все планируемые дни пребывания”, <http://www.finland.org.ru/public/default.aspx?nodeid=36986&contentlan=15&culture=ru-RU>. Such practices have also been reported by people applying to consulates of other EU Member States, even if such information is not provided on a given consulate's website.

<sup>75</sup> Information achieved via Visa whistle-blower webpage maintained by the Visa-free Europe Coalition: <http://visa-free-europe.eu/about-us/visa-whistle-blower/>. With regard to the Polish visa application requirements, see: <http://bip.mazowieckie.pl/cmsws/page/?D:1144>.

<sup>76</sup> Report from the Commission to the Council and the European Parliament on the functioning of Local Schengen Cooperation during the first two years of implementation of the Visa Code, COM (2012) 648 final.

visa applications within the Schengen area, it is no secret that in practice significant differences continue to exist. Some Member State consulates appear more ‘user friendly’ than others when implementing the common EU visa policy. For instance, Russians submitting applications to Finnish consulates are generally pleased with the level of service they obtain<sup>77</sup> whereas consulates from certain other countries have the reputation to be rather strict.<sup>78</sup>

The EU’s harmonized list of documents may serve as a good practice example for the Russian Federation as it includes a clear and transparent overview of required documentary evidence for different categories of applicants in line with the EU-Russia VFA. A further harmonization of the visa application procedures, not only among the EU Member States in the context of the LSC, but also between the EU and Russia would increase the predictability and legitimacy of the existing visa regime in the spirit of reciprocity. Moreover, closer EU-Russia visa cooperation including the exchange of best practices and common approaches would be helpful to increase the level of trust among the partners, which is a crucial precondition to proceed with the parallel process of visa liberalization (cf. *infra*).<sup>79</sup>

Both the EU and Russia could work towards a better and harmonized use of electronic means of communication. Currently, some consulates or visa centers accept electronic or fax copies of invitations, while others insist on enclosing the originals at the point of submitting the visa application, which makes arranging a visit extremely time consuming and often leads to a situation where a visitor simply fails to attend an event due to the fact that the original of the invitation arrived too late by post. Another issue is submission of documents by a third person. Again there are considerable differences between different consulates and visa centers, with some insisting on the submission of documents in person, whereas others allowing third persons submit the documents on behalf of the applicant.

In the twenty-first century, technological developments could be better used as part of the visa facilitation process between the EU and Russia. Several countries already introduced electronic visas (eVisas). The United Nations World Tourism Organization recommends the use of eVisas as a secure and efficient alternative to traditional paper visa: “[i]t can be more easily obtained and requires neither the physical presence of the applicant nor the presence of the passport, which is especially important for destinations without a wide-spread network of embassies and consulates.”<sup>80</sup> The eVisa programs of Australia and the United States are generally regarded as good practice examples. Significantly, also within the EU there are examples of visa facilitation going beyond what is traditionally provided under a VFA. A concrete example is the specific e-Pro Visa mechanism used by Russian tourists visiting Cyprus (cf. *supra*). In the context of the European Football Championship held in Poland in June/July 2012, visas were issued according to a simplified procedure, without the obligation to appear in person at the consulate.<sup>81</sup> It is our

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<sup>77</sup> M.M. Salminen, A. Moshes, Practice what you preach. The prospects for visa freedom in Russia-EU relations, FIIA Report, 2009, p. 30.

<sup>78</sup> Бобровская Д. и др. Результаты опроса среди некоммерческих организаций в рамках проекта NO-VISA. М.: 2012.

<sup>79</sup> For an analysis of trust problems in EU-Russia relations, see: Потемкина, О. (2011) “Проблема доверия России и ЕС в рамках общего пространства свободы, безопасности и правосудия”. Европейский Союз в XXI веке: время испытаний. Под ред. О.Ю. Потёмкиной (отв.ред.), Н.Ю. Кавешникова, Н.Б. Кондратьевой. М.: Весь Мир.

<sup>80</sup> United Nations World Tourism Organization, “Visa Facilitation, Stimulating Economic Growth and Development Through Tourism”, available at: [http://dtxq4w60xqpw.cloudfront.net/sites/all/files/pdf/unwto\\_visafacilitation.pdf](http://dtxq4w60xqpw.cloudfront.net/sites/all/files/pdf/unwto_visafacilitation.pdf).

<sup>81</sup> Communication from the Commission to the Council and the European Parliament, Implementation and development of the common visa policy to spur growth in the EU, COM (2012) 649 final Brussels, 7 November 2012, p. 8.

conviction that only the introduction of an eVisa regime without the need to appear in person at the consulate constitutes a real facilitation of the procedure. In addition, the use of migration cards and the requirement of visa registration are time-consuming and may be abolished in light of technological developments.

Technological innovations can also solve practical problems of border crossing. In this regard, the so-called ‘smart border package’ is of particular significance.<sup>82</sup> In essence, this package consists of a Registered Traveler Program (RTP) and an Entry/Exit System (EES). The RTP will allow frequent travelers from third countries to enter the EU using simplified border checks such as automated gates. The EES will replace the traditional stamping of passports with a centralized storage system for entry and exit data of third country nationals admitted for short stays to the Schengen area, thus allowing for a more efficient tracking of illegal overstays. Notwithstanding evident concerns regarding the protection of personal data and the significant financial implications of such a scheme, initiatives such as the smart border package as well as the expanded use of electronic means of communication in the visa application procedure may help to ensure smooth travel between the EU and Russia while safeguarding the evident interests in security and migration management.

Finally, in anticipation of further technological innovations, cooperation with regard to the processing of visa applications could be further enhanced. This practice already exists among some EU Member States. For example, the Consulate General of Finland in St. Petersburg issues visas to people travelling to Austria. Also in other countries such forms of cooperation are not uncommon: in Armenia, the consulate of Germany issues visas for Belgium, the Netherlands, Austria and Sweden. However, there are no common visa application centers in Russia, such as, for example, in Moldova, where the Common Application Centre in Chisinau issues visas on behalf of 16 EU/Schengen states.<sup>83</sup>

## 2. *The role of external service providers*

The EU Member States and Russia increasingly rely on external service providers/outsourcing staff (so-called ‘visa centers’) for handling visa applications. Whereas such co-operation increases the administrative capacity to deal with the growing number of visa applications, this practice *de facto* raises the cost of the entire procedure. On top of the regular visa fee, service providers may charge an additional service fee proportionate to the costs of the provided service.<sup>84</sup> It is, therefore, important that visa applicants maintain an effective possibility to lodge applications directly at its diplomatic missions or consular posts as foreseen under the EU visa code.<sup>85</sup> The introduction of an explicit provision that the external service fee shall not exceed 30 € and that the Member States “shall maintain the possibility for all applicants to lodge their applications directly at their consulates” in the updated EU-Ukraine VFA is a good practice example, which may be expected to be included in an the upgraded VFA with the Russian Federation as well (cf. *infra*).<sup>86</sup> This

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<sup>82</sup> European Commission, ‘Smart borders: enhancing mobility and security’, IP/13/162, 28 February 2013.

<sup>83</sup> The official web-site of the Common Application Centre is available here: [http://www.cac.md/index\\_en.html](http://www.cac.md/index_en.html)

<sup>84</sup> Article 17 of the EU visa code. Whereas the option of applying directly at the consulate is often formally offered, waiting times for an appointment at the consular office up to two or three months (e.g. *de facto* undermine the real choice for the applicant.

<sup>85</sup> See consideration 15 of the preamble to the EU visa code.

<sup>86</sup> Art. 6 (c) paragraph 5 of the Agreement between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation on the issuance of visas, OJ (2013) L 168/11.

amendment is important from the perspective of reciprocity and legal certainty.

The correct implementation of such a provision will be of crucial importance. Even if consulates officially provide for the possibility to apply directly via the consulate, in practice this is often almost impossible due to a lack of available time slots for submission of documents or even express discouragement to apply directly by the consular staff. Some EU Member States officially declare that their consular representations accept visa applications directly only in exceptional cases and that the vast majority of applications should be processed by visa centers. For example, the Polish Ministry of Foreign Affairs has declared that their target is to have 80% of all visa applications processed by visa centers,<sup>87</sup> which is clearly in violation of the EU visa code provisions.

In order to ensure the equal treatment of all visa applications it is also of crucial importance that external service providers and consulates apply the same standards during the visa application procedure. Problems may arise regarding the interpretation of certain provisions of the EU-Russia VFA, for instance regarding the visa fee waiver for certain categories of applicants.<sup>88</sup> As the visa centers in principle operate only as intermediaries between the visa applicants and the relevant consulates, the staff may be banned from advising or providing help to the applicants, including providing information that a given applicant may apply for a long validity visa.<sup>89</sup> Yet, in practice, applicants are sometimes discouraged by the visa centers' staff from applying for longer-term visas.<sup>90</sup> What is even more significant, the staff of at least some EU Member State visa centers is required to provide recommendations as to the type of a visa that should be issued in a given case. Although the final decision is always made by the consular staff, taking into account the workload, it is clear that in all too many cases the final decision is actually taken by the local visa centers' staff, as the consuls simply do not have the time to verify their recommendations.<sup>91</sup> Hence, it is of crucial importance that the staff working at visa centers is well-trained and aware of the sometimes subtle interpretations of the EU-Russia VFA and relevant national legislation.<sup>92</sup>

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<sup>87</sup> Siegień, Paulina, "Wizy w mętnej wodzie", *Gazeta Wyborcza*, 09.07.2013, last visited 14.07.2013, [http://wyborcza.pl/1,87648,14244934,Wizy\\_w\\_metnej\\_wodzie.html?as=2](http://wyborcza.pl/1,87648,14244934,Wizy_w_metnej_wodzie.html?as=2)

<sup>88</sup> The head of a Spanish NGO taking part in a cultural exchange program with the Russian Federation had to pay € 120 in the visa service center in Madrid, € 70 for using the express procedure and € 50 service fee. [Information from "German-Russian Exchange", Saint Petersburg, <http://www.obmen.org>] Arguably, this practice is contrary to Art. 6 (3) of the EU-Russia VFA, which waives the visa fee for persons taking part in scientific, cultural and artistic activities. Moreover, the 50 € service fee is more than the standard € 35, which is deemed to be proportionate for the service provided (cf. *infra*). This example illustrates how an upgraded VFA (cf. *supra*), including an explicit reference to NGOs as well as an explicit maximum fee for the visa service may be helpful to solve existing problems.

<sup>89</sup> See, for instance, the website of the Polish visa center in Kaliningrad, which explicitly provides that: "Мы можем предложить вам помощь во время всего процесса подачи визовых заявлений, но мы не уполномочены советовать или направлять Вас в выборе визовой категории". See: <http://www.vfsglobal.com/poland/kaliningrad/>

<sup>90</sup> Interviews with visa applicants and information achieved via Visa whistle-blower webpage maintained by the Visa-free Europe Coalition: <http://visa-free-europe.eu/about-us/visa-whistle-blower/>.

<sup>91</sup> According to the Polish consul in Kaliningrad, about 1,500 applications are submitted daily to the visa centre. In order to process such a number of applications, the consul would need to examine 3 visa applications per minute for 8 hours a day, which clearly does not leave much space for thorough consideration of the recommendations by the visa centre staff. See Siegień, Paulina, "Wizy w mętnej wodzie", *Gazeta Wyborcza*, 09.07.2013, last visited 14.07.2013, [http://wyborcza.pl/1,87648,14244934,Wizy\\_w\\_metnej\\_wodzie.html?as=2](http://wyborcza.pl/1,87648,14244934,Wizy_w_metnej_wodzie.html?as=2).

<sup>92</sup> For instance, when "German-Russian Exchange" St. Petersburg organized a youth exchange program with partners from the Baltic countries, the Russian visa service centre in Tallinn refused to grant visas free of charge for participants in this event arguing that youth exchange programs are not explicitly mentioned in the VFA. The Russian visa service centre in Riga had no problems to grant a visa fee waiver for a participant to the same youth event but argued that the applicant of 22 years was too old to be considered a youth representative.

All too often visa centers are located in the same cities where consular missions are already present.<sup>93</sup> As a result, an opportunity to increase the options for visa applicants is unfortunately missed. This is particularly regrettable in large countries, such as Russia, where citizens living far away from consulates have to undertake long journeys in order to submit their visa applications.<sup>94</sup>

Furthermore, the cooperation with external service providers only partially helps to cut down the waiting periods. After all, each application still needs to be handled by consular staff, so the possible number of issued visas still depends on the number of consulates/consular staff that can make decisions with regard to the issuance of visas. Still all too often waiting times in visa centers are equally very long, especially during holiday seasons.<sup>95</sup>

### 3. *The use of multiple entry visas: challenges with regard to their issuance and usage*

One of the greatest facilitations of the EU Schengen visa regime is the possibility of issuing multiple-entry visas with a long term of validity, up to 5 years, to persons who fulfill two criteria: (i) prove their “integrity and reliability” (which includes lawful use of previous Schengen visas, sound economic situation as well as intention to leave the Schengen territory before expiry of the visa) and (ii) prove the need to travel to the EU frequently.<sup>96</sup> A rather sophisticated mechanism for the issuance of multiple entry visa is also explicitly foreseen under Article 5 of the EU-Russia VFA.<sup>97</sup> Diplomatic missions and consular posts of the Member States and the Russian Federation are under a legal obligation<sup>98</sup> to issue multiple entry visas with a term of validity of up to *five years* for members of national and regional governments and parliaments, constitutional courts and supreme courts as well as for spouses and children (including adopted), who are under the age of 21 or are dependent, visiting their family members legally residing in the territory of the other party. For these categories of persons, their professional status or their family relationship justify the use of such long-term multiple entry visa, valid for five years or limited to their term in office or term of legal residence for the family member. In addition, the VFA provides that multiple entry visa with a term of validity of up to *one year* shall be issued to citizens belonging to specific professional categories provided that during the previous year they had obtained at least one visa which was used in accordance with the applicable rules and regulations and that there are reasons for requesting a multiple-entry visa. Such citizens become eligible for a multiple entry visa with a validity from two up to five years if they proved to be *bona fide* users of their one year multiple entry visa and the reasons for requesting a multiple-entry visa are still valid.

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<sup>93</sup> A notable exception here is Spain, whose visa centers are present in 20 Russian cities.

<sup>94</sup> This is confirmed by an analysis of the problem of consular coverage in Mananashvili, S. (2013) “Access to Europe in a Globalised World - Assessing EU’s Common Visa Policy in the light of the Stockholm Guidelines”, paper presented at the 2013 annual conference of the Migration Policy Centre (European University Institute), to be published.

<sup>95</sup> Interviews with visa applicants and information achieved via Visa whistle-blower webpage maintained by the Visa-free Europe Coalition: <http://visa-free-europe.eu/about-us/visa-whistle-blower/>.

<sup>96</sup> Art. 24 of the EU Visa Code

<sup>97</sup> It is noteworthy that the visa facilitation agreement between the Russian Federation and the United States of America includes a much more straightforward mechanism of multiple-entry visa. According to the agreement, “nationals of each party shall *as a rule* (emphasis added) be issued multiple-entry visas for a stay of no more than 6 months starting from the date of each entry that are valid for 36 months from the date of issue.” See: <http://moscow.usembassy.gov/new-visa-agreement.html>.

<sup>98</sup> The wording of Article 5 of the EU-Russia VFA is very clear in this respect: “Diplomatic missions and consular posts of the Member States and of the Russian Federation *shall* issue multiple entry-visa [...]” [emphasis added]

The issuance of multiple entry visa with a long term of validity has significant advantages. On the one hand, it makes the life of travelers much easier. This is particularly important in case of people whose occupations involve a lot of travelling to foreign countries. On the other hand, it also limits the workload of consulates, which deal with an application of a frequent traveler only once in five years and not some 20 or 30 times within that period. However, for a number of reasons, including the lack of clarity of the relevant legal provisions as well as reluctance on the part of national governments to apply them to the fullest potential, the issuance of multiple entry visa with a long term of validity turns out to be a rather rare phenomenon in practice.

The European Commission collects statistical data on the number of visas issued by the EU Member States, including the share of multiple-entry visas.<sup>99</sup>

**Table 1. EU visa statistics<sup>100</sup>**

	Total C visas issued in the world	Total C visas issued in Russia	Rate C visas issued in Russia/ in the World <sup>101</sup>	Rate to the previous year (in Russia)	Multiple entry C visas (MEV) issued in Russia	Share of MEVs on issued C visas in Russia	Number of applications for C visas	C visas not issued	Rate of refusal	3 top Schengen consulates in Russia (number of issued C Schengen visas)
2012	14 250 595	5 939 644	41.68%	+15.28%	2 906 259	48.93%	6 069 001	54 860	0.9%	FI (S. Petersburg) 1 022 443 ES (Moscow) 873 812 IT (Moscow) 602 913
2011	12 640 034	5 152 518	40.76%	+25.04%	2 439 656	47.3%	5 265 866	77 509	1.47%	FI (S. Petersburg) 929 776 ES (Moscow) 668 279 IT (Moscow) 557 164
2010	11 018 936	4 120 704	37.4%	+30.2% <sup>102</sup>	1 753 536	42.6%	4 222 551	—	—	FI (S. Petersburg) 738 505 ES (Moscow) 438 182 IT (Moscow) 434 921

On the basis of this data one can see which EU Member States are more liberal in issuing multiple-entry visas and which are less. However, in practice it turns out that all too often the multiple-entry

<sup>99</sup> This information is available from the official website of the Directorate-General Home Affairs. For statistical tables and overview, please see: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index\\_en.htm/](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm/).

<sup>100</sup> *Ibid.*

<sup>101</sup> Russia is an undisputed leader of the countries, where C visas were issued, around 40% of all Schengen visas were issued in Russia, the following countries in 2012 are Ukraine (1 283 014) and China (1 185 569).

<sup>102</sup> European Commission. Overview of Schengen visa statistics 2009-2011//[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/docs/overview\\_of\\_schengen\\_visa\\_statistics\\_2011\\_final\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/docs/overview_of_schengen_visa_statistics_2011_final_en.pdf)

visas issued by EU Member States have a very short validity. In fact, it does not make much of a difference whether a visa is a single-entry or a multiple-entry one if its validity is limited to one month: it is not very likely that the same person will travel twice to the EU within the same month. If we look closer at visa statistics we will see that the largest share of multiple-entry visas are valid for up to one year (unfortunately it is impossible to gather more precise data, so we do not know what share of visas issued within this group are in fact valid for just several weeks or several months). What we see in Table 1 is that even if an overall share of multiple-entry visas issued by a given country is high (e.g. Switzerland with 71% of MEVs), the share of multiple entry visas with a really long validity, from up to 3 years to up to 5 years, is strikingly low. In all the three cases it is below 2%. Arguably, only such visas with long-term validity really make a difference in terms of facilitating the visa regime.

**Table 2. Share of MEVs according to length of validity<sup>103</sup>**

	Single/ Double entry	MEVs up to 1 year	MEVs up to 2 years	MEVs up to 3 years	MEVs up to 4 years	MEVs up to 5 years	Total MVEs	Total	Share of MEVs	Share of MEVs with 3-5 year- validity
2012	80712	21432	23435	2030	250	15	47072	127784	36,8%	1.8%
2011	329545	55220	8675	3524	0	751	68170	397662	17%	1%
2010	18066	42845	1442	83	10	20	44400	62486	71%	0.2%

One of the issues underlying such a situation are the sometimes ambiguous regulations regarding the issuance and use of multiple-entry visas, both with regard to the purpose of travel (business, tourism, visiting family, etc.) and destination countries (e.g. where one should apply if one plans to travel to more than one EU Member State). Responding to an enquiry by members of the Visa-free Europe Coalition, the European Commission repeated that multiple-visas are not purpose-bound, that is even if a given visa was issued for business purposes, it can also be used for tourist purposes.<sup>104</sup> Yet, according to the EU visa code requirements, every applicant needs to give the main reason of their travel, which is then coded into the visa sticker. The same concerns the country of issuance: the applicant is bound to apply for their visa in the consulate of the country where he or she intends to travel most often, which for obvious reasons may be problematic, especially when applying for a long-term validity visa, e.g. up to 5 years. All too often, in order to be granted a multiple-entry visa valid for up to 5 years, an applicant is expected to demonstrate that he or she will be travelling regularly to the same country with the same purpose, e.g. to take part in a series of seminars or business meetings within the span of 5 years, which in most cases is simply impossible. Otherwise, applicants with a positive visa history (even 5-10 years of regular travelling to the EU Member States, always respecting the visa requirements) and with a clear purpose of regular visiting EU Member States (e.g. businessmen cooperating with international companies or scientists taking part in numerous international conferences) are granted visas with short-term validity, often for just one trip.

<sup>103</sup> We have sent inquiries with regard to a detailed breakdown of multiple-entry visas according to their term of validity. Unfortunately only three Schengen countries sent the required information, others either sent only the information about the share of multiple visas without the breakdown according to the terms of validity or did not reply at all.

<sup>104</sup> <http://visa-free-europe.eu/wp-content/uploads/2012/12/20120426105858243.pdf>

Also for EU citizens regularly traveling to Russia, multiple entry visa are rarely used.<sup>105</sup> This is partly due to limited options for issuing multiple entry visa under Russian national legislation<sup>106</sup> and partly due to a lack of information about the possibilities offered to those applicants that fall within the scope of the VFA. A particular problem exists for persons participating in scientific, cultural and artistic activities, which have a right to a multiple entry visa under the conditions of Article 5 (2) e) of the VFA. However, as such activities are often organized by different Russian institutions and/or taking place in different cities, it is not evident to satisfy the documentary requirements. Often, the organizers can only issue an invitation letter for a specific event, creating problems for the applicant to get a multiple entry visa.<sup>107</sup> Moreover, Russian consulates and visa centers do not always inform EU citizens who fall into the latter category that they could apply for such visas. There have also been cases when Russian consular representations on the EU territory assured the applicants that they only had a right to visit the cities in Russia which they mentioned in the application form and which were pointed in the invitation, while this does not correspond to the Russian Federal law “On the Legal Status of Foreign Citizens in the Russian Federation” which grants them freedom of movement across the country with exclusion of territories where special permit is required.<sup>108</sup> For instance, NGOs which invite EU citizens to take part in cultural exchange programs are often asked to change the invitation letter if it does not include a list of cities the applicant is going to visit, stating that otherwise this person only could stay in the region where the inviting organization is situated.<sup>109</sup>

Similar problems also arise when a holder of a Schengen multiple-entry visa attempts to travel to a country different than the country of issuance or with a different purpose than the one stated on the visas. On many occasions travelers with visas issued by consular services of one EU Member State were detained when travelling to other EU Member States and their visas were cancelled or annulled.<sup>110</sup>

Finally, the distinction between different professional categories benefitting from the EU-Russia VFA is subject to criticism.<sup>111</sup> *Bona fide* travelers not falling within one of the predefined categories cannot benefit from the facilitated regime when it comes to granting multiple entry visas. Moreover, the division between different sub-categories almost unavoidably complicates the administrative procedures as it is not always easy to define to which category an applicant belongs. Alternatively, it may therefore be recommended to focus more on a person’s track record of

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<sup>105</sup> Unfortunately, no official statistics are available.

<sup>106</sup> Art. 25.6. of the Russian Federal Law on the Order of Departure from the Russian Federation and Entrance to the Russian Federation provides that ordinary private visa are issued for three months; this is one month in case of tourist visa and one year for business visa. See: [http://www.russian-visas.net/general\\_information/russian\\_laws\\_and\\_visa\\_policy/](http://www.russian-visas.net/general_information/russian_laws_and_visa_policy/).

<sup>107</sup> Based on personal experience of the editor.

<sup>108</sup> Статья 11 пункт 1 Федерального закона от 25 июля 2002 г. N 115-ФЗ «О правовом положении иностранных граждан в Российской Федерации» [http://www.rg.ru/oficial/doc/federal\\_zak/115-fz.shtm](http://www.rg.ru/oficial/doc/federal_zak/115-fz.shtm)

<sup>109</sup> Information from the “German-Russian Exchange”, Saint-Petersburg, <http://www.obmen.org>.

<sup>110</sup> See, for example, the letter by Batory Foundation and Europe without Barriers organisation to the European Commission regarding a group of Ukrainian citizens travelling in Germany with a visa issued by a Polish consulate: [http://visa-free-europe.eu/wp-content/uploads/2012/04/multiple\\_visas\\_Batory\\_EWB\\_letter\\_to\\_EC.pdf](http://visa-free-europe.eu/wp-content/uploads/2012/04/multiple_visas_Batory_EWB_letter_to_EC.pdf) and the reply by the EC: <http://visa-free-europe.eu/wp-content/uploads/2012/12/20120426105858243.pdf>

<sup>111</sup> K. O’Connell, “EU Visa Policy: Squaring the Circle of Neighbourhood and JHA Objectives”, in: D. Mahncke and S. Gstöhl (eds.), *Europe’s Near Abroad: Promises and Prospects of the EU Neighbourhood Policy*, Peter Lang, Brussels, 2008., p. 122.

legitimate visa use rather than on his/her belonging to a certain professional category.<sup>112</sup>

#### 4. *Protecting the rights of visa applicants*

Organizations working on visa policy issues are regularly alarmed by visa applicants about cases of unfriendly or even outright rude behavior of staff in consulates and visa centers of the EU Member States and the Russian Federation<sup>113</sup> as well as about an inadequate level of information provision about their rights within the application procedure. In this respect, it is important to recall that Article 39 of the EU visa code explicitly provides that “Member States’ consulates shall ensure that applicants are received courteously.” Moreover, consular staff is under an obligation to “fully respect human dignity” in the exercise of their duties and to ensure the equal treatment of all applicants without discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Unfortunately, there is no equivalent provision included in the Russian visa legislation.<sup>114</sup>

Also, there are considerable differences between consulates of the EU Member States and the Russian Federation with regard to facilities inside and outside the consulate. Some consulates still require visa applicants to wait in long queues outside of the building and do not even provide any shelter against natural elements. It is also worth drawing attention to the questionable practice of some EU Member States of charging premium rates for phone calls with regard to visa issues.<sup>115</sup> Taking into account that applicants pay high fees for visas as well as for visa centers’ services, it does not seem too extravagant to expect that consulates and visa centers should provide desks and chairs for filling in applications and waiting, photocopying machine facilities, photo booth stationary and computers (where changes to applications can be made) as well as fresh water dispensers.

Apart from the basic rights of fair treatment of visa applicants, respect for the rule of law in the entire visa procedure also implies that there should be an effective right of appeal against refusals to issue a visa. This right is not laid down in the EU-Russia VFA but is based on relevant legislation of the parties. With regard to visas issued within the Schengen area, Article 32 of the EU visa code lays down that the visa applicant needs to appeal against the Member State that had taken the final decision, in accordance with the national law of that State. This means that the appeal procedures vary considerably between Member States and usually need to be conducted in the national language of the Member State in question. In different Member States the appeals need to be submitted to different institutions (e.g. the Ministry of Refugees, Immigration and Integration Affairs in case of Denmark, the Administrative Regional Tribunal of the Lazio Region in case of Italy, Administrative Court in Gothenburg in case of Sweden, and so on). In any case, it needs to be done on the territory of the Member State in question. This all makes the appeal a very complicated procedure that is available only to people who know foreign languages, understand legal procedures well and can easily navigate institutions of other countries, or are prepared to pay significant sums of money to agencies specializing in visa services. Otherwise, this procedure is virtually

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<sup>112</sup> *Ibid.*

<sup>113</sup> E.g. Visa whistle-blower webpage maintained by the Visa-free Europe Coalition: <http://visa-free-europe.eu/about-us/visa-whistle-blower/>

<sup>114</sup> A general non-discrimination provision is included in Article 19 of the Russian Constitution.

<sup>115</sup> Interviews with visa applicants and information achieved via Visa whistle-blower webpage maintained by the Visa-free Europe Coalition: <http://visa-free-europe.eu/about-us/visa-whistle-blower/>.

meaningless. What is more, the waiting times are usually long, at least several months,<sup>116</sup> which means that all too often even if the applicant in question finally is granted a visa, the initial purpose of the visit may no longer be valid and the money for tickets and accommodation has been lost.

With regard to the possibility of appeal against visas issued by the Russian Federation, Regulation No. 335 of 9 June 2003 on the Establishment of the Visa Form, Procedure and Terms of Visa Extension and Issuance, provides that “[a] foreign national may be refused a visa in the instances envisaged under the legislation of the Russian Federation. The duly authorized state body is not obligated to give explanations of the reasons for such refusal”.<sup>117</sup> Hence, there is no specific information regarding the options and procedure to appeal against a visa refusal, even though this option is available under Russian national law.<sup>118</sup>

Sometimes visa applicants living in other countries than the one of their nationality face significant practical obstacles to go through the application procedure.<sup>119</sup> The EU-Russia VFA remains silent on this issue. It is noteworthy that, in contrast, the VFA between Russia and the United States explicitly provides that nationals of each party can apply for a visa at diplomatic missions and consular posts of the other party that are located in the territory of third states.<sup>120</sup> Under the conditions set forth in the agreement this possibility only applies to third countries where nationals are permitted a stay of more than 90 days.<sup>121</sup> Nevertheless, such a right could further facilitate the right of visa applicants in the context of the EU-Russia visa regime.

Finally, specific problems exist for representatives of Non-Governmental Organizations (NGOs). For instance, NGO representatives coming to Russia often face problems to get the correct visa, implying that if they come with a tourist visa there is a risk to have problems with Russian migration authorities if they take part in conferences or seminars. In this respect, the updated VFA which is foreseen to include specific provisions with regard to ‘representatives of civil society organizations’ may be helpful.<sup>122</sup> A perhaps even more fundamental concern is the practice of ‘blacklisting’ certain foreign nationals involved in human rights work and journalism without any explanations or possibilities of appeal.<sup>123</sup>

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<sup>116</sup> See: <http://appeal.com.ua/apellyaciya-otkaz-v-vize-v-strany-shengenskogo-soglasheniya>.

<sup>117</sup> <http://en.russia.edu.ru/information/npb/fzakon/post/335/index,2/>

Постановление Правительства РФ от 9 июня 2003 г. № 335 «Об утверждении Положения об установлении формы визы, порядка и условий ее оформления и выдачи, продления срока ее действия, восстановления ее в случае утраты, а также порядка аннулирования визы», *Собрание законодательства РФ*, 16.06.2003, № 24, ст.2329.

<sup>118</sup> For an example of an appeal against a visa refusal, see Case 2-1575/2012 before the Pushkin District Court (City of Saint Petersburg) of 16 August 2012, available at: <http://rospravosudie.com/court-pushkinskij-rajonnyj-sud-gorod-sankt-peterburg-s/act-106222980/>.

<sup>119</sup> For instance, a Latvian citizen with legal residence in the UK could not apply for his Russian visa in London but was advised to apply in Latvia. As the UK is no party to the VFA between the EU and Russia, the Russian consulate in London only accepted invitations issued through the Federal Migration Service. [Information from the “German-Russian Exchange”, Saint Petersburg, <http://www.obmen.org>].

<sup>120</sup> See: <http://moscow.usembassy.gov/new-visa-agreement.html>.

<sup>121</sup> See: <http://moscow.usembassy.gov/warden-message-russian-visa.html>

<sup>122</sup> [http://europa.eu/rapid/press-release\\_MEMO-13-485\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-485_en.htm). Such explicit references to ‘representatives of civil society organizations’ have already been included in the updated version of the VFA between the EU and Ukraine, see: [http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130701\\_vfa\\_agreement\\_ukraine\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130701_vfa_agreement_ukraine_en.pdf).

<sup>123</sup> With regard to this practice in Russia and other former Soviet republics, see: Norwegian Helsinki Committee, *Persona Non Grata. The CIS ban system for human rights defenders and journalists*, available at: [http://nhc.no/filestore/Publikasjoner/Rapporter/2010/Rapport\\_2\\_10\\_web\\_final2.pdf](http://nhc.no/filestore/Publikasjoner/Rapporter/2010/Rapport_2_10_web_final2.pdf).

## Part III Towards the Abolition of the Visa Regime: Challenges Ahead

### 1. Legal options

Recent practice illustrates that the abolition of a visa regime between the EU and a third country usually consists of three stages, including (i) the parallel conclusion of visa facilitation and readmission agreements; (ii) the adoption of a road map or visa liberalization action plan (VLAP) and (iii) the abolishment of the visa requirements. The latter can be done either through amendments to Regulation 539/2001, as has been recently applied in the EU's relations with the Western Balkans, with the exception of Kosovo,<sup>124</sup> or through the conclusion of a visa waiver agreement, as is currently planned with Russia (cf. *infra*).

As the European Commission acknowledged in a report of November 2012 “[t]he most effective way to solve the visa issue, is the waiving of the visa requirement for citizens of a third country by transferring third countries from the negative list into the positive list attached to Regulation 539/2001”.<sup>125</sup> The determination of those lists is based on “a case-by-case assessment of a variety of criteria relating *inter alia* to illegal immigration, public policy and security, and to the European Union's external relations with third countries”. Consideration is also given to “the implications of regional coherence and reciprocity”.<sup>126</sup> This non-exhaustive list of criteria gives the EU institutions and EU Member States a wide margin of appreciation to decide whether or not a certain country remains on the visa black list.

Interestingly, in the same Communication of November 2012, the European Commission suggested to take into account the economic impact of the visa policy as an important element to decide whether or not a country should remain on the visa black list.<sup>127</sup> Such an evolution could be important for Russia. The German Committee on Eastern European Economic Relations calculated that the visa application procedures cost the Germans and Russians alone an estimated 162 € million annually.<sup>128</sup> A survey among 200 German companies revealed that 56 per cent would invest more in Russia and/or the EU if the visa requirement were to be lifted whereas almost 20 per cent stated that visa problems had resulted in the termination of business contracts.<sup>129</sup> In other words, the economic cost of the existing visa regime between the EU and Russia cannot be ignored and is an important consideration in times of economic crisis. Apart from the negative impact on economic cooperation between companies established in Russia and the EU, the visa regime implies that an important potential for tourism is currently not exploited.

Yet, despite this significant argument in favor of introducing a visa free regime through the amendment of Regulation 539/2001, this is not the option that will be followed with Russia. The Common Steps towards visa free short travel explicitly provide that the abolition of the visa

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<sup>124</sup> See e.g. Regulation (EU) No 1091/2010 of the European Parliament and of the Council of 24 November 2010 amending Council Regulation (EC) No 539/2001 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, OJ (2010) L 329/1.

<sup>125</sup> Communication from the Commission to the Council and the European Parliament, *Implementation and development of the common visa policy to spur growth in the EU*, COM (2012) 649 final Brussels, 7 November 2012, p. 6.

<sup>126</sup> Preamble to Regulation (EU) No 539/2001, OJ (2001) L 81/1, para. 5.

<sup>127</sup> Communication from the Commission to the Council and the European Parliament, *Implementation and development of the common visa policy to spur growth in the EU*, COM (2012) 649 final Brussels, 7 November 2012.

<sup>128</sup> Committee on Eastern European Economic Relations, ‘Roads to Visa-free travel’, July 2011, available at: [http://www.ost-ausschuss.de/sites/default/files/page\\_files/Position%20Paper%20Roads%20to%20Visa-free%20Travel\\_0.pdf](http://www.ost-ausschuss.de/sites/default/files/page_files/Position%20Paper%20Roads%20to%20Visa-free%20Travel_0.pdf).

<sup>129</sup> *Ibid.*

requirement will be based on the conclusion of an EU-Russia visa waiver agreement.<sup>130</sup> The principle of reciprocity, which is so crucial in EU-Russia visa relations, as well as the possibility to introduce specific modalities to the right of visa free movement, e.g. by limiting this right to holders of biometric passports or certain categories of tourists and business people etc., helps to explain this choice.

Following the EU's common visa policy and the nature of the EU's competence in this area, only the Union can negotiate and conclude a visa waiver agreement and not the individual Member States.<sup>131</sup> In accordance with the procedure laid down in Article 218 TFEU, this implies that the European Commission will conduct the negotiations after receiving the negotiating guidelines from the Council. The Council shall adopt the decision concluding the agreement after obtaining the consent of the European Parliament.<sup>132</sup> Taking into account the opt-out of the United Kingdom and Ireland with regard to the Schengen *acquis*, the provisions of EU visa waiver agreements do not apply to those countries.

An interesting example of what could be achieved in the future is the recently concluded visa waiver agreement between the EU and Brazil.<sup>133</sup> This agreement allows citizens of both parties to enter each other's territory without a visa for tourism and business purposes for a maximum period of stay of three months during a six months period. The two purposes of "tourism" and "business" are widely defined in the agreement, including persons attending meetings, conferences and seminars etc. provided that no remuneration is received for their activity, and also visits of relatives and official meetings are covered by the categories of "tourists" and "business people" respectively. According to the EU's estimates, these two categories would cover 90-95 % of all the travelers.<sup>134</sup> Persons travelling for the purpose of carrying out paid activities are excluded from the scope of the Agreement. For this category, each Member State (and also Brazil) remains free to impose the visa requirement on the citizens of the other Party in accordance with the applicable Union or national law, or in accordance with bilateral agreements.

The abolition of visa requirements on the basis of bilateral visa waiver agreements is also a common practice for the Russian Federation. In recent years, agreements on visa waiver have been concluded with a wide range of countries including Argentina, Columbia, Israel, Peru, Thailand, Turkey, Brazil, Guatemala, SAR Hong Kong, SAR Macau, Nicaragua, Uruguay and Chili.<sup>135</sup> The

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<sup>130</sup> See: for the text of the common steps: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/russia/docs/common\\_steps\\_towards\\_visa\\_free\\_short\\_term\\_travel\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/russia/docs/common_steps_towards_visa_free_short_term_travel_en.pdf).

<sup>131</sup> Pursuant to Article 3 (2) of the Treaty on the Functioning of the European Union (TFEU), the Union has exclusive competence for the conclusion of international agreements when its conclusion "is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope".

<sup>132</sup> The consent of the European Parliament is required since the agreement covers a field to which the ordinary legislative procedure applies.

<sup>133</sup> Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of ordinary passports, *OJ*, 2011, L 66/2. In parallel an agreement on short-stay visa waiver for holders of diplomatic, service or official passports has been concluded. The latter did not need to be ratified by the Brazilian Congress.

<sup>134</sup> See:

<http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=9401>.

<sup>135</sup> For a database of relevant agreements, see: CARIM-East Legal Database: [http://www.carim-east.eu/database/legal-module/?ls=3&ind=biag&country=Russia&country\\_fin=%D0%A0%D0%BE%D1%81%D1%81%D0%B8%D1%8F&lang=](http://www.carim-east.eu/database/legal-module/?ls=3&ind=biag&country=Russia&country_fin=%D0%A0%D0%BE%D1%81%D1%81%D0%B8%D1%8F&lang=) See also: Наличие безвизового режима при въезде в иностранные государства для граждан Российской Федерации, являющихся владельцами дипломатических, служебных и общегражданских паспортов (по состоянию на 1 апреля 2013 года), <http://www.mid.ru/bdcomp/dks.nsf/mnsdoc/04.04.02.01>.

agreement with Israel is of particular interest taking into account the strict immigration rules applicable in this country.<sup>136</sup> According to this agreement, nationals of both states holding valid passports can enter and stay on the territory of the other state without obtaining a visa for 90 days per period of 180 days. Nationals of the parties who intend to stay in the territory of the other state for a period exceeding 90 days or to take up employment or to engage in business activities in its territory remain under an obligation to obtain a visa in accordance with the legislation of the receiving state. Significantly, each party reserves the right to deny entry to nationals of the other party “whom it may consider undesirable”, or to shorten their period of stay in the country.<sup>137</sup> This very generic exception to the visa free regime grants a wide margin of appreciation to the national governments of the parties, which may go beyond the standard restrictive interpretation that such a refusal is only possible in cases of serious threats to national security, public order or public health.

## 2. *Common Steps towards visa free short travel of Russian and EU citizens*

### 2.1. *Background*

In the context of the EU-Russia visa dialogue, both parties agreed on a list of “Common Steps towards visa-free short term travel for Russian and EU citizens” (hereinafter – Common Steps) in December 2011.<sup>138</sup> The Common Steps include a list of actions to be implemented by both the EU and the Russian Federation in preparation of negotiations for the conclusion of a visa waiver agreement providing for the abolition of the visa requirement for holders of biometric passports and limited to short-term travels (stays of maximum 90 days in every 180 day period).<sup>139</sup> The Common Steps consist of the followings four “blocks”: Block 1: document security, including biometrics; Block 2: illegal migration, including readmission; Block 3: public order, security and judicial cooperation; Block 4: external relations.

According to the *Block 1*, the Parties shall introduce ICAO-compliant biometric passports; ensure prompt and systematic reporting to the Interpol database on lost and stolen passports; maintain regular exchange of passport specimens and visa forms, information on false documents and cooperation on document security; conduct training programs on the methods of the document protection; as well as undertake and if necessary improve anti-corruption measures targeting officials of any public authority that deals with comprehensive and secure identity management.

*Block 2* commits the Parties *inter alia* to conclude the implementing protocols between Russia and all the relevant EU Member States to the EU-Russia readmission agreement; effectively implement the EU-Russia visa facilitation agreement; amend the EU-Russia visa facilitation agreement in order to further simplify visa requirements for the short-term travels; ensure facilitation, further simplification and transparent application of the respective rules on registration/listing of citizens legally staying on the other Party's territory, on issuance of permits to legally stay/reside and exercise labor activity; establish clear and transparent asylum procedures effectively accessible for persons seeking asylum; closely cooperate on the asylum related issues;

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<sup>136</sup> Agreement between the Government of the State of Israel and the Government of the Russian Federation on the waiver of visa requirements for mutual visits of the nationals of the Russian Federation and of the nationals of the State of Israel, available at: <http://mfa.gov.il/Style%20Library/AmanotPdf/4-27464-8887.pdf>.

<sup>137</sup> Art. 2 of the Russia-Israel visa waiver agreement.

<sup>138</sup> Common Steps towards visa free short term travel for Russian and EU citizens (Russia-EU Visa dialogue), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/russia/docs/common\\_steps\\_towards\\_visa\\_free\\_short\\_term\\_travel\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/russia/docs/common_steps_towards_visa_free_short_term_travel_en.pdf)

<sup>139</sup> *Ibid.*

ensure proper status for persons recognized to be in need of international protection; optimize the appropriate working mechanism for closer cooperation and more intensive contacts and information exchange between the Russian and EU Member States' border services and effectively implement the working arrangement between FRONTEX and the Border Guards Service of the Federal Security Service of the Russian Federation; undertake necessary steps in order to develop cooperation between the Federal Agency for the Development of the State Border Facilities of the Russian Federation (Rosgranitsa) and FRONTEX; deploy appropriate staff, resources, technical equipment and infrastructure at the relevant parts of the state border, as well as effectively implement border control procedures and best practices at their common state border crossing points. This block also contains a detailed list of operational measures mostly focusing on exchange of information and trainings for officials in the above mentioned areas.

Measures under the *Block 3* imply that the Parties shall follow relevant international standards in the fight against money laundering and terrorism financing, in particular effectively fulfill relevant Financial Action Task Force on Money Laundering (FATF) recommendations; further enhance exchange of information and cooperation between relevant agencies of both Parties to effectively combat trafficking in illicit narcotic drugs, psychotropic substances and their precursors, and effectively implement the working arrangement between the European Monitoring Center for Drugs and Drug Addiction (EMCDDA) and relevant agencies of the Russian Federation; exchange information on respective strategies and laws to fight trafficking in human beings including to protect its victims, in accordance with the Parties' obligations under the UN Convention against Transnational Organized Crime and its Protocol on Trafficking in Human Beings and addressing possible deficiencies; ensure exchange of information and cooperation between relevant agencies of both Parties to effectively combat terrorism and trafficking in firearms and other serious transnational crimes, in accordance with applicable international law and legislation of the Parties; undertake necessary steps for conclusion and effective implementation of a strategic and operational cooperation agreement between Europol and the Russian Federation; undertake necessary steps for conclusion and effective implementation of a cooperation agreement between Eurojust and the Russian Federation; accede to and implement the 1980 Convention on Civil Aspects of International Child Abduction and the 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibilities and Measures for the Protection of Children; accede to and implement the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and its 2001 Additional Protocol regarding supervisory authorities and transborder data flows. Operational measures in this block mostly focus on exchange of information on relevant issues, as well as on strengthening of operational cooperation between competent authorities of Russia and EU member states.

According to the *Block 4* the Parties shall ensure that all Russian and EU citizens and legally residing persons (regardless of the length of their authorized stay) can travel on an equal basis with the Parties' own citizens within their respective territories, subject to their internal rules and regulations concerning national security; ensure full-fledged and effective issuance of travel and identity documents, including with regard to their price and deadlines of procedures, to all categories of persons for example to all citizens, internally displaced persons, refugees, non-citizens and stateless persons including to persons belonging to minorities; conduct training programs for

law enforcement officials, prosecutors, judges and other practitioners in the areas covered by the present Block, and address possible deficiencies. The wording for the operational measures under this block that allegedly relates to human rights issues is very careful – the Parties declare only that they will “discuss and cooperate” on relevant recommendations of UN bodies, OSCE, the Council of Europe and international human rights organizations on the freedom of movement and facilitation of people-to-people contacts, in implementing anti-discrimination policies, protecting persons belonging to minorities and combating hate crimes and other areas covered by the Common Steps.<sup>140</sup>

Importantly, after these four blocks of measures, the Common Steps document also includes so-called “final provisions”, which so far have attracted less attention than measures within the four blocks themselves. Nevertheless, these provisions are of crucial importance inasmuch as they contain a list of issues whose evolution and assessment “will be also taken into account”. These indicators include the rate of visa applications refusals; the rate of readmission applications accepted and effective returns under the Russia-EU readmission agreement; the number of return decisions with regard to citizens of the Parties, illegally staying or residing on the territory of the other Party; the number of refused entries at the border; the number of apprehended citizens of the Parties, illegally staying or residing on the territory of the other Party.<sup>141</sup> From the point of view of the EU’s common immigration policy such criteria are essential for any assessment of migration risks and, consequently, for evaluating the readiness of a given country for a visa free regime with the EU.

The structure of the Common Steps is similar to documents which are introduced by the European Commission to other countries seeking for a visa free regime with the EU. However, the difference with the “Visa Liberalization Action Plans” (VLAPs) with the countries of the Eastern Partnership (so far VLAPs have been adopted with respect to Ukraine, Moldova and Georgia) as well as the “Road maps” towards visa free short travel with the Western Balkan countries is not only in terminology. The Common Steps document has not been unilaterally imposed by the EU on Russia, but has emerged as a product of negotiations between the European Commission and the Russian authorities. Hence, one crucial feature of the Common Steps is underestimated by many to-date analyses<sup>142</sup> - this document is, at least in principle, much less of a conditionality instrument and much more a reciprocal mechanism insofar as “*instead of just presenting Russia with a set of conditions that need to be fulfilled in order to qualify for a visa-free regime (as the EU did in the Western Balkans, Moldova and Ukraine), the EU agreed to design a set of steps for both sides to take, which underscored the equality between the EU and Russia*”.<sup>143</sup> The *sui generis* nature of the Common Steps repeatedly emphasizing their reciprocal character is not just a diplomatic move. Both the EU and Russia are under a commitment to solve actual problems. This is exemplified,

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<sup>140</sup> Remarkably, the formulation of the obligations under this block is more straightforward in the context of the Visa Liberalization Action Plans (VLAPs) with the EU’s eastern neighbors participating in the Eastern Partnership. For instance, the Action Plan for Ukraine *inter alia* requires ‘the adoption and effective implementation’ of legislation and policies on anti-discrimination. See: <http://novisa.org.ua/upload/file/EU-Ukraine-Action-Plan.pdf>.

<sup>141</sup> Common Steps towards visa free short term travel for Russian and EU citizens (Russia-EU Visa dialogue), [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/russia/docs/common\\_steps\\_towards\\_visa\\_free\\_short\\_term\\_travel\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/russia/docs/common_steps_towards_visa_free_short_term_travel_en.pdf).

<sup>142</sup> With a clear exception of Hernandez I Sagrera, R. and Potemkina, O. (2013) Russia and the Common Space on Freedom, Security and Justice: Study. Brussels: European Parliament.

<sup>143</sup> European Council on Foreign Relations (2013) European Foreign Policy Scorecard 2012: Russia. Available at: <http://www.ecfr.eu/scorecard/2012/russia/14>

among others, by the fact that the Common Steps address the so-called „Russian” problem with registration of foreigners in Russia, which is also an „EU” problem since registration requirements in various forms and of various degrees of strictness exist in a number of EU Member States.<sup>144</sup> In addition, the document does not contain any direct references neither to EU *acquis* nor to EU standards to be adopted by Russia, which is indicative of the lack of “Europeanization” attempts from the EU side – as opposed to the cooperation patterns with the Eastern Partnership countries and Western Balkans. This is apparently one of the underlying reasons for keeping the Common Steps closed from the general public for more than a year after their adoption – till March 2013. The EU Council has underlined that “the content of the document was not communicated to the public by the negotiating partners and its unilateral release by the EU would negatively affect the climate of confidence among the actors involved in the negotiations and would prejudice the EU's relations with Russia”,<sup>145</sup> thus, hinting to Russia’s unwillingness to disclose the text of the Common Steps. However, whereas the EU Council has concluded that “full public access ... [to the Common Steps] must be denied on the basis of Article 4(1)(a)<sup>146</sup>, third indent of the Regulation (protection of the public interest as regards international relations)”,<sup>147</sup> it has also admitted that “other similar negotiations are currently ongoing with several Eastern Partnership countries. The visa facilitation with these countries is a long term goal of the EU. As the negotiations which the EU is conducting with these countries have reached different stages, disclosure of the content of document 7973/11<sup>148</sup> would enable the negotiating partners of the EU to establish a parallelism and assess the EU's positions and willingness to compromise in similar international negotiations. This would not only weaken the EU's position in the said negotiations, but would also have an adverse effect in future negotiations on similar subjects”.<sup>149</sup>

After the disclosure of the Common Steps, it is obvious that this list of actions is not a Road Map or an Action Plan in the bureaucratic terminology of the European Commission, since it does not set any chronological prioritization for actions to be taken and gives no promise of consequences once the measures mentioned in the document will have been achieved. The Visa Liberalization Action Plans for Eastern Partnership countries contain clearer-defined benchmarks and the process of visa liberalization is more transparent. The Commons Steps are more general in nature, which makes the process much more political, as it is not clear what level of implementation of each postulate will be deemed sufficient.

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<sup>144</sup> Details of these requirements can be found here: Notifications under Article 37 of 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). The obligation on third-country nationals to report their presence on the territory of any Member State pursuant to Article 21(d) (2008/C 18/04), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:018:0025:0030:EN:PDF>

<sup>145</sup> Note from General Secretariat of the Council to Delegations on Public access to documents, Confirmatory application made by Ms Joanna Hosa (No 15/c/01/12), p. 4, Available at: <http://register.consilium.europa.eu/pdf/en/12/st12/st12340.en12.pdf>

<sup>146</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. OJ L 145 of 31.5.2001, P. 43.

<sup>147</sup> Note from General Secretariat of the Council to Delegations on Public access to documents, Confirmatory application made by Ms Joanna Hosa (No 15/c/01/12), p. 5, Available at: <http://register.consilium.europa.eu/pdf/en/12/st12/st12340.en12.pdf>

<sup>148</sup> "I/A" item note from the Working Party on Eastern Europe and Central Asia to the Permanent Representatives' Committee and to the Council.

<sup>149</sup> Note from General Secretariat of the Council to Delegations on Public access to documents, Confirmatory application made by Ms Joanna Hosa (No 15/c/01/12), p. 4, Available at: <http://register.consilium.europa.eu/pdf/en/12/st12/st12340.en12.pdf>

Importantly, the Common Steps document is a soft law instrument, which does not have binding legal power for the parties. According to its final provisions, once the implementation of the Common Steps is completed, the Parties will decide, in accordance with their respective internal procedures, on starting negotiations on an EU-Russia visa waiver agreement. This means that full implementation of the Common Steps does not automatically result in visa free short travel. Further steps in the visa liberalization process will depend on the political decisions of the parties. Moreover, despite the fact that a diplomatically drafted text of the fourth block of the Common Steps avoids direct references to human rights considerations sensitive for the Russian side, inclusion of such issues as freedom of movement within the country and access to travel documents might be interpreted as a link between the EU-Russia visa dialogue and the human rights agenda. However, this link is rather weak and a human rights-oriented interpretation of the relevant provisions of the Common Steps has been disputed by the Russian side.<sup>150</sup> Arguably, the fourth block is where the approaches of the Russian and EU sides differ the most. Whereas from a Russian perspective, the latter block is more political in nature and, therefore, considered of less importance in comparison to the technical preparations for introducing the visa free regime, considerations such as respect for fundamental rights and values are crucial for many EU Member States and representatives within the EU institutions.

## *2.2. Implementation of the Common Steps: state of play*

In order to monitor progress in the implementation of the Common Steps, the parties agreed to exchange expert missions under all four thematic blocks of measures. Results of these missions form the core of internal progress reports drafted by the competent bodies on each side. Progress is regularly monitored and assessed by the senior officials reporting to the EU-Russia Permanent Partnership Council, and is subsequently reviewed at the EU-Russia Summits. As it has already been pointed out by some researchers and NGOs, implementation of the Common Steps unfortunately does not involve any formal public monitoring, as progress reports are deemed only for internal use.<sup>151</sup> However, an indirect monitoring of general trends is possible thanks to the annual progress reports on the EU-Russia Common Spaces that used to be drafted by the European Commission and are now in hands of the European External Action Service and other related documents such as progress reports of the EU-Russia Partnership for Modernization, joint conclusions of the EU-Russia Permanent Partnership Council on Freedom, Security and Justice and press-releases of the EU-Russia Migration Dialogue.

The Russian side has also got the possibility to send missions to EU Member States only because the above mentioned logic of reciprocity is inherent to this new phase of the EU-Russia visa dialogue. Neither VLAPs with Eastern Partnership countries, nor Road Maps with Western Balkan countries provide(d) such a possibility for EU partners. Still, it seems that the European Commission prefers to see this common political platform more as homework for Russia. This, in particular, is signaled by the fact that apart from having sent to Russia two expert missions already in September-December 2012 that visited 52 “sites” including 4 migrants’ temporary accommodation centers, the European Commission sent to the Russian Government a questionnaire

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<sup>150</sup> Hernandez I Sagrera, R. and Potemkina, O. (2013) Russia and the Common Space on Freedom, Security and Justice: Study. Brussels: European Parliament.

<sup>151</sup> Visa-Free Europe Coalition (2013) Common Steps towards visa free regime. Available at: <http://visa-free-europe.eu/2013/03/eu-russia-common-steps-towards-visa-free-regime/>

with 500 questions covering various aspects of the Common Steps. And after having received the collective reply of several Russian competent bodies, it has sent another questionnaire with 45 new questions.<sup>152</sup> From the point of view of the Russian side, such time-consuming requirements lead to unnecessary slow-down of the mutually beneficial process and eventual postponement of concrete decisions. However, the overall conclusions of the EU expert groups composed of representatives of EU Member States, the European Commission and specialized agencies have been positive as regards the first three thematic blocks of the Common Steps – Document security, including biometrics; Illegal migration, including readmission and Public order, security and judicial cooperation.<sup>153</sup>

There has been indeed significant progress in work under the first three blocks of the Common Steps. With regards to the first block, in particular, Russia has started issuing biometric passports using the standards of the International Civil Aviation Organization (ICAO). The respective Presidential Decree # 1709 “On passport of citizen of the Russian Federation, confirming identity of citizens of the Russian Federation abroad, containing additional biometric personal data of passports’ holders on electronic chip” entered into force in January 2013.<sup>154</sup> The Russian Parliament has also introduced several important legislative changes to the normative acts regulating migration control measures in Russia. The Federal Law #320-FZ “On amendments to the Federal Law “On the legal status of foreign citizens in the Russian Federation”,<sup>155</sup> the Federal Law #321-FZ “On amendments to the Article 26 of the Federal Law “On the rules of exit from and entry to the Russian Federation”<sup>156</sup> entered into force on 11 January 2013. These legislative changes were in line with the prescriptions of the second thematic block of the Common Steps.

Progress is also indisputable in the major part of the second thematic block of the Common Steps – the implementation of the EU-Russia readmission agreement, which has been clearly defined by the European Commission as one of the core pre-conditions for talks on visa-free regime on many occasions since 2006 when the agreement was signed. In line with the Readmission Agreement, Russia and the EU are obliged to readmit their nationals who are staying irregularly in the territory of the other party, as well as those third country nationals who transited through their territory. A special clause of this Agreement has given Russia a three-year transitory period, when the country had to readmit only its own nationals as well as the citizens of those countries with whom Russia itself had already concluded readmission agreements. During this transitory period Russia was supposed to take measures to secure its territory from migrants planning to use it for transit to the EU, as well as to prepare for readmission of irregular migrants from the EU. Such a preparation implied the establishment of centers for readmitted migrants, improved and strengthened infrastructure for migrants’ accommodation and border infrastructure, concluding

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<sup>152</sup> From informal consultations at the Russian MFA, May 2013.

<sup>153</sup> From informal consultations at the Russian Federal Migration Service, February 2013.

<sup>154</sup> Указ Президента Российской Федерации от 29 декабря 2012 г. N 1709 "О паспорте гражданина Российской Федерации, удостоверяющем личность гражданина Российской Федерации за пределами территории Российской Федерации, содержащем на электронном носителе информации дополнительные биометрические персональные данные его владельца", Собрание законодательства РФ, 31.12.2012, N 53 (ч. 2), ст. 7861.

<sup>155</sup> Федеральный закон Российской Федерации от 30 декабря 2012 г. N 320-ФЗ "О внесении изменений в Федеральный закон "О правовом положении иностранных граждан в Российской Федерации", Собрание законодательства РФ, 31.12.2012, N 53 (ч. 1), ст. 7645.

<sup>156</sup> Федеральный закон Российской Федерации от 30 декабря 2012 г. N 321-ФЗ "О внесении изменения в статью 26 Федерального закона "О порядке выезда из Российской Федерации и въезда в Российскую Федерацию", Собрание законодательства РФ", 31.12.2012, N 53 (ч. 1), ст. 7646.

readmission agreements with countries on the perimeter of Russia, as well as concluding with individual EU Member States implementation protocols – de-facto detailed technical and procedural schemes – indispensable for the whole-scale implementation of the EU-Russia readmission agreement.

Russia started implementing the Readmission Agreement in October 2007 – even in the absence of implementation protocols with EU Member States. It was the second country after Albania to do so. After these three transitory years (by the summer 2010) Russia has assumed responsibility for all irregular immigrants entering the EU from the Russian territory. To-date, Russia has concluded implementing protocols with all EU Member States that are part of the readmission agreement.<sup>157</sup> The Russian Government has also managed to conclude readmission agreements with major migrants' origin and transit countries, most importantly in Central Asia, but also with Vietnam and Turkey, whereas negotiations are under way with Pakistan and Afghanistan.<sup>158</sup> The Russian Federal Border Service has paid specific attention to the improvement of infrastructure and border management schemes on the Southern part of the Russian border in recent years. Several centers for temporary accommodation of readmitted third country migrants were established with expert assistance from the International Organization for Migration (IOM) and financial assistance/monitoring from the European Commission.<sup>159</sup> The Russian Federal Migration Service (FMS) has established good working relations with its EU-based counterparts and cooperation in migrants' identification and removal is progressing smoothly,<sup>160</sup> even though approximately 50% of all readmission applications from EU Member States to Russia are rejected by the FMS as ill-founded.<sup>161</sup>

Importantly, as indicated by a representative of the European Commission, Russia's adherence to the EU-level readmission agreement has been instrumental in stimulating EU Member States to use this legal mechanism instead of other bilateral means.<sup>162</sup> Prior to the entry into force of the EU-Russia readmission agreement, EU Member States and Russia (similar to Eastern Partnership countries<sup>163</sup>) used various legal mechanisms in their cooperation for expulsion purposes not limiting themselves to readmission procedures. Once the EU-Russia readmission agreement entered into force, Russia – with the purpose to persuade the European Commission in its good will to properly implement the readmission agreement – has been consistent in suggesting EU Member States to cooperate under the EU-Russia readmission agreement instead of using other schemes for

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<sup>157</sup> Подписан Исполнительный протокол к Соглашению о реадмиссии с Португальской Республикой в рамках соглашения между Российской Федерацией и ЕС (Официальный сайт ФМС России). Available at: [http://www.fms.gov.ru/press/news/news\\_detail.php?ID=60112](http://www.fms.gov.ru/press/news/news_detail.php?ID=60112)

<sup>158</sup> Korneev, O. (2012) 'Deeper and Wider than a Common Space: EU-Russia Cooperation on Migration Management', *European Foreign Affairs Review*, Vol.17, No.4.

<sup>159</sup> Korneev, O. (forthcoming) 'Exchanging Knowledge, Enhancing Capacities, Developing Mechanisms: the Role of IOM in the Implementation of the EU-Russia Readmission Agreement'. Special issue of the *Journal of Ethnic and Migration Studies* (guest editors Martin Geiger and Antoine Pécoud).

<sup>160</sup> Hernandez I Sagrera, R. and Potemkina, O. (2013) *Russia and the Common Space on Freedom, Security and Justice: Study*. Brussels: European Parliament. P.15-16.

<sup>161</sup> From informal consultations at the Russian FMS, February 2013.

<sup>162</sup> Nils Coleman (International Relations Officer, European Commission, DG HOME), questions and answers section, "The Management of the External Borders of the EU and its Impact on the Human Rights of Migrants: The Italian Experience. A Consultation between the UN Special Rapporteur on the Human Rights of Migrants, Mr François Crépeau Civil Society, and Academia". European University Institute, Florence, 3 October 2012.

<sup>163</sup> Brunarska, Z., Mananashvili, S. and A. Weinar (2013) *Return, readmission and reintegration in the Eastern Partnership countries: an overview*. CARIM-East RR 2013/17, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute.

“return”. The lack of consistency in EU Member States’ use of EU level readmission agreements with third countries as well as their ad hoc decisions to use other mechanisms for “return” when EU level readmission agreements could have been used, have been emphasized by the European Commission as a serious problem for the EU’s readmission policy in its evaluation report in 2011.<sup>164</sup> Therefore, the insistence of the Russian Federal Migration Service on the use of the EU level readmission agreement has been important for the development of the EU’s readmission policy.

Overall, the EU-Russia readmission agreement has been characterized by a competent EU official as the only one that has been effectively used in EU readmission policy.<sup>165</sup> This has to do with scale dynamics as regards Russia and, most importantly, with the need to extend the network of readmission agreements further from EU direct neighbors/partners to other countries in the world. Russia is the only country in the neighborhood that has actually gone in this direction – its contribution to the „domino effect” in the proliferation of readmission agreements is obvious and this is something unique. The European Commission has explicitly stated on many occasions that implementation of the EU-Russia readmission agreement will also be judged based on Russia’s success in concluding readmission agreements with important countries of origin and transit, which is much more than just an effective implementation of the EU-Russia readmission agreement per se. Such dynamic of proliferation is not the case for Moldova or Ukraine, for example. Therefore, the comment mentioned here refers to a broader context of EU readmission policy – its disseminative ideology – in which Russia definitely plays a bigger role than any other Eastern Partnership or European Neighborhood country.<sup>166</sup>

The Russian side has also used its right to rely on expert missions to the EU and by February 2013 has sent two joint missions that visited several EU Member States. Russian experts on document security, fight against irregular migration, issues of asylum and refugee protection and IT technologies met their colleagues and conducted field visits to various “sites” including centers for temporary migrants’ accommodation in Germany, Italy and Greece. The mission to Berlin turned out to be problematic, as the Russian experts planning to check the functioning of the asylum and refugee protection systems in Germany were denied access to applicants who could provide firsthand information on the conditions of their stay.<sup>167</sup> Apart from this incident, Russian officials characterized these missions as a useful way of learning about the situation in the fields covered by the Common Steps directly from their partners in selected EU Member States. The missions of Russian experts uncovered some issues that normally used to be pointed out as Russian problems. For instance, Russian officials underlined that some of the EU Member States divert from internationally agreed standards on document security. The issuance of passports in Italy is done regionally, whereas international standards require the creation of a centralized passport-issuing body for diminishing the risks of theft and corruption. The Russian side also expressed concerns

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<sup>164</sup> European Commission (2011) *Evaluation of EU Readmission Agreements*, Brussels, 23.02.2011, COM (2011) 76 final.

<sup>165</sup> Nils Coleman (International Relations Officer, European Commission, DG HOME), questions and answers section, “The Management of the External Borders of the EU and its Impact on the Human Rights of Migrants: The Italian Experience. A Consultation between the UN Special Rapporteur on the Human Rights of Migrants, Mr François Crépeau Civil Society, and Academia”. European University Institute, Florence, 3 October 2012.

<sup>166</sup> For more details please see Korneev, O. (2012) ‘Deeper and Wider than a Common Space: EU-Russia Cooperation on Migration Management’, *European Foreign Affairs Review*, Vol.17, No.4.

<sup>167</sup> From informal consultations at the Russian Federal Migration Service, February 2013.

about living and security conditions in a migrants' camp near Athens where approximately 13 000 migrants are kept without clear prospects for their further status in Greece.<sup>168</sup>

The recently launched special EU-Russia Migration Dialogue is another important channel for fostering the implementation of the Common Steps. The first session of this dialogue took place in Moscow in June 2011. Since then, four more sessions took place in Brussels, Saint-Petersburg, Bratislava and Kaliningrad. The Migration Dialogue has finally provided for a venue to discuss possibilities of cooperation on different migration-related issues, not limited by the common interest to fight irregular migration. This allows both parties to approximate their positions on a number of tasks defined in the Common Steps. Importantly, during the last session of the Migration Dialogue in Kaliningrad, EU representatives confirmed that they “do not expect any risk of growth in irregular migration either from or via Russia”,<sup>169</sup> which is clearly an important argument in the visa liberalization dialogue. Yet, such statements are politically sensitive and are contrary to a widespread belief within the Union that an abolition of the visa requirement will go hand in hand with increased migration and organized crime.<sup>170</sup>

In the absence of public access to Progress Reports on implementation of the Common Steps, an evaluation of the EU-Russia Migration Dialogue might also be used as an indirect assessment of the progress made with the Common Steps. The value of such an assessment is clear because the Migration Dialogue is part and parcel of the EU strategy to impact Russia's migration and migration-related law and policies and thus might account for progress in at least some of the areas grouped by the four blocks of the Common Steps. In the most recent EU official evaluation of the EU-Russia Common Spaces, the partners underline “progress in the Migration Dialogue, implementation of its first Work Plan for 2011-2012 and adoption of a new one for 2013-2014 at the October PPC”.<sup>171</sup>

The Common Steps also try to tackle the long-discussed issue of foreigners' registration – de-facto mostly concerning EU citizens in the Russian territory and Russian citizens in a number of the EU states<sup>172</sup> – in a very soft manner. The document says, in particular, that the parties shall “work to ensure facilitation, further simplification and transparent application of the respective rules on registration/listing of citizens legally staying on the other Party's territory” without any reference to potential abolishment of the registration requirement by Russia. Significantly, the proposal to cancel the registration requirement for all EU citizens coming to Russia for no more than three months under the conditions of a visa free regime was part of the draft visa waiver agreement presented by President Medvedev at the EU-Russia summit in June 2010 in Rostov. After the failure of this initiative, the Russian side has never reiterated its proposal in any official document, but it has been repeatedly mentioned by Russian MFA officials, emphasizing that this issue will be

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<sup>168</sup> Ibid.

<sup>169</sup> Диалог Россия-ЕС на тему «Незаконная миграция». Available at: [http://www.fms.gov.ru/press/news/news\\_detail.php?ID=68343](http://www.fms.gov.ru/press/news/news_detail.php?ID=68343)

<sup>170</sup> This and similar arguments against visa-free regime are extensively discussed in Golunov, S. (2013) EU-Russian Border Security: Challenges, (Mis)perceptions and Responses. Routledge: London and New York.

<sup>171</sup> EEAS (2013) EU-Russia Common Spaces. Progress Report 2012. Brussels, March 2013. P.3. Available at: [http://eeas.europa.eu/russia/docs/commons\\_spaces\\_prog\\_report\\_2012\\_en.pdf](http://eeas.europa.eu/russia/docs/commons_spaces_prog_report_2012_en.pdf)

<sup>172</sup> For registration requirements in EU Member States see Notifications under Article 37 of 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). The obligation on third-country nationals to report their presence on the territory of any Member State pursuant to Article 21(d) (2008/C 18/04), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:018:0025:0030:EN:PDF>

solved once the parties reach a visa waiver agreement.

This issue, as well as some other tasks identified under the politically sensitive fourth thematic block in addition to the concerns of the EU over Russia's problems with corruption and border management,<sup>173</sup> shadow Russia's progress in what the Russian government believes to be the most important aspects of the Common Steps, namely measures aimed to diminish risks of irregular migration and other internal security challenges. So far, there is only very scarce data and almost no official information that would allow to assess – even though only *en grandes lignes* – progress under the third and fourth blocks of the Common Steps. The expert missions under the third block have been accomplished. However, it is very well known that negotiations on the operational agreement between Europol and Russia are stumbling,<sup>174</sup> while indicators of a successful implementation of the measures under the fourth block remain unclear. Informally, the European Commission representatives say that Block 4 is the most problematic and still a lot needs to be done there.<sup>175</sup> The expert missions (from both sides) on the fourth block will take place only in autumn, and then the drafting of the report will take some time, further postponing the outcomes of an already very long process.

### 3. *The way forward*

The importance attached to the visa dialogue by both parties is emphasized by the fact that “continued implementation of the ‘Common Steps towards visa free short-term travel of Russian and EU citizens’ including expert missions” is officially listed as the first among top three general achievements of the general EU-Russia dialogue in 2012.<sup>176</sup> At the same time, as stated in the introduction to this report, even though the processes of visa liberalization and facilitation are both to be considered as self-standing and reciprocal processes, which proceed in parallel, there is a certain connection between the two in the sense that the effective implementation of the (updated) visa facilitation agreement is considered by the partners as one of the preconditions for progress towards further visa liberalization. This is, at least, an officially expressed common approach since it is included in the jointly agreed Common Steps document and also in the preamble of the draft upgraded visa facilitation agreement.<sup>177</sup>

Still, one can argue that the undeclared agenda of the Russian authorities remains quite different – the emphasis is put on the need of the quickest jump to a visa waiver scheme and further visa facilitation is not regarded as a prerequisite for this long-awaited qualitative change in the bilateral relations. It has been repeatedly stated by the Russian MFA that negotiations on amendments to the current VFA and the visa-free dialogue are two different tracks. Russian authorities have been criticizing what they call the political – and, thus, in their view artificial – nature of the delays in the latter process.

In other words, the Russian authorities emphasize that while the parties deal with concrete technical problems mentioned in the Common Steps – such as introduction of biometric passports,

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<sup>173</sup> Hernandez I Sagrera, R. and Potemkina, O. (2013) Russia and the Common Space on Freedom, Security and Justice: Study. Brussels: European Parliament. P.11.

<sup>174</sup> This mostly has to do with the absence in Russia of an independent body to oversee information exchange that would guarantee Russia's compliance with the Council of Europe standards on data protection.

<sup>175</sup> Informal consultations at the European Commission, March 2013.

<sup>176</sup> EEAS (2013) EU-Russia Common Spaces. Progress Report 2012. Brussels, March 2013. P.2. Available at: [http://eeas.europa.eu/russia/docs/commonsaces\\_prog\\_report\\_2012\\_en.pdf](http://eeas.europa.eu/russia/docs/commonsaces_prog_report_2012_en.pdf)

<sup>177</sup> Informal consultations at the European Commission, March 2013.

improvement of operational cooperation between border services or changes in the legislation relating to entry and exit of foreigners – they always manage to find a compromise. Therefore, they draw the conclusion that more serious problems lie in the political realm and blame the EU and, in particular, certain Member States, for the lack of political will to start visa-waiver agreement negotiations. Russian Foreign Minister Sergey Lavrov has been very clear on this point:

*“We are disappointed with insufficient progress towards visa-free travel for short-term visits between Russia and the EU. The visa regime has long been an anachronism in our relations. From the technical point of view, Russia and EU Member States have been ready to waive visas for each other. This issue is symbolic; it exemplifies all the differences between Russia and the EU. It is ironic that our western partners, who were so adamant about freedom of movement when negotiating the Helsinki Final Act, are now reluctant to create conditions for free human communication on the European continent.”*<sup>178</sup>

A mirror approach exists within the European Union. In official documents the European Commission acknowledges progress in the implementation of the Common Steps, as well as the technical nature of prominent unresolved issues – such as the conclusion of an operational agreement between Europol and Russia – and admits that both the EU and Russia need time and resources to implement particular measures. However, at the discourse level and also informally many EU representatives reproach the Russian authorities for a lack of political will to deal with such issues as human rights, which the Russian side believes to be somehow irrelevant for the visa dialogue.

As it has been noted, “Russia is dissatisfied with the slow speed of the implementation process [of the Common Steps] and proposes a quicker road map with a fixed date of starting negotiations on a Visa Waiver Agreement”. The EU [...] views visa liberalization in a longer-term perspective”.<sup>179</sup> Even if everything that is mentioned in the Common Steps is implemented – and thus so-called „benchmarks” are met – negotiations on a visa waiver agreement will not start automatically (cf. supra). A genuine benchmarks-based approach functions in a different way – and this has been amply demonstrated by the history of European integration itself, in particular, during the Eastern enlargement process – implementation of agreed measures naturally leads to an automatic step further. Therefore, in fact, the non-binding formulations of the Common Steps can hardly be named benchmarks, which is clearly an indication of the political rather than technical nature of the process. A wide margin for political manoeuvre is given to the EU by the very nature of its decision-making process: “as agreed in the Common Steps methodology, there is no automaticity and the Council's decision on this issue will take into account the overall EU-Russia relations”.<sup>180</sup> This is specifically evident in the ambiguous positions of certain Member States, such as Germany, Scandinavian countries, Baltic and some Central European States referring to potential migration “threats” in case a visa-free regime is established.

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<sup>178</sup> See: S. Lavrov, “Russia-EU: Prospects for Partnership in the Changing World”, *Journal of Common Market Studies* (2013), also available at: [http://www.mid.ru/brp\\_4.nsf/0/B769A8BF9D89820044257BC6006008F6](http://www.mid.ru/brp_4.nsf/0/B769A8BF9D89820044257BC6006008F6)

<sup>179</sup> Hernandez I Sagrera, R. and Potemkina, O. (2013) *Russia and the Common Space on Freedom, Security and Justice: Study*. Brussels: European Parliament. P.31.

<sup>180</sup> Policy Briefing “State of Play on EU-Russia visa dialogue”, DG EXPO/B/PolDep/Note/2013\_147, April 2013, Brussels: European Parliament.

At the same time, a no-risk statement on the potential migration pressure from Russia to the EU expressed by EU representatives during the last session of the EU-Russian Migration Dialogue in Kaliningrad (mentioned above) echoes several studies done to assess migration potential from Eastern Partnership countries to the EU in the possible absence of a visa regime. While studies produced by some of the EU security-oriented agencies, like FRONTEX, seem to be very cautious in their forecasting and are rather alarmist as regards potential migration risks, research done within academia is skeptical about the high risk of increasing migration pressure – in particular as regards low-skilled and unskilled workers – from Ukraine or Moldova to the EU.<sup>181</sup> There has not yet been such a thorough study on Russia, even though already in 2002 in its very first reaction to President’s Putin letter proposing to abolish the visa regime the European Commission clearly identified two main problems that were supposed to be dealt with before the parties would start visa-free negotiations: crime and illegal migration.<sup>182</sup> These requirements put forward by the European Commission have perfectly reflected the founding ideas and principles of the then nascent common immigration policy of the European Union and, in particular, its impact on the EU relations with third countries.<sup>183</sup> In the mentioned Communication no reference has been made to such issues as human rights. At a later stage the whole visa dialogue has been diverted from the allegedly main focus of attention of the EU common immigration policy – prevention of irregular immigration risks, according to which a no- or low-risk immigration scenario as regards a third country should be considered a sufficient ground for visa liberalization – to a broader perspective including human rights concerns in Russia. Relevant indicators of the prospects for visa liberalization are also formulated in the final provisions of the Common Steps document (cf. supra). However, up to date, the Parties have barely discussed – at least in public – the actual meaning and importance of these concrete technical criteria relating to migration risks. Finally, only now – more than ten years after the seminal Communication on Kaliningrad transit – apparently the time has come. According to insider information, the European Commission prepares to ask several established academic institutions together with other important stakeholders to produce a detailed assessment of potential migration risks from/via Russia to the EU in a no-visa scenario.<sup>184</sup> If such an assessment takes place any time soon and its results are taken into account by the EU side, the EU-Russia visa dialogue might take a much less political – indeed technical – and pragmatic turn.

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<sup>181</sup> See Weinar, A., Korneev, O., Makaryan, S. and S. Mananashvili (2012) Consequences of Schengen Visa Liberalisation for the Citizens of Ukraine and the Republic of Moldova. Migration Policy Centre Research Report 2012/01. European University Institute: Florence. Available at: <http://www.migrationpolicycentre.eu/docs/RR%202012%2001%20-%20visa%20final.pdf> and CASE: ENPI - Costs and Benefits of Labour Mobility between the EU and the Eastern Partnership Partner Countries final reports. Available at: [http://www.case-research.eu/en/migration\\_ENPI](http://www.case-research.eu/en/migration_ENPI)

<sup>182</sup> As it has already been mentioned in the Introduction to this report, the European Commission has noted that “*before the EU and Russia are able to identify and carry out the measures needed to set the conditions for abolishing the visa regime, co-operation on crime and illegal migration should be stepped up immediately including preparation of a readmission agreement*”. Please see COM (2002) Communication from the Commission to the Council “Kaliningrad: Transit”, COM (2002) 510 final, Brussels, 18.09.2002.

<sup>183</sup> Lavenex S. (2006) “Shifting up and out: the foreign policy of European immigration control”, *West European Politics*. Vol.29. No.2. pp.329-350.

<sup>184</sup> From a source in the European Commission.

## **Part IV Policy recommendations**

Based upon the above mentioned analysis, the following policy recommendations can be made regarding the processes of visa facilitation (1) and visa liberalization (2)

### ***1. Recommendations regarding the process of visa facilitation***

#### **Amendments to the EU-Russia Visa Facilitation Agreement**

- The upgraded EU-Russia VFA should be concluded as soon as possible without being hijacked by the discussions on service passports. Freedom of movement, including the opportunity to cross state borders without unnecessary obstacles, is of great significance in people's lives. For this reason, visa policy should not be used as an instrument to achieve other objectives.
- *Bona fide* travelers with a positive visa history visiting the EU Member States or Russia for private purposes (e.g. visiting friends or tourism) should also be able to benefit from the facilitated visa regime even when they do not belong to one of the privileged categories of travelers mentioned in the (updated) VFA.

#### **The use of a harmonized list of supporting documents**

- The implementation of the harmonized list of supporting documents to apply for a Schengen visa should be carefully monitored by the European Commission. Moreover, it could be used as a basis for harmonization of the visa requirements with the Russian Federation. Further steps should be taken with regard to the harmonization of the documentation requirements. For instance, electronic means of communication, including fax and internet, should be commonly applied for transmission of the required documents, especially invitations. Electronic copies of invitations should be accepted by all consular missions, especially when sent directly to the mission's electronic address or fax number by the inviting party. The issuance of invitations by hosts and sponsors should be simplified. A written letter of invitation signed by the inviting party and providing their personal data should be sufficient in such cases; there is no real need for official certification of such invitations as there is always a possibility of checking the data presented in such an invitation in case of doubts.
- The focus of the consular authorities should be shifted to an assessment of immigration and security risks posed by the applicant, rather than justifying the need for frequent travel and documenting a single purpose of travel. What is more, annulment and revocation of a visa should be allowed only in cases when a visa was obtained in a fraudulent way and the person in question poses a clear immigration risk or is a threat to public security.
- An online-based fully electronic system of applying for and issuing of visas without the need for an applicant to attend a consulate or a visa handling center in person should be gradually introduced. In addition, the use of eVisa as recommended by the United Nations World Tourism Organization should be contemplated in the context of EU-Russia visa

relations. The so-called e-ProVisa issued by the Republic of Cyprus for short-term Russian visitors could be used as an example.

### **The use of multiple-entry visas**

- Multiple-entry visas with maximum term of validity should be issued on a regular basis to all *bona fide* travelers who need to visit the EU or Russia frequently. The third visa issued to the same person who has used her/his previous visas according to the rules should be valid automatically for 5 years. Successive visas should not have shorter validity than previous ones, unless there are serious reasons for granting a visa with shorter validity. 3- to 5-year validity visas should be granted to all applicants that fulfill the necessary criteria, irrespective of whether they have or have not applied for a visa with such long validity. Moreover, the upper limit of validity of visas should be extended to 10 years. A person who has used a 5-year visa, should be granted a 10-year visa upon next application.<sup>185</sup>
- In order to ensure a better and more efficient use of multiple entry visa, the purpose of travel should be indicated only in case of single- and double-entry visas and not multiple-entry visas. In order to better monitor the issuance of long-term multiple entry visas, the European Commission should work with Member States to include the length of issued multiple-entry visas in the statistics they collect annually from the Member States. Similar statistics should be collected with regard to the visa practice of the Russian Federation. Only then will it be possible to monitor the effectiveness of the multiple-entry visa regulations as laid down in the EU-Russia VFA.

### **Information and service provided to visa applicants**

- The European Commission and the Russian Ministry of Foreign Affairs should carefully monitor the work of EU Member State and Russian consulates/visa centers. Especially in the context of limited direct appeal possibilities, a dedicated website should be established with an e-mail address and a telephone hotline for reporting incidents of malpractice and misbehavior by consulate/visa centers staff. Consulates and visa handling centers should provide a ‘complaint mail box’ to acquire information from visa applicants about their problems during the application process.<sup>186</sup>
- There is an urgent need to introduce a simplified and uniform appeal procedure, both with regard to being granted a visa with far shorter validity than requested as well as against decisions on annulment and revocation of a visa. Appeal cases should be investigated by an independent centralized body. Specific attention should be devoted to the practice of ‘blacklisting’ persons without any stating any reasons or general reasons of ‘state security’. Persons included in such ‘black lists’ should be guaranteed a right of appeal.

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<sup>185</sup> The experience of the US should be considered here. US visas of 5 and 10 years validity are routinely granted to travelers who do not pose an immigration risk, even if the application is made in relation to a short trip (e.g. for a conference). General information about the US visa practice is available at: [http://travel.state.gov/visa/temp/types/types\\_1262.html](http://travel.state.gov/visa/temp/types/types_1262.html).

<sup>186</sup> As was suggested in by the European Commission in its Report to the Council and the European Parliament on the functioning of Local Schengen Cooperation during the first two years of implementation of the Visa Code, COM (2012) 648 final, p. 7.

- Further cooperation between EU Member States over visa application submission and visa issuance should be encouraged. This concerns not just the states that might not have diplomatic representations in Russia, but also those that have only one or two consulates, which forces visa applicants to travel long distances to apply for a visa. Yet, the establishment of a network of common EU/Schengen visa application centers appears to be an even better solution. This will help to further harmonize the EU visa policy, facilitate the access of Russian citizens to the EU as well as demonstrate the true spirit of solidarity within the Schengen zone. Such centers should also have a common online application system enabling application tracking, in order to limit queues and make the whole process more transparent.
- Visa applicants should have a true choice between applying either directly at a consulate or at a visa handling centers. An equal level of quality is to be guaranteed. In this respect, the rights of visa applicants under the (upgraded) VFA should be carefully monitored.
- Visa handling centers should be established in cities where no consular missions are already present. This will increase the options for visa applicants and avoid that long journeys have to be undertaken in order to fulfill the formal requirements.
- It should be the duty of the consular/visa centers staff to inform applicants if they fall under a category benefitting from the EU-Russia Visa Facilitation Agreement. Also, relevant provisions of the EU visa code (or relevant Russian legislation) and the EU-Russia Visa Facilitation Agreement presented in a concise and clear manner should be widely available in both the consulates and visa application centers. One cannot simply assume that it is enough to make public the official texts of these documents as they are utterly unintelligible for regular visa applicants. Also, it should be a duty of the staff to inform the applicants about the possibility to appeal against unfavorable decisions as well as to lodge complaints.

## ***2. Recommendations regarding the process of visa liberalization***

- In order to make progress in the process of visa liberalization, the parties should concentrate on the implementation of measures that are of direct importance to visa/migration policy, i.e. measures dealing with the management of migratory pressure and security in the case of a visa free regime.
- In order to assess the impact of visa liberalization, the parties should order an independent study focusing on migration flows and security risks in the case of a visa free regime.
- The parties should use the criteria mentioned in the Final Provisions of the Common Steps (rate of visa applications refusals; rate of readmission applications accepted and effective returns under the Russia –EU readmission agreement; number of return decisions with regard to citizens of the Parties, illegally staying or residing on the territory of the other Party; number of refused entries at the border; number of apprehended citizens of the Parties, illegally staying or residing on the territory of the other Party) as the basic formal criteria for the evaluation of the parties' readiness for a visa free regime.

- The process of visa liberalization should be as transparent and accountable as possible. For this reason, all statistical data relevant for the evaluation of the parties' readiness for a visa free regime (cf. *supra*), progress reports on the implementation of the Common Steps, conclusions of the regular meetings of the Joint Monitoring Committees for the EU-Russia VFA and the EU-Russia readmission agreement should be made public.
- The parties should commit themselves to start negotiations on a visa waiver agreement once they agree that the Common Steps have been successfully implemented.

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