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BELARUS - EU: LONG BUMPY ROAD TOWARDS VISA FACILITATION

Andrei Yeliseyeu

Disappointing Riga summit results

Since the official commencement of bilateral talks over visa facilitation and readmission in January 2014, three rounds of Belarus-EU negotiations took place, the last one in March 2015. Officials on both sides expected that the agreements could be initialled during the Eastern Partnership Summit in Riga in late May 2015. However, these expectations did not come true. Although none of the sides publicly shared the reasons, unofficially the EU diplomats recognised that the failure had to do with the conditions for visa-free travel for the Belarusian holders of diplomatic passports covered by the Visa Facilitation Agreement (VFA). Pending the Riga summit, a few EU Member States allegedly requested that, in order to allow a visa-free travel, Belarusian diplomatic and service passports had to be biometric. As long as the required legislation is not in place in Belarus, the negotiations will not resume.

In an attempt to paint an optimistic picture of the state of things, the EaP Summit Joint Declaration in Riga reads that the Summit participants “welcome the progress achieved in the VFA/RA negotiations with Belarus, as well as that achieved towards the establishment of an EU-

Belarus Mobility Partnership”.¹ In fact, there is not much to boast about both for Belarus and the EU. After a decade-long story of failed attempts to start and proceed with the visa facilitation negotiations between the EU and Belarus, the long-awaited agreements, which were never closer to becoming a reality than on the eve of the Riga summit, were put on hold again.

Before that, it took two and a half years for the Belarusian authorities to accept the invitation of the European Commission in midyear 2011 to start on the VFA. The Belarusian side offered two explanations of such delay, namely the EU sanctions policy against the Belarusian officials and the negative consequences of the hypothetical readmission agreement with the EU. Before 2010, it was the EU which deemed the start of the visa facilitation process with Belarus premature. Until the change in approach in late 2010, the EU institutions associated simplification of visa procedures with the progress in political reforms and human rights.

¹ Joint Declaration of the Eastern Partnership Summit (Riga, 21-22 May 2015), www.enpi-info.eu/library/sites/default/files/attachments/Riga%20Declaration%20220515%20Final.pdf

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Two obstacles confirmed: missing biometry and disagreements over readmission

Only in late 2015 public statements were made by both sides regarding the VFA. In December Gunnar Wiegand, a high European External Action Service official, said that the visa facilitation and readmission agreements with Belarus were ready for signing.² A few days later, Alena Kupchyna, Belarusian deputy foreign minister, responded by saying that Weigand's words took them by surprise. According to her, the package deal of visa facilitation and readmission was far from being ready for signing.

According to the comments of the Belarusian side, one of the problems was indeed the EU requirement for diplomatic and service passports. Their holders include not only Foreign Ministry officials, but also members of the government, parliamentarians, and members of the superior judiciary. Belarus is the only country among the Eastern Partnership countries without a functioning legislature regulating the issuance of biometric passports. To compare, the initial visa facilitation agreement between the EU and Ukraine allows holders of diplomatic passports visa-free travel to the EU, without the biometric requirement. However, later VFA agreements between the EU and Armenia, and EU and Azerbaijan included provisions which require that the diplomatic passports would meet certain security standards and be biometric. As it follows from Kupchyna's comment, another obstacle to visa facilitation between the EU and Belarus is disagreement over the text of the readmission agreement.

Disagreements over a transition period within the readmission agreement

The EU links the VFA with the conclusion of the readmission agreement, and both come in one package. Readmission agreements hold reciprocal obligations of the EU and third countries to facilitate the return of illegal residents to the country of origin or transit. There is no problem with admitting the country's own citizens since the state's refusal to readmit its own citizens can amount, according to the international human rights law, to persecution. However, according to the EU policy, readmission agreements linked to the VFAs shall contain an obligation to readmit *the third-country nationals and stateless persons* who, under certain circumstances, come to the EU territory through the territory of the other contracting state. It means that un-

der the standard readmission agreement Belarus would have to readmit on its territory, upon the request by any of the EU Member States and subject to no additional formalities, its own nationals, third-country nationals and stateless persons who do not fulfil the conditions of entry to or presence in the requesting state.

The readmission agreements between the EU and Ukraine, and the EU and Russia foresaw two-year and three-year transition periods, respectively. During this time, the clause on the readmission of third-country nationals and stateless persons did not function, allowing the countries to complete technical preparations for the readmission and to conclude additional readmission agreement with the countries of origin of irregular migration. It follows from the official Minsk observation that the EU is not ready to give Belarus a similar transition period regarding the readmission of the third-country nationals. It does not seem fair, however, to deprive Belarus of this transition period, given it was earlier provided to Ukraine and Russia. It must also be taken into account that the flows of irregular migration through Belarus into the EU are comparatively low.

Concerns of the Belarusian authorities relating to the readmission agreement are easy to understand. There is no obvious benefit for Belarus associated with it, while financial costs linked to the maintenance of the third-country nationals in detention centres – until they are sent back to their country of origin or the country of transit – are apparent. However, as shown by the earlier research,³ concerns voiced in 2012 by the Belarus MFA spokesperson about “*thousands, if not tens of thousands of illegal migrants*”⁴ who will appear in Belarus as a result of the readmission agreement are obviously exaggerated. The study projects that under the readmission agreement Belarus will likely have to readmit up to 100-200 third-country nationals and stateless persons annually, given the volume of the illegal migration flows through Belarus and their characteristics.

In November 2013, in anticipation of the start of the negotiation process over the VFA with the European Union, Belarus concluded a readmission agreement with Russia. This agree-

² Belarus-EU visa facilitation agreement ready for signing. *Belarusian Telegraph Agency*, 9 December 2015. Available at <http://eng.belta.by/politics/view/belarus-eu-visa-facilitation-agreement-ready-for-signing-87541-2015/>

³ Yeliseyeu A. Belarus-EU: The likely consequences of a readmission agreement. BISS research paper, May 2013, https://www.academia.edu/13669795/Belarus_-_EU_The_likely_consequences_of_a_readmission_agreement

⁴ МИД уверен, что Беларусь придет к безвизовому обмену с ЕС (“The Foreign Ministry is positive that Belarus will eventually achieve a visa-free regime with the EU”). TUT.BY media portal, <http://news.tut.by/politics/277179.html> Note: the text version is abridged compared to the original audio.

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Visa relations between the EU and the EaP countries

The way towards a visa-free regime with the EU is a two-stage process for the Eastern Partnership countries, where the visa liberalisation dialogue follows the conclusion of visa facilitation and readmission agreements. *“Once these agreements are concluded and effectively implemented, the EU and the partner countries will take gradual steps towards visa-free regimes in due course on a case-by-case basis provided that conditions for well-managed and secure mobility set out in two-phase action plans for visa liberalisation are in place”*, the Joint Declaration of the 2011 Eastern Partnership Summit reads.⁵

Visa liberalisation dialogues are built upon Visa Liberalisation Action Plans (VLAP), which include four blocks of benchmarks related to document security, including biometrics; border management, migration and asylum; public order and security; and external relations and fundamental rights. During the first VLAP phase, which focuses on the legislative and policy framework, a country is supposed to adopt and/or amend the existing legislation, which governs the issuance of biometric passports, adopt the integrated border management, ensure effective fight against organised crime, establish a joint independent anti-corruption institution, etc.

As part of VLAP, a country is expected to ratify a number of the United Nations and European Council conventions and intensify cooperation with various regional and international organisations, including Europol, Frontex, the International Organization on Migration, the OSCE, the United Nations Office on Drugs and Crime. During the second VLAP phase, effective implementation of the adopted legislative and policy measures is monitored by the European Commission.

In the absence of bilateral contractual relationship with the EU⁶, visa liberalisation process

⁵ Joint Declaration of the Eastern Partnership Summit, Warsaw, 29-30 September 2011, p. 4, http://ec.europa.eu/europeaid/where/neighbourhood/eastern_partnership/documents/warsaw_summit_declaration_en.pdf

⁶ Neither the Partnership and Cooperation Agreement nor the Interim Agreement was concluded and ratified due to the deterioration of the situation concerning civil and political rights in Belarus in 1996.

with the EU could become a key instrument for Belarus to comply with the EU norms in the areas of freedom, security and justice.

So far, Belarus has clearly lagged behind all other EaP countries and Russia in its efforts to achieve visa-free regime with the EU. Since the VFA between the EU and Azerbaijan entered into force in September 2014, Belarus has remained the only country in the region without the functioning VFA. Therefore, a standard visa fee for the nationals of Belarus continues to be EUR 60, meanwhile for the nationals of all other EaP countries it decreased to EUR 35 (see Table 1 for details).

Table 1. Visa relations between the EaP countries, Russia, and the EU.

Country	Entry into force of VFA	Visa liberalisation dialogue	Standard fee for a Schengen visa
Azerbaijan	September 2014	Not yet started	€35
Armenia	January 2014	Not yet started	€35
Belarus	–	–	€60
Georgia	March 2011	Commenced in June 2012; the VLAP presented in February 2013	€35
Moldova	January 2008	Commenced in May 2010, the VLAP presented in January 2011 Visa-free regime introduced in May 2014	Visa-free regime
Russia	June 2007	Joint steps agreed in December 2011	€35
Ukraine	January 2008	Commenced in October 2008; the VLAP presented in October 2010	€35

Despite backlogs in the visa arrangements with the EU from legal point of view Belarus, somewhat paradoxically, is in the lead among the EaP countries by the total number of Schengen visas issued per capita (see Table 2). In fact, Belarus leads in the relative number of Schengen visas issued per capita among all 140 countries, which are subject to visa requirements for the EU territory. According to the 2014 statistics, 93 Schengen visas were issued per 1,000 citizens in Belarus. To compare, in Russia and Ukraine this rate in 2014 stood at 40 and 30 Schengen visas per 1,000 citizens, respectively.

The share of multiple-entry visas in the overall number of Schengen visas issued in Belarus is

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also rather high (51.2%). Besides, Belarus has the lowest refusal rate in the world, which stood at 0.26% in 2014. In Russia, Ukraine and Georgia the refusal rate was registered at 0.9%, 2.0% and 12.7% respectively.

Table 2. Schengen visas issued in 2014 in the EaP countries (except Moldova) and Russia.

Country	Number of issued visas	Number of visas issued per 1,000 citizens	Total population
Azerbaijan	69,967	7.4	9.5m
Armenia	46,757	15.6	3.0m
Belarus	879,808	92.6	9.5m
Georgia	80,967	18	4.5m
Russia	5,702,624	39.9	142.9m
Ukraine	1,351,757	29.6	45.6m

Source: The author's compilation on the basis of the European Commission's visa statistics.⁷

Almost 5% of all INDICATE THE SOURCE HERE PLEASE

Schengen visas issued globally (15.7 million in 2014) are granted in Belarus. This makes Belarus the fourth country in the world after Russia, Ukraine, and China in terms of the absolute number of granted Schengen visas (see Table 3).

Table 3. Leaders in the number of issued Schengen visas in 2014.

Country	Number of issued visas	Share of the total number of Schengen visas issued globally (in %)	Number of visas issued per 1,000 citizens
Russia	5,702,624	36.4%	39.9
China	1,742,013	11.1%	1.3
Ukraine	1,351,757	8.6%	29.6
Belarus	879,808	5.6%	92.6
Turkey	770,342	4.9%	9.9
India	529,367	3.4%	0.41

Source: The author's compilation on the basis of the European Commission's visa statistics.

What will come next for Belarus after the long-awaited launch of the VFA

In Ukraine, it took ten months between the moment when the VFA came into force and the commencement of the visa liberalisation dia-

logue. In case of Georgia and Moldova, it was the 15 and 26 months respectively (see Table 1). One can reasonably expect that, if the VFA between the EU and Belarus enters into force in 2016, the VLAP will likely be presented to Belarus in 2017 at best. As far as the implementation of the VLAP is concerned, for Moldova it took three additional years, while the first VLAP phase for Ukraine lasted for four years. There is no guarantee that the Belarusian authorities will be as quick in meeting the VLAP benchmarks as Moldova or even Ukraine were.

It is worth mentioning that the military conflict in Donbas has hampered progress towards visa-free regime for both Russia and Ukraine and, indirectly, for Belarus too. Russia-EU relations have deteriorated considerably following the annexation of Crimea and the inimical Russia's policy towards Ukraine, thus making the prospects of EU-Russia visa-free regime look very gloomy. The growing number of displaced persons in Ukraine and considerable deterioration in economic well-being of Ukrainians has caused more immigration worries in the EU. There is no social pressure on the Belarusian government to intensify its work on visa facilitation and visa liberalisation with the EU, which otherwise would have been expected had the nationals of Russia and Ukraine been not subject to visa requirements for the EU anymore.

In 2014, the leading Belarusian and international migration experts representing academic institutions, NGOs, governmental bodies and international organisations based in Belarus were asked, how soon the visa regime between the EU and Belarus would likely be abolished. Most of the experts surveyed (11 out of 16) believed this would likely happen in 7–10 years, while four respondents considered this feasible within a shorter perspective of 4–6 years.⁸ Given the current state of affairs in visa relations between the EU and Belarus, this seems to be a fairly reasonable forecast.

⁸ Yeliseyev A. Migration between the EU, V4 and Eastern Europe: the present situation and the possible future. The perspective of Belarus. In *Forecasting migration between the EU, V4 and Eastern Europe. Impact of visa abolition*. Ed. By Jaroszewicz M. and Lesinska M. Warsaw, July 2014, Center for Eastern Studies, https://www.academia.edu/13662088/Migration_between_the_EU_V4_and_Belarus_the_present_situation_and_the_possible_future

⁷ See the 2014 visa statistics file on the webpage of EC DG on Migration and Home Affairs at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm#stats