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**PROBLEMS
AND PROSPECTS
OF EU — RUSSIA
DIALOGUE
ON VISA-FREE TRAVEL**

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This article deals with the issues pertinent to the EU — Russia visa dialogue — one of the major areas of cooperation between the two partners. The article aims to identify the main problems of this dialogue, as well as prospects for the introduction of a visa-free regime between the EU and Russia. The authors provide a historical overview of cooperation in this area and consider problems and prospects of visa liberalization from the economic, legal, and political perspectives. The analysis draws on primary sources such as the EU and Russia's legislation, EU — Russia agreements on visa facilitation and readmission, visa statistics, expert interviews, as well as analytical reports and research works on the topic. Particular attention is paid to the “Common steps towards visa-free short-term travel of the citizens of the EU and Russia”, which is currently the main document in the visa dialogue. Having assessed the implementation of the provisions contained in the four blocks of the “Common Steps”, the authors draw conclusions about the political nature of major obstacles to a visa-free regime.

This article is based on the proceedings of the “Russia and European Union: the dynamics of interrelations” international conference organized by the EU center of the I. Kant Baltic Federal University (the EU4U project).

Key words: Russia, European Union, visa dialogue, visa facilitation agreement, readmission agreement, common steps, migration dialogue

Visa issues play a particular role in EU — Russia relations. According to the data of the European Commission, over recent years, Russia has been the undisputed leader in the number of citizens obtaining Schengen visas. In 2011, Russian citizens accounted for more than 39% of all Schengen visas issued throughout the world [1]. It is not surprising that in Russia, the existing visa regime is considered a temporary phe-

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nomenon and the visa requirements are perceived as an anachronism, which is hardly in line with the current bilateral relations [2].

Looking back at the history of EU — Russia relations one can conclude that the visa issue, alongside those of trade and cooperation in the field of energy greatly affected the terms of cooperation. Still, the visa issue is one of the primary focuses of EU — Russia cooperation. This importance of the visa regime can be explained by three factors. First, the visa regime is the sphere of international relations that is most often faced by ordinary citizens, which explains the attention of not only the public but also non-governmental organisations and mass media to this problem [3; 4]. Secondly, the visa regime is one of the indicators of the level of bilateral relations. Moreover, a more liberal visa regime means a higher level of trust [5, c. 500—518; 6]. Finally, the intense discussion of this problem is related to the issue of Russian passenger transit from the Kaliningrad region to mainland Russia and back.

Historically, the EU — Russia visa regime was a result of the general visa policy of the Schengen member states and, later, the inclusion of the Schengen rules into the Amsterdam Treaty of 1997 and the general immigration policy of the EU in the context of the decisions of the European Council in Tampere in 1999.

On the threshold of the 2004 EU enlargement to the countries of Central Europe and the Baltic States, on August 27, 2002, President of Russia, Vladimir Putin, delivered to the President of the Commission of the European Communities a message on the problem of ensuring the viability of the Kaliningrad region, which suggested that the issues of visa-free travel should be considered [7]. *De facto*, this message can be considered the beginning of the EU — Russia visa-free dialogue; although it was brought to the institutional level only in 2007 after the agreement on readmission and on visa issue simplification came into force.

The European Union did not deny the possibility of a visa-free regime with Russia; on the contrary, at the meeting of the EU Council in Brussels on September 9, 2002 [8], a decision was made to analyse the possibility of visa-free relations with Russia in a long-term perspective.

On May 31, 2003, at the EU — Russia summit scheduled to coincide with the 300th anniversary of the foundation of St. Petersburg, heads of state identified the visa-free regime of travel as a long-term issue [9].

Two years later, on May 10, 2005, at the EU — Russia summit held in Moscow, the parties adopted roadmaps for four common spaces, thus emphasising the aspiration to abolish the visa regime in the long-term perspective and finalise negotiations on the visa procedure simplification as a short-term one [10].

In 2006, Russia and the EU concluded an agreement on the simplified visa issuance for the citizens of the Russian Federation and the European Union [11, c. 61—71]. After this agreement came into force in 2007, the EU — Russia visa regime has been characterised as simplified. A specific feature of such a regime is that, against the background of the preservation of mutual visa requirements, the state should introduce the simplified rules for obtaining visas.

The official beginning of the so-called "visa-free" dialogue dates back to April 23—34, 2007, when, in the course of a meeting of the Permanent Partnership Council on Freedom, Security and Justice, the parties reached an

agreement on its terms and procedure [12]. Following the EU — Russia summit held in Samara on May 17—18, 2007, the parties made an official statement announcing the launch of this visa-free dialogue [13]. The EU — Russia visa-free dialogue takes place at three levels: the Permanent Partnership Council, ministerial level, and at the level of top officials and experts.

It is worth noting that, the Russian party defines this dialogue as the EU — Russia *visa free* dialogue, whereas the EU uses a different notion the EU — Russia *visa* dialogue. This terminological difference is indicative of the principal difference in approaches to these issues: Russia's explicit aspiration towards bilateral visa abolition and the gradual simplification of the visa regime, which can transform into a visa-free regime, pursued by the EU, first of all, the European Commission.

The troubled history of the visa and migration issues in EU — Russia relations is explained by the fact that, today, the EU — Russia visa free dialogue is a multi-faceted and multi-level process, which has several key aspects.

The economic aspect

It is evident that the visa regime created additional barriers to the economic ties between Russian and European companies, sometimes posing an obstacle to the conclusion of international economic contracts, the development of tourism industry, and more efficient cooperation. It is most pronounced in case of the foreign economic activities of Russian regions and companies operating at a significant distance from Moscow and other large cities where most consulates and visa centres are situated.

On the other hand, the visa regime is a source of income for a whole industry of companies involved in this process, first of all, commercial mediators that operate in the interests of consulates and other companies providing additional services to applicants for Schengen or Russian visas. Researchers focusing on the visa problem [15], as well as representatives of Russian public structures (information received at a consultation at the Russian Ministry of Foreign Affairs on May 16, 2013) stress the ambiguous consequences of the institutionalisation of visa centres in Russia and the Eastern Partnership countries. Indeed, visa centres are not only a convenient mediator, first of all, for Russian citizens residing at a significant distance from most consulates of EU states, but also an additional barrier to obtaining a visa. There are numerous cases of the incompetence of visa centre employees, as well as discrepancies between the waiting time for an appointment at a visa centre and the idea of procedure simplification and acceleration. Another target for criticism is the fact that, when applying for a visa, citizens do not have a real choice between the visa centre and the consulate. According to the employees of the Russian ministry of Foreign Affairs, such a situation is a result of the fact that this aspect has no legal confirmation in the EU — Russia agreement of 2006, but is merely mentioned in the Visa Code of the EU, which is, in essence, the internal law of the EU, whose violation cannot be monitored by the EU — Russia Joint Committee (information received at a consultation at the Russian Ministry of Foreign Affairs on May 16, 2013).

Taking into account that, annually, more than 5 million Schengen visas are issued to Russians, one can come to a conclusion that the annual turnover of the visa industry can reach from 150m to 200m Euros in Russia alone. Despite the fact that these figures cannot be compared to the revenues of the tourism industry in the conditions of a visa-free regime, for many EU states, the income from visa fees is a considerable resource for sustaining diplomatic institutions and consulates. A search for, and an analysis of, the cases of possible conflict of interests and the lobbying for the deceleration of the EU — Russia visa dialogue by the “visa industry” are beyond the scope of this study. However, the ambiguous role of visa mediators was already stressed in the work of international scholars, mostly in the case of the issue of Schengen visas in southern Mediterranean countries [16]. When considering the EU — Russia visa problem, one must also take this issue into account.

The legal aspect

EU legislation establishes a visa regime with third countries as a general rule. Exceptions — i. e. the introduction of a visa-free regime — are made for certain countries, predominantly on a reciprocal basis, as a result of the assessment of the state according to four criteria:

- 1) the features of public policy and the level of security;
- 2) the level of illegal immigration;
- 3) the level of intergovernmental relations;
- 4) the level of regional cooperation and reciprocity in relations.

These criteria are given in the EU Council Regulation No 539/2001 of March 15, 2001 [17, c. 1—7], which even includes a list of states whose citizens should obtain visas and whose citizens are exempt from such an obligation.

From the EU perspective, one can identify two principal ways of establishing visa-free relations: the signing of an international agreement and introduction of amendments to the Council Regulation No. 639/2001. This is applied when a visa-free regime is established on a reciprocal basis. The EU and the third country mutually waive visa requirements [18, c. 4—9]. This method is used quite rarely: the conclusion of international agreements is always accompanied by changes to Regulation No. 539/2001; however, such changes come into force only with a corresponding international agreement.

The second method is used when there is no need to conclude an international agreement, since EU citizens already enjoy the right to visa-free entry into a certain country [19, c. 1—2].

Since changes to Regulation No. 539/2001 are carried out in the framework of the general EU visa policy, such changes are made according to Article 77 of the Treaty on the functioning of the European Union (referred to below as TFEU) in line with the regular legislative procedure (Article 294 of the TFEU).

From the Russian perspective, according to Article 6 of the federal law of August 15, 1996 No. 144-FZ: ‘On the Procedure for Exit from the Russian Federation and Entry Into the Russian Federation’ [20], foreign citizens or stateless persons must present valid identification documents acknowledged in

the RF as such and a visa when entering or exiting the Russian Federation, unless otherwise stipulated in the federal law, an international agreement of the Russian Federation or a decree of the president of the Russian Federation.

Thus, the law lists three methods of waiving visa requirements: in the framework of an international agreement, according to a presidential decree, and through making changes to the federal law.

The abolition of a visa regime according to the federal law or a presidential decree usually takes place during major sporting or political events. In other cases, visa regimes are abolished in the framework of international agreements.

Recently, Russia has been involved in active negotiations with third countries on the establishment of a visa-free regime. As a rule, the legal framework for the abolition of visa requirements is a bilateral international agreement based on the principle of equality. [21].

The existing bilateral agreements between Russia and the EU do not regulate the course of the EU — Russia visa-free dialogue. The agreements reached relate to the sphere of *soft* law. Only in the agreement on the simplification of the procedure of issuing visas to citizens of the RF and the EU, the parties voiced the intention to establish a mutual visa-free regime of travel [11].

On the basis of an analysis of Russian and EU legislation, as well as the practices of establishing a visa-free regime with third-party countries, one can conclude that the EU — Russia visa-free dialogue can be implemented through the conclusion of an international agreement [22, c. 122—129].

Moreover, the signing of an international agreement on visa abolition between Russia and the EU is mentioned as the concluding stage of the visa-free dialogue in the "Common steps" adopted by the parties in December 2011 (the first passage of the general framework).

The political aspect

In its practices of visa regime liberalisation, the EU employs two approaches. The first approach is applied to the countries, a visa-free regime with which is in the interest of the European Union (Brazil, Canada, the USA, etc.). As a rule, it is states that have strong economic ties with the European Union. This approach is based on the principle of equality: the parties reach an agreement on a visa-free regime as equal partners; they make mutual concessions and come to a mutually beneficial agreement.

The second approach relates to the countries that are themselves interested in the abolition of the EU visa requirements. Such states are qualified by the European Union as candidates for the "EU visa-free club" membership. In these cases, the European Union acts as the "imposer of the visa regime", i. e. the entity that grants the citizens of a certain states a right to a visa-free entry to the EU under certain conditions. These are the countries that have quite developed relations with the EU. However, from the perspective of the EU, the level of their political and economic development is not sufficient [23].

In comparison with the first approach, the second one suggests a more complicated procedure consisting of three stages:

- 1) the signing of a readmission agreement [24];
- 2) the adoption of a roadmap (action plan); and
- 3) changes to Council Regulation No. 539/2001 and/or the signing of an agreement on the short-stay visa waiver) [25].

Despite the fact that, today, Russia is seen as a strategic partner of the EU, the visa-free dialogue between Russia and the EU follows the second approach. Now, the EU — Russia visa-free dialogue is at the second stage. In the course of another EU — Russia summit held on December 15, 2011, the parties adopted the so-called “Common steps towards visa free short-term travel of Russian and EU citizens”, which became the fundamental document of the visa-free dialogue [14]. The “Common steps” are a soft law document, which has no legally binding force.

The adoption of the “Common steps” is a unique development in EU visa policy. In the course of liberalising the visa regime with other countries, different notions were used: an action plan (Ukraine, Moldova), or a roadmap (Kosovo, Serbia, Albania, etc.). The “Common steps” are neither an action plan, nor a roadmap in the sense attached to it by the European Commission, since this document does not imply an immediate chronological connection between the implementation of the “Common steps” provisions and taking the visa-free dialogue to the next level. In other words, there is no strict connection between the implementation of the “Common steps” and the launch of negotiations on a visa-free regime. The “Common steps” remain a political declaration of the strategic intentions of the partners, which, however, gives them — first of all, the EU — room for manoeuvring. Thus, one can conclude that the implementation of the “Common steps” provisions belongs to the field of politics and depends directly on the political will of the leadership of Russia, EU member states, and the European Commission.

The position of the Council of Ministers resulted in, over a long period, the text of the “Common steps” being kept from the public by the negotiation partners, since otherwise it could have had an adverse effect on the climate of trust between the EU and other countries, with which similar negotiations were conducted (first of all, Ukraine and Moldova) [26]. Only the document structure was disclosed. On March 11, 2013, more than a year after the agreement had been reached; the “Common steps” were published [27]. This document contains a list of actions to be taken both by Russia and the EU in the framework of preparing for the bilateral introduction of a visa-free regime for short-term travel, which were divided into four main blocks:

- 1) Document security, including biometrics;
- 2) Illegal migration, including readmission;
- 3) Public order, security and judicial cooperation; and
- 4) External relations.

In effect, the provisions of the “Common steps” repeat the thematic blocks which have been underlying the development of the visa-free dialogue since 2007, which is indirectly indicative of the absence of a significant breakthrough in solving the problem, first of all, on the part of the EU. In view of the name of the document — “Common steps” — one can suppose that it suggests reciprocal measures and mutual obligations. However,

in effect, it is mostly a document of unilateral undertaking; it is considered by the European Union as ‘homework’ for Russia. In particular, this is stressed by the fact that the European Commission, apart from organising two visits of expert groups to Russia, where they had to assess the measures taken by the RF in the framework of the first two blocks, also sent the Russian Ministry of Foreign Affairs a questionnaire consisting of 500 questions addressed to the competent Russian agencies relating to different aspects of the “Common steps”. Having analysed the answers to the questionnaire, it sent another document with 49 questions (information received at a consultation at the Russian Federal Migration Service on May 16, 2013). However, the Russian side managed to insist on the reciprocity principle in relation to the measures suggested in the “Common steps” and exercised its right to send a Russian expert group to EU member states to monitor the activities of the European partners in the framework of the agreement.

Russian experts on document security, prevention of illegal migration, refugee issues, as well as modern technologies met their colleagues and visited various sites, including migrant detention centres, in Germany, Italy, and Greece (information received in an unofficial conversation of February 12, 2013). The results of these missions are presented in special internal reports of the appropriate agencies, which will have to assess the implementation of the “Common steps” in the future. Unfortunately, as researchers and representatives of civil society justly stress, the visa dialogue based on the “Common steps” does not leave room for a mechanism of formal public monitoring [4; 24]. However, an indirect monitoring of the results achieved is possible through an analysis of regularly published report of the European Commission on the implementation of the roadmap for the common space on Freedom, Justice and Security, as well as a number of other documents reflecting the progress and problems of bilateral relations.

At the moment, one can speak of significant progress in the framework of the second block of the “Common steps”. The Russian party also began to act on certain recommendations given in the “Common steps”. So, on January 11, 2013, the federal laws of the Russian Federation of December 30, 2012 No. 320-FZ “On changes to the Federal law ‘On the legal status of foreign citizens in the Russian Federation’” [28] and No. 321-FZ “On changes to Article 26 of the Federal law ‘On the procedure for Exit from the Russian Federation and Entry Into the Russian Federation’” [29] entered into force. Also, the decree of the President of the Russian Federation of December 29, 2012 No 1709 “On the passport of a citizen of the Russian Federation certifying the identity of a citizen of the Russian Federation beyond the territory of the Russian Federation containing additional personal biometric data of its holder on an electronic information carrier” [30] took effect. Those were necessary for the implementation of certain provisions of the second block of the “Common steps”.

Undoubted progress was made in implementing the EU — Russia agreement on readmission and relevant areas of cooperation. Executive protocols were signed with all EU member states within the scope of the document. Russia concluded a readmission agreement with most countries of migrants’ origin and transit (first of all, in Central Asia). The Russian Federal Migra-

tion Service closely cooperates with EU member states in the identification of illegal migrants and their admission to Russia [31].

Of major significance for the implementation of the “Common steps” provisions is another channel of EU — Russia cooperation — the recently launched Migration Dialogue. The first meeting in the framework of the Migration Dialogue was held in Moscow on June 27, 2011 [32]. Three further meetings took place later — in Brussels (June 25, 2012 [33]), St. Petersburg (October 26, 2012 [34]), and Bratislava (February 7, 2013 [35]). The fifth session of the Migration Dialogue took place in Kaliningrad on July 4—5, 2013: the meeting discussed opportunities for cooperation and exchange of experience in the field of various migration issues rather than exclusively the problems of illegal migration, which makes it possible for the parties to harmonise their position on a number of objectives formulated in the “Common steps”. According to the official report on the session, the EU representatives emphasised the absence of the “expected” risk on the part of the Russian Federation as to the increase in illegal migration, which is an important argument in the EU — Russia visa-free dialogue [34].

According to the conclusive provisions of the “Common steps”, as soon as the list of common steps is implemented, Russia and the EU — following their internal procedures — will make a decision on the launch of negotiations on visa abolition. It means that the further process of visa liberalisation depends on a political decision of the parties as to the commencement of negotiations on the mutual waiver of visa requirements. Moreover, the European Union still plans to link the visa-free dialogue with the problem of human rights protection in order to take into account the interconnection between the evolution of migration flows and the protection of human rights and fundamental freedoms, as well as the observance of the rule of law, which will make it possible for the EU to use the problem of human rights as a condition for the transition to a visa-free regime. In its turn, Russia does not consider it possible to address the human rights issue as an element of the visa-free dialogue with the EU, since it will become political leverage [34].

An analysis of the text of the “Common steps” gives reason to suppose that the document does not contain any obligations that cannot be fulfilled by the parties. Moreover, most measures are of a general nature and include such expressions as “undertake necessary steps”, etc. The “Common steps” do not mention any tangible cooperation results, whose achievement is necessary for a transition to the conclusive stage of the visa-free dialogue i. e. a visa-free regime for EU and Russian citizens crossing common borders. Despite the adoption of the list included in the “Common steps”, a visa-free regime for mutual travel remains a political rather than technical issue. At the same time, from the perspective of political analysis, one of the major factors obstructing the progress of the visa free dialogue is the competition between the European Commission, which is technically responsible for the visa dialogue, and EU member states, the real political actors in the process, a result of the division of authorities in EU. It is well-known that a number of EU member states, in particular, Germany, the Scandinavian countries, Latvia, Lithuania, Estonia, and some Central European countries are oppos-

ing the idea of visa abolition (information received in an unofficial conversation of February 12, 2013).

The Russian side strives to benefit from the situation by trying to convert the problem into leverage. The Russian Ministry of Foreign Affairs applies the mechanisms of bilateral and multilateral semi-official meetings with the representatives of EU member states in order to lobby for the abolition of the visa regime on the conditions, while the European Commission still insists on the step-by-step process [36]. The ambassador-at-large of the Russian Ministry of Foreign Affairs, Anvar Azimov, held an unofficial meeting with representatives of all EU member states at the Russian Ministry of Foreign Affairs on February 12, 2013 in order to clarify their position on the visa-free dialogue and on the establishment of corresponding bilateral communication. It was the first meeting of its kind, which generated an ambiguous response from the European Commission, which sees the stages of the visa-free dialogue as follows: work on the “Common steps” blocks under the aegis of the European Commission; the assessment and discussion of the situation by the EU member states; and the possible mandate of the Council of Ministers to the Commission to launch official negotiations (from an unofficial conversation with an employee of the EU delegation to Russia of February 11, 2013). From the perspective of certain EU member states, the process should not be of such a linear nature, and the European Commission has to reflect their opinions, even at the stage of the on-going visa dialogue (from an unofficial conversation with an employee of the French Embassy in Russia of February 12, 2013). The theoretical problem of multiple sources of power and decision-making centres in the framework of the EU has taken on special significance in the context of the years long visa-free dialogue with Russia, thus it requires serious analysis.

Conclusion

The visa-free dialogue between Russia and the EU is one of the key areas of cooperation. The major problems and prospects of the dialogue are identified in terms of the economic and political factors shaping the dialogue context and affecting concrete decisions.

When analysing EU — Russia visa relations, one should not overlook the economic factor of the visa issue — the income from visa fees and the considerable financial interest of organisations comprising the “visa industry”. This factor can lead to a conflict of interests between the “visa industry” and different groups within the societies of EU member states and Russia, which would profit from the introduction of a visa-free regime.

The analysis of the legal aspects of the visa-free dialogue shows that the implementation of the latter is regulated, to a great degree, by *soft* law rules. The only legal document mentioning the visa-free dialogue is the 2006 EU — Russia agreement on the simplification of the visa issue.

The analysis of the Russian and EU legislation, as well as the text of the “Common steps”, leads one to the conclusion that the implementation of the EU — Russia visa dialogue is indeed possible through concluding an international agreement on the mutual waiver of visa requirements.

The political component of the visa-free dialogue shows that, in the particular context of EU — Russia relations, the political will of the partners becomes the decisive factor in progressing on the chosen path of gradual visa liberalisation. In this connection, of special interest are the provisions of the “Common steps towards visa-free short-term travel by the citizens of the EU and Russia”, which stress the unique nature of the selected approach to cooperation with Russia and suggest the application of the reciprocity principle in the dialogue development. Nevertheless, it is emphasised that the “Common steps” remain a political declaration of the strategic intentions of the partners, which, however, gives them — first of all, the EU — room for manoeuvring, which poses a certain problem of an automatic progress in the dialogue. The analysis of the provisions divided into the four blocks of the “Common steps” and the assessment of the degree of their implementation make it possible to speak of successful interaction at the technical level and the political nature of the basic obstacles on the path towards a visa-free regime.

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