

## MAKING THE IMPOSSIBLE POSSIBLE

THE PROSPECTS FOR VISA-FREE MOVEMENT  
BETWEEN THE EU AND ITS EASTERN PARTNERS

Marta Jaroszewicz

NUMBER 27  
WARSAW  
MAY 2012

**MAKING THE IMPOSSIBLE POSSIBLE**  
THE PROSPECTS FOR VISA-FREE MOVEMENT  
BETWEEN THE EU AND ITS EASTERN PARTNERS

Marta Jaroszewicz



**OSW** |

CENTRE FOR EASTERN STUDIES  
OŚRODEK STUDIÓW WSCHODNICH im. **Marka Karpia**

© Copyright by Ośrodek Studiów Wschodnich  
im. Marka Karpia / Centre for Eastern Studies

Content editors  
Adam Eberhardt

Editor  
Anna Łabuszewska

Co-operation  
Katarzyna Kazimierska

Translation  
Ilona Duchnowicz

Co-operation  
Nicholas Furnival

Graphic design  
PARA-BUCH

DTP  
GroupMedia

PUBLISHER

**Ośrodek Studiów Wschodnich im. Marka Karpia**

Centre for Eastern Studies

ul. Koszykowa 6a, Warsaw, Poland

Phone + 48 /22/ 525 80 00

Fax: + 48 /22/ 525 80 40

osw.waw.pl

ISBN 978-83-62936-10-6

# Contents

KEY POINTS /5

INTRODUCTION /8

## I. THE CRISIS OF THE EU'S MIGRATION AND NEIGHBOURHOOD POLICIES /10

1. Problems of the EU's migration policy /10

2. The future of the Eastern Partnership /11

## II. THE MIGRATION SITUATION IN EASTERN EUROPE /13

1. The irregular migration threat /13

2. The readmission agreements /15

3. The region's emigration potential /18

## III. THE STATE OF PLAY. THE VISA LIBERALISATION PROCESS /22

1. Ukraine and Moldova: the action plans /22

2. Russia: a separate 'path' /28

3. Belarus: at the very end /33

## IV. THE STRENGTHS AND THE WEAKNESSES OF THE NEIGHBOURING COUNTRIES /37

1. Political will and activity /37

2. The rule of law and corruption /40

3. Biometric documents /41

4. Border management /43

5. The migration policy /45

RECOMMENDATIONS. "TO BREAK THE SPELL CAST ON VISAS" /47



## KEY POINTS

- The present socio-political situation in the European Union and the global financial crisis are creating rather unfavourable conditions for the process of visa liberalisation between the EU and the countries of Eastern Europe. On the other hand, the threat posed by irregular migration from this area is incomparably lower than from North African countries, and is decreasing due to unfavourable demographic trends and the increasing possibilities of legal employment abroad for residents of Eastern European countries. Furthermore, the border management system in Eastern Europe is definitely more efficient than several years ago. The countries discussed are also competently fulfilling their obligations linked to the implementation of the readmission agreements they have signed with the EU. The visa refusal rate at Schengen consulates in Eastern Europe is successively falling.
- The issue of mobility and visa-free movement, with adequate conditions set to ensure security, could add new momentum to the Eastern Partnership (EaP) and make the partner states more interested in this initiative. Russia could also be included in this process, which could become a natural axis providing a connection with the Partnership for Modernisation project. All this would lead to an improvement in the stability of the EU's neighbourhood, and it would also encourage Eastern European countries to make efforts at modernisation.
- To bring about the lifting of the visa requirement in relations between the EU and Eastern European countries it is essential that the spell cast on this issue be broken. Now is the stage which brings the long-term liberalisation process to its conclusion; we are not witnessing a breakthrough with unpredictable consequences for the EU. Lifting the visa requirement for citizens of Eastern European countries may be temporary and conditional. It is worth combining it with the implementation

of such solutions aimed at improving the EU's security such as the smart borders system<sup>1</sup> or making the mechanisms for moving the states from the 'white' to the 'black' visa list more flexible. In the testing phase, visa liberation can be introduced with regard to certain categories of travellers or in connection with a precisely defined event.

- The best solution would be the introduction of a visa-free regime for Ukraine and Moldova at the same time or over a short time-span. It will be difficult to lift the visa requirement for citizens of Russia at the same time given the size of this country, its problems with internal security, and the need to apply special regulations. However, visa-free movement for certain categories of travellers from Russia, especially those who have a positive history of trips to the Schengen Area (*'bona fide'* travellers), appears to be very realistic. Owing to this EU member states could regain interest in the entire liberalisation process, which is becoming an overly technical issue. Belarus, despite the present difficulties, should also not be deprived of the prospect of visa-free movement. In the short term, lowering the price of the uniform Schengen visas for Belarusians should be considered, regardless of the possibilities for signing a visa facilitation agreement with Minsk.
- The negotiation process cannot be too long, and the EU – along with the requirements – should also create an incentive system. It is worth considering introducing visa-free movement conditionally, when most of the criteria have been met, which should be accompanied by putting into operation a mechanism

<sup>1</sup> In October 2011, the EC suggested modern border management methods be introduced on the external borders of the EU in the future, i.e. the 'smart borders' system, which would include introducing an electronic entry-exit registration system and a system for the pre-screening of travellers. The main principle inherent in the new idea is the use of different border control methods, depending on whether a given traveller poses a migration risk or not.

for monitoring further progress. This increased conditionality policy could provide an additional incentive to the Eastern European governments and make them more inclined to fulfil their obligations with regard to the EU at a faster rate.

- The key short-term challenges include the introduction of biometric documents and adequate databases, and ensuring the due protection of borders. In the long term, the EU should press for the ministries of internal affairs to be reformed and the judiciary and the system for combating corruption to be reinforced. In the case of Russia and Belarus, a change in the restrictive registration policy applicable to citizens of EU member states staying in those countries should be the key element.

## INTRODUCTION

This paper is aimed at presenting the opportunities and the challenges linked to the introduction of a visa-free regime in EU-Eastern Europe relations, and the attempts to propose solutions for breaking the lengthy deadlock this issue has faced since the collapse of the USSR. At the outset, the background of the visa liberalisation process between the EU and Eastern European countries will be outlined. Then the progress in negotiations between individual neighbouring countries and the EU and also existing co-operation mechanisms are described. The next section provides an analysis of the strong and the weak points of the neighbouring states, and assesses their level of readiness for the introduction of visa-free movement with the EU. The last part presents recommendations: how to steer the further negotiation process so that the ultimate goal can be achieved and will be beneficial for both the European Union and the governments and societies of Eastern European states.

This text provides a description of those Eastern European countries which share a border with the European Union and which are encountering serious problems due to the existence of the visa regime with the EU: the three countries participating in the Eastern Partnership which are closest to the EU (Ukraine, Moldova and Belarus), and also Russia, which is not covered by the EaP. The choice of these countries was based on their progress in preparations, on the migration situation and a realistic political evaluation of the possibility to introduce a visa-free regime with the EU. In other words, the basic criterion was the assessment of whether EU member states and institutions and the neighbouring states see this scenario as possible and desirable, and what conditions should be met for this plan to be successful.

Moldova and Ukraine are the most advanced in the negotiation process on visa liberalisation with the EU. However, they do not have too many supporters in the EU, who would be willing to

lift the visa requirement within a short timeframe. On the other hand, the visa refusal rate for the citizens of these countries at the EU consulates has been falling (at a much faster speed for Ukrainians than Moldovans). The European Commission has also noted that the functioning of the local border traffic regime on the EU's borders with these countries is safe. In turn, Russia has not agreed to be subject to the conditionality principle in visa issues (liberalisation in exchange for internal reforms), to which other Eastern European countries have consented. The EU-Russia negotiations on the introduction of a visa-free regime have been in place for many years; however, little progress has been observed in this field. It appears now that both parties are increasingly interested in breaking the deadlock. In terms of meeting the formal and legal requirements, Belarus is in last place. However, in the case of Belarusians, the visa refusal rate at EU consulates is the lowest in this region.

All the countries discussed (including Belarus) have declared that lifting the visa regime in relations with the EU is a priority issue for them. The abolition of visas to the EU is also unquestionably supported by public opinion. Moldova is the most advanced as regards the issuing of biometric documents; Russia also already issues such documents. Neither Ukraine nor Belarus have introduced biometric documents as yet. The main problem all the countries in this region share are the difficulties with introducing the rule of law, the manifestations of which include the inefficient and weak judiciary and high corruption levels. The Achilles heel of these states is their ministries of internal affairs. These have not been reformed and are managed in a non-transparent way when they should be playing the coordinating role in the process of the liberalisation of the movement of people with the EU.

# **I. THE CRISIS OF THE EU'S MIGRATION AND NEIGHBOURHOOD POLICIES**

## **1. Problems of the EU's migration policy**

Since the EU at present needs to deal with the crisis of its migration and enlargement policies and also fundamental economic problems inside the eurozone, a large part of EU member states would prefer the issue of lifting the visa requirement for Ukraine and Moldova to be postponed for as long as possible. Supporters of delaying the resolution of the visa issue claim that all the criteria for lifting the visa regime, which are often excessive, must be met. Therefore, there is a risk that Ukraine and Moldova will get stuck in a never-ending negotiation process. On the other hand, visa liberalisation in relations between the EU and Russia may gain momentum owing to the adoption of a joint action plan to this effect. However, if it is conducted on the grounds of political premises alone, this will in no way make the Russian government more inclined to implement reforms. In turn, Belarusians, who are increasingly cut off from the outside world due to the nature of the political regime in their country, may direct their aversion and disillusionment also against the European Union.

Eastern European countries are watching several current developments with anxiety: the delay in the acceptance of Bulgaria and Romania into the Schengen area, the temporary reinstatement of border control by some EU member states on their borders and France's and Holland's desire to challenge the principle of the free movement of people within the EU by introducing regulations on the expulsion of undesirable EU citizens. The media and experts in the partner states have also been watching the influx of refugees to the EU in the aftermath of the revolutions in the Arab world closely and have noted the difficulties individual member states have had with accepting them.

Given this situation, the eastern neighbours are asking the question, 'If some countries in the EU fear the free movement of people of EU member states citizens of, is the European Union ready to liberalise its policy with regard to its external partners?' Since the governments of these countries tend to answer 'no' to this question, their disbelief in the possibility of the visa regime being abolished in relation with the EU is increasing. This in turn is strengthening their reluctance to reform the migration and border policies in line with EU requirements. Summing up, frustration and de-motivation are increasing in both the EU and the neighbouring countries.

## **2. The future of the Eastern Partnership**

A further liberalisation of the movement of people in relations with Eastern European countries is also being held back due to the growing disaffection with the Eastern Partnership project (both inside the EU and among the beneficiary states) resulting from the impossibility to achieve real political and economic goals, and thus from the weakening of political will. The strictly economic approach to the EaP – given the crisis in the Euroland and Russia's economic offensive in the region – adopted so far is unable to add impetus to this initiative. Secondly, in effect of the enlargement policy crisis, an opening up would be impossible to be brought about in the political sphere. The harmonious development of the EaP is also likely to be upset by unfavourable political trends taking place in countries covered by the EaP, especially the case of Yulia Tymoshenko – whether she will stay in prison for many years – and of other Ukrainian prisoners. This may have a direct impact on the prospects of signing an association agreement between the EU and Ukraine. The future of the pro-European government coalition and its reform agenda is also unclear in Moldova, which has so far been the leader of democratic transformation. Taking this into consideration, the issue of mobility – with conditions improving security adequately set – could make the Eastern European countries and societies more interested in

the EaP. This approach could also cover Russia, since the Partnership for Modernisation cannot be seen as a successful project, given the fundamental disagreements between the EU and Russia regarding its nature and goals.

Doubtlessly, provisions of the declaration developed at the conclusion of the second Eastern Partnership summit were a ray of hope in the process towards liberalisation. EU member states agreed to no longer define the visa-free regime as a long-term goal in mutual relations and to state that this endeavour could be successfully realised “within due time”, provided that the conditions set in the action plans on visa liberalisation have been met<sup>2</sup>. Although this declaration changes little in practice, its fundamental value is that the set of the EU’s requirements to be met by Eastern European countries has been defined, even if this set is very complex.

<sup>2</sup> Joint Declaration of the Eastern Partnership Summit, Warsaw, 29-30 September 2011, p. 4.

## II. THE MIGRATION SITUATION IN EASTERN EUROPE

### 1. The irregular migration threat

The threat of irregular migration from Eastern European countries to the EU – unlike as is the case with the North African region – is falling. The greatest influx of migrants from the Commonwealth of Independent States (CIS) area and of transit migrants from Southern Asia and Africa, who were trying to travel through Ukraine illegally, and to a lesser extent through Belarus (the EU's borders with Russia and Moldova are definitely less popular) was seen in the late 20th century. At that time, Ukrainian border guards detained approximately 30,000 people annually who were trying to cross the border illegally. Among these Ukrainians and Russians were leading in the statistics of countries of origin of irregular migrants apprehended in the EU. It needs to be added that the border management system in Eastern Europe was at that time considerably less efficient than at present.

In 2008, the Ukrainian border service apprehended 6,100 individuals attempting to cross the border illegally, 4,800 individuals in 2009 and also 4,800 in 2010. 3,200 irregular migrants were apprehended in the first six months of 2011. Around 90% of all the migrants apprehended, and also of those whose entry was rejected, are citizens of CIS countries (mainly residents of Moldova, the Russian Federation and Uzbekistan), attempting to get into the EU<sup>3</sup>. While such migrants used to be identified when they had managed to reach the Ukraine-EU border in the past, recently the Ukrainian border service has improved its capacity of apprehending them on its eastern borders.

A secondary transit route for illegal migration from the CIS area as well as Asia and Africa to the EU runs through Belarus. Most

<sup>3</sup> Data from the State Border Guard Service of Ukraine.

migrants most likely arrive in Belarus through the border with Russia, which is totally open; hence the lack of statistical data from this border. In turn, relatively high migration activity can be observed at the Ukrainian-Belarusian and the Belarusian-Lithuanian borders. In total, in 2010 the Belarusian border committee detained 1,387 individuals on charges of violating border legislation<sup>4</sup>. Among these citizens of Georgia were predominant (mostly apprehended at Minsk airport) and following them citizens of Kyrgyzstan and Moldova<sup>5</sup>.

However, it is also worth keeping in mind that Eastern European countries do not always apply a clear methodology for defining the number of apprehended irregular migrants, which makes it difficult to compare their data with EU statistics. Furthermore, some border sections have such a low level of protection that the statistics showing the number of apprehended individuals do not allow any conclusions whatsoever to be made about the existing trends and threats.

EU statistics also show that the threat of irregular migration from Eastern Europe is low. According to the Frontex reports, illegal migration at the EU's eastern land border is remaining at a stable low level. As the most recent report from this agency shows, the greatest threat on the eastern Schengen border is posed not by irregular migration but by cigarettes and fuel smuggling due to the substantial difference in the prices of these goods on the two sides of the border, and also the smuggling of stolen cars from EU member states<sup>6</sup>. The risk of illegal migration is the highest on the Ukrainian-Slovakian border, which accounts for around 40% of all apprehensions on the eastern EU border. Citizens of Moldova

<sup>4</sup> This is a broader category than apprehension for attempted illegal border crossing.

<sup>5</sup> Data from the State Border Committee of Belarus.

<sup>6</sup> Frontex, Eastern Borders Risk Analysis Network Annual Overview 2011, Warsaw, October 2011.

and Georgia (and, from outside the CIS area, citizens of Somalia, Afghanistan and Palestine) are predominant among the migrants apprehended by EU border police. In turn, entry to the EU is most frequently refused to citizens of the neighbouring countries, i.e. Ukraine, Belarus and Russia, who have previously breached the rules of stay in the EU<sup>7</sup>.

## 2. The readmission agreements

Readmission agreements are a perfect touchstone for the assessment of the migration risk. Over the past two years, readmission agreements have been put into effect to the full extent between the EU and: Ukraine (from 1 January 2010), Moldova (from 1 October 2010) and Russia (from 1 June 2010). This means that these countries accept from EU member states not only their own citizens or foreigners caught red-handed but also all irregular migrants, provided that it is proven that they came to the EU through a given neighbouring country. The readmission agreements in the part concerning the return of own citizens came into effect in 2007–2008.

Contrary to expectations, the entry into force of these agreements has not resulted in a rapid growth in the number of individuals readmitted from the EU to Eastern European countries<sup>8</sup>. Firstly, this confirms the thesis that Eastern Europe is not a major transit route for migrants from Africa and Asia heading for the European Union. Secondly, this also indicates that, as regards those citizens of Eastern European countries who break the rules of stay in EU member states, the process of their expulsion was already quite unproblematic before. The readmission agreements signed with the EU did not bring any added value in this area. The change was

<sup>7</sup> *Ibid.*

<sup>8</sup> Communication from the Commission to the European Parliament and the Council, Evaluation of EU Readmission Agreements, COM (2011) 76 Final, Brussels 23 February 2011.

mainly of a statistical nature; the returnees started to be shown in EU statistics instead of bilateral statistics.

Doubtlessly, readmission agreements (both at the community level and the bilateral agreements which apply in reality)<sup>9</sup> appear to be an effective mechanism in combating the irregular migration of own citizens. Proofs of this include: the high number of requests for accepting own citizens sent by EU member states to the partner countries, and the relatively smooth process of accepting readmitted individuals by the receiving states. Co-operation in this area is especially effective with Ukraine and Moldova, and a little worse with Russia, since EU member states are unable to present the sufficient number of documents required by Russia to recognise a given person as its citizen. In the case of Ukraine, co-operation is also good in the part regarding foreigners transferred with the application of the accelerated procedure, i.e. those who are detained in the border area within 48 hours of illegally crossing the border.

Although irregular transit migration and the process of transferring irregular migrants from third countries by EU member states to the partner states has no direct impact on visa liberalisation, it still shows the degree of the general migration risk. Citizens of Eastern European countries tend to be less likely to take the risk of illegal migration. This region is also becoming less popular with irregular transit migrants. Forged passports of the Eastern European countries are used relatively rarely by irregular transit migrants. Above all, these trends show that border management systems have improved and that the level of co-operation between border guards on both sides of the border is relatively high.

<sup>9</sup> Although the previous bilateral agreements (e.g. Polish-Ukrainian) lost effect upon the entry into force of the community readmission agreements, they in fact still apply. Given the lack of implementing protocols to the new type of agreements, the bilateral agreements are still used in readmission practice.

**Table 1.** The implementation of readmission agreements between the EU and the Eastern Partners

| State                     | Year  | Number of requests citizens | Number of requests third states | Number of positive responses | Number of refusals | Accelerated procedure | Number of returns | Transit cases |
|---------------------------|-------|-----------------------------|---------------------------------|------------------------------|--------------------|-----------------------|-------------------|---------------|
| <b>Russian Federation</b> | 2007  | 357                         | 0                               | 116                          | 98                 | 0                     | 62                | 0             |
|                           | 2008  | 986                         | 0                               | 420                          | 451                | 0                     | 388               | 0             |
|                           | 2009  | 1428                        | 1                               | 671                          | 518                | 0                     | 562               | 2             |
|                           | Total | 3165                        | 1                               | 1601                         | 1067               | 0                     | 1406              | 2             |
| <b>Ukraine</b>            | 2008  | 695                         | 680                             | 1209                         | 40                 | 0                     | 1592              | 0             |
|                           | 2009  | 1030                        | 495                             | 1289                         | 82                 | 23                    | 1545              | 0             |
|                           | Total | 1725                        | 1175                            | 2498                         | 122                | 23                    | 3137              | 0             |
| <b>Moldova</b>            | 2008  | 217                         | 0                               | 134                          | 28                 | 0                     | 456               | 0             |
|                           | 2009  | 225                         | 0                               | 111                          | 23                 | 3                     | 446               | 0             |
|                           | Total | 680                         | 0                               | 483                          | 51                 | 3                     | 1140              | 0             |

**Source\*:** Evaluation of EU Readmission Agreements. The aggregated data for the chosen categories gathered by the European Commission from the MS on a basis of a questionnaire, Brussels, 23 February 2011, SEC (2011) 210.

\*These data are not very precise; data provided by individual member states are at variance, not all countries have made their statistics available to the EC. No data have yet been collected for 2010, when readmission agreements came into effect in the full scope.

### 3. The region's emigration potential

The demographic indicators in Eastern European countries are far from optimistic. The societies of our eastern neighbours, including Russia, are characterised by low fertility rates and high mortality rates, and are ageing fast. Since the collapse of the USSR, the Russian Federation was the only post-Soviet state to have seen a substantial increase in migration, which did not however allow it to reverse the trend of its decreasing population. The forecasts for the demographic development of this region indicate clearly that the population will fall in each of the countries discussed despite the fact that over the past twenty years the economic situation has improved, that life expectancy has been increasing, the mortality rate has been falling, and, additionally, the fertility rates improved in 2005–2010. The countries discussed are increasingly wary of the threat emigration poses, given the unfavourable demographic situation. Therefore, they are slowly embarking on active migration policies. All this means that no significant emigration wave from Eastern Europe to the EU should be expected in the long term.

However, it cannot be ruled out that in the short term, after a possible lifting of the visa requirement, migration from Eastern European countries to the EU will grow. This trend could be observed in the case of the Western Balkan countries, where the visa-free regime was introduced in 2009–2010. The problem with unfounded applications for refugee status submitted by citizens of Serbia and Macedonia was especially difficult to handle for such countries as Germany, Sweden and Belgium. These were predominantly persons of Roma or Albanian origin whose economic situation in their home countries was very bad.

**Table 2.** Key demographic indicators in Eastern European countries

| State   | Russia  | Ukraine | Belarus | Moldova |
|---|---------|---------|---------|---------|
| Population number 2010 (millions)                       | 142.958 | 45.448  | 9.595   | 3.573   |
| Fertility rate 2005–2010 (per 1,000 residents)          | 11.4    | 10.4    | 10.7    | 12.3    |
| Mortality rate 2005–2010 (per 1,000 residents)          | 14.2    | 16.7    | 14.4    | 13.5    |
| Population change ratio 2010–2015 in % (medium variant) | -0.10   | -0.55   | -0.33   | -0.68   |

**Source:** Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat. World Population Prospects: The 2010 Revision, <http://esa.un.org/unpd/wpp/index.htm>

The number of labour migrants, including students and scholars from Eastern European countries (with both regulated and unregulated status), staying in EU member states is considerable and reaches several million. However, it is very difficult to assess their number with even rough precision, because Eastern European countries – usually for financial reasons – do not conduct comprehensive research on labour migration, and often use the simple formula of the border crossing balance. The most methodologically reliable research concerning Ukrainian migrants, which was conducted by the State Statistics Committee in 2008 with support from the international community, revealed that 1.5 million of Ukraine’s residents, which accounted for 5.1% of its population at productive age, were working abroad between 2005 and mid-2008. At the same time, the survey proved that emigration

dynamics was falling: in 2007–2008 it was 15% lower than in the preceding two years<sup>10</sup>.

Well-developed migration practice may attract new migrants or facilitate circulatory migration. However, in contrast to the Western Balkans, for which the EU is the main region to migrate to, in the case of Eastern Europe, Russia is an equally important destination. According to estimates, around half of all labour migrants from Ukraine and Moldova leave for Russia. This share is even higher in the case of Belarusian migrants<sup>11</sup>.

The EU member states which are the most popular among labour migrants (predominantly Ukrainians and Moldovans, but also more and more often Russians and Belarusians, who previously rarely participated in labour migration to the EU) are: Italy, Spain, the United Kingdom, Germany and France. A new country which is gaining popularity with migrants from Ukraine is the Czech Republic<sup>12</sup>. The number of migrants who move from Eastern Europe to Poland has also been increasing recently. This is certainly an effect of the liberalisation of regulations concerning the employment of foreigners.

The labour emigration of Belarusians is a new phenomenon. Due to the unprecedented economic crisis this country sustained in 2011, Belarusians' real wages have halved from around US\$500 to US\$250. This is a new trend, and thus it is difficult to confirm by statistical data. However, both independent trade unions and the Belarusian authorities confirm the outflow of highly qualified

<sup>10</sup> This survey was conducted by the Ukrainian Centre for Social Reforms and the State Statistics Committee, with support from the Open Ukraine foundation, the IOM and the EBRD; for more see: Instytut Demografii ta Sotsyalnykh Doslizhen NAN Ukrainy, *Trudova emigratsiya v Ukraine*, Kyiv 2010; pp. 109–112.

<sup>11</sup> See: S. Zivert, S. Zakharov, R. Klinkholts, 'Migratsionnye rezervy Rossii', *Demoscope Weekly*, 29 August–11 September 2011.

<sup>12</sup> Instytut Demografii ta Sotsyalnykh Doslizhen NAN Ukrainy, *op.cit*; Building Migration Partnership, *Ukraine: Extended Migration Profile 2011*.

labour, including specialists in the areas of construction and machine-building, as well as other industry workers. The destination for this wave of Belarusian emigrants is Russia, where such specialists are in demand. What is also important, Belarusian employees are not required to hold any work permits in Russia. Russian sociology centres are also reporting on a new emigration wave of young educated Russians – predominantly students and young businessmen – who leave for the USA and Western European countries. According to estimates by Sergei Stepashin, chairman of the Russian Accounts Chamber, 1.25 million Russians, mainly young people, emigrated from the Russian Federation between 2008 and 2010<sup>13</sup>. This is not strictly labour migration. The main reason these people are leaving is not to find jobs but rather because they are dissatisfied with the prospects of the development of their country, the political situation, corruption, etc. The outflow of this category of people is more of a problem for Russia than for the countries they emigrate to, since Russia is thus losing young and educated human capital.

<sup>13</sup> <http://wciom.ru/index.php?id=459&uid=111681>

### **III. THE STATE OF PLAY. THE VISA LIBERALISATION PROCESS**

As at the end of 2007 the Schengen area was enlarged to include the new EU member states, European countries and institutions decided to launch mechanisms to compensate for the negative consequences of the introduction of the new, more restrictive visa regime. These mechanisms have been developing and evolving. It can be stated now, after several years of their functioning, that the Eastern European area has been covered with a tight network of liberalisation agreements and technical assistance programmes on visas and migration (visa facilitation agreements, readmission agreements, local border traffic agreements, assistance programmes covering mobility or integrated border management, visa dialogue, etc.). However, it has to be admitted that their real impact on the liberalisation of the movement of people between Eastern European countries and the EU is rather insignificant. The security logic and the fear of the influx of undesirable migrants is still prevalent in the EU policy over the desire to open up to the people from these countries, to fill the EaP with content, and to build more friendly relations with the Eastern Partners. In other words, the paradigm of security policy is stronger than the paradigm of foreign policy in the EU's approach to visa issues in the East.

#### **1. Ukraine and Moldova: the action plans**

Ukraine and Moldova have to be singled out as the most advanced countries in the visa liberalisation process. These countries wish for concluding association agreements with the EU (Ukraine officially closed the negotiations in December 2011) and are at the first stage of implementation of the Action Plans on Visa Liberalisation (VLAP), the ultimate goal of which is to lift the visa requirement completely. The Action Plan on Visa Liberalisation granted to Ukraine in November 2010 and to Moldova in January 2011 is strongly reminiscent of the Road Maps which

allowed the Western Balkan countries to gain visa-free entry to the EU several years ago. It includes conditions concerning document security (including biometrics), illegal immigration (including readmission), public order and security, external relations and fundamental rights. However, unlike with the Balkan states, the plans for Ukraine and Moldova divide very ambitious requirements necessary to be met into two phases. They make a distinction between the requirements linked to the introduction of necessary legal changes and the preparation of reforms and the requirements related to the direct implementation of such reforms. The action plans for Ukraine and Moldova contain another new element, namely the provision that in parallel to the evaluation of the reform process, the liberalisation's potential impact on the situation in the area of illegal migration in the EU will also be evaluated. Naturally, such construction of the document proves that the assessment of the eventual progress to be made by Kyiv and Chisinau predominating in Brussels is less optimistic. This also hints that the visa lifting process in this case could be slower<sup>14</sup>.

The staunchest supporters of the introduction of a visa-free regime with Ukraine and Moldova in the EU are Poland and other new EU member states (including Romania in the case of Moldova). These countries believe that lifting the visa requirement for the citizens of Eastern European countries is the best way to promote contacts between people and the development of democratic societies. A similar, albeit slightly toned down, approach has been taken by the foreign ministries of Sweden and Germany, and business circles in numerous EU member states. The Southern European countries are relatively indifferent, although they emphasise that the southern direction should be given priority in the development of the neighbourhood policy. However, most interior ministries of the 'old' EU member states (especially of

<sup>14</sup> In the case of the Western Balkan countries, it took between two and three years on average.

Germany, Austria and Holland) oppose lifting the visa requirement for Eastern European countries in the short term, and their arguments include the crisis in the EU's migration policy and the threats posed by Eastern Europe.

In February 2012, the European Commission presented the second consecutive reports<sup>15</sup> which evaluate Ukraine's and Moldova's advancement in the implementation of the Action Plans on Visa Liberalisation. Although some progress in the fulfilment of the plan's provisions (especially in the case of Moldova) was noted in the reports, the European Commission did not invite the partner states to enter the second (implementation) phase of the Action Plans. This means that Ukraine and Moldova will still remain in the phase of preparations for VLAP implementation. Moving to the second, more difficult, phase of Action Plan fulfilment will thus not be ruled out in the second half of 2012, provided that both countries have adopted all the required legislation changes. Although these two countries have been treated as a 'tandem' so far, it is possible that only Moldova will be invited to the second phase if Ukraine still has such serious delays in introducing biometrics. On the other hand, Moldova poses a higher migration risk, one proof of which is the relatively high rate of visa refusals at the consulates of Schengen states.

While the visa action plans can be recognised as the main element of the visa liberalisation dialogue with the EU, the visa facilitation agreements in force since 2008 are the basic real instrument for action in this area. Their main consequence was the reduction in the price of the short-term uniform ('Schengen') visa from 60 to 35 euros, offering facilitations in obtaining multiple-entry visas with long term of validity to selected categories of travellers and extending the range of situations when no charges for visas are made. Since the agreements came into force, they have been monitored by non-governmental organisations. In their opinion,

<sup>15</sup> The first evaluation was made in September 2011.

the consuls of the Schengen countries have offered the facilitations available too rarely, have issued too few long-term visas and have required the applicants to attach an excessive number of documents to each visa application, seeing every traveller as a potential illegal migrant<sup>16</sup>. The latest reports still note a certain improvement in the situation, including an increase in the number of multiple-entry visas with long term of validity and free-of-charge visas issued<sup>17</sup>. Furthermore, the EU Visa Code came into force in April 2010, one of the results of which is that the holders of national visas of Schengen states have been allowed to travel without restrictions across the whole area, and new solutions, more friendly for travellers, have been introduced to the visa procedure.

Ukraine is negotiating a second-generation visa facilitation agreement. At the EU-Ukraine summit in December 2011, the two sides closed the talks on the envisaged amendments to the liberalisation agreement. They will include an extension of the categories of individuals authorised to receive free-of-charge visas with long term of validity (to include for example workers of non-governmental organisations) and the liquidation of the special charge (70 euros) for issuing a visa with an express procedure applied. However, the greatest liberalisation impact is likely to be made by the new provision, according to which multiple-entry visas are to be issued for a period of between one and five years and not of up to one or up to five years as has been the

<sup>16</sup> See for example: Europe without Barriers, Public Monitoring of the EU Member States' Visa Issuance and Policies and Practices in Ukraine, Kyiv 2009; Stefan Batory Foundation, Zmiany w polityce wizowej państw UE. Raport z monitoringu, Warsaw 2009; Stefan Batory Foundation, "Gateways to Europe" – a Friendly Border, Warsaw 2009.

<sup>17</sup> Europe without Barriers, Schengen Consulates in Assessments and Ratings. Visa Practices of the EU Member States in Ukraine, Kyiv 2010; A. Stiglmyer, Liberalizacja reżimu wizowego wobec Państw Bałkanów Zachodnich. Doświadczenia i wnioski, Warsaw 2011.

case so far. It is expected that the new regulations could come into force in the second half of 2012<sup>18</sup>.

Ukraine is the only neighbouring state to have local border traffic (LBT) agreements in effect on its almost all western borders with the EU (with the exception of the border with Romania). These agreements have turned out to be the most efficient visa liberalisation instrument so far. They have considerably activated the movement of people between the new Schengen states and Ukraine, and have brought insignificant negative consequences (a marginal number of regime violation cases)<sup>19</sup>. Although a level equal to that in 2007, when Poland was not a member state of the Schengen area, has not been achieved in the movement of people between Poland and Ukraine, local border traffic has had the greatest impact on improving its dynamics. Over 7.5 million border crossings were registered as part of local border traffic on the Polish-Ukrainian border between July 2009 (when the agreement came into force) and the end of September 2011 (for comparison: the total annual number of crossings on this border is less than 15 million).

Moldova neighbours only one EU member state, Romania, with which it has signed a local border traffic agreement. However, Moldovans enjoy quite a broad access to this country. Firstly, Romania still does not belong to the Schengen area, so its visa requirements can be more liberal. Secondly, it is conducting an active policy aimed at granting citizenship to individuals of Romanian origin, who – according to its definitions – are descendants of citizens of Romania even in the second and third generations.

<sup>18</sup> See: European Union Factsheet, EU-Ukraine Summit (Kiev, 19 December 2011); Uhoda pro sproshtcheniya oformleniya viz: sho novogo[not 'shcho novoho'?, Yevropa bez barrieriv, 26 December 2011.

<sup>19</sup> See: Communication from the Commission to the European Parliament and the Council, Second report on the implementation and functioning of the local border traffic regime set up by Regulation No. 1931/2006, Brussels 9 February 2011, COM (2011) 41 final.

**Table 3. Local Border Traffic (LBT) agreements**

|                | <b>LBT in force</b>   | <b>LBT under negotiation</b>  |
|----------------|---|---|
| <b>Ukraine</b> | With Poland<br>(since July 2009)                                      |   |
|                | With Hungary<br>(since January 2008)                                  |   |
|                | With Slovakia<br>(since September 2008)                               |   |
|                |   | With Romania (at an early negotiating stage)  |
| <b>Belarus</b> |   | With Lithuania (signed in October 2010; ratification has been delayed)  |
|                | With Latvia (signed in August 2010; came into force in February 2012) |   |
|                |   | With Poland (signed in February 2010; ratification has been delayed)  |
| <b>Moldova</b> | With Romania (since September 2010)                                   |   |
| <b>Russia</b>  |   | With Norway (signed in August 2010; will come into force most likely in mid-2012)                               |
|                |   | With Poland (the entire Kaliningrad Oblast; signed on 14 December 2011; planned to come into force in mid-2012) |
|                |   | With Latvia (at the level of the exchange of working documents)   |
|                |   | With Lithuania (at the level of the exchange of working documents)  |

**Source:** Developed by the author of this paper

Moldova has the best-developed co-operation with the EU in the area of migration when compared to other countries covered by the Eastern Partnership. It also benefits from numerous assistance mechanisms offered as part of the European Neighbourhood Policy (ENP). Additionally, it participates in the Partnership for Mobility, which is aimed at supporting the legal and structured migration of Moldovans to EU member states<sup>20</sup>. The European Union is also helping Moldova to prepare its 'migration profile', a reform of migration statistics in line with EU standards. Furthermore, as part of the EaP, both Ukraine and Moldova are participating in a project aimed at improving their migration management capacity within the framework of 'Comprehensive Institution Building' (CIB). These two countries are also active participants of the flagship initiative for integrated border management, and they have concluded (or are negotiating) co-operation agreements with Frontex, Europol and Eurojust. The EU Border Assistance Mission to Moldova and Ukraine (EUBAM) offers help in the management of the Ukrainian-Moldovan border (at the Transnistrian section which is beyond Chisinau's control)<sup>21</sup>.

## 2. Russia: a separate 'path'

Citizens of Russia have been given similar visa facilitations in the EU to Ukrainians and Moldovans. A visa facilitation agreement has been applicable in EU-Russia relations since 2007, as a consequence of which the price of the short-stay visa has been reduced to 35 euros and numerous privileges in access to visas with long term of validity have been granted to certain categories of travellers. Like Ukraine, Russia is negotiating with the European Commission amendments to this agreement to broaden the group of persons

<sup>20</sup> The two other Eastern Partners which are also benefiting from this mechanism are Georgia and Armenia.

<sup>21</sup> For more see: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, On Cooperation in the Area of Justice and Home Affairs with the Eastern Partnership, Brussels, 26 September 2011, COM (2011) 564 Final.

encompassed by the visa facilitation. However, in practical terms, Russians seem to be in a better situation because the Schengen consulates see them as attractive tourists. Thus the number of visa refusals in Russia is lower than in the other Eastern European countries. On the other hand, the Russian Federation is perceived in the EU through the prism of the large wave of refugees and irregular migrants from the Northern Caucasus, which swept across Europe in the aftermath of the Chechen conflict (Russia is the second country, after Afghanistan, in terms of the number of asylum seekers in the EU). Attention is also paid to the threats of religious extremism and terrorism. Of equal importance is the fact that the number of visas issued in Russia by the consulates of Schengen states is the largest in the world, which yields considerable incomes and is not making EU countries inclined to abolish the visa regime.

**Table 4.** Visa statistics of the Schengen member states in Eastern European countries in 2010

| State          | Number of all visas issued (A, B, C, LTV, D and 'D+C') | Number of Schengen visas issued (A, B and C) | Number of negative visa decisions (uniform visas) | Visa refusal rate (uniform visas) |
|----------------|--|--|---|-----------------------------------|
| <b>Russia</b>  | 4,525,985  | 4,479,220                                    | 56,868  | 1.41%                             |
| <b>Ukraine</b> | 1,227,001  | 1,061,311                                    | 37,916  | 3.69%                             |
| <b>Belarus</b> | 595,630  | 471,876                                      | 4,580   | 1.35%                             |
| <b>Moldova</b> | 198,704  | 179,605                                      | 13,345  | 10.82%                            |

**Source:** Developed by the author on the basis of information from the EC. Source: [http://ec.europa.eu/home-affairs/policies/borders/borders\\_visa\\_en.htm](http://ec.europa.eu/home-affairs/policies/borders/borders_visa_en.htm)

**Explanations:** Visas: 'A' - airport transit visa; 'B' - transit visa (liquidated); 'C' - uniform short-stay visa; 'D' - national long-stay visa; 'D+C' - national long-stay visa valid concurrently as a short-stay visa (liquidated); 'LTV' - special limited territorial validity visa.

**Table 5.** Major countries of origin of asylum seekers in the EU27 in 2009–2010

|                                     | 2010    | 2009    | Change<br>2010 to 2009 |        | Ranking<br>2010 to 2009<br>change |     |     |
|-------------------------------------|---------|---------|------------------------|--------|-----------------------------------|-----|-----|
| <b>Total number of applications</b> | 258,945 | 263,990 | -5,045                 | -1.9%  | -                                 | -   | -   |
| <b>Afghanistan</b>                  | 20,590  | 20,455  | 135                    | 0.7%   | 1                                 | 1   | 0   |
| <b>Russia</b>                       | 18,590  | 20,110  | -1,520                 | -7.6%  | 2                                 | 2   | 0   |
| <b>Serbia</b>                       | 17,745  | 5,460   | 12,285                 | 225%   | 3                                 | 16  | +13 |
| <b>Iraq</b>                         | 15,800  | 18,845  | -3,045                 | -16.2% | 4                                 | 4   | 0   |
| <b>Somalia</b>                      | 14,355  | 19,000  | -4,645                 | -24.4% | 5                                 | 3   | -2  |
| <b>Kosovo</b>                       | 14,310  | 14,275  | 35                     | 0.2%   | 6                                 | 5   | -1  |
| <b>Iran</b>                         | 10,315  | 8,565   | 1,750                  | 20.4%  | 7                                 | 9   | +1  |
| <b>Pakistan</b>                     | 9,180   | 9,925   | -745                   | -7.5%  | 8                                 | 8   | 0   |
| ...                                 | ...     | ...     | ...                    | ...    | ...                               | ... | ... |
| <b>Belarus</b>                      | 910     | 945     | -35                    | -3.8%  |                                   |     |     |
| <b>Ukraine</b>                      | 825     | 935     | -110                   | -13.3% |                                   |     |     |
| <b>Moldova</b>                      | 735     | 1110    | -375                   | -49.7% |                                   |     |     |

**Source:** Eurostat

EU-Russia relations in the area of visa liberalisation have a special logic. For prestige reasons, it was unacceptable for Russia to be subject to the conditionality principle, which other Eastern European countries agreed to. This means that Moscow will not

implement any thorough reform programme in the area of justice and home affairs in exchange for a promise from the EU to abolish the visa regime. The attitude Russia is clinging to is that mutual visa relations should be regulated by the principle of mutuality and therefore, unlike Ukraine and Moldova, it has not lifted the visa requirement for citizens of EU member states. Furthermore, they must undergo many additional procedures in Russia, such as filling in a 'migration card' on the border and registering their residence in the place of stay (if their stay exceeds 7 days).

Formally, the introduction of a visa-free regime between the EU and Russia has been stated as an objective to be achieved in almost every document signed by the two parties since 2003. However, more practical aspects started to be raised in talks only in 2010. In December 2011, the two parties managed to agree on the content of their common road map entitled 'Common Steps towards visa-free short-term travel for Russian and European citizens'<sup>22</sup>. This document, which has been modelled on the visa action plans for the Balkan states and Ukraine, lists the obligations of the two parties. It must be accepted both by EU member states and by Russia and this fact is making its implementation more difficult.

It is worth keeping in mind that the stances adopted by individual EU member states and also individual ministries (foreign vs. interior) or groups of interest (business circles are more open) in a given EU member state on lifting the visa requirement for Russians are strongly polarised. The predominant opinion in the Scandinavian and the Baltic states is that visa-free entry to the EU should not be offered to officials of a country which violates human rights. The interior ministries of such countries as Germany, Belgium or Holland fear an influx of migrants from the Northern Caucasus. The South European states, including Spain and Portugal, and the Central European member states generally take a more liberal approach to visa issues (although they would not

<sup>22</sup> European Union background, EU-Russia Summit, Brussels, 15 December 2011.

like Russia to outpace Ukraine or Moldova in this field). In turn, the foreign ministries of Germany and France see visa-free movement as a price worth paying for closer political and economic relations with Russia. In November 2011, France and Germany made an announcement stating that the EU should embark on negotiations on a visa-free regime with Russia regardless of the fact that this might send negative signals to Eastern Partnership countries<sup>23</sup>.

Special rules applied to the negotiations on local border traffic to be introduced in the Kaliningrad enclave. Pursuant to the proposal stated in the regulation of the European Parliament and the Council of July 2011, the LBT agreement between Russia and Poland – as has not been the case with the other frontier areas – will not be restricted to a 30 to 50 kilometres wide border zone. Instead, it will cover the entire Kaliningrad Oblast and significant parts of the Polish Pomeranian and Warmia-Mazury provinces, including Gdańsk, Gdynia, Elbląg and Olsztyn<sup>24</sup>. The agreement was concluded by the foreign ministers of Poland and Russia in December 2011<sup>25</sup>. It still needs to be ratified, and may come into force in summer 2012 at the earliest. This special agreement, which goes beyond Schengen legislation, is generally supported by the Russian government and at the same time is giving rise to fears that decentralist tendencies could emerge in the enclave. Moscow emphasises that Russia's priority is not a special regime for Kaliningrad offering privileges to its residents, but a visa-free

<sup>23</sup> See: 'EU preparing to launch visa-free talks with Russia', *EU Observer*, 15 November 2011.

<sup>24</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1931/2006 as regards the inclusion of the Kaliningrad area and certain Polish administrative districts in the eligible border area, Brussels 27.07.2011, COM (2011) 461 final.

<sup>25</sup> Agreement on the Principles of Local Border Traffic between the Government of the Republic of Poland and the Government of the Russian Federation, signed on 14 December 2011.

movement for all Russian citizens<sup>26</sup>. Furthermore, the Lithuanian government is at the moment not ready to sign an equally ambitious local border traffic agreement, arguing that this would significantly raise the risk of smuggling. Besides this, the Lithuanian government is feeling disaffected with negotiations with Russia after Moscow broke off the almost finalised talks on the LBT in 2009.

### 3. Belarus: at the very end

Belarus comes last of all in legal and formal terms. Not only has it not signed a visa facilitation agreement but it has not even adopted the basic documents to regulate its relations with the EU, including the Partnership and Co-operation Agreement (PCA). The ratification of this document was withheld in 1997 by the Belarusian side. The warming of Belarus-EU relations in late 2007/early 2008 did however allow Minsk to join the Eastern Partnership and to participate in the flagship initiative for integrated border management and cross-border co-operation programmes.

The Belarusian regime quashing the demonstration after the presidential election on 19 December 2010 resulted in a cooling of relations between Brussels and Minsk and saw the EU impose visa sanctions on almost 250 individuals accused of human right violations<sup>27</sup>. Nevertheless the EU Council in early 2011 authorised the European Commission to start negotiations on a visa facilitation agreement. However, now that the level of mutual political relations is reduced, talks are only possible at the expert level. Furthermore, the EU would like to target its offer primarily at the Belarusian public and not at officials or politicians, in which the Belarusian regime is not interested. Therefore, it seems quite

<sup>26</sup> 'Vladimir Putin opposes visa facilitation for the Kaliningrad oblast', *East-Week*, 8 June 2011.

<sup>27</sup> This list has been extended; initially it included 150 officials, journalists and businessmen.

unlikely that a visa facilitation agreement with this country will be signed in the immediate future (especially since it should be accompanied by a readmission agreement, which requires close co-operation with the institutions in charge of state security).

As a consequence of the lack of a visa facilitation agreement, Belarusians still have to pay 60 euros for the 'Schengen' visa. Moreover, despite the fact that both Poland and Lithuania ratified the local border traffic agreements with Belarus, Minsk has been delaying bringing them into force. Meanwhile, an LBT agreement with Latvia was put into effect in February 2012, which – according to the Belarusian government – is to serve as a test for the possible further implementation of agreements of this kind<sup>28</sup>. It is worth noting that, given the geographic layout, Belarusians could benefit more than Ukrainians from such agreements. Some of Belarus's large urban centres, such as Grodno and Brest, are located in the border zone and their residents would enjoy the privileges offered by the LBT. Nevertheless, the real visa situation of Belarusians has improved over the past year. Firstly, this is an effect of the general changes in the EU's visa policy. Secondly, in response to the repressions after the presidential election, some EU member states, including Poland and Latvia, lifted the charges for national visas for Belarusians, which *de facto* has made it possible for them to travel without paying for visas across the entire Schengen zone. This indicates that the EU member states' governments are thus trying to put into effect their policy of supporting civil society in Belarus.

However, it seems unlikely that EU countries would be considering lifting the visa regime for Belarus at the moment. This is prevented primarily by the freezing of mutual relations, the low frequency of contacts between the law enforcement institutions of the two sides, and the lack of mutual trust.

<sup>28</sup> Belarus-Latvia small-scale border traffic to open 1 February 2012, *Belta*, 31 January 2012.

**Table 6.** Existing mechanisms for dialogue and co-operation in the area of visa liberalisation

| State          | Political dialogue | Visa facilitations | Visa Action Plans | LBT | Other mechanisms   |
|----------------|--------------------|--------------------|-------------------|-----|--|
| <b>Ukraine</b> | Ad-<br>vanced      | Yes                | Yes               | Yes | Association Agenda, Visa Action Plan, CIB, the flagship IBM initiative, cross-border co-operation, EUBAM, advanced technical assistance programmes (migration, readmission, border management, refugee protection, human trafficking), readmission co-operation and operational co-operation with Frontex and Europol          |
| <b>Moldova</b> | Ad-<br>vanced      | Yes                | Yes               | Yes | Association Agenda, Visa Action Plan, CIB, Partnership for Mobility, the flagship IBM initiative, EUBAM, advanced technical assistance programmes (migration, readmission, border management, refugee protection, combating human trafficking), readmission co-operation and operational co-operation with Frontex and Europol |

| State          | Political dialogue | Visa facilitations | Visa Action Plans | LBT | Other mechanisms  |
|----------------|--------------------|--------------------|-------------------|-----|---|
| <b>Russia</b>  | Advanced           | Yes                | No                | No  | Common steps towards lifting the visa regime, migration dialogue, negotiations on special status for Kaliningrad, limited readmission and cross-border co-operation, limited technical assistance programmes (combating irregular migration and human trafficking, and refugee protection) and co-operation with Frontex                                  |
| <b>Belarus</b> | Frozen             | No                 | No                | Yes | Expert consultations on the visa facilitation agreement, the flagship IBM initiative, limited technical assistance and cross-border projects (developing IT infrastructure on the border, improvement of the border protection system at the Belarusian-Ukrainian section, refugee protection, combating human trafficking) and co-operation with Frontex |

**Source:** Developed by the author

## **IV. THE STRENGTHS AND THE WEAKNESSES OF THE NEIGHBOURING COUNTRIES**

One cannot assess the readiness of Ukraine, Moldova, Russia and Belarus for the introduction of a visa-free regime with the EU only from a technical perspective, which to a great extent was the case with the Western Balkans. It is increasingly clear that the decision to lift the visa requirement will be influenced by both the level of technical preparation and the political evaluation. Furthermore, in contrast to the previous visa liberalisation processes in the EU's neighbourhood, this process is not linked to accession policy, and its outcome is uncertain. This still does not mean that the neighbouring countries should be doing nothing, believing that not much really depends on them. On the contrary, they should not only prove they have made technical progress – following the 'more for more' principle which is increasingly popular in the European Union – they should also take active political steps to convince EU member states that lifting the visa regime is in the interest of both parties.

### **1. Political will and activity**

All the countries discussed (including Belarus) are declaring that the lifting of the visa regime in relations with the EU is an issue of high priority for them. The most convincing seem to be Ukraine and Moldova, which have unilaterally lifted the visa requirement for EU citizens (Ukraine in 2005 and Moldova in 2007) and which are displaying pro-European aspirations by making efforts to conclude Association Agreements with the EU. The desire to achieve a visa-free regime is shared by all the major political forces in these two countries. In turn, the Russian government, although unwilling to make unilateral visa concessions, has consistently sought the abolition of the visa regime in major European capitals.

Lifting the visa requirement for travellers to the EU is very clearly supported by the public in Moldova and Ukraine. This is

particularly important for Moldovan society, almost one third of whom work in EU member states. Ukrainians, especially residents of western Ukraine, have also been participating in labour migration schemes with EU states or earning their living from cross-border trade for years. The latter is also typical of residents of western Belarus, who earn on the differences in petrol and cigarette prices in the neighbouring EU countries. A similar trend can also be observed in Kaliningrad Oblast., For residents of Russia proper, who travel to the EU mainly as tourists in organised groups, the existence of a visa-free regime is not so vital. Shopping in the neighbouring EU member states is also very popular among citizens of Russia, Ukraine and Belarus. Tourism is also gaining in significance. However, due to the complicated visa procedure in the Schengen area, the preferred destinations are usually Turkey and North African countries.

Each of the countries discussed has adopted a different tactic in dealing with the EU. Ukraine has generally been undergoing reforms in line with the EU's recommendations, but is also emphasising its great geopolitical significance and its role as a buffer which protects the EU from undesirable immigrants from the East. It has been delaying the implementation of those reforms which would upset its institutional and bureaucratic *status quo* or which require too radical changes of the system. However, it co-operates closely in combating illegal migration, understanding that this is the most important practical issue for the EU. Moldova is top of the class as regards the scope of the reforms implemented and the degree of acceptance of the solutions proposed by the EU. However, it has problems with financing and personnel, and its rate of transformation has been slowed down by the continuing political crisis. Furthermore, the level of visa refusals at the EU consulates in Moldova is also very high. Chisinau's main problem is the unresolved Transnistrian conflict, which gives rise to a dilemma as to how internal security can be guaranteed in the country in line with EU standards while a greater openness is maintained with regard to the people and business circles of Transnistria.

So far, Russia has not appeared to be ready to make serious concessions to the EU in exchange for the abolition of the visa regime or the introduction of a real principle of mutuality<sup>29</sup>. Its operation methods include mainly appeals and diplomatic talks, and also influencing interest groups inside the EU which are favourably disposed to it (business circles, the tourism industry and some politically friendly governments). However, the lengthy stagnation in relations with the EU and the increasingly evident system crisis may persuade the Russian government to adopt a different tactic. Belarus, depending on the political phase it is in at a given moment, is either threatening the EU with the possibility of opening its borders and thus letting in a huge wave of illegal migrants, or is emphasising the high level of protection of the Belarusian border and its stable migration situation.

Ukrainian and Moldovan non-governmental organisations in cooperation with their EU counterparts monitor the EU's visa policy and attract the public opinion's attention to the socio-economic problems this entails in Eastern European countries. They analyse the tempo and the character of the reforms conducted by their governments. These organisations are becoming more and more professional and are gaining significance as a pressure group. The same applies to civil society organisations in Belarus, which are for example involved in the lobbying aimed at reducing the visa price for Belarusians from 60 to 35 euros. As regards Russia, appeals for visa liberalisation are heard rather from within the EU. One proof of this is the latest report from the Committee on Eastern European Economic Relations (Ost-Ausschuss), an influential German business organisation which emphasises the benefits

<sup>29</sup> For example, at the end of 2010, Russia introduced stricter visa requirements for citizens of Germany in response to what it believed was unfavourable visa practice at the German consulates in Russia, as a consequence of which the number of Germans visiting Russia has fallen by considerably more than ten percent.

business world would derive from lifting the visa requirement for Russians<sup>30</sup>.

## 2. The rule of law and corruption

Difficulties with introducing the rule of law are the main problem all the countries in this region must deal with. One symptom of this is a judiciary which is ineffective and also far from being independent. The lack of respect for legal regulations and the principles of the rule of law makes the courts either susceptible to political influences or prone to corruption by business circles. The law enforcement authorities and the judiciary are often used in political clashes. Although the criteria linked to the rule of law and an independent judiciary have not been stated *expressis verbis* in the Visa Action Plans, stable and effective judiciary co-operation in criminal matters between EU member states and Eastern European countries obviously requires a major reconstruction of the court systems in these countries. However, such a reconstruction does not seem to be placed among the conditions necessary to be met for a visa-free regime to be introduced. This challenge is too complex and pertains to all aspects of state life, so it should rather be seen as a key goal of the association agreements.

All the countries discussed also have problems with corruption. It is the main barrier in the development and modernisation of Ukraine and Russia. Corruption is widespread both among civil servants and state administration workers – whom citizens meet in everyday life – and in ‘big corruption’ where politics and business intermingle. As regards legislation, Moldova and Ukraine are the leaders in terms of compliance of the anti-corruption laws with EU standards and participation in the relevant international instruments. What does raise some doubts, though, is the practical aspect: the operation of anti-corruption institutions and

<sup>30</sup> Roads to Visa-free Travel, Position Paper, Committee on Eastern European Economic Relations, July 2011.

the fulfilment of these countries' practical obligations resulting from their membership in the Group of States against Corruption (GRECO). Belarus started to co-operate with GRECO only at the beginning of 2010, so it is difficult to evaluate the condition of its legislation and anti-corruption practice. According to the GRECO report on combating corruption in the Russian Federation published in late 2010, Russia by then implemented 9 of the 26 recommendations from this organisation. Russia's main problems were identified as: the non-transparent financing of political parties, and bribery in the judiciary and public administration system.

Another key problem in this region is posed by the unreformed and non-transparently managed interior ministries, which after all should be performing a coordinating function in the process of visa liberalisation and carrying out the necessary reforms. Even in Ukraine and Moldova, the ministries of internal affairs have not undergone any major changes and in fact are rather police ministries than civil institutions in charge of the supervision of the law enforcement agencies.

### **3. Biometric documents**

The second progress report on Moldova in the part evaluating the implementation of legislative changes in the area of biometrics stated that this country had in principle met the conditions set in the first phase of the Action Plan on Visa Liberalisation<sup>31</sup>. The Moldovan Ministry for Information Technology and Communications has been issuing biometric documents since 2008. However, it was only at the beginning of 2011 when International Civil Aviation Organization (ICAO)-compliant biometric documents became the only type of passport issued. Moldova has a complete electronic population registration system on the basis of which

<sup>31</sup> Second progress report on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation, Brussels, 9.2.2012, SWD (2012) 12 Final.

documents are issued<sup>32</sup>. All passports are to be replaced with biometric ones by 2019. However, EU experts point to the following two weaknesses of the Moldovan system for issuing biometric documents: the chip carrying the biometric data is attached and not integrated, and children's names are still written in the passports of their parents<sup>33</sup>. Still the main challenge the Moldovan government needs to cope with is ensuring the security of issuing biometric documents to residents of the breakaway region of Transnistria so that this process is fair and transparent.

Ukraine has noticed significant delays as regards the introduction of biometric documents. Not only does it not issue biometric passports, it also has not adopted the proper legislation. This is not an effect of technological or financial problems, but rather of the conflict of interests over the shape of the planned reform. The Ukrainian president, Viktor Yanukovich, vetoed the law on documents identifying a person adopted by parliament in October 2011, which has delayed the introduction of the necessary legislative changes yet further. The official reason for the presidential veto was the law's non-compliance with the constitution, but some experts have stated off the record that this law would have adversely affected the interests of Ukrainian citizens and would have yielded considerable profits to a company which is the only one in Ukraine capable of producing biometric documents in compliance with ICAO standards<sup>34</sup>. Another major problem is the lack

<sup>32</sup> First progress report on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation, Brussels, 16.09.2011, SEC (2011) 1075 Final.

<sup>33</sup> Policy Association for Open Society, "Belarus Country Report". Paving the Road towards Visa-free Travel between the Eastern Partnership countries and the EU.

<sup>34</sup> The government adopted another version of the bill introducing biometric passports in February 2011 (all other identity documents would not contain biometric data).

of an automatic uniform system for population registration<sup>35</sup>. The personal data protection system is, however, quite advanced.

Russia has been issuing biometric passports since 2005 and their newer, improved version since 2010. Russia also started issuing biometric passports on a mass scale only in 2010 – around 3 million of these documents were issued during one year. However, the passports currently being issued do not meet all the EU standards. The Federal Migration Service has announced that passports with integrated secured biometric chips will be issued starting in 2013.

Belarus has not introduced biometric passports as yet, but it has the proper institutional system and the technologies needed to do this. They were developed as part of the MIGRABEL technical assistance programme, which was implemented between 2007 and 2009 by the International Organization for Migration. Belarus is planning to supply its border checkpoints with adequate equipment capable of reading biometric documents and to begin issuing biometric passports to its citizens in 2012. Since Minsk is not engaged in a visa dialogue with the EU, the system for issuing documents containing biometric data has not been officially evaluated by EU experts.

#### **4. Border management**

Eastern European countries are at various levels of advancement as regards the development of the border management system and the existing border challenges. However, beyond any doubt, they have all conducted a more or less thorough reform of their respective border surveillance systems by making a transition from a purely military system to systems based on police troops.

<sup>35</sup> First progress report of the implementation by the Ukraine of the Action Plan on Visa Liberalisation, Brussels, 16.09.2011, SEC (2011) 1076 Final; Second progress report on the implementation by Ukraine of the Action Plan on Visa Liberalisation, Brussels, 9.2.2012, SWD (2012) 10 Final.

Border management in these countries, especially of the sections shared with EU member states, is much more efficient than in the 1990s. Nevertheless, there are still some sections which are not protected either for political reasons, as is the case with the Russian-Belarusian border (these two countries form a Union State), or due to logistical and financial difficulties, as is the case with the world's longest land border between Russia and Kazakhstan. In turn, the Transnistrian section is controlled only on the Ukrainian side. Some key sections, as the Ukrainian-Belarusian or Ukrainian-Russian borders have not been delimited but are in practice controlled rather effectively.

The quality of technical equipment varies immensely between individual border sections. Some of them have cutting-edge equipment at their disposal, while others are protected with the use of mobile patrols and a system of entanglements, ditches and bare land strips, called *sistema*. Basic risk analysis systems have already been implemented in Ukraine and Moldova. The channels for information flow inside border services are insufficient in all the countries in this region, since – based on the old Soviet models – the agencies are strongly centralised, and the internal flow of information in them mainly goes top down. Furthermore, inter-agency cooperation channels are underdeveloped. Border and customs services often do not have mutual access to their respective databases. This means that although both Ukraine and Moldova have adopted the integrated border management strategy, such a system does not exist in practice in any of the states discussed.

Ukraine is the clear leader in border management. Firstly, it quite effectively controls all its borders. Secondly, it has a relatively well-reformed and appropriately managed border police. The process of its transformation from a military structure into a law enforcement agency is almost complete. Moldova is still not as advanced as Ukraine in this process (although its legislation complies best with EU standards). In turn, the border services of Russia and Belarus are still at the initial stage of reform. Belarus controls its

borders with the EU effectively (albeit in a paramilitary style), but it has not developed sufficient mechanisms for controlling travellers who enter the country from Russia. Meanwhile, Russia made an interesting experiment by removing the competences concerning border infrastructure development from the obligations of the border service, which reports to the KGB, and creating a modern agency in charge of equipping the state border.

## 5. The migration policy

All the countries discussed need to tackle their Soviet legacy in the area of migration policy, one characteristic of which are the combined competences covering the policy towards foreigners, concerning population registration and citizenship policy. In effect of this, migrants are perceived mainly through the prism of required documents and certificates, with no link being made to the needs of the labour market. Generally, the immigration policy of each of these countries needs to be characterised as restrictive and bureaucratised. The migrant labour black market exists (especially in the case of Russia) due to the impracticality of the regulations rather than their liberalism. Despite the existence of vast diasporas abroad, emigration policy is also insufficiently developed. Asylum policy should, however, be basically recognised as being close to international standards, especially as regards the legislative aspect.

Legislation on migration and asylum in Moldova is the most advanced in terms of the adaptation of the best EU practices and standards. Still Chisinau needs to handle institutional problems related to the coordination of migration policy and also control of people who enter Moldova from Transnistria. After many years of bureaucratic perturbation, the Ukrainian government established the State Migration Service in 2010, which is set to deal with most of the tasks related to migration policy, and then adopted the national migration strategy. Another positive thing was parliament adopting a new law on refugees and temporary protection. However, a modern law on foreigners is still missing. Ukraine is also lacking

both a uniform automated database on foreigners and mechanisms for collecting statistical data on migration. Belarus conducts a typically post-Soviet migration policy, where emphasis is put on control and registration functions. The authority in charge of its implementation is the Ministry of Internal Affairs. The most modern and the closest to EU practices are those areas of migration policy (asylum policy and combating human trafficking) in which international technical assistance programmes have been implemented.

Russia's migration policy is difficult to compare to the policies of the other countries in this region. Russia is not only the world's largest country in terms of territory but also is home to equally intensive migration movements as the USA, France and Germany, and has equally serious problems with integration. Russia is at the crux of immigrant movements in the CIS area – it accounts for approximately 75% of the migrants from this region. Since the collapse of the USSR, Russia has accepted around 7 million migrants from the post-Soviet area as permanent residents, and between 4 and 6 million labour migrants are working in Russia<sup>36</sup>. However, the Russian Federation's migration policy is rather ineffective and, above all, it is overly focused on short-term tasks. On the one hand, Russia can carry out vast liberalisation actions, and on the other it can soon cancel the changes adopted when this is needed for internal political purposes. What gives rise to the greatest criticism are the annual immigration quotas, which are unadjusted to the labour market needs, and the practice of modifying them during the year. The authority in charge of the supervision of migration policy is the Federal Migration Service, a typical police authority, with complex control and registration functions. Russia is not trying to adopt the EU's best practices and standards, although the practices adopted in some areas, such as the readmission policy and combating human trafficking, are very close to those used in EU member states.

<sup>36</sup> V. Mukomiel, *Rossiyskiye diskursy o migratsii: "nulevye gody"*, Demoscope.ru, 26 September–9 October 2011.

## RECOMMENDATIONS

### “TO BREAK THE SPELL CAST ON VISAS”

#### General recommendations

- To make the abolition of visas in relations between the EU and the Eastern European countries possible, the **“spell” must be broken** on this issue. With the present levels of mobility and people-to-people, business, political, etc. contacts between the EU and Eastern European countries, **the introduction of a visa-free regime will be a natural consequence of the liberalisation processes which have been at work for years.**
- Firstly, the visa-free movement **is not linked to enlargement policy**, and EU member states need not fear that this will give rise to a huge wave of accession-related demands from the partners. In turn, this will certainly help stabilise the EU’s closest neighbourhood and may improve the public sentiments in the neighbouring countries, which tend to be increasingly unappreciative of the EU. This will also provide an incentive for Eastern European countries to make the effort to modernise themselves. The free movement of people is also the best conveyor belt to transfer EU models and practices in developing entrepreneurship and self-governance.
- Secondly, the decision to lift the visa requirement **is unlikely to significantly stimulate an increase in migration pressure** from Eastern European countries. Citizens of the countries from this region are in the lead in global statistics of visas granted by the consulates of EU states anyway, and the largest wave of labour emigration to the EU took place a decade ago. An increased influx of people seeking to be granted refugee status unreasonably, even if this happens, is likely to be temporary. Besides which, there are methods to combat this. The EU should not view the migration flows from Africa and

Eastern Europe in the same light, because the risk of migration from Eastern Europe is continuously falling.

- Thirdly, although the consulates of the Schengen states generate considerable profits on the numerous visas they grant, the **present consular system in Eastern Europe is very expanded** (the number of employees and the maintenance of the buildings and infrastructure) **and therefore expensive**. It is worthwhile considering allocating these funds to the protection from undesirable migration from Northern Africa and the Middle East, since this could turn out a less expensive solution. Meanwhile, a less expensive but equally effective solution in terms of meeting the conditions necessary to guarantee safety could be the use of biometric passports on a mass scale in Eastern Europe.
- Fourthly, lifting the visa requirement for Eastern European citizens **can be temporary and conditional**, and may involve the EU's latest proposals for improving migration safety, such as the 'smart borders' system or introducing visa-free entry for periods shorter than three months. This policy of **increased conditionality** could have a mobilising effect on the governments of Eastern European countries and thus could stimulate them to fulfil their obligations with regard to the EU.
- In political terms, making visa liberalisation a key issue would fundamentally change the partners' approach to the **Eastern Partnership** and would provide a link to the **Partnership for Modernisation** targeted at Russia. An eastern policy based on the model of importing the *acquis* and EU values will be ineffective if such standards and values remain a purpose *per se*. Meanwhile, they should bring the governments and societies of these countries closer to achieving practical goals, such as travel facilitations, for instance.

- The technical approach is prevalent at the moment in the visa dialogue with the countries covered by the EaP. The European Union is rather principled as regards the precise fulfilment of the criteria and notices too little the political potential of the negotiation process. In turn, in the case of Russia, the dialogue is taking place first of all for political purposes, and EU officials seem to have little faith in Moscow's determination to implement reforms. It seems that in both cases **the golden mean should be found between technical issues and politics.**
- From the point of view of security and politics, the best solution would be to grant the visa-free regime to **Ukraine and Moldova at the same time or over a short time-span** (provided that they have met the required criteria). It would be difficult to introduce a visa-free regime with Russia at the same time due to the scale of this country and the need to apply special regulations. Ensuring effective border surveillance across entire length of the borders or stabilising security in Northern Caucasus, from where the individuals who seek refugee status in the EU originate, will certainly take many years. However, **lifting the visa requirement for certain categories of travellers from Russia**, especially *bona fide* travellers, businessmen and tourists seems to be very realistic. This solution may offer considerable political and financial benefits to EU member states and carries a low migration risk.
- The conditions necessary to be met before the visa regime is lifted is the achievement of a satisfactory **level of mutual trust between law enforcement agencies of EU member states and the partner states**, both at the strategic level and in everyday operational co-operation. Even if it is impossible to build such trust today in relations between the EU and Belarus, **Minsk should not be excluded completely from the liberalisation process.** Paradoxically, this country poses a low migration risk, and the relevant Belarusian institutions could catch up quickly during the negotiation process. In the

short term, the possibility of lowering the price of the uniform visa to 35 euros without the need to sign visa facilitation and readmission agreements should be considered.

### Detailed recommendations

- The possibilities of a conditional and temporary introduction of a visa-free regime and the changes necessary to be made for this purpose in Schengen legislation need to be analysed. Possible solutions **could include lifting the visa requirement for citizens of a given country for a short period (for example, at the time of holding a mass sports, cultural or religious event)**. Such a **test phase** would make it possible to check the operation of the institutions in charge of border safety and the expected increase in the dynamics of the movement of people. Although too little time has remained for this proposal to be possible to put into practice during the Euro 2012 football championship, some security solutions which could be used in a possible test phase of the visa-free movement could be tested at this time.
- It is also worth considering lifting the visa requirement **for specific categories of people (travellers who have had a positive visa history so far, businessmen, students and youth, individuals mentioned in visa facilitation agreements, tourists)**, who pose a low migration risk and who could offer EU member states considerable economic and social benefits and promote EU models and standards in the countries they come from.
- The introduction of a visa-free regime with Eastern European countries **does not need to entail an increase in the pressure migrants from Eastern European countries put on the EU labour markets** (which does not seem to be beneficial during an economic slowdown). It is worth keeping in mind that these migrants are already present on these markets anyway, and

their total number is not growing but falling. Furthermore, in a visa-free regime, they would be more ready to seek the possibilities of legal employment in EU member states.

- To reduce the resistance of those EU member states which oppose the introduction of a visa-free regime, it is worth considering synchronising the decision to lift the visa requirement with introducing other security measures in the Schengen Area, including the ‘smart borders’ system, **in particular the mechanism of registering travellers prior to their entry to the Schengen Area** (provided that the introduction of these instruments is not excessively delayed). It may also be worthwhile to introduce regulations which facilitate **the reinstatement of temporary border control** on the internal borders should there be a mass influx of migrants or a serious organised crime threat<sup>37</sup>. Equally, making the system of **transferring third states from the ‘white’ to the ‘black’ visa list** more flexible could be considered.
- The negotiation process **cannot last too long**. Otherwise, the motivation of the partner states to launch reforms will weaken significantly, and the dialogue with the EU will be viewed as a bureaucratic exercise.
- The criteria necessary to be met can be divided into two groups: those aimed at minimising the risk of illegal migration from Eastern European countries to the EU following the introduction of the visa-free regime, and those which should lead to internal reforms to be implemented in these countries in line with EU standards and values. **It must be unconditionally ensured that the criteria from the first group**

<sup>37</sup> See: European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, Brussels, 16 September 2011, COM (2011) 560 Final.

**have been met. The fulfilment of the criteria specified in the second category could be treated less rigorously.** It is worth considering the introduction of a visa-free regime conditionally, after most of the criteria have been fulfilled, and at the same time introducing the mechanism for monitoring further progress.

- In the short term, the most important issues appear to be **the introduction of biometric documents, automatic population registration systems and uniform databases at law enforcement agencies, and ensuring proper border management.** In the long term, the EU should insist that **the Ministries of Internal Affairs are reformed and the judiciary and the system for combating corruption are strengthened,** and it should treat these elements as an inherent part of its association agenda (with regard to Ukraine and Moldova). In the cases of Russia and Belarus, a **change of the restrictive residence registration policy** applied to citizens of EU member states should also be a key element.
- Incentive for reform (for example, once the first group of the criteria as part of the action plans have been met) could also be provided by amending the visa facilitation agreements to cause further liberalisation.
- The **regional co-operation** on migration and borders, promoted by the EU, in this area **is impossible without Russia.** If its goals also included visa-free movement for Russia, a breakthrough could be more easily achieved in many areas which have been subject to a lengthy dispute, such as border delimitation and co-operation on the control over the movement of people.
- Eastern European countries should take more effective lobbying actions in EU member states, **including through an**

**intensified exchange of information and strengthening contacts with the institutions in charge of security in individual EU member states** (and not concentrating only on EU agencies). This could reduce the fear of a possible influx of irregular migrants from the East in these EU member states and dispel many myths in this area. Although visa talks have been conducted in the bilateral format, partner states could also try to coordinate their negotiating stances between themselves (not only as part of the EaP).

**MARTA JAROSZEWICZ**