

V. V. Voinikov

**THE FACILITATION
OF FREEDOM OF MOVEMENT
BETWEEN RUSSIA
AND THE EUROPEAN UNION:
PROSPECTS AND LEGAL ISSUES**

This article examines the legal aspects of the prospective visa free regime between Russia and the European Union, as well as the implementation of local border traffic mechanisms.

Key words: *Russia, European Union, visa-free regime, freedom of movement.*



Visa free regime

The European Union, as any other state formation, divides all citizens entering its territory into two groups: those who need visas and those who are exempt from this obligation. As for any other state, for the European Union, visa regime with third countries is a general rule. An exception from this rule, i. e. the introduction of visa free regime, is made for certain states, as a rule on a reciprocal basis, if the state meets the four key criteria:

- 1) the nature of state policy and security level;
- 2) illegal migration level;
- 3) level of external relations;
- 4) level of regional cooperation and provision of reciprocity.

The above criteria are presented in Council Regulation No 539/2001 of March 15, 2001 listing the countries whose nationals must be in possession of visas when crossing the external borders of EU member states.

According to article 77 of the Treaty on the functioning of the European Union [1, p. 1], the issue of establishing a visa or visa-free regime for visiting EU member states falls within the authority of the community in whole, such decisions are subject to the regular legislative procedure, i. e. the consent of qualified majority in the Council and Parliament.

As of today, the list of states whose nationals are exempt from the obligation to obtain a visa is approved in Council Regulation No 539/2001 of March 15, 2001 [2, p. 1].

Historically, Russia was on the first list, however, over the last ten years, our country has persistently but so far to no avail strived to be moved to the second list. So, on August 27, 2002, the president of the Russian Federation, Vladimir Putin, addressed a message regarding the problem of sustenance of the Kaliningrad region in view of the EU enlargement to the chair of the EU Commission and the heads of EU member states, which proposed considering the question of prospective transition to a visa-free regime of travel [3]. This message marked the official beginning of negotiations on the issues of visa-free travel of the citizens of Russia and EU member states.

The European Union did not reject the opportunity of establishing a visa-free regime; on the contrary, the meeting of the Council of the European Un-

ion in Brussels on September 30, 2002 came to a decision to consider this question individually as a long-term prospect.

At the EU-Russia summit held on May 31, 2003, which was scheduled to coincide with the 300th anniversary of Saint Petersburg, the heads of state issued a joint statement identifying visa-free regime for citizens as a long-term prospect [4].

In two years, on May 10, 2005, at the Moscow summit between Russia and the EU, the parties adopted the road maps on the establishment of four common spaces [5], once again emphasising the aspiration to cancel the visa regime in a long-term prospective and conclude the negotiations on the simplification of visa procedures in the short-term one.

The European Commission emphasised that the Russian visa standards for Europeans were of rigid and almost prohibitive nature. According to the Commission, in 2008, EU countries issued short-term visas to 3.6 mln Russian citizens, whereas Russia only to 1.8 mln Europeans (one must keep in mind that the total population of 27 EU countries is 3.5 times as large as that of Russia) [6].

However, up until now, the mechanism of “approaching” the visa free regime has not been negotiated. Both the European Union and Russia have certain experience in establishing visa-free relations with third countries.

The EU offers two basic approaches to the establishment of visa-free relations: the conclusion of an international agreement and introduction of amendments to the Council regulation No. 539/2001. The first method is used in the cases when a visa-free regime is established on a reciprocal basis. The second method is applied when the third state has already introduced the visa free regime for the travel of EU citizens.

In Russia, according to Article 6 of the federal law “On the procedure of exist from and entry into the Russian Federation”, foreign citizens or stateless persons shall produce valid identification documents and a visa at the entry into or exit from the Russian Federation, unless stated otherwise in the given law, an international agreement, or a presidential decree.

So, the law stipulates three ways of waiving visa requirements: through an international agreement, a presidential decree, and amendments to the federal law.

On the basis of a study into the practices of the Russian Federation and the EU, one can conclude that, in most cases, a visa-free regime is established on the basis of an international agreement. It seems that in the Russia-EU case, the most adequate method would be the signing of an international agreement [7].

The EU practice of establishing visa-free relations shows that, as a rule, this process consists of three stages: the signing of an agreement on readmission; the adoption of a road map; the introduction of amendments into Council Regulation No 539/2001 and (or) the signing of an agreement on the short-stay visa waiver.

Russia is at the first stage today; a readmission agreement has been in force since 2007, negotiations on the visa-free dialogue are under way, however, the road map on the liberalisation of visa regime has not been produced yet. On the eve of the Russia-EU summit held In Rostov-on-Don on May 31, 2010, the Committee of Permanent Representatives approved the adoption of

a document on the visa regime with Russia; however, this document has to be called an *action plan* rather than a *road map*. Road maps and action plans are equal in legal nature, but in effect, they are different documents.

A *road map* is a document containing certain measures, the implementation of which is followed by the establishment of visa-free regime between the EU and the third state; such map does not stipulate specific time limits and — formally — does not contain legal obligations; however, the nature of the document implies an automatic transition to the visa-free regime after all requirements are met. In other words, after a state has fulfilled all requirements stipulated by the road map, the EU shall establish a visa-free regime with this country. Formally, it does not impose on the EU an obligation to waive visas over a certain period but it compels the EU to react if the country meets the criteria.

An *action plan* does not follow this approach, i. e. as the measures listed in it are fulfilled, the EU decides whether it will further the progress, in other words, it gives an opportunity to slow it down at any time.

Moreover, according to the EU position, an action plan on the liberalization of visa regime should be introduced to Russia simultaneously with other former USSR countries (Ukraine, Moldova, etc.).

At the recent Ukraine-EU summit, an action plan on visa regime liberalization was offered to Ukraine.

At the Rostov-on-Don summit, a similar breakthrough was not achieved, although the parties announced the beginning of preparation of a general list of measures aimed at the establishment of visa-free regime.

As of today, the last countries, to which the EU has granted a visa-free regime, are three Western Balkan countries: Serbia, Montenegro, and Macedonia. As to Albania and Bosnia and Herzegovina, the decision will be made in the nearest future [8].

The decision on the establishment of a visa-free regime with the given countries was preceded by an assessment of the implementation of road maps by the Balkan states. These maps contained four main sections corresponding to the number of criteria stipulated in Council Regulation No 539/2001:

- 1) identification document security (introduction of biometric document, anticorruption measures);
- 2) illegal immigration (provision of border services with adequate infrastructure, improvement of national legislation in accordance to the EU requirements, implementation of international mechanisms, etc.);
- 3) public order and security (prevention of corruption, combating organised crime, close cooperation with the EU within criminal and police procedure, information security);
- 4) international relations (freedom of movement, protection of fundamental human rights).

Such road maps are of pronounced unilateral character, i. e. they stipulate obligations for only one party — the third state, whereas it does not mention the obligations of the EU. Since, over the last years, Russia has been positioned as an equal partner; such approach does not seem adequate in its case.

Local border traffic

Local border traffic is a relatively new form of cooperation, which gives the citizens of the border regions of the EU and border region visit each other using a simplified procedure.

According to Council and Parliament regulation No 1931/2006 of December 20, 2006 [9], EU member states can establish a special regime or crossing the external borders of the Schengen area for their citizens on the basis of bilateral agreements with neighbouring states. This procedure allows citizens permanently residing on border territories cross the border and stay in the border area of the neighbouring state. The border area for both exit and entry is an administrative unit situated within a 30 kilometre zone. If the administrative unit goes beyond the limits of this zone but for not further than 50 km away from the border, the border zone accessible for the citizens of the foreign state extends to the administrative border of the given territory.

The local border traffic regime suggests relaxing certain requirement of the Schengen legislation, in particular, that on visas and sufficient funds, etc. In this case, visa is replaced with a special local border traffic permit. Moreover the citizens of border areas can cross the border through special checkpoints or along special lanes and stay on the neighbouring territory for up to 3 months (without fulfilling the standard requirement of a 90 day stay over a 180 day period), border service officers do not stamp travels documents; in relation to certain citizens, border control can even be irregular.

According to the EU regulation, the principal purpose of this mechanism is the elimination of barriers in trade, social and cultural exchange, and regional cooperation.

As of today, certain countries have implemented such regime at the bilateral level. The first agreement of the kind, which came into force on January 11, 2008, was concluded between Hungary and Ukraine [10]. Agreements were also signed by Ukraine and Slovakia, Ukraine and Poland, Moldova and Romania.

Belarus is involved in active negotiations on the local border traffic. As of now, Belarus has concluded agreements with Poland (the document has not come into force yet), Latvia, and Lithuania.

Negotiations about the conclusion of bilateral agreements between Bulgaria and Serbia, Bulgaria and Macedonia, Romania and Ukraine, Lithuania and Russia, Latvia and Russia, etc. are also underway.

The local border traffic regime is a product of the European law, i. e. it was prepared and implemented in the framework of the EU. In other words, it regulates relations pertaining to the entry and sojourn on the territory of the Schengen area and, of course, cannot establish the procedure for the sojourn on the territory of the neighbouring country. At the same time, the launch of this mechanism in a certain border region requires the neighbouring state to be willing to implement it on its territory voluntarily. Thus, the state, with which the local border traffic regime is established should transfer the rules contained in the EU regulation into its national legislation.

The LBT regime is a unique example in the area of visa legislation of the European Union. A specific feature of the EU visa policy is that the visa ju-

jurisdiction was transferred from the member states to the supranational level. The development of corresponding EU legislation was conducted through the adoption of unified unionwide rules, whereas member states almost lost jurisdiction over the travel of citizens to neighbouring countries.

The LBT regulation did not only liberalise the Schengen rules, but also give members states the authority over concluding agreements on reciprocal travels of citizens with neighbouring countries.

As to Russia, the issues of concluding a similar agreement is being considered in relation to three member states — Latvia, Poland, and Lithuania.

Russia already signed an agreement on the simplification of reciprocal travel procedure for the residents of Russian border territories with one member state — Norway — on November 2, 2010 [11].

A prime focus of the negotiation process pertaining to the simplification of reciprocal travel is the Kaliningrad region, since in case of the implementation of LBT regime it will be situated in the territorial scope of two agreements — those with Lithuania and Poland.

The Kaliningrad region stretches from south to north for 90—100 km and from east to west for 150 km. In case the local border traffic regime is introduced it will divide the region into three parts: the southern part will be in the territorial scope of the agreement with Poland, the northern part in that of the agreement with Lithuania, whereas the central and north-western part accommodating the largest urban areas (Kaliningrad, Chernyakhovsk, Gusev) and the whole Samland peninsula with all resort towns will be left beyond the territorial scope of these agreements. Thus, the work on the agreement preparation was suspended.

In July 2009, Russia, Lithuania, and Poland commenced the preparation of a trilateral address to the European Commission, which contained a request to consider the question of amending certain provisions of the regulation. However, Lithuania abandoned the effort; thus, in April 2010, the address was forwarded to the Commission on behalf of Poland and Russia. Russia also hopes to expand the border zone within the EU so that it extends to such cities as Olsztyn, Elblag, and Gdansk (the latter is situated at a distance of 120 km from the border). This suggestion is based on the consideration that Gdansk is one of the favourite recreational sites for many Kaliningraders, thus its return to the visa-free zone will serve the interests of regional residents.

It is worth noting that the residents of the Kaliningrad region have little hope for the mechanism of local border traffic, most Kaliningraders put up with the current reciprocal travel regime, some of the even benefited from the accession of Lithuania and Poland to the Schengen Area. In contrast to the earlier procedure of visiting neighbouring countries, local residents have to pay 35 Euros; however, in this case, the individual obtains a Schengen visa valid not only on the territory of neighbouring states, but in all 25 European states.

The local border traffic mechanism will hardly win popularity as a means of tourist travel. It is rather aimed at contacts between relatives, who found themselves due to various historical reasons astride the Schengen Area border, or the facilitation of work-related travel — only 20,000 Lithuanians and approximately 4,000 Polish natives reside in the Kaliningrad region.

104.7 thousand people reside in the territorial scope of LBT with Poland and 96.7 thousand in that with Lithuania, whereas the residents of the Nesterov district (17.2 thousand people) can travel to both Poland and Lithuania.

In case the local border traffic regime is introduced in the Kaliningrad region, it will be used predominantly by individuals involved in cross-border trade and, sometimes, small-time smuggling. If special checkpoints and lanes for local border traffic are not created, as it is stipulated the regulation, it will only aggravate today's unfavourable situation at the border.

On the other hand, if the whole Kaliningrad region is opened for the residents of Polish and Lithuanian border regions, it will serve regional interests, since it will become more attractive for tourists, businesspeople, etc.

So, the negotiations on the introduction of LBT regime in the Kaliningrad region depends, to a great degree, on the results of examination of the address to the European Commission on whether the acting regulation No 1931/2006 is amended as to the expansion of the border area. Probably, the process will take a long time. There is no confidence in that the EU will decide for such amendments, because they distort the idea of LBT regime. On the other hand, in almost all regions, where such regime has been introduced, the participant states knowingly violated in the course of concluding bilateral agreements the rules established by the regulation and pertaining to delineating the boundaries of border regions. In this relation, the Commission agreed in the report of July 2009 to consider the question of applying a flexible approach to delineating the boundaries of border regions in special cases and to make corresponding amendments to the regulation [12].

In my opinion, regardless of the decisions made by the European Commission, there is a need for the introduction of LBT mechanism on the territory of the Kaliningrad region in the framework of current requirements. If the amendments to the regulation are made, it does not eliminate the possibility of reconsidering the agreement of reciprocal travel.

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About the author

Dr Vadim V. Voinikov, Associate Professor, Department of International and European Law, Immanuel Kant Baltic Federal University.

E-mail: voinicov@yandex.ru