The development of cooperation between the European Union and Russia on migration issues: from „the common spaces" to the actual implementation

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RUSSIA — EU: THE VISA ISSUE

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EU-Russia cooperation has experienced problems in many areas. Nevertheless, cooperation in the field of migration proves to be successful. Through analysing the EU-Russia migration agenda from the Partnership and Cooperation Agreement (1997) to the Roadmap for the Common Space on Freedom, Security and Justice (2005), the article assesses the main results of its implementation, such as the Readmission and Visa Facilitation agreements. Moreover, it stresses the role of Russia as an agenda-setter of the EU migration agenda in the Eastern Europe.

Key words: *EU-Russia relations, Justice and home Affairs, migration, Europeanisation, Common Spaces.*

The cooperation between the European Union (EU) and ''the Russian Federation[1] has been coined as being scarce and subject only to the context of political relations between the parties. That notwithstanding the analysis of sectoral cooperation shows that there has been actual cooperation. An early significant cooperation outcome was the Facilitated Travel Regime with Kaliningrad, which stipulates Kaliningrad citizens' transit to Russia's mainland through Lithuania [6; 17]. Afterwards, the EU and Russia signed the Readmission and Visa Facilitation agreements, which are the cornerstone of the EU migration cooperation with East European countries. It must be taken into account that Brussels and Moscow have shared borders since 1995, when Finland accessed the EU and that after the 'big bang' enlargement in 2004; the EU-Russian border is the longest of the EU external border. Moreover, ever since the entry into force of the EU-Russia Partnership and Cooperation Agreement in 1997, both actors have been actively cooperating on migration issues and, more widely, on Justice and Home Affairs.

Nevertheless, the EU-Russia migration cooperation has not had the same scholar attention as developments in the Eastern Partnership[2] countries. This article looks at the EU-Russia migration agenda from the PCA to the present time with a dual aim. First, it seeks to identify and synthesise the main commitments in the EU-Russia migration agenda. In order to do so, four ref-

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[1] Hereafter referred to as Russia. See on the general framework of EU-Russia cooperation [1; 14; 21; 22].
[2] The Eastern Partnership was launched in May 2009 by the Prague Eastern Summit declaration. It integrates Belarus, Moldova, Ukraine and the three South Caucasus republics.

erence documents are analysed. Second, it develops how the EU-Russia migration agenda has been translated into policy outcomes and what kind of norms and standards arise from them.

From an International Relations perspective, the study of EU relations with third countries in terms of the norms and standards promoted has been focused on the Europeanisation literature [20; 23]. Europeanisation theoretical strands contend that the EU promotes its norms and standards when cooperating with third countries [16]. Yet, authors such as Barbé *et al* [2] claim that Europeanisation strands do not take into consideration that the cooperation process is biderectional and that third countries might have leverage to change EU preferences. In our case, EU-Russia relations are based on a pattern of symmetry. Morevover, they claim that Europeanisation studies do not bear in mind that the EU cooperation with third countries takes place within a broader international system, with its own norms that might be also promoted. As a result, Barbé *et al* propose two alternative cooperation patterns to Europeanisation: internationalisation (when norms and standards emanating from international organisations are promoted) and bilateralisation (when norms and standards commonly agreed between the EU and a third country are adopted).

The migration agenda set out in the Partnership and Cooperation Agreement and the Common Strategy

The first document to set out a migration agenda between the EU and Russia was the PCA, signed in 1994 and into force since 1997 [8]. The PCA established the 'strategic partnership' between the EU and Russia, the motto that has led EU-Russia ever since. For instance, the Stockholm Programme, which sets out the EU priorities for action in the JHA domain for the 2010—2014 period, states that Russia is a *strategic partner* of the Union [7]. Although the PCA includes no chapter devoted to JHA, it includes up to four measures related to the field. First, the PCA mentions the prevention of 'illegal activities', by readmitting irregular migrants to their countries of origin. Second, it makes reference to the 'adoption of national legislation', which is a rather ambiguous provision since it does not clarify whether it implies the approximation of Russian norms to the *acquis*. Third, the PCA includes socialisation measures such as the training of personnel. Lastly, the agreement foresees a provision on visa policy, targeted to businessmen, key personnel and sellers of cross-border, whose visas should be issued more easily.

The next document setting out provisions on the EU-Russia migration agenda is the Common Strategy [5], a soft law policy tool of the Union created by the Treaty of Amsterdam which stipulates the priorities of EU cooperation with a third actor, in this case Russia. Similarly, Russia approved a Medium-strategy towards the EU in the same year [18]. The EU Common Strategy envisaged for the first time the conclusion of a readmission agreement between the EU and Russia [4]. This is no coincidence since the EU competence in the field of readmission was transferred with the Treaty of Amsterdam. In a similar fashion, like in the PCA, the Common Strategy in-

cluded socialisation mechanisms. As for visa policy, the Strategy advocates for the adjustment of the Russian visa policy to that of the Union, as well as the approximation of the Russian documents standards to those of the Union. Cooperation on document security constitutes one of the cornerstones of the technical reforms foreseen in the EU-Russia visa liberalisation dialogue.

The migration agenda in the Common Space for Freedom, Security and Justice

At the EU-Russia Saint Petersburg Summit in 2003, both actors designed a new institutional and non-legally binding setting to reinforce their cooperation, with the launch of four Common Spaces [12]. Among them, a Common Space on Freedom, Security and Justice (hereafter the Roadmap), which has framed the EU-Russia migration policy ever since, with specific measures to be found in a roadmap agreed two years later at the EU-Russia Moscow Summit in 2005 [13]. Regardless of its non-legally binding nature, i.e., the fact that the roadmap is a soft law policy tool, it has been so far the main document setting out the EU-Russia migration agenda. Until the entry into force of the New Agreement, which as mentioned above includes a whole chapter devoted to JHA, the roadmap remains the most valuable tool at our disposal to assess the EU-Russia migration agenda. The following paragraphs deal with the main provisions within the roadmap regarding migration policy, namely in the fields of readmission, border management and visa policy.

Concerning readmission policy, as mentioned in the previous section, the conclusion of a readmission agreement with Russia was already foreseen in the Common Strategy, and constitutes one of the main provisions in the Roadmap. The readmission of one country's nationals irregularly staying in another country is a principle on International Public Law. Yet, the EU sought to include a clause in the agreement whereby irregular migrants who entered the EU via Russia coming from a third country or stateless people would also be subject to readmission. In other words, the clause stipulates that Moscow had to be responsible for the readmission procedure of an irregular migrant who transited through Russia before entering the EU. This clause was initially rejected by Russia, and finally accepted after the offer of Brussels of a tempting incentive: the visa facilitation regime, which will be dealt with below at the section on visa cooperation.

The EU-Russia readmission agreement [10] entered into force in June 2007. The leverage of Russia vis-à-vis the Union was translated into a three-year delay before the clause of readmitting transit migrants and stateless people became operational. Nevertheless, EU Member States asked for the signature of implementing protocols of the agreement with Russia, to give more certainty to the obligations emanating from it. Another provision in the Roadmap in the field of irregular migration is the exchange of information regarding migration flows, which has been channelled by means of the Working Arrangement between FRONTEX and the Russian Border Guard Service.

As for border management provisions in the Roadmap, again they have been materialised with the Working Arrangement between FRONTEX and Russian Border Guard Service. The EU agency for the management of the external borders has no executive powers, which are exercised by Member States, but carries out operational cooperation with neighbouring countries. Russia was the first country with which FRONTEX signed a Working Arrangement on operational cooperation, in 2007, which entails capacity-building for border guards, the deployment of joint action at the border and the aforementioned exchange of data on irregular migration flows. Besides the border management cooperation in the framework of FRONTEX, the Roadmap calls for the signature of international agreements of border demarcation between Russia and EU countries sharing borders with Moscow.

Regarding visa policy, it must be highlighted that the Joint Statement of the Saint Petersburg Summit reaffirmed the importance of people to people contact, which was was translated into a specific measure in the Roadmap: the establishment of a visa-free regime in the long-term. The roadmap explicitly states that 'it was also decided to examine the conditions for visa-free travel as a long-term perspective [13, p. 20]. Actually, visa cooperation was one of the main issues during the St. Petersburg Summit, since Russia asked the EU for a clear and tangible incentive to go further with the negotiations on a readmission agreement. In order to be persuasive enough, this incentive had to be necessarily related with the facilitation of the movement of people between the EU and Russia. In this sense, it must be recalled that Moscow was eager to abolish the visa regime, but a lot of EU Member States were not in favour of it. So in the absence of the suppression of the visa regime in the short term, the incentive proposed was a *facilitation* of the issuance of visas.

The new visa facilitation regime entailed the exemption of visa fees for certain categories of visa applicants such as researchers and lorry drivers, a reduced fixed visa fee for the rest of applicants, a shorter period for the issuance and the possibility to lodge applications for multiple entry visas. The Visa Facilitation agreement [9] was negotiated and signed in parallel with the Readmission agreement, in what constitues a readmission-visa facilitation nexus [15; 19]. Ever since it has been established as a first step towards visa liberalisation in the EU migration agenda towards Eastern Partnership countries [1]. The assessment of the visa facilitation regime is rather positive, according to officials from both the EU and Russia. Nonetheless, with the enactment of the so-called 'EU Visa Code', the EU Regulation regarding the issuance of Schengen visas, the Visa Facilitation agreement would need to be amended accordingly. At the time of writing, the Commission has not been granted the mandate from the Council to start negotiations on the amendment of the Agreement.

Yet, all the attention is focused on the developments of the EU-Russia Visa dialogue, the framework launched to conduct the visa liberalisation process in September 2007, which raises two main questions. First, on what grounds should the visa regime be abolished? The Commission approach, also applied in the Eastern Partnership countries, advocates for a process

whereby technical requirements should be adopted by both parts in the fields of document security, data protection, the fight against organised crime and corruption, the protection of fundamental rights, among others. To that end, a 'common steps approach' was proposed to Russia as a setting to discuss and move forward towards the visa-free regime.

Second, what legal form should the abolition of the visa regime adopt? At the EU level, the visa liberalisation entails an amendment of the Regulation 539/2001 but there is no requirement to sign an international agreement with Russia on the suppression of visas. However, Moscow has suggested the signature of an international agreement and it seems that both parts will go for it, according to Barroso's speech at the EU-Russia Brussels Summit in December 2010. In his own words, there has been '[r]eal progress on the visa issue. <…> We will now start elaborating a list of common steps and the implementation of those concrete steps will open the way for talks on a EU-Russia Visa Waiver Agreement' [3, p. 2]. In the same line, the President of the European Council expressed his confidence in the EU-Russia visa liberalisation process stating at the same Brussels summit that 'We now have a view of how to move forward towards an eventual visa-free travel regime' [11, p. 1].

Conclusions

To conclude, this article has stressed Russia's role in setting its migration agenda with the EU, which has been extended to the whole of the Eastern Partnership countries. The process whereby the EU and Russia have agreed their migration agenda has indeed been two-sided and has shown that both actors interact within the international system, in a context of symmetry. Despite the lack of cooperation of both actors in many issue areas, the sectoral analysis provided in this article focused on migration cooperation shows that actual cooperation has taken place in this field.

Looking at the actual cooperation between the EU and Russia in the migration field, it can be concluded that, contrary to what Europeanisation scholars claim, most of the commitments are not part of the *acquis communautaire*. Rather, they are commitments emanating from international organisations or agreed *ad hoc* between the parties. An example of cooperation which implies the adoption of international norms would be the core of reforms within the *common steps* approach towards visa liberalisation. The standards on document security adopted are those of the International Civic Aviation Organisation (ICAO. Similarly, the standards on data protection and the fight against organised crime and corruption belong to the Council of Europe, of which both EU Member States and Russia are members. A clear case of cooperation where a bilaterally-agreed norm is adopted is the visa facilitation regime. Indeed, the Visa Facilitation agreement is the result of a tailor-made negotiation between Brussels and Moscow, which has been extended to the Western Balkans and the Eastern Partnership countries. Nonetheless, the Readmission agreement would be an exception as its content was not negotiated and was drafted solely by the EU. In this regard, the clause on

the readmission of transit migrants and stateless people is an innovation from the EU extended to Russia.

The New Agreement under negotiations since 2007 should provide a more enhanced legal basis for cooperation in the JHA area, whose chapter has been already agreed. With the closure of the 11th round of negotiations, when the treaty enters into force it is going to be not only a new reference for the EU-Russia migration agenda, but for the EU agenda-setting in the migration domain with the rest of Eastern Europe. Indeed, as this article has shown, Moscow has had the capacity to fix the content of the agenda that has been at a later stage institutionalised to the rest of Eastern Europe.

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