

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS **C**



**RUSSIA AND THE
COMMON SPACE ON
FREEDOM, SECURITY
AND JUSTICE**

STUDY



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STUDY

Abstract

EU-Russia cooperation in the framework of the Common Space on Freedom, Security and Justice, launched a decade ago in 2003, has borne fruit more in the security aspects than the justice and liberty-related policy areas. The study assesses the uneven cooperation on justice and home affairs between the EU and Russia, while delving into the intersection between cooperation on justice, liberty and security and the promotion of human rights, democracy and rule of law in EU-Russia relations. The study concludes by proposing a set of policy recommendations to the LIBE Committee for playing a more active role in this important field of cooperation between the EU and Russia.

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CONTENTS

LIST OF ABBREVIATIONS	4
EXECUTIVE SUMMARY	5
1 COOPERATION BETWEEN THE EU AND RUSSIA IN JUSTICE, LIBERTY AND SECURITY: NORMATIVE AND INSTITUTIONAL FRAMEWORK	6
2 MAIN ISSUES AND CHALLENGES UNDERLYING THE IMPLEMENTATION OF THE EU-RUSSIA COMMON SPACE ON FREEDOM, SECURITY AND JUSTICE	8
2.1 The dialogue on visa-free short-term travel and the Visa Facilitation Agreement	9
2.2 Implementation of the Readmission Agreement	15
2.3 Border management: Implementing the Working Arrangement between FRONTEX and the Russian Federal Border Service and negotiating border demarcation agreements	17
2.4 Drugs cooperation	18
2.5 Dialogue on migration and asylum	19
2.6 Cooperation on transnational organised crime	21
2.7 Negotiations on working agreements with Europol and Eurojust	22
2.8 Counter-terrorism cooperation	23
2.9 Judicial cooperation in criminal and civil matters	24
3 ASSESSMENT OF THE INTERSECTION BETWEEN THE COMMON SPACE AND THE PROMOTION OF DEMOCRACY, HUMAN RIGHTS AND THE RULE OF LAW IN EU-RUSSIA RELATIONS	25
4 CONCLUSIONS AND POLICY RECOMMENDATIONS	30
REFERENCES	35
ANNEX	38

LIST OF ABBREVIATIONS

AFSJ	Area of Freedom, Security and Justice
CEPOL	European Police College
CIS	Commonwealth of Independent States
CSTO	Collective Security Treaty Organization
EEAS	European External Action Service
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
ECHR	European Convention on Human Rights
EU	European Union
EurAsEC	Eurasian Economic Community
FIDH	International Federation of Human Rights
FBS	Russian Federal Border Service
FMS	Federal Migration Service of the Russian Federation
FSKN	Federal Service for Drug Control of the Russian Federation
GCTF	Global Counter-Terrorism Forum
ICAO	International Civil Aviation Organisation
LBT	Local border traffic
LBTP	Local border traffic permit
JLS	Justice, liberty and security
NATO	North Atlantic Treaty Organization
PCA	Partnership and Cooperation Agreement
PPC	Permanent Partnership Council
RF	Russian Federation
SCO	Shanghai Cooperation Organisation
SOM	Senior officials' meeting
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
US	United States
VFA	Visa Facilitation Agreement
WA	Working Arrangement

EXECUTIVE SUMMARY

At the Saint Petersburg Summit in 2003, the EU and the Russian Federation¹ established a new institutional and non-legally binding setting to reinforce their cooperation, with the launch of four Common Spaces. Among them is a Common Space on Freedom, Security and Justice, which has framed the EU-Russia cooperation on justice, liberty and security (JLS) ever since. Specific measures are outlined in the Road Map for the Common Space on Freedom, Security and Justice,² agreed two years later at the EU-Russia Moscow Summit in 2005. In addition, EU-Russia JLS cooperation has developed in line with the multiannual EU programmes outlining the priorities in the EU JLS policy areas. In this respect, the Stockholm Programme (2009-2014) has particularly stressed the external dimension of the Area of Freedom, Security and Justice (AFSJ) and the EU-Russia strategic partnership.³ Finally, with the entry into force of the Treaty of Lisbon in December 2009, the European Parliament has strengthened its role in external action, in particular by giving its assent to the signature of EU international agreements. The Treaty has also reinforced the fundamental human rights framework at the EU level, with the legally binding character of the Charter of Fundamental Rights and the EU's accession to the European Convention on Human Rights (ECHR), of which Russia is a party.

In this context, the Permanent Partnership Council (PPC) has become the main framework for EU-Russia JLS relations. Cooperation has borne fruit so far with *inter alia* the conclusion of Readmission and Visa Facilitation Agreements (VFAs), as well as those on operational border-management cooperation between FRONTEX and the Russian Federal Border Guard Service. Nevertheless, the respective operational arrangements with Europol and Eurojust have not been signed yet and the dialogue on visa liberalisation has progressed slowly. In spite of the growing network of professional contacts, meetings and consultations, commitments made in the Road Map have not been completely fulfilled and have so far led to scarce results in some policy areas.

Against this background, this study provides up-to-date evidence of the state of play in EU-Russia JLS cooperation from the perspective of both the EU and Russia, an approach that has not been adopted so far in this profoundly under-researched area. It aims at providing a detailed analysis of the EU and Russia's approaches to the Road Map, highlighting both actors' positions in implementing the Road Map, in order to assess elements underlying the lack of apparent results of EU-Russia cooperation in the framework of the Common Space on Freedom, Security and Justice. First, this study assesses progress in the most relevant policy areas in the field of JLS and whether there is a balance between policy areas related to freedom and justice, on the one hand, and security on the other. Second, the study also looks at the shortcomings of the EU-Russia institutional cooperation structures, with a particular view on the new institutional settings in the EU since the entry into force of the Treaty of Lisbon. Third, the lack of mutual trust between the parties is analysed as an element preventing the cooperation needed to move forward. Finally, the limited human rights cooperation between the EU and Russia is assessed in detail. The main argument for lack of progress in certain policy areas is the strategic use of political conditionality by the EU, the legitimacy of which is contested by Russia. Still, the study identifies socialisation as the policy instrument to help step up cooperation under the Road Map. The analysis shows

¹ Hereafter referred to as 'Russia'. On the general framework of EU-Russia relations, see Averre (2005) and Haukkala (2010).

² Hereafter referred to as the 'Road Map'.

³ See Wolff, Wichmann and Mounier (2009) for a comprehensive overview of the external dimension of the EU policies on justice, freedom and security.

that the application of socialisation has proven to be effective, i.e. with progress made in the policy areas where it has been applied. The study explains how socialisation measures fit into EU-Russia cooperation and how they can contribute to overcoming the current lack of trust between the parties. Finally, the study proposes a set of policy recommendations to the LIBE Committee for playing a more active role in EU-Russia JLS cooperation.

Methodologically, the study is complemented by fieldwork (interviews of officials involved in JLS cooperation) and is structured as follows. First, it presents an account of the normative and institutional framework of EU-Russia JLS cooperation. Second, it analyses the implementation of the main policy areas in JLS cooperation, including such crosscutting challenges as asylum and ensuring data protection standards. Third, it assesses the intersection of the Road Map with the cooperation on human rights, democracy and the rule of law. In this sense, the EU and Russia have established that cooperation on human rights would be the basis of EU-Russia JLS cooperation. Finally, the study summarises the main conclusions of the analysis and presents policy recommendations.

1 COOPERATION BETWEEN THE EU AND RUSSIA IN JUSTICE, LIBERTY AND SECURITY: NORMATIVE AND INSTITUTIONAL FRAMEWORK

KEY FINDINGS

- The Partnership and Cooperation Agreement (PCA) entered into force in 1997 and constitutes the EU-Russia legally binding framework for cooperation.
- The Road Map for the Common Space on Freedom, Security and Justice, launched in 2005, has so far been the main document to set out the EU-Russia JLS agenda, regardless of its non-legally binding nature.
- Both parties opted to include socialisation as a policy instrument to step up their cooperation in the PCA.
- The sub-committee format would provide for a more structured venue, where the relevant ministerial representatives would meet on a regular basis.
- The Nicosia PPC meeting in October 2012 agreed to set up senior officials' meetings (SOMs) that cover the full spectrum of JLS cooperation once a year, with the participation of the highest non-political representatives.
- The EU-Russia New Agreement will be the first legally binding framework that regulates JLS cooperation comprehensively, with the challenge of providing a more coherent institutional setting. In addition, the EU is adjusting the coordination of all the post-Treaty of Lisbon actors in the field of external action.

This section looks briefly at the normative basis that the EU and Russia have established for cooperating in the AFSJ, ranging from the PCA, which entered into force in 1997, to the commitments set out in the Road Map for the Common Space on Freedom, Security and Justice. Second, it focuses on negotiations on an EU-Russia New Agreement and the challenges underlying the current institutional setting in EU-Russia JLS relations.⁴

⁴ On the EU-Russia New Agreement, see Emerson, Tassinari and Vahl (2006).

The first document to set out a JLS agenda between the EU and Russia was the PCA, (Council of the European Union, 1997). The PCA established a 'strategic partnership' between the EU and Russia. In this sense, the Stockholm Programme, the multiannual programme that sets out the EU's priorities for action in the JLS sphere for 2010-2014, states that Russia is a *strategic partner* of the Union (European Council, 2010, p. 35). The PCA includes a special title VIII devoted to counteracting unlawful activities. First, it mentions the prevention of "illegal activities",⁵ by readmitting irregular migrants to their countries of origin, fighting forgery, corruption and drug trafficking. Second, it makes reference to assistance in "drafting national legislation" against unlawful activities, which is a rather ambiguous provision given that it does not clarify the contents of this legislation. Third, the PCA includes socialisation measures, such as the training of staff from both parties working mainly in law enforcement authorities. It is worth mentioning that both parties opted for socialisation as a policy instrument to step up their cooperation. Lastly, the agreement foresees a provision on visa policy, targeted at businessmen, key personnel and cross-border sellers, stipulating that when issuing their visas, more favourable conditions should apply.

At the EU-Russia Saint Petersburg Summit in 2003, both actors designed a new institutional and also non-legally binding setting to reinforce their cooperation, with the launch of four Common Spaces (EU-Russia Saint Petersburg Summit, 2003). Among them were the Common Space on Freedom, Security and Justice, with specific measures to be found in a Road Map agreed two years later at the EU-Russia Moscow Summit in 2005 (EU-Russia Moscow Summit, 2005).⁶ Regardless of its non-legally binding nature, it has so far been the main document setting out the EU-Russia JLS agenda. The New Agreement, which will include a whole chapter devoted to JLS issues, will be the reference document in EU-Russia JLS cooperation.

After this overview of the normative basis of EU-Russia JLS cooperation, a few considerations on the institutional framework of EU-Russia relations are highlighted. The EU-Russia New Basic Agreement, which the EU and Russia have been negotiating since 2007 with eleven rounds of negotiations, should provide an enhanced legal basis for cooperation in the JLS sphere. The JLS chapter has already been agreed, but the parties have not reached an agreement on trade and investments, which prevents the New Agreement from being signed.⁷ Once it comes into force, the New Agreement will be the first comprehensive legal basis to regulate EU-Russia JLS cooperation, setting out legally binding commitments that will most likely enhance cooperation in the field.

A major aspect that the New Agreement will regulate is a new institutional framework. Neither the EU-Russia cooperation councils foreseen in the PCA, nor the sub-committees on JLS have taken place in practice. Instead, the PPC has been institutionalised as the framework to cooperate on JLS. Although the EU-Russia PCAs on JLS issues have counted with the participation of the Ministries of the Interior and Justice of Russia, as well as Commissioners Viviane Reding and Cecilia Malmström from the EU side, the sub-committee format would provide for a more structured venue where the relevant ministerial representatives could meet on a regular basis. In addition, the Nicosia JLS PPC in October 2012 went a step further from the current situation, stating that "[t]he Parties agreed to hold one PPC on Freedom, Security and Justice per year. To ensure continuity of the work between PPC meetings, the Parties agreed to hold an SOM in line with the implementation

⁵ The term 'illegal migration' was widely used by the EU institutions at the time the PCA entered into force. However, the neutral term 'irregular migration' has progressively replaced it. The contribution of civil society and academia has been key to changing the use of one term for the other.

⁶ See Potemkina (2010) for an assessment of the implementation of the Road Map.

⁷ Based on an interview with an official from the European External Action Service.

of the EU-Russia Partnership and Cooperation Agreement” (Council of the European Union, 2012a, p. 3). The initiative consists of setting up SOM meetings that cover all of JLS cooperation, with the participation of the highest non-political representatives. Such general SOM meetings take place in the framework of EU-US JLS cooperation. SOM meetings already take place in specific policy areas, such as the EU-Russia visa dialogue, which from the EU side are chaired by the Commission Directorate-General for Home Affairs and from the Russian side by the Ministry for Foreign Affairs and the Joint Readmission and Visa Facilitation Committees.

At this point, it is important to recall that as a consequence of the entry into force of the Treaty of Lisbon, the EU is adjusting at the internal level those institutions responsible for external action in the field of JLS. The actors involved are the new body responsible for overall external action, the European External Action Service (EEAS), the Commission services in charge of the external dimensions of home affairs and justice, the Presidency of the Council and the EU member states. Home affairs agencies, such as FRONTEX, Europol and Eurojust, also have their own external relations officers who deal with Russia. The EU faces the challenge of inter-service coordination and more time is needed so that the new institutional structures of the Treaty of Lisbon become fully operational. All in all, according to an official from the EEAS, the challenge of the New Agreement is to set up new structures that allow for more effective cooperation between Brussels and Moscow.

2 MAIN ISSUES AND CHALLENGES UNDERLYING THE IMPLEMENTATION OF THE EU-RUSSIA COMMON SPACE ON FREEDOM, SECURITY AND JUSTICE

KEY FINDINGS

- The visa-free dialogue has become a crucial issue in EU-Russia JLS cooperation, overshadowing other significant spheres of the common space, as it can be considered ‘a litmus test’ for the level of mutual trust.
- The Common Steps towards visa-free short-term travel consist of actions in four key areas covering all the main aspects of JLS policy and connecting the loose patchwork of JLS cooperation.
- The state of play reveals the difference in the approaches of the EU and Russia towards visa liberalisation: while Brussels insists on the technical character of the existing obstacles to a visa-free regime, Moscow states that the technical requirements have been met and stresses the political component of the EU decision not to lift short-term visas in the nearest future.
- The implementation of the EU-Russia Readmission Agreement can be regarded as a success story and among the less problematic issues in EU-Russia cooperation.
- EU-Russia cooperation on drugs is assessed as more problematic than successful. In spite of intensive activities against illicit drug trafficking, no steps have been taken in exerting joint consolidated pressure upon the trafficking of drugs from Afghanistan.
- The lack of an independent body to control information exchange in Russia is slowing down the progress of negotiations on the operational Working Arrangements with Europol and Eurojust, which is a precondition for the liberalisation of the visa regime.

This section analyses the degree of implementation of the Road Map, its main results, challenges and failures. The last publicly available *Progress Report* on the Road Map is for 2010 (European Union–Russia, 2011), although an evaluation in 2011 was also issued.⁸ The structure is developed in accordance with the importance of the issues under examination and their place on the EU-Russia political agenda, starting from the dialogue towards visa-free short-term travel, which is crucial in EU-Russia JLS relations, and ending with judicial cooperation in civil and criminal matters, which despite its relevance lacks momentum. The section looks at the main issues at stake, which are logically interlinked, by examining the most recent developments in EU-Russia JLS consultations and meetings at the different levels. The analysis shows the uneven progress in fulfilling the commitments set in the Road Map. It is important to understand why a number of the commitments in the Road Map are being implemented rather smoothly, while others stagnate, in spite of the fact that the main preparations for achieving the results have been accomplished. The objective and subjective reasons for the success and failure of the implementation of the Road Map are exposed, as well as the reasons for (mis)communications and (dis)trust between the parties. It is obvious that the lack of trust at the level of EU-Russia political contacts constrains the enhancement of cooperation in JLS issues.

2.1 The dialogue on visa-free short-term travel and the Visa Facilitation Agreement

The Joint Statement of the Saint Petersburg Summit reaffirmed the importance of people-to-people contacts and a “Europe without dividing lines”, which was translated into a specific measure in the Road Map: the establishment of a visa-free regime in the long-term. The Road Map explicitly states that “it was also decided to examine the conditions for visa-free travel as a long-term perspective” (EU-Russia Moscow Summit, 2005, p. 20). Actually, visa liberalisation was one of the main issues during the Saint Petersburg Summit, since Russia asked the EU for a clear and tangible incentive to go further with the negotiations on a Readmission Agreement. To be sufficiently persuasive, this incentive had to be necessarily related to the facilitation of the movement of people between the EU and Russia. In this sense, it must be recalled that Russia, unlike the EU, was eager to abolish the visa regime at the time of the negotiations. Therefore, in the absence doing so in the short term, the incentive proposed was a *facilitation* of the issuance of visas. This section delves into the implementation of and prospects for the common steps towards visa-free short-term travel, the renegotiation of the VFA and the Kaliningrad regime for local border traffic (LBT).

2.1.1 Implementation of the common steps towards visa-free short-term travel

The EU-Russia visa dialogue SOMs were launched in September 2007 as a framework for the visa liberalisation process. Regarding the grounds on which the visa regime should be abolished, the EU and Russia have opted for an approach whereby technical requirements should be adopted by both parties. At the EU-Russia Summit in December 2011, the list of mutual commitments or Common Steps towards visa-free short-term travel was adopted and regrettably not made publicly available. It seems that the EU will seek publication of the commitments set out in the Common Steps at the EU-Russia Summit on 21 December

⁸ It must be recalled that access to documents on EU-Russia relations is not fully transparent, as numerous documents are not publicly available and many of them are only partially accessible to the public.

2012 if member states agree to do so in the Council. Russia presumably has no objections to the publication of the Common Steps.⁹

The Common Steps, unlike the existing Road Maps on Visa Liberalisation that the EU unilaterally adopted for the Eastern Partnership countries (Ukraine and Moldova to date), are expected to commit both sides on the basis of reciprocity. Concerning the legal form the reciprocal abolition of the visa regime should adopt once the Common Steps are fulfilled, the parties will sign an international Visa Waiver Agreement, which will also provide more legal certainty on compliance with their obligations.

Ambassador Vladimir Chizhov, Permanent Representative of the Russia to the EU, called the visa-free dialogue "a touchstone determining the faithfulness of the partners' intention to develop a strategic partnership for modernisation", as visa-free travel concerns the interests of many citizens: 2.5 million Russians visit the Schengen Area annually and 1.5 million citizens from the Schengen Area go to Russia.¹⁰ The statistics show the extensive travel exchange between Russia and the Schengen Area. According to data from the European Commission, in 2011 Russia was among the countries where most short-stay visa applications were lodged (5.2 million, 39% of the total), with the highest rate of multi-entry visas issued (47%) and a very low refusal rate (2%).¹¹ The statistics of the Federal Migration Service (FMS) of Russia show that in 2011 Germany was second (after China) in the list of states whose citizens received Russian visas (10%), followed by France (5%), Finland (4%), Italy (4%) the UK (3%) and Lithuania (3%).¹²

For the purpose of preparing the report on the implementation of the Common Steps for the EU-Russia Summit on 21 December 2012, the visa dialogue SOM in January 2012 agreed on a monthly schedule to monitor progress in the implementation. According to the agreed schedule, the first expert meeting took place in April 2012, where the parties discussed the necessary arrangements for the fulfilment of the Common Steps, including the legal base and measures to be implemented in every element of the Common Steps: "documents security, including biometric passports", "irregular migration, including readmission", "public order protection, law enforcement and legal cooperation", including the Russia-Europol Strategic and Operational Agreement, and finally "external relations and fundamental rights". In addition, the exchange of expert missions was agreed as well as the reports on implementation. Russia submitted its report (219 pages) in April 2012 and the EU did so in June 2012. The reports were discussed during the SOM in June 2012 in Brussels. The first expert field mission on document security went to Moscow on 24-28 September. The second EU mission (28 November-8 December) inspected the Russian-Belarusian border and cross-border points between Russia, Ukraine and Kazakhstan. Russian experts plan a return visit to the EU on 10-20 December.

A number of issues had already been tackled in summer 2012, such as the issuance of biometric passports that are compliant with the standards of the International Civil Aviation Organisation (ICAO). These contain a chip with information as well as a procedure of information transfer for stolen or lost documents. In addition, the EU's concern about the obligation of foreigners' registration in Russia would be addressed by Russia with the following proposal: once the Visa Waiver Agreement enters into force, registration for short visits will be cancelled in both Russia and the EU member states where it is required.

⁹ Based on an interview with an EEAS official.

¹⁰ See Chizhov (2012). It is very significant that Russia speaks about "visa-free dialogue" in official documents and rhetoric, while the EU calls it "visa dialogue".

¹¹ European Commission, "Overview of Schengen Visa statistics 2009-2011", Directorate-General Home Affairs, Directorate B: Immigration and asylum, Unit B.3: Visa Policy, Brussels (2012), p. 4.

¹² RF FMS (2012), p. 8.

In October 2012, the EU-Russia PPC in Nicosia welcomed the continuing implementation of the Common Steps in its joint conclusions (see Council of the European Union, 2012a). At the same time, Alexander Konovalov, the head of the Russian delegation at the PPC, noted that the negotiations returned to the results that had been already achieved four years ago.¹³ The visa-free regime became the key issue during the EU-Russia Summit on 21 December 2012. The situation seemed rather strained and controversial on the eve of the summit. Russia, being dissatisfied with the slow pace of implementing the Common Steps, offered a Road Map for quicker progress: to implement measures fulfilling the first and the second elements of the Common Steps (on document security and irregular migration) by the end of 2012 and to continue work on the third and the fourth ones in 2013 with the aim of finalising them by the EU-Russia summit in June 2013, in order to proceed with the drafting of the Visa Waiver Agreement.

According to this schedule, the Agreement might be signed at the end of 2013 and a visa-free regime enacted before the winter 2014 Sochi Olympics. As for the EU, Brussels has several technical problems with the implementation of the Common Steps, which have not been addressed by Russia: border management (technical capabilities at checkpoints) and corruption, which are connected with document security. With serious doubts on the EU side that the problems could be solved during a year, the "visa lifting process is at the very beginning" and it is "untimely to speak about any dates".¹⁴

The state of play reveals the difference in the approaches of the two sides: while Brussels insists on the technical character of the obstacles to a visa-free regime, Moscow believes that the technical requirements have been met, and the real reasons of the EU are mainly political. In this regard, Anwar Asimov, Ambassador at Large, cited the intention of several EU member states to first lift visas with the Eastern Partnership countries,¹⁵ the opposition by certain Central European and Baltic member states to the liberalisation and the EU's persistence in emphasising the human rights component of the visa liberalisation process.¹⁶ At the same time, Ambassador Azimov mentioned that Moscow may take measures if there is no breakthrough in the visa-free dialogue with the EU before the end of 2013. "It is hard to put Russians under a yoke – and then the strike [back] will be adequate and asymmetric", he added, according to *Interfax*.¹⁷

The EU-Russia Summit on 21 December 2012 brought no positive results to the urgent issues under discussion. It is clear that the implementation of the Common Steps has not facilitated the level of trust needed to lift visas yet. Nevertheless, Russia has at the moment no intention of unilaterally stopping the adoption of the Common Steps. Actually, the Russian Ministry of Culture is engaged in drafting legislation to liberalise visas for participants and spectators of business, cultural, sport and other official events, who come to Russia for no more than ten days. The decision on the further development of the visa dialogue might be taken during the EU-Russia summit in June 2013.

To sum up, mixed results have been achieved so far in the EU-Russia visa dialogue. Two elements of the Common Steps have been implemented by the EU-Russia summit on 21 December: document security and irregular migration. Russia is indicating its willingness to

¹³ *ITAR-TASS News Agency*, 03.10.2012.

¹⁴ See Ambassador Azimov's interview by the *Interfax News Agency*, *Kommersant-daily*, 28.11.2012.

¹⁵ Given that the EU has been developing the visa dialogue in parallel with Ukraine and Moldova, Russia is against an eventual earlier lifting of the visas in Ukraine and Moldova, as it considers that this would be a political decision. However, Moscow accepts the possibility of reaching the visa-free regime at the same time.

¹⁶ *PNA/Itar-Tass News Agency*, 29.11.2012.

¹⁷ *Moscow Times*, "Russia threatens EU with retaliation", 27 November 2012.

address the EU's concerns on border management, corruption and foreigners' registration. The following six months will be devoted to addressing the most critical problems. The EU's reluctance to fix a date for starting the negotiations on a Visa Waiver Agreement causes disappointment and irritation on the Russian side and decreases significantly the progress of the visa-free dialogue. By contrast, a fixed date would be a great incentive and encouragement for Russia to overcome problems and shortcomings.

In this context, the implementation of technical preconditions to which the parties committed in the Common Steps should be separated from political conditionality, which puts human rights as the main aspect for progress towards visa liberalisation. Russia shows readiness to implement all the technical requirements under the respected list, but rejects progress in human rights and democracy as the key precondition for establishing visa-free travel and insists on including human rights issues in the implementation process only to the extent they directly touch on the liberalisation of visas, such as anti-discrimination laws.

Why may conditionality not only turn out to be ineffective but also counterproductive? Conditionality is a policy instrument that is most plausible when there is an EU membership prospect and when sanctions are justified in relation to a repressive political regime. In the Russian case, unlike the Eastern Partnership states, Russia does not emphasise 'the European choice'; it agrees to accept *acquis communautaire* 'where appropriate', and positions itself as an equal partner *vis-à-vis* the Union. Thus the golden carrot of EU membership does not attract Russia. As for the possible sanctions, Russia does not consider them a serious threat and speaks regularly about an asymmetrical response. Consequently, the most effective policy instrument in EU-Russian relations appears to be that of socialisation, as opposed to that of conditionality. Visa liberalisation and increasing youth exchanges would foster people-to-people contacts, which can become the motor of socialisation, increase the knowledge and deeper understanding of both sides and finally support EU-Russian common values. Increasing business and professional contacts through meetings and consultations and joint training programmes *inter alia* for judges, police officers and border guards are another means of socialisation, which contribute to building mutual trust among the parties. These would be the most effective countermeasures to boost the modernisation and democratising pressures within Russia. Meanwhile, visa restrictions are generally felt to be humiliating by virtue of their intrusiveness, heavy bureaucratic delays, costs and uncertain outcomes. The current visa obligations and the EU's reluctance to lift Schengen visas give way to an increase of anti-European sentiments in Russia, thus feeding nationalistic rhetoric.

2.1.2 Progress in the renegotiation of the Visa Facilitation Agreement

The Visa Facilitation Agreement between the EU and Russia entered into force in 2007 (Council of the European Union, 2007a) and was the first one to be negotiated and signed in parallel with the Readmission Agreement, in what has been coined as the readmission-visa facilitation nexus (Hernández i Sagrera, 2009, p. 578). The VFA 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 the applicants and a shorter period for the issuance along with the possibility to lodge applications for multiple entry visas. The assessment of the visa facilitation regime is rather positive, according to officials from both the EU and Russia, but rather negative in the opinion of visa applicants, who encounter problems in the visa issuance procedure. Nonetheless, with the enactment of the so-called 'EU Visa Code', the EU Regulation regarding the issuance of Schengen visas, the VFA would need to be amended accordingly. The European Commission has the mandate from the Council to renegotiate the Agreement.

The amended VFA, which has almost been agreed at the end of 2012, foresees the liberalisation of visas for additional categories of citizens, the extension of long-term multiple-entry visas for more citizens as well as the facilitation of the visa procedure for the remaining applicants subject to the regime. At the beginning of the negotiations, the Russian side proposed to include a provision extending the liberalisation of visas to holders of service passports. In this sense, similar provisions are included in the VFAs with Ukraine and Moldova. The proposal was not backed by the EU, however. When preparing the Nicosia PPC in October 2012, the sides started discussing compromise solutions, which could overcome a deadlock to the negotiations on an amended VFA. One proposed solution was to limit the scope of service passport holders to those who possess passports with an electronic data carrier and to reduce the number of passport holders by excluding the military and the administrative staff from diplomatic representations. Although Russia agreed to accept both, the compromise was not reached and the Agreement has not been amended yet.

The lack of a compromise solution on the Agreement had direct repercussions on airline crew members, who used to benefit from visa liberalisation under the current VFA. The respective moratorium was not prolonged by Moscow on 1 November 2012 as a response to the refusal of the EU to include service passport holders in the amended VFA. Instead, Russia can sign bilateral agreements with certain member states on visa liberalisation for airline crew members. Still, failure to sign the amended VFA is symbolic in EU-Russia JLS relations, as it demonstrates the lack of flexibility even in a specific policy area. The EU distrust of even a relatively small group – service passports holders – makes the very prospect of a visa-free regime questionable and slows down progress in implementing the Road Map. The EU should assess how to address this obstacle to the signature of an amended VFA.

2.1.3 Kaliningrad regime for local border traffic

Local border traffic is regulated by the EU Local Border Traffic Regulation (European Parliament and Council of the European Union, 2006) and became a special issue in the agenda of the tenth EU-Russia PPC, which was held in Kaliningrad in May 2009. Two years later, the initiative of Poland – which held the EU Presidency in the second half of 2011 – led to the signature of an agreement. On 14 December 2011, Russia and Poland signed the bilateral agreement on LBT, which entered into force on 27 July 2012. The Agreement enables residents of the border regions to cross the border with special permits, which cost €20 and are issued by the Russian consulates in Warsaw and Gdansk and the Polish consulate in Kaliningrad. The document can be used for making family, social, economic, cultural and other contacts, but not for work or business activities. The new cross-border regime covers the entire Kaliningrad *oblast* and the Polish *Województwo* (provinces) Warmińsko-Mazurskie and Pomorskie.¹⁸

A similar Russian-Norwegian agreement on LBT entered into force in May 2012 and was signed by the ministers for foreign affairs of the two countries in November 2010. The Russian-Norwegian Agreement covered the small border area foreseen in the EU Local Border Traffic Regulation. Actually, the prescribed radius of the local traffic zone proved quite convenient for travellers. But in the case of Kaliningrad, the Polish initiative proposed the extension of the area to the entire *oblast*. Therefore, it required the revision of the EU LBT Regulation. Given that Kaliningrad's geographical location is unique, the EU showed

¹⁸ Ministry of Foreign Affairs of the Russian Federation, Legal Department, Agreement between the Government of the Republic of Poland and the Government of the Russian Federation on the Rules of Local Border Traffic, 14 December 2011 (2012).

flexibility in extending Poland and Russia's proposal from a radius of 30 km (50 km in exceptional cases) to stretch the LBT area to up to 60-100 km for both Russian and Polish border areas with the goal "to prevent an artificial division of the Kaliningrad oblast, whereby some inhabitants would enjoy facilitations for local border traffic while the majority (including the inhabitants of the city of Kaliningrad) would not" (European Parliament and Council of the European Union, 2011, p. 41). The Polish Consul General to Kaliningrad, Marek Golkowsky, acknowledged the uniqueness of the Polish-Russian Agreement.¹⁹

The Polish initiative was perceived in Russia as one of a few visible results of cooperation under the Road Map and across all EU-Russia relations. Furthermore, it gave an impetus to Polish-Russian bilateral relations. The LBT "will noticeably facilitate human contacts between the residents of these regions and will considerably expand opportunities for developing business ties, inter-regional cooperation, youth exchanges and tourist trips", the Russian Foreign Minister Sergei Lavrov commented.²⁰ Thus, the political value of the Agreement appears to be even more significant than its practical content.

Regarding whether the inhabitants of the border region benefited from the Agreement, the statistical data gives evidence that this has been the case. In August 2012, 3,699 Poles crossed the border with local border traffic permits (LBTPs).²¹ The number of Kaliningrad *oblast* inhabitants applying for permits was initially lower, but by October 2012 it had increased by 6,000. The number of those wishing to obtain an LBTP – almost 200 per day – exceeds the consulates' capabilities. Therefore, an outsourcing centre was opened in Kaliningrad in November 2012 in charge of issuing the permits.²²

Nevertheless, the Agreement was criticised even before it came into force. Experts cast doubt about the smooth functioning of the new regime, pointing out shortcomings at checkpoints, which were not ready to cope with the increased number of crossings.²³ One needs to remember that differences in prices have always motivated and stimulated border crossings (*chelnok* business). LBT has triggered an increase in the prospects of petty traders, who bring cheap fuel and cigarettes from Kaliningrad and spirits back from Poland. Their activities cannot be qualified as smuggling, if they carry their goods in permitted quantities. But the increasing scale of *chelnok* trade raises concerns among the Kaliningrad business community; moreover, sometimes people need to wait for seven hours to cross the border. The current situation prompted the members of Kaliningrad regional Duma to address the deputies of the Sejm of Poland, and ask for their assistance in accelerating the check procedures at the Polish-Russian border.

The launch of LBT at the Polish-Russian border might have given impetus to negotiations on a similar agreement with Lithuania, which have stalled since 2009. The text of the agreement was agreed, but the Lithuanian side showed no enthusiasm for widening the radius of the border zone. According to Arūnas Plikšnys, Director of the Regional Policy Department of the Lithuanian Ministry of the Interior, Lithuania has the intention of

¹⁹ European Border Dialogues Forum at Kaliningrad and Elblag, 17-18 November 2011; *Barents Observer*, 21 November 2011.

²⁰ *ITAR-TASS News Agency*, 26.07.2012.

²¹ *Kaliningrad news* (<http://kaliningrad.net/news/69409/>).

²² Polish cultural centre in Kaliningrad (<http://polska-kaliningrad.ru/ru/2012-10-20-10-36-42/news/398-pleasure>).

²³ V. Balobaev, "Small border traffic risks to go down in history as a project of 'great border traffic jams'", 2012 (<http://news.rambler.ru/12273264/photos/>).

advancing the decision on LBT.²⁴ But the Polish-Russian LBT is regarded by the Commission as exceptional and will hardly set a precedent for the Lithuanian case.²⁵

Two other Russian initiatives regarding visa issues in the Kaliningrad *oblast* are worth mentioning. First, in 2003 the Kaliningrad regional Duma put forward a proposal to amend federal legislation with the purpose of lifting visa requirements for foreigners coming to Kaliningrad. Yet, this initiative was doomed to failure and has never been appreciated in Moscow because of the reciprocity issue in visa liberalisation between the EU and Russia. The regional deputies' idea was not supported by Prime Minister Dmitry Medvedev during his visit to Kaliningrad in October 2012.

Second, the Russian initiative of '72 hours visa-free' was proposed by the participants of the 21st Baltic Sea Parliamentary Conference held in Saint Petersburg on 28 August 2012 as a small step towards establishing a visa-free regime. In 2008, the Russian government took the unilateral decision to allow foreign tourists who arrived by ferry to stay in Russia for 72 hours visa-free. This regime was applied to Kaliningrad after the new checkpoint was established in Baltiysk. The Russian delegation at the Conference expressed their intention to ask the European Parliament to examine the possibilities for establishing a 72-hour visa-free regime, although the initiative was not reflected in the Conference's final resolution.

To conclude, the establishment of the Polish-Russian LBT can be regarded as a positive small step in EU-Russia cooperation. Its significance is more political than practical, as it demonstrated the EU's flexibility in solving an issue of common interest, which was highly appreciated by Russia.

2.2 Implementation of the Readmission Agreement

Readmission policy constitutes one of the main provisions in the Road Map. The readmission of one country's nationals irregularly staying in another country is a principle of 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 persons 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 accepted by Russia after Brussels offered a tempting incentive at the time of negotiations of the Readmission Agreement: the VFA with a prospect of a visa-free regime.

The EU-Russia Readmission Agreement entered into force in June 2007 (Council of the European Union, 2007b). The leverage of Russia *vis-à-vis* the Union translated into a three-year delay before the clause of readmitting transit migrants and stateless persons became operational in the second half of 2010, when Russia had to take the heavy burden and responsibility for the transit migrants entering the EU from Russia's territory.²⁶ Nevertheless, the five years of implementing the EU-Russia Readmission Agreement demonstrated that the burden proved not to be so heavy. Three centres were constructed in the Moscovskaya and Permskaya *oblasts* as well as in the Krasnodarskiy *krai*. They have an occupancy rate of approximately 70% and very few requests for readmission of transit migrants (see Table A1 in the Annex).

²⁴ See *Rugrad.eu*, "Head of Department of the Ministry of Interior of Lithuania: The question of small border traffic with Lithuania can be resolved within six months", 13.09.2012 (<http://rugrad.eu/news/527656/>).

²⁵ Based on an interview with an official of the European Commission.

²⁶ Russia most likely advocated a delay in the entry into force of the clause because of its expected visa liberalisation would be established by 2010.

In addition, the EU asked for the signature of implementing protocols of the agreement with Russia, to give more certainty to the obligations emanating from it. This process is still underway and has been included as one of the commitments in the Common Steps, in an attempt to give stimulus to the signature of the Protocols. By mid-December 2012, only two EU member states had not signed the protocols with Russia: Greece and Portugal.

Russia had to reform its legal basis since the term 'readmission' was not included in the federal legislation until 2006. The normative basis is being developed to divide powers in implementing the readmission procedure among the interested authorities – the FMS, the Ministry of Interior and the Federal Security Service. The EU-Russia Joint Readmission Committee is an SOM that discusses any matters related to the implementation of the Readmission Agreement, including data on readmitted persons. There have been no major complaints about the implementation of the Agreement, which was confirmed at the Nicosia PPC in October 2012 (Council of the European Union, 2012a).

The number of requests received by Russia for readmission of its own citizens has been increasing but the readmission procedure has been smooth. The improvement of the border management systems together with the border guards' cooperation played a positive role (Jaroszewicz, 2012, p. 15). But there is a problem with the identification of migrants with no documents, which is common to all Readmission Agreements. The Joint Readmission Committee approved a Special Protocol on Identification, laying down the structure of interviews to identify the country of origin.²⁷

A statistical analysis shows that since 2007, Russia has received requests mainly from Germany (57%), Norway and Sweden (9%), and Austria (6%). In its turn, since 2007 Russia has deported 53 irregular migrants and revealed 48 wanted persons.²⁸ Several persons, whose asylum applications were rejected in the EU, were re-admitted in the North Caucasus and, being wanted for various crimes, were transferred to the Ministry of Interior.²⁹

One of the main preconditions for visa liberalisation is the conclusion of Readmission Agreements between Russia and non-EU states. Negotiations with a number of countries were launched several years ago. They have reached successful conclusions with Armenia, Iceland, Kazakhstan, Kyrgyzstan, Moldova (to be signed), Norway, Switzerland, Turkey, Ukraine, Uzbekistan and Vietnam. The Agreement with Ukraine is expected to play a key role in fighting irregular migration. It was signed on 22 October 2012 together with the Implementation Protocol. The progress in fighting irregular migration would be much more far-reaching if the agreement had been concluded with countries of origin of irregular migration, such as India, Sri Lanka, Pakistan, Lebanon, Mongolia and North Korea. In this sense, the FMS suggests the inclusion of a readmission clause in any bilateral agreement signed by Russia.

The implementation of the Readmission Agreement can be regarded as one of a few spheres of the Road Map and the Common Steps where progress is not called into question. Russia implemented this EU technical condition and the progress in concluding the relevant agreements with Russia's neighbours to the east strengthens the security of the EU borders and contributes to reducing the EU's fears of irregular migration as a consequence of visa liberalisation.

²⁷ Based on an interview with an official of the European Commission.

²⁸ Expert group on updating the "Strategy 2020" (strategy2020.rian.ru/load/366063053).

²⁹ See ECRE (2011), p. 6.

2.3 Border management: Implementing the Working Arrangement between FRONTEX and the Russian Federal Border Service and negotiating border demarcation agreements

Russia became the first country to sign the Working Arrangement (WA) with FRONTEX in February 2006, the main content of which entails capacity building for border guards, the deployment of joint actions at the border and exchange of data on irregular migration flows. Two cooperation plans between the EU agency and the Russian Federal Border Service (FBS) followed for the periods 2007-2010 and 2011-2014, aimed at further developing contacts. These included the organisation of activities in risk analysis and information exchange, irregular immigration and joint operations, training, participation in multilateral symposiums linked to border guard activities, and finally joint operative actions. All of them constitute socialisation measures.

On the basis of the WA, Russia participated as an observer in the operations that were organised in the context of the Euro 2008 and Euro 2012 football tournaments. In 2009, two joint operations were held at the EU-Russia borders – “Mercury” and “Good Will” – to enhance interaction, including information exchanges among the FBS, FRONTEX and the relevant member states’ authorities. During the two-week “Mercury” operation, about 50 refusals of entry were registered, one irregular migrant apprehended, two cases of falsified documents were uncovered and one stolen car was detected.³⁰ The smuggling of cigarettes was identified as one of the common illegal activities.

A wider field for cooperation between FRONTEX and the Collective Security Treaty Organisation (CSTO) could be open across the entire Eurasian space. Russia is vitally interested in involving FRONTEX in a series of annual operations called ‘Nelegal’ (irregular migrant) and the deeper cooperation with the Eurasian Economic Community (EurAsEC) structures. The latest Russia-FRONTEX working plan emphasises efforts to provide security for the Sochi Winter Olympic Games in 2014.

Besides the border management cooperation in the framework of FRONTEX and the Russian FBS, the Road Map calls for the signature of international agreements on border demarcation between Russia and EU member states sharing borders with Russia. Russia and two Baltic EU member states, Latvia and Lithuania, have overcome their problems and controversies. On 27 March 2007, Russia signed and ratified a border treaty with Latvia after a long dispute concerning the Pytalovo/Abrene region. On the basis of this treaty, the bilateral Commission on demarcation began its work in 2009 and physical demarcation started in 2011 according to the respective plan. Demarcation is to be completed by 2013.

The Russian-Lithuanian Border Demarcation Agreement, signed in 1997 and ratified in 2003, was considered ‘a package deal’ based upon balanced mutual interests. A bilateral commission was established in 2006. Russia took responsibility for border demarcation in the Kurshskiy gulf of the Baltic Sea. In October 2012, the meeting of the bilateral commission completed the process on border demarcation along the Kurshskaya Kosa (Curonian Spit).

In the meantime, the border demarcation process with Estonia has been deadlocked owing to the lack of a border treaty. As a consequence, the border was being demarcated unilaterally. Russian-Estonian consultations started in October 2012, however, which are aimed at renegotiating and signing a treaty.

³⁰ FRONTEX, News Release, 11.02.2009 (http://www.frontex.europa.eu/newsroom/news_releases/art52.html).

Border management cooperation is another success story for the implementation of the Road Map. The next step and the future challenge is to widen cooperation, including Russia's participation in the irregular migration programmes of the Eastern Partnership and FRONTEX involvement in operations across the Eurasian space, which could contribute to strengthening regional security.

2.4 Drugs cooperation

The development of an agreed drugs policy based on the United Nations Conventions and the legal system for bilateral (Russia-EU) and multilateral (Russia and the EU member states) cooperation meets the strategic interests of both Russia and the EU. International operational cooperation is becoming the most essential element, including the Paris Pact format, the Pompidou Group of the Council of Europe and controlled precursor deliveries under Europol's coordination.

The deeper involvement of EU member states in the Shanghai Cooperation Organisation (SCO) and the CSTO programmes is fully supported by Russia. The SCO undertakes a number of initiatives against organised crime and drugs trafficking, and for many years the CSTO has carried out the "Channel Operation" to capture drugs convoys on their way from Afghanistan to Central Asia. Observers from more than half of NATO's members participate.

Regarding drug trafficking, Russia has now become more a destination than a transit area. Indeed, there appears to be very limited heroin trafficking to Europe, only 3.8% of the entire amount.³¹ Nowadays, Russia can rather be considered the main target on the heroin route from Afghanistan, because heroine from Afghanistan does not reach Europe, but remains in Russia. This situation makes international support and cooperation vital.

Against this background, Victor Ivanov, Chairman of the Russian State Anti-Drug Committee and Director of the Federal Service for Narcotics Traffic Control (FSKN), proposed in June 2011 a joint five-year Russia-EU plan to be elaborated on the basis of the Russian "Rainbow-2" plan and the anti-drug provisions of the report on a *New Strategy for Afghanistan*, approved by the European Parliament in December 2010 (European Parliament, 2010). He believes that the consolidation of these two plans into a single operational plan could provide for a synergic effect.

Ivanov called upon Russia and the EU to set up a joint agency that could contribute, in cooperation with the UN, the CSTO and other international organisations, to creating a stable system of Eurasian anti-drug security. Yet so far, there have been no signs of the EU supporting this initiative by Russia.

Moreover, drug trafficking has increasingly developed in the reverse direction, from West to East: synthetic drugs – amphetamine and related drugs – are brought to Russia and the other members of Commonwealth of Independent States (CIS) from the EU member states (mainly Portugal, the UK and the Netherlands). The Commission and Europol reports provide documentary evidence that the increase in illicit production and turnover of synthetics is becoming more and more pressing.

Special expert meetings are held in The Hague on the destruction of illicit precursor trafficking as well as the development of a legal basis on the prevention of precursors leaking into illicit turnover. The key issues on the agenda are exchanging experience on reducing the consumption of drugs and psychotropic substances, and the treatment and rehabilitation of drug addicts. Cooperation is developing between FSKN and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). A meeting took place in

³¹ UN Office on Drugs and Crime, *Addiction, Crime and Insurgency* (2009), pp. 13, 40-44.

Moscow in October 2012, which discussed the possibility of involving a Russian expert in the EMCDDA's work, as well as the prospect of exchanging experience in establishing national observatories on drugs. The negotiations on the Russia-EU Agreement on Drug Precursors reached their final stage in 2011. Four rounds of expert consultations took place, and the EU-Russia summit in December 2012 stated that the negotiations have been completed, and the agreement ready for signature in 2013.

The EU-Russia drugs cooperation is developing positively in consultations between EMCDDA and the RF FSKN on prevention and on treatment of those addicted to drugs. Both parties show interest in exchanging experience and best practices, which once again constitute socialisation measures. Cooperation against drug trafficking has not brought any significant results because the EU is more focused on other drug routes, such as the Balkans. Still, stopping drug trafficking is a global challenge, in which both Russia and the EU should participate in full. To fulfil this task, Russia's bilateral cooperation with the EU member states, which has already been fruitful, could be further developed, as well as the EU-Russia involvement in international fora and the other common initiatives.

2.5 Dialogue on migration and asylum

The dialogue on migration and asylum was launched on 27 June 2011 with fairly developed workshops and seminars at the expert level. EU-Russia JLS cooperation had been lacking in such dialogue, which is why it was qualified as a "historical event" by Konstantin Romodanovsky, who heads the FMS.³² The migration dialogue covers all aspects of migration, including support of legal migration, the regulation of migratory flows, the fight against irregular migration, international protection and migrants' integration. The first thematic working session took place in December 2011 in Moscow. It was devoted to cooperation on asylum, including statistics and data exchange, the role of international organisations and civil society, and the conditions and procedures associated with reception.

According to the UN High Commissioner for Refugees (UNHCR), "a number of Eastern European countries often prioritise irregular migration control over asylum", which might apply to Russia, as the scale of the irregular migration problem exceeds that of asylum significantly. Since 2007, the FMS has examined more than 13,000 applications and only 10% on average annually are deemed satisfactory. According to FMS official statistics, by October 2012, 801 refugees had been registered. In 2012, 3,370 have received temporary protection compared with 3,996 in 2011.³³ Traditionally, the number of refugees has not been very high (500-800 a year), but it increased in 2008 after the armed conflict in Abkhazia and South Ossetia. Georgians still make up the majority of refugees, followed by Afghans, and a fewer number of Uzbeks. As regards the integration of refugees, according to Ekaterina Egorova, the FMS Deputy Head, their small number is explained by the fact that they become Russian citizens in the course of a year.³⁴ Still, 127,000 stateless persons are reported by the UNHCR, and the problem is recognised by both the FMS and human rights organisations,³⁵ but certain achievements can be noted in the reduction of

³² "Your Rights: Migration", No. 14, 2011.

³³ Federal Migration Service of the Russian Federation, Official statistical data, Form 1 RD, Granting Asylum; the UNHCR gives the same data for the 2011 (3,900 refugees) in UNHCR (2012), p. 291.

³⁴ *Rossiskaya Gazeta*, 23.10.2012.

³⁵ Human Rights Centre (2011).

statelessness. Between 2003 and 2010, more than 600,000 formerly stateless persons were naturalised.³⁶

Large-scale internal displacement remains a challenge in Russia too – up to a million people are still displaced in the Caucasus region. Yet the UNHCR closed its sub-office in Vladikavkaz in 2011, and ended direct assistance for internally displaced persons, most likely because the vulnerable population benefits from a Russian fund for investment and development. Many constraints remain: limited access to asylum procedures in border-transit zones in airports, readmission and detention centres together with ill treatment and deportation before the final decisions on asylum claims are taken. Overall, however, the UNHCR's assessment shows that "both national and regional partnerships with the Russian Federation on asylum and statelessness issues have been strengthened, contributing to the renewal and updating of the country's legislative instruments and processes. In Russia there have also been improvements in the reception of asylum seekers and the determination of their claims."³⁷

Yet, a number of urgent issues could be solved by the EU and Russia in the framework of the dialogue. The number of asylum seekers in the EU of Russian origin remains high (18,200 in 2011), and that is seen as a serious obstacle for visa liberalisation. Still, 80% of the applications are rejected,³⁸ which makes the case very ambiguous. Among those who are really in need of international protection, there are many pretending to receive international protection for quite different reasons – from economic motivations to fleeing from justice. Finally, they join the figures of irregular migrants in the EU. Most of the asylum seekers come from the North Caucasus. To improve the situation, in addition to readmission, in 2011 the FMS and the International Organisation for Migration launched the project on "Voluntary Return and Reintegration Assistance for Russian Citizens", in particular for those returning to the Chechen republic. That notwithstanding, the influx of asylum seekers from the North Caucasus remains an issue of concern and further mechanisms to protect the rights of asylum seekers could be developed in the framework of the dialogue.

The meeting on the "Fight against Irregular Migration", held on 30 March 2012, was devoted to the causes and effects of irregular migration, the models of risk analysis, preventive measures against irregular migration (increasing document security, including biometrics and tracing false documents). Russia and the EU exchanged information and statistics on migration flows and routes as well as the results of operational cooperation. In the following meeting, the dialogue on "Migration and Development" held on 26 October 2012 in Saint Petersburg, the sides exchanged their views and best practices on the key correlated issues (migration, remittances and integration). In addition, Russia noted the priority of favouring the return of highly skilled specialists. According to Ekaterina Egorova, the FMS Deputy Head, "Russia considers this issue from the position of a dual advantage: returning migrants satisfy the requirements of the national labour market and stimulates the [economy's] growth".³⁹

The migration dialogue runs smoothly because it covers more topics of mutual interest than contradictions. Both sides possess rich experience, both positive and negative. The participants hope to move from the exchange of best practices to an operational phase and spot elements.⁴⁰ The dialogue might play a positive role in strengthening cooperation in the

³⁶ UNHCR (2012), p. 292.

³⁷ Ibid., p. 294.

³⁸ Eurostat, *Data in Focus*, No. 8/2012, p. 11.

³⁹ RIA Novosti news agency, Federal portal, 29.10.2012.

⁴⁰ Based on an interview with an official of the European Commission.

post-Soviet space. Despite Russia's rather reticent attitude to the Eastern Partnership initiative, it is very interested in a number of its programmes. The EU, which is rather cautious about the EurAsEC, might be more engaged in the fight against irregular migration. What is more, the EU's experience in anti-discrimination legislation, which forbids discrimination on the grounds of race and nationality, might be much needed to promote freedom of movement in the framework of EurAsEC.

2.6 Cooperation on transnational organised crime

EU-Russia cooperation in the field of organised crime constitutes another element of cooperation in light of the Road Map. The Cooperation Agreement between Europol and Russia has been the legal basis for cooperation on transnational organised crime. It was signed in Rome on 6th November 2003 and has consisted in the exchange of information, experience and best practices, pieces of legislation and other documents, as well as the organisation of study visits, expert workshops and seminars. From the Russian side, the Ministry of the Interior is competent for cooperation with Europol. In addition, a Russian National Contact Point for Europol was created to carry out specific tasks such as operational activities and workshops and seminars. The information shared by Russia is used in the publication of the Europol Organised Crime Threat Assessment. The ongoing negotiations on a Europol-Russia Operational Agreement will provide with an enhanced legal basis for cooperation on organised crime between law-enforcement authorities.

Other platforms to promote discussions on combating organised crime have been set, such as the EU-Russia High Level Police Chiefs' Meetings. Moreover, the Russian Ministry of the Interior and the European Police College (CEPOL) have cooperated in organising a Conference in Tallinn on 29-31 October 2012, with the participation of representatives from 18 EU Member States, INTERPOL and FRONTEX. The state of play and prospects of law enforcement cooperation were discussed, including the training of police personnel. To that end, CEPOL and the Academy of Management of the Russian Ministry of the Interior signed a draft protocol in the margins of the Conference.

Regarding cooperation on cyber crime, it was included in the EU-Russia JLS agenda in 2008. The programme of the experts' meetings was approved to discuss measures for stopping the distribution of video materials containing scenes of violence towards children. Russia suggested supplying law enforcement bodies with full information on IT transborder crimes so that they could arrest criminals and bring them to trial. An exchange of requests has already been organised on addressing cyber crime. Russia proposed to work out the typology of transborder cybercrimes, so that any relevant information about their commitment could be immediately sent to the law enforcement bodies of the aggrieved party through the channels of the international network of the national contact points. To achieve this aim, it seems very significant to compare the existing Russian and European practices in this field. In this sense, the EU should adopt a Cyber Security Strategy in January 2013, a joint exercise by EEAS, the Commission, which should be the basis for an upcoming EU Cyber Security directive.

EU-Russia cooperation could be supplemented by a new task of creating a cyber space, where the new common definition of 'cyber security' can be developed. In 2008, the sides started discussing the possibilities of such cooperation. The Cooperation Agreement between Europol and Russia in force (2003), as well as the upcoming operational one, might form the legal basis for this kind of interaction. To achieve results in fighting cyber terrorism, Russia could participate in the Europol project 'Check the web', which is aimed at disclosure of Islamist terrorist websites. However, cooperation in this extremely important sphere is complicated by the same factors that hinder the entire EU-Russia counter-

terrorist cooperation: the lack of a common perception on the basis of which websites can be considered terrorist. A single criterion could hardly be established without a single approach to the terrorist lists. In the same way as cutting off financing of terrorism, the websites which belong to the organisations included both in Russia's and the EU's terrorist lists could be currently suppressed.

In January 2011, the EU Member States and Russia's operational police units decided at a meeting in the Hague to include a Russian representative in the Europol Expert Group – the European Cyber Crime platform. The sides also agreed on studying possibilities of information exchange on harmful virus programmes, which are used for criminal purposes.

2.7 Negotiations on working agreements with Europol and Eurojust

The Europol-Russia negotiations on the agreement concerning the exchange of personal data, which would considerably strengthen cooperation on transnational crime, were finally launched on 21-22 October 2010 after several years of preparations. The meeting was preceded by the EU-Russia Conference on personal data protection. The problem of compliance by Russia with the Council of Europe standards on data protection became the key point of the discussions. In 2005, Russia ratified the Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (2001). The ratification required the further amendment of 23 legal acts in Russia, which has slowed down the process significantly. In 2006, in the framework of the Convention, Russia adopted the Federal Law on Personal Data, Information Technologies and the Protection of Information, which did not lead automatically to the opening of negotiations on the operational agreement with Europol. Finally, the amended Federal Law on Personal Data was adopted by the State Duma and approved by the Federation Council on 13 July 2011. The legal basis was enacted in Russia, which includes 74 Federal Laws, 14 Presidential Orders and 79 Government Enactments. The Additional Protocol to the Convention was signed in 2006 but has not been ratified yet.

The situation has been complicated by Russia's administrative incompatibility with the Council of Europe's standards regarding control over the protection of personal information. In Russia, the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications (Roskomnadzor) was established in 2007 and authorised with the necessary competences. Furthermore, the Prosecutor General's Office fulfils supervisory functions, including personal data protection. Roskomnadzor, as an authorised body, publishes annual reports on the results of its activities.⁴¹ Its representatives participate in the negotiations on the agreements with Europol and Eurojust, where the European partners attach key importance to Roskomnadzor's position on the order and conditions of automatic processing of personal data.⁴² Nevertheless, the Council of Europe's standards on information protection require internal institutional restructuring in Russia: the establishment of an independent supervisory body.

In spite of the Presidential Order, issued in 2006 for the signature of the Additional Protocol, the creation of the independent supervisory body is still under examination. In May 2012, the Russian Federation Council's special commission on information started examining the possibility of creating a supervisory authority. Still, at the PPC meeting on 3

⁴¹ Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications (2012).

⁴² "Protection of personal data: New demands", Internet Interview of Roman Sheredin, the Deputy Head of the Federal service for supervision, 28 December 2011 (<http://www.garant.ru/action/interview/373047/>).

October 2012 in Nikosia, Alexandr Konovalov, who headed the Russian delegation, called it "a stumbling block" in the negotiations on the agreement.⁴³ However, the prospects for the signature of the operational agreement remain unclear. The same applies to the discussion on the operational agreement with Eurojust, whose negotiations started in 2007 with four rounds.

It should be mentioned that the EU faced a similar challenge when negotiating Europol and Eurojust's operational agreements with the US. In spite of the absence of appropriate legislation in the US and an independent supervisory body, the agreements were finally signed. The EU-US JLS cooperation covers the same issue areas as the EU-Russia one, without the legal basis provided by an international agreement between the parties, such as the EU-Russia PCA. The cooperation is framed in a more flexible manner, in the format of SOMs. A high level of trust and commitments to fight against organised crime allowed partners to overcome controversies. Nowadays, bilateral agreements with EU member states as well as cooperation with the liaison officers have allowed Russia to exchange information in the process of joint operations under Europol's coordination. Yet, Alexander Prokopchuk, the head of Russia's Central Interpol bureau, believes that the conclusion of the operational agreement would surely increase the effectiveness of joint activities.⁴⁴

The negotiations on operational agreements between Russia and Europol and Eurojust have resulted in partial success. Russia's efforts in reforming the domestic legal basis in order to sign and ratify the relevant Council of Europe Convention should be appreciated. Still, the absence of an independent body to control information exchange is slowing down progress. The prospect of signing the operational agreements does not seem tempting enough for Russia to change the institutional structure in this sphere. But given that the operational agreements with Europol and Eurojust are a precondition for visa liberalisation under the Common Steps element on internal security, Russia will be encouraged to implement the necessary reforms.

2.8 Counter-terrorism cooperation

Counter-terrorism cooperation has been traditionally fruitful in the context of Russia's bilateral relations with the EU Member states. However, the EU and Russia established it a key element in both the Road map on AFSJ and the external security.

In March 2006, the State Duma adopted the Federal Law on Ratification of the Council of Europe Convention on the Prevention of Terrorism, and it was regarded as a significant step in implementing the Road Map. Russia has become party of more than 20 counter-terrorist international legal acts under the auspices of the UN, the Council of Europe, the CIS and the SCO.

The priorities of counter-terrorist cooperation are currently identified at the PPC meetings. Besides, a working dialogue started in February 2011 between Gilles de Kerchove, the EU Counter-terrorism Coordinator and Ambassador Anatoly Safonov, Special Representative of the President of the Russia for International Cooperation in the Fight against Terrorism and Transnational Organised Crime. They develop further steps in strengthening cooperation and exchange with assessments of the regional and global aspects of terrorist threats. In May 2011 in Brussels, Mr. de Kerchove was decorated with the medal of the Russian Ministry of Foreign Affairs "for Contribution to International Cooperation".

⁴³ *ITAR-TASS News Agency*, 03.10.2012.

⁴⁴ *Rossiyskaya gazeta*, 25.01.2010.

Following the commitment in the Road Map, Russia shows readiness to undertake the preparation of the draft Memorandum of Understanding on fight with terrorism, which would replace the current Joint Statement of 2002. This Memorandum would bring an obvious added value. It could incorporate urgent common priorities such as counteracting the ideology of terrorism, propaganda and incitement to terrorism, civil society active involvement in counteracting terrorism, promoting inter-civilisation dialogue. All these elements were neither reflected in the Joint Statement nor in the Road Map.

The agenda of the EU-Russia summit in December 2012 included an assessment of the counter-terrorism political dialogue and especially the meeting, which took place in Moscow in November 2012. The sides expressed their endeavor "to give further impetus to counter-terrorism cooperation and strengthen cooperation on the prevention of terrorism, in particular radicalisation, the promotion of criminal justice and rule of law, combating of terrorist financing as well as bilateral cooperation in multilateral fora such as the UN and the Global Counter-Terrorism Forum (GCTF)".⁴⁵

To sum up, significant potential has been accumulated in Russia-EU counter-terrorism cooperation. Nowadays, further efforts are needed to bring cooperation to a new level and fill it with concrete substance.

2.9 Judicial cooperation in criminal and civil matters

Consultations on stepping up judicial cooperation in criminal and civil matters form a special part of the Road Map, which has significantly stimulated Russia's aspiration to join international conventions on combating organised crime and corruption. In 2006, Russia ratified the Council of Europe Criminal Law Convention on Corruption, which entered into force in 2007. In 2009, Russia signed the Additional Protocol and expressed a similar interest in the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, which will increase possibilities to obtain evidence on committed crimes. Adopting the Civil Law Convention on Corruption has been under discussion since 2000, although some of its provisions were included in the domestic legislation on corruption.

In 2008, the European Convention on the Transfer of Proceedings in Criminal Matters was signed, as was the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism in 2009. At around the same time, in 2008 Russia refused to join the Council of Europe Convention on Cybercrime, unless provisions on cross-border access to computer systems are amended.

In the framework of experts' consultations, preconditions have been discussed for signing the Agreement between the Russian Ministry of Justice and the European Judicial Network in Civil and Commercial Matters. The sides are expected to negotiate the spheres that could be covered by the Agreement as well as the principles of recognition and implementation of court decisions. The official negotiations are to start as soon as the Commission receives the respective mandate and would constitute another measure of socialisation.

The process has slowed down because of mixed positions within Russia and in the State Duma regarding the reasonability of joining a number of The Hague Conventions, such the Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. In the framework of consultations, Russia's position has been put forward. It was only in 2001 that Russia became a full Conference participant, so joining The Hague Conventions requires the adoption of legislation and financial costs. Actually, Russia prefers

⁴⁵ European External Action Service. Factsheet EU-Russia summit, Brussels, 20-21 December 2012, P.1-2

bilateral international agreements on the adoption of children. Moreover, there is no common support in Russia for either inter-country adoption or juvenile justice, which is rejected by a large segment of Russian society. Nevertheless, Russia participates in a number of Hague Conventions, notably those concerning jurisdiction, recognition, enforcement and in respect of parental responsibility and the protection of children (since June 2012) and on Civil Aspects of International Child Abduction (since June 2011). They were both adopted with certain derogations, fixing *inter alia* the Russian authorities' jurisdiction on protecting children's property rights.

The EU has a distrust of the judiciary system in Russia, shared by many Russians, which remains a challenge for Russian authorities. The participation of Russian judges in the common training programmes, including their visits to the relevant European bodies, can be seen as additional socialisation measures.

3 ASSESSMENT OF THE INTERSECTION BETWEEN THE COMMON SPACE AND THE PROMOTION OF DEMOCRACY, HUMAN RIGHTS AND THE RULE OF LAW IN EU-RUSSIA RELATIONS

KEY FINDINGS

- The EU and Russia have assessed in a negative and politicised way the human rights situation in each other's territory. The Council of Europe and independent organisations claim that there are challenges in the protection of human rights in both the EU and in Russia.
- EU-Russia consultations on human rights, which have been held biannually since 2005, have been severely criticised by independent organisations. The European Parliament has called for an enhancement of the consultations so that they are more effective and results-oriented.
- The Nicosia PPC in October 2012 included a reference to the principle of independence of the judiciary as well as a clear commitment that links the respect for human rights and rule of law with cooperation in the AFSJ, but made no reference to the promotion of democracy.

This section focuses on the linkage between the Common Space on Freedom, Security and Justice and the promotion of democracy, human rights and the rule of law. First, the section looks at the assessment of human rights situations in Russia from a Brussels-based perspective and in the EU from a Moscow-based perspective, as well from the viewpoints of the Council of Europe and independent organisations. Second, the section looks at the formulation in the PCA and the Road Map of cooperation in JLS and the promotion of democracy, human rights and the rule of law, as well as the human rights consultations as an instrument for human rights discussions between the EU and Russia. It explains the reasons underlying the limited results of the human rights consultations in addressing situations where human rights are not protected. Third, the section looks at the prospects for EU-Russia cooperation in the field of human rights in the New Basic Agreement, as well as in the Common Steps towards visa-free short-term travel.

The Road Map refers to the "common commitments to democracy, respect for human rights and fundamental freedoms" as the basis for EU-Russia JLS cooperation (EU-Russia, 2011,

p. 45). Regarding the human rights situation in Russia from an EU perspective, in 2011 the Council of the European Union gave a negative assessment, in which it claimed that there has been "little improvement" in this respect (Council of the European Union, 2011, p. 23). It presents among others reports of violence by law enforcement authorities in the North Caucasus, no progress in media pluralism, difficulties in holding public demonstrations, torture and ill treatment in detention centres and increased racism, xenophobia and homophobia. As for the rule of law, the Council raises concerns about the situation of human rights defenders and independent journalists. Finally, the document also claims that Russia fails to comply with judgments by the European Court of Human Rights and the ratification of Protocol 6 of the ECHR on the abolition of the death penalty, although Russia applies a moratorium in this case.

For its part, the European Parliament adopted resolutions on the rule of law in Russia in February 2011, and on the political use of justice in Russia in September 2012, in which it reaffirmed the belief that Russia remains an important partner for the EU in building sustainable cooperation based on democracy and the rule of law (European Parliament, 2011, point 1), but mentions that the human rights situation in Russia has deteriorated because of "intimidation, harassment and arrests of the representatives of opposition forces and non-governmental organisations, the recent adoption of a law on the financing of NGOs, on the right of assembly, the law on defamation, the law on the internet restrictions as well as the increasing pressure on free and independent media and minorities in sexual orientation and religious belief". The Parliament reminds Russia that as a member of the Council of Europe it has signed up to all the human rights *acquis* and calls on Russia to comply with the rulings of the European Court of Human Rights (European Parliament, 2011, point 13).

An individual case that attracted considerable attention in the EU as regards the human rights situation in Russia and the independence of the judiciary is the 'Pussy Riot' case. In Russia, the experts, media community and citizens perceived the performance of the band in the Cathedral of Christ the Saviour in different ways. In any case, it must be taken into account that it is an individual case that had exceptional media coverage, which many other cases do not experience. The whole situation, including the media campaign, has profoundly deepened popular distrust in Russia and the EU and revived discussion on the compatibility of liberal and traditional values. The EU's concerns about the imprisonment of the Pussy Riot members were expressed by the German Bundestag as well as German Chancellor Angela Merkel in the framework of then Russia-Germany intergovernmental consultations in Saint Petersburg in November 2012. The German criticism did not prevent the sides from signing ten bilateral agreements, including one on facilitating youth exchanges. Thus, Germany has opted for socialisation instead of conditionality in its relations with Russia.

As for the assessment of the human rights situation in the EU from a Russian angle, Moscow has criticised Brussels for not respecting the rights of the Russian-speaking minorities in Estonia and Latvia. The EU has referred to this as politicised criticism. Moscow finds the EU's criticism politicised as well, and does not accept the European Parliament's resolutions. As for the resolution on the political use of justice in Russia, it was considered "one-sided" and "based on improbable sources". The Russian Ministry for Foreign Affairs mentioned that "the EU Parliament did not take into account the explanations given by [the] Russian side during the meeting of the working groups of the EU-Russia Parliamentary Cooperation Committee".⁴⁶ According to the State Duma, by reason of its bias the resolution will have "a zero effect in Russia". The State Duma deputies added the reminder that "the European experience was used for developing the new legislation in

⁴⁶ RIA Novosti news agency (<http://ria.ru/politics/20120914/750230456.html>).

Russia on violation of order during the actions of protests and others”, and expressed regret that the Members of the European Parliament emphasised all the negative aspects, with the distortions and ignored the positive changes in Russian legislation and the political situation.⁴⁷

Russia’s will to establish symmetry in the human rights sphere was evident in two reports by the Ministry for Foreign Affairs, which were published in December 2011 and 2012. The Ministry for Foreign Affairs analysed in detail “the situation of non-citizens in the Baltic countries, Roma people, migrants and refugees, and manifestations of racism and xenophobia”, calling them “particularly troublesome human rights issues in the EU”. Furthermore, the reports included cases of infringements in privacy and personal data protection, the rights of detainees, freedom of mass media, a lack of separation of powers and politicisation in criminal proceedings, freedom of assembly and speech in member states. The reports were mainly aimed at drawing the attention of EU member states as well as EU supranational bodies to serious internal challenges before applying conditionality in external relations. In its second 2012 report, which was published amidst increased criticism from the EU side, Russia expressed a desire “for a constructive dialogue of equals with the European Union on human rights and democratic development, which would to the full extent correspond to the relations of strategic partnership with the EU”.⁴⁸ The report was presented in Brussels on 6 December during consultations between Ambassador Konstantin Dolgov (the Russian Ministry for Foreign Affairs’ Commissioner for Human Rights, Democracy and the Rule of Law) and Stavros Lambrinidis (EU Special Representative for Human Rights), at a press conference for Russian and foreign media and at a meeting with representatives of international human rights NGOs.

The initiative was supported by the State Duma Committee on International Affairs, which organised hearings on the basis of the report by the Ministry for Foreign Affairs in May 2012. The head and the other officials of the EU delegation participated; the representatives of international organisations and the European Parliament were invited but did not attend. The head of the EU delegation welcomed the initiative of the State Duma, as did the Director of Russian Amnesty International, who noted that he considers such hearings ‘normal practice’. The hearings did not appear to be a dialogue, however, but rather a continuation of reciprocal claims about human rights violations.

Apart from the position taken by EU and Russian institutions, independent evidence coming from international organisations and independent civil society actors (e.g. the Council of Europe, Human Rights Watch, the International Federation for Human Rights (FIDH), Amnesty International and the EU-Russia Civil Forum) show recent and profound challenges relating to the rule of law in Russia. For example, the Council of Europe Parliamentary Assembly called on Russia “to respect the obligations incumbent upon every Member State...with regard to pluralist democracy, the rule of law and human rights”.⁴⁹ Similarly, the EU-Russia Civil Forum at the same time outlined “a decreased perceptiveness of the European governments to the civil society voice in times of economic and financial crisis”.⁵⁰ Thus, the protection of human rights constitutes a challenge to both Russian and EU Member States.

Against these assessments of the human rights situation in the EU and Russia, the PCA establishes in Art. 2 that “[r]espect for democratic principles and human rights as defined in particular in the Helsinki Final Act and the Charter of Paris for a New Europe, underpins

⁴⁷ *RIA Novosti* news agency, 13 September 2012 (<http://ria.ru/politics/20120913/749400761.html>).

⁴⁸ Ministry of Foreign Affairs of the Russian Federation (2012).

⁴⁹ The CE Parliamentary Assembly, Resolution 1896 (2012).

⁵⁰ See the Statement of the EU-Russia Civil Society Forum, Saint Petersburg, 10 October 2012.

the internal and external policies of the Parties and constitutes an essential element of partnership and of this Agreement" (Council of the European Union, 1997).

Since 2005, both parties have held consultations on human rights⁵¹ twice a year, which do not take place in parallel with the EU Summits. So far, the consultations have only been held in Brussels. The EU has proposed a rotation of the consultations between Moscow and Brussels so that members of the Russian Ministries of the Interior and Justice can also participate. The EU reports on human rights violations and exerts pressure on Russia to adhere to international standards on human rights. Russian experts stated that the EU lacks supranational mechanisms of promotion and protection of human rights by its member states and that the European Commission is mainly focused on assessment of the human rights situation in third countries. In this context they noted the importance of the EU's prompt accession to the ECHR on equal conditions with other participants.⁵² From Russia's side, concerns are expressed about the rights of the Russian-speaking population in the Baltic States, excessive use of force when breaking up peaceful demonstrations, the rights of migrants as well as infringements of the right to privacy. During consultations the EU's support of Russian NGOs is also analysed. Thus, the partial results of the consultations should not be denied. In 2011, the human rights consultations incorporated a civil society dimension – the Civil Society Forum (CSF). During the third CSF General Assembly in Saint Petersburg on 9-10 October 2012, the participants expressed their concerns about a "visible cooling down of relations between Russia and EU", which "may have long-term consequences, including for civil society on both sides". The Forum noted an element of confusion on the side of the EU in regards to the processes happening in Russia and "a lack of understanding on how to further develop dialogue and cooperation with Russia in Brussels and other European capitals". Consequently, the EU-Russia Civil Society Forum sees its mission as influencing Moscow and Brussels to modulate the cooling of relations for constructive dialogue.⁵³

At the same time, civil society organisations such as the FIDH have heavily criticised the EU-Russia human rights consultations and even advocated their suspension, stating that they "have neither contributed to an improvement of the human rights situation in Russia, nor increased the level of support to human rights defenders" (FIDH, 2010, p. 2). The European Parliament also made reference to the shortcomings of the human rights consultations and called for the "human rights consultations to be stepped up and made more effective and results-oriented, with the Russian Ministries of Justice, the Interior and Foreign Affairs taking part in the meetings in both Brussels and Moscow and with the full involvement of the European Parliament at all levels" (European Parliament, 2011, point 14). The *Road Map Progress Report 2010* foresaw improvements in the human rights consultations by stating that the "EU aims to ensure that the discussion on these issues is not confined only to the bi-annual Human Rights Consultations but is addressed to the extent possible also in the PPC meetings and other meetings taking place within the Space on Freedom, Security and Justice" (EU-Russia 2011, p. 45). In other words, the approach advocates the extension of EU-Russia human rights cooperation beyond the framework of the human rights consultations.

Actually, the prospects for enhanced cooperation between the EU and Russia on human rights were put forward in the conclusions of the Nicosia PPC in October 2012: "The Parties reiterated the importance of and respect for commitments in the area of human rights and

⁵¹ The latest EU-Russia Human Rights Consultations took place on 7 December 2012.

⁵² "Another round of Russia-EU Expert Human Rights Consultations", Permanent Mission of the Russian Federation to the European Union, 12.10.2012 (<http://www.russianmission.eu/en/news/another-round-russia-eu-expert-human-rights-consultations>).

⁵³ Ibid.

rule of law, including the independence of the judiciary, which underpin cooperation in the area of freedom, security and justice. They also expressed the necessity to prevent discrimination, protect minorities and combat hate crimes. They noted the importance of EU's prompt accession to the ECHR and Fundamental Freedoms" (Council of the European Union, 2012a, p. 1). Here, for the first time, the principle of the independence of the judiciary is included in an EU-Russia document, as well as a clear commitment that links the respect for human rights and rule of law with cooperation in the AFSJ. In addition, the EU's objective to accede to the ECHR, of which Russia is a party, will put the EU and Russia on equal footing as members of the ECHR and may stimulate EU-Russia human rights relations through the Council of Europe's human rights *acquis*.⁵⁴

Notably, however, the promotion of democracy is not included in this statement from the Nicosia PPC. Alexander Kononov, the Minister of Justice who chaired the meeting from Russia's side, emphasised at the subsequent press conference "the issues of real significance, which should be put on the top of agenda – minimising and excluding completely the risks of new possibilities for international criminal activity, excluding factors of irregular migration, technical management of passengers' flows – both tourists and migrants". Furthermore, "[a]s for the issues, which our partners bring to the first plan", the Minister added, "they might be discussed endlessly. Absolute satisfaction [about] how they will look in 10-20 years might never be reached."⁵⁵ Thus, the existence of a common view on the effectiveness of extending human rights beyond the framework of the human rights consultations still provokes doubt.

The framework that can stimulate EU-Russia cooperation on human rights is the Common Steps towards visa-free short-term travel. The fourth building block of the set of commitments that the EU and Russia have agreed to fulfil contains a set of measures in the field of human rights, including consultations and discussions on the protection of migrants' rights and anti-discrimination laws. Use of human rights as a tool of conditionality in EU-Russia relations is regarded in the EU as an opportunity to promote change, given that the incentive of visa liberalisation is very tempting. From Russia's side, however, prioritising human rights issues in every sphere of cooperation is considered counterproductive. Unlike the human rights consultations, the provisions under the Common Steps are clearly formulated and will be monitored regularly. The ongoing implementation of the Action Plans on visa liberalisation in Ukraine and Moldova has shown the effectiveness of conditionality to promote reforms on human rights, with the adoption of legislation on anti-discrimination law. But the rhetoric of symmetry in EU-Russia human rights cooperation prevents the conditionality mechanism from being effective. The more pressure the EU exercises, the more resistance from Russia it triggers, unless human rights issues are discussed symmetrically. In any case, both sides have committed to the protection of fundamental rights in the framework of the Common Steps.

Finally, according to an official from the EEAS, the New Agreement will have a significant and far-reaching human rights component in the political dialogue and the JLS chapters. The European Parliament confirmed the EEAS position by adopting the resolution of 13 December 2012, which contains the EP's recommendations to the Council, the Commission and the EEAS on the negotiations of the new EU-Russia Agreement and in particular the paragraphs dealing with the respect for democratic principles, human rights and the rule of law and considers this respect "as an absolute prerequisite for the signature of an EU-

⁵⁴ The Council issued the EU Strategic Framework and Action on Human Rights and Democracy, which sets out the objectives of the Union regarding human rights and reaffirms the human rights component of the EU external action. See Council of the European Union (2012b).

⁵⁵ *ITAR-TASS News Agency*, 3.10.2012 (<http://www.itar-tasskuban.ru/news/article?type=politics&i=32854>).

Russia agreement".⁵⁶ Russia, however, has never expressed the intention to include conditionality provisions in the New Agreement. Thus, it is still unclear whether the EU's intention of an enhanced EU-Russia human rights cooperation as analysed above will gain in legal certainty in EU-Russia relations. Until now, the developments analysed in this section signal that there are strains in EU-Russia relations, and that a renewed format for cooperation in human rights is needed.

4 CONCLUSIONS AND POLICY RECOMMENDATIONS

CONCLUSIONS

This study has provided a thorough analysis of EU-Russia JLS cooperation in light of the Common Space on Freedom, Security and Justice, adopting an approach that integrates both EU and Russian perspectives. Analysis of the implementation of the different JLS policy areas shows that there has been actual cooperation, but a main conclusion could be drawn: the cooperation has been uneven and has not led to the same outcomes in all the JLS policy areas.

Progress has been observed in the following policy areas:

- 1) **Technical security of passports.** In the framework of the Common Steps, Russia launched biometric passports that are compliant with the standards of the ICAO. The biometric passports contain a chip with information, as well as parameters to transfer information in case of stolen or lost documents. It must be taken into account that most EU member states are in the process of introducing biometric passports.
- 2) **Fight against irregular migration.** The EU-Russia Readmission Agreement has been effectively implemented since 2007, including readmission of transit migrants since 2010. Despite the difficulties in identifying the nationality of transit migrants, the assessment of the implementation of the Agreement is generally positive. In addition, most implementing protocols with EU member states have been ratified.
- 3) **Border management.** A Working Arrangement was agreed between FRONTEX and the Border Guard Service of Russia in 2006, enabling information exchange and capacity building for border guards. Furthermore, Russian border guards have participated in several FRONTEX Joint Operations. Cooperation follows the prescribed plans and could deepen with intensified exchanges.
- 4) **Border demarcation.** The demarcation processes on the Russian-Latvian and the Russian-Lithuanian borders have been completed, with the entry into force of Demarcation Agreements. The negotiations between Russia and Estonia, which had been deadlocked since 2005, have been resumed with a view to demarcating the common border.
- 5) **Counter-terrorism cooperation and fight against organised crime.** A significant potential has been accumulated in Russia-EU counter-terrorism cooperation as well as in fighting organised crime. Nowadays, further efforts are needed to bring cooperation to a new level and fill it with concrete substance.

⁵⁶ European Parliament resolution of 13 December 2012 on the annual report on Human Rights and Democracy in the World 2011 and the European Union's policy on the matter (2012/2145(INI)).

In the following policy areas, however, progress has been limited:

- 6) **Common Steps towards visa-free short-term travel:** Two aspects of the Common Steps could be approved by the EU-Russia summit on 21 December. Yet Russia is dissatisfied with the slow speed of the implementation process and proposes a quicker road map with a fixed date of starting negotiations on a Visa Waiver Agreement. The EU finds the obstacles to visa-free travel to be technical rather than political and views visa liberalisation in a longer-term perspective.
- 7) The failure of the negotiations to conclude an amended **Visa Facilitation Agreement (VFA)** shows the lack of flexibility even in a small particular sphere of EU-Russia relations. Moreover, the EU's lack of trust in service passports and concerns about corruption in Russia put into question the recognised progress in the technical security of passports and the very prospects for the liberalisation of visas.
- 8) **Kaliningrad border traffic.** The Polish-Russian agreement on LBT is deemed a positive achievement, at least from a political standpoint. Still, it will hardly be possible to reach a similar Lithuanian-Russian LBT agreement covering the entire Kaliningrad *oblast*.
- 9) **Dialogue on migration and asylum.** Four thematic sessions took place with a positive outcome. The participants hope to move on from the exchange of best practices to an operational phase and spot elements. Yet a high number of asylum seekers from Russia causes concern for the EU and remains a challenge in EU-Russia JLS relations. The problem is being discussed in the framework of the migration dialogue, but no clear prospect for improving the situation is foreseen.
- 10) **Drugs cooperation** has been developing positively in relation to consultations between the EMCDDA and the FSKN on prevention and on the treatment of drug addicts. The EU-Russia Agreement on Drug Precursors is ready for signing in 2013. However, there is no progress in joint initiatives against drug trafficking originating in Afghanistan.
- 11) **Operational Agreements between Russia and Europol/Eurojust.** Russia signed and ratified the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and signed the Adjacent Protocol to the Convention. In addition, Russia reformed the domestic legal basis for data protection. Nevertheless, the absence of an independent supervisory authority to control information exchange has brought the negotiations to a standstill.
- 12) **Judicial cooperation.** Expert discussions are underway on preconditions for the signature of the Agreement between the Russian Ministry of Justice and the European Judicial Network in Civil and Commercial Matters. The process has slowed down owing to rather mixed views in Russia about the reasonability of joining some of The Hague Conventions. In addition, the EU is showing distrust of Russia's judicial system.
- 13) **Human rights** remain the most controversial issue in EU-Russia relations. The consultations take place twice a year with a very limited outcome. The Civil Society Forum was created in 2011, which is a positive step but with limited influence so far. The EU and Russia negatively assess each other's human rights situations. Russia insists on the symmetrical treatment of human rights issues.

To sum up, the EU and Russia have made obvious progress in implementing five policy areas of the EU-Russia Road Map, while there are limited achievements in the other eight most relevant issue areas, with slow progress on visa liberalisation, judicial cooperation and human rights. This study concludes that there is a lack of balance between security, on the

one hand, and freedom and justice, on the other in EU-Russia cooperation in the Road Map. The analysis gives evidence of how security issues are the cornerstone of EU-Russia JLS cooperation and account for a number of the outcomes of the Road Map, namely the implementation of a Readmission Agreement and the signature of a Working Arrangement between FRONTEX and the Russian Federal Border Service, among others. The Common Steps towards visa-free short-term travel use security measures as a precondition for visa liberalisation and this approach has proven to be effective so far for further implementation of the Readmission Agreement – with the signature of most of the implementing protocols with member states, among other security-related policy areas.

Meanwhile, cooperation on freedom-related areas has not lived up to expectations. Although the local border regime was established on the Polish-Russian border, the negotiations on an amended VFA have not been successful to date and progress on the visa liberalisation dialogue has been limited. Actually, most of the outcomes of EU-Russia cooperation in the AFSJ have been in the security realm. In addition, freedom measures encapsulate the notion of mobility from a comprehensive point of view, which includes not only the liberalisation of short-term visas, but also fostering labour migration, student exchanges and other measures aimed at promoting mobility.

Nevertheless, the Road Map *Progress Report 2010* uses the concept of a balance between freedom, security and justice when assessing the outcomes of the Road Map. Under the label “freedom”, the report covers the areas of readmission, visa policy, local border traffic and border management. The concept of “justice” in the *Progress Report* encapsulates negotiations on an Arrangement with Eurojust and Russia acceding to international conventions. As for “security”, this label covers the areas of counter-terrorism, negotiations on a Europol Arrangement and drugs cooperation. As mentioned above, it is our understanding that the issues of readmission and border management also fall within the security realm. As a result, there is not a balance between freedom, security and justice in EU-Russia JLS cooperation. This assessment challenges the usefulness of systematising the JLS policy areas under this concept and shows that this is not a valid approach to framing EU-Russia JLS cooperation.⁵⁷

Another contribution of the study is the analysis of the current and future institutional structures in EU-Russia JLS cooperation. On the one hand, the EU faces internal coordination challenges between the EEAS, the Commission and also the EU agency services in external relations since the entry into force of the Treaty of Lisbon. On the other hand, the proposal at the Nicosia PPC meeting in October 2012 to set up a senior officials’ meeting once a year covering the full spectrum of EU-Russia JLS cooperation would provide for a better institutional setting for such cooperation.

There are several reasons why progress on the EU-Russia Common Space on Freedom, Security and Justice is stagnating, in spite of the obviously increasing network of experts’ consultations and professional contacts between the parties.

- 1) While good trustful relations have been observed at the professional and expert level in the process of consultations and dialogues, there is lack of trust at the political level. This problem is common across all EU-Russia relations. As soon as the

⁵⁷ At the end of the day, the ‘balance’ between freedom, security and justice is a notion created by the EU in the aftermath of the 9/11 attacks, whose usefulness has been contested not only by academia (Bigo et al., 2010), but also by the EU itself. The Stockholm Programme states that “[i]t is of paramount importance that law-enforcement measures, on the one hand, and measures to safeguard individual rights, the rule of law and international protection rules, on the other, go hand in hand in the same direction and are mutually reinforced” (European Council, 2010, p. 4). This represents a shift from the balance approach to a conception of freedom and security on equal footing.

contacts and consultations reach their final stage, in which a norm has to be adopted, the cooperation becomes much more difficult – neither side is ready for significant concessions. In many cases, there is no flexibility when the contacts pass from the expert/professional to the political level. Meanwhile, the Road Map has not materialised in clear, tangible outcomes, such as the signature of the operational agreements with Europol/Eurojust or the EU-Russia VFA.

- 2) In addition, the differences between Russian and European legal and administrative practices have been slowing down progress, as legal reform is costly and requires time, effort and consensus. Examples here are the Council of Europe Convention on Information Protection and The Hague Conventions.
- 3) In drawing up the list of Common Steps with the four building blocks of preconditions for visa liberalisation, EU-Russia JLS cooperation is closely interlinked and mainly focused on security. Thus, the lack of progress in certain directions minimises achievements in the others. For example, the absence of operational agreements with Europol and Eurojust prevents the visa liberalisation process from going further. As a result, the general progress is very limited.
- 4) While showing readiness in complying with the technical preconditions for visa liberalisation, Russia has demonstrated strong opposition to political conditionality, which the EU uses as a tool for promoting human rights. Russia insists on a symmetrical, equal partnership not only in declarations, but also in practice.

Therefore, this study has shown how socialisation can be an efficient alternative to conditionality and help to step up cooperation in the Road Map. The visa liberalisation process and increasing youth exchanges seem to be the best methods of socialisation: more people would be able to come to the EU and become supporters of the shared values; more visitors to Russia would provide for the better understanding of the parties. Furthermore, as agreed in the Road Map, joint training programmes for civil servants who are involved in the implementation of the Common Steps, as well as seminars, exchanges of experience and best practices, promote socialisation and confidence building, which is vitally needed to face security challenges and build a Europe without dividing lines.

POLICY RECOMMENDATIONS

Bearing in mind the uneven progress in the Common Space policy areas, it is recommended that the LIBE Committee should undertake the following steps:

- Monitor the further implementation of the EU-Russia Readmission Agreement and complete the necessary procedure for and signature of the remaining Protocols. For this objective, the contacts on joint readmission should be established.
- Implementation of the local border traffic regime should also be closely monitored in cooperation with colleagues from the Russian State Duma, Polish Sejm and Kaliningrad regional Duma.

Special attention should be paid to areas where limited progress is observed:

- In the framework of the dialogue on migration and asylum, the problem of asylum seekers from the North Caucasus should be analysed from all aspects. The LIBE Committee should follow developments concerning asylum seekers who are apprehended at the border as irregular migrants and subject to an accelerated return procedure to Russia as well as those who stay at detention camps, in both the member states and in Russia.

- Give consent to the VFA once the negotiations are finalised, so that a new tool fostering mobility between the EU and Russia enters into force.
- Implementation of Common Steps elements should be monitored with the aim of their timely and effective completion. For this purpose the relevant implementation reports should be analysed by the LIBE Committee.
- The LIBE Committee should analyse possibilities for developing the five-year Russia-EU plan on the basis of the Russian "Rainbow-2" plan and anti-drug provisions of the report on a *New Strategy for Afghanistan*, approved by the European Parliament in December 2010. Attention should be given to Russia's proposal for establishing the EU-Russia joint anti-drug agency.
- In the framework of the Inter-Parliamentary Cooperation Committee, meetings and contacts should be established with the Information Commission of the Russian Federation Council, aimed at exploring the possibilities to create an independent supervisory authority, with a view to a quicker signature of the operational agreements between Russia and Europol/Eurojust.

A number of recommendations of a procedural character can be suggested:

- The LIBE Committee should cooperate with the members of the EU-Russia Parliamentary Cooperation Committee to promote in its agenda issues related to EU-Russia JLS cooperation. More intensive cooperation in the framework of the Parliamentary Cooperation Committee would promote better understanding of each side's position. Regular inter-parliamentary meetings and consultations help to prevent misunderstanding, soften rhetoric and continue constructive dialogue.
- The LIBE Committee should promote more democratic accountability of the EU-Russia JLS cooperation and pay attention to the consistency of the EU's external action in the field of JLS and in particular in EU-Russia JLS relations, following the work of the different actors involved.
- The LIBE Committee should evaluate and contribute to the strengthening of the rule of law, the promotion of democracy and the protection of fundamental rights not only in Russia, but also in the EU AFSJ, by ensuring a better evaluation of the basis upon which cooperation in JLS issues has been built so far. For this purpose the special provisions on human rights should be included in every international treaty with Russia, solely provided that both sides accept an equal obligation to respect them.

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ANNEX

Table A1. Statistics regarding implementation of the Readmission Agreement

Year	2007/ since October	2008	2009	2010	2011	2012/up to November
Total number of applications	127	946	1,362	1,436	2,038	1,932
Number of applications for Russian nationals	127	946	1,362	1,432	2,003	1,910
Number of applications for third-country nationals	0	0	0	2	30	10
Total number of positive replies	76	386	664	769	938	1,208
Number of positive replies for third-country nationals	-	-	-	0	14	4

Sources: Federal Migration Service of the Russian Federation (RF FMS), Official Statistical Data, Form 1 RD, Readmission; RF FMS (2008), p. 72; RF FMS (2009), p. 23; RF FMS (2012), p. 132.

Table A2. Readmission applications by country in 2007-2011

Country/period	2007 (October)–2011 (March)		2011 Persons
	Persons	%	
Total (18 EU MS+Denmark; Norway)	5,616		590
Germany	3,227	57	246
Norway	520	9	123
Sweden	519	9	40
Austria	366	6	57
Other states	984	17.5	124

Source: RF FMS (2012), p. 9.

Table A3. Chronology EU-Russia JLS cooperation under the Common Space on Freedom, Security and Justice

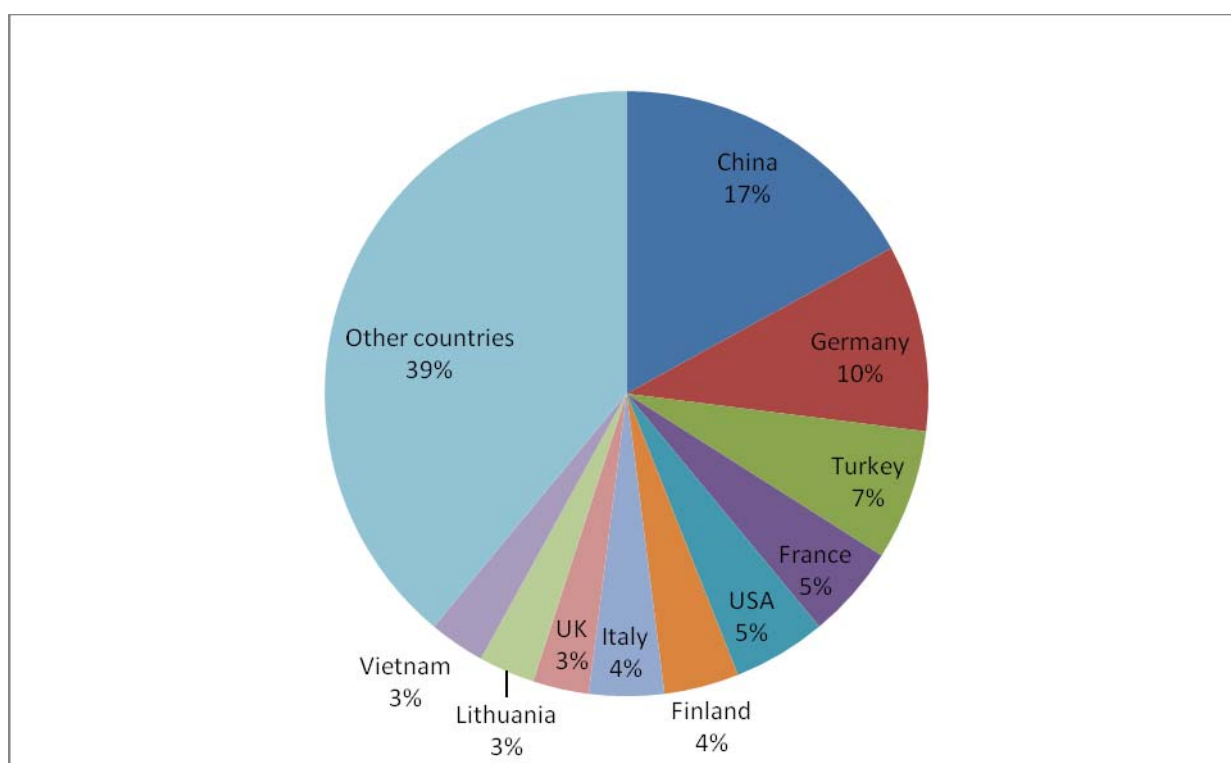
Date	Event
1 December 1997	Entry into force of the EU-Russia Partnership and Cooperation Agreement
19 December 2005	Russia ratified the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data
31 May 2003	Agreement on a Common Space for Freedom, Security and Justice at the EU-Russia Saint Petersburg Summit
10 May 2005	Adoption of Road Map on Freedom, Security and Justice at the EU-Russia Moscow Summit
1 March 2005	The first round of Human Rights consultations was held in Brussels
	Signature of Working Arrangement between FRONTEX and the Russian Federal Border Guard Service
1 June 2007	Entry into force of the EU-Russia Readmission Agreement
1 June 2007	Entry into force of the EU-Russia Visa Facilitation Agreement
September 2007	Launch of visa-free dialogue
26 October 2007	Signature of Memorandum of Understanding between the Federal Service of the Russian Federation for Narcotics Traffic Control and the European Monitoring Centre for Drugs and Drug Addiction
1 December 2009	Entry into force of the Treaty of Lisbon
December	Adoption of Stockholm Programme setting out EU priorities for action in the JLS sphere for 2010-2014
21 October 2010	Launch of Europol-Russia negotiations on Operational Working Arrangement
April	Launch of negotiations on amending the Agreement on the facilitation of the issuance of visas to the citizens of the Russian Federation and the European Union
19 May 2011	Launch of the dialogue on migration and asylum
17 February 2011	The European Parliament adopted the Resolution on the Rule of Law in Russia
14 December 2011	Russia and Poland signed the bilateral agreement on Local Border Traffic, which entered in force on 27 July 2012
15 December 2011	Adoption of the Common Steps towards visa-free short-term travel
28 December 2011	The Russian Ministry for Foreign Affairs published a report <i>On the situation with Human Rights in Certain States</i>
11 September 2012	The European Parliament adopted the Resolution on the Political Use of Justice in Russia
27 July	The bilateral agreement Russian-Polish agreement on Local Border Traffic entered into force
1 December 2012	The Russian Ministry for Foreign Affairs published a report <i>On the situation with Human Rights in Certain States</i>

Source: Authors' compilation.

Table A4. Organisations of the persons interviewed for this study

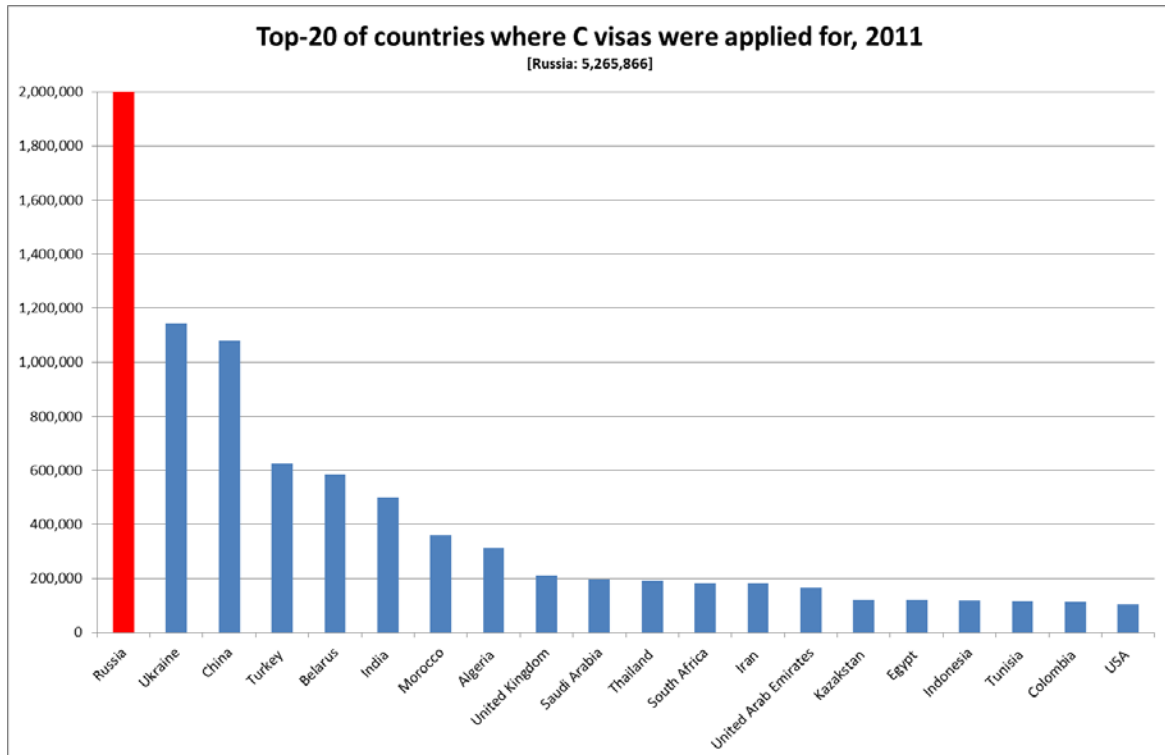
Institution	Date of interview
Amnesty International	4 December 2012
Council of the European Union	30 November 2012
European Commission – Directorate-General for Home Affairs	8 November 2012
European External Action Service	13 November 2012
EU Delegation to Russia, Press and Information Office	19 October 2012
European Parliament	27 November 2012
Kaliningrad Oblast Duma	5 September 2012

Source: Authors' compilation.

Figure A1. Top-10 countries whose citizens received Russian visas (2011)

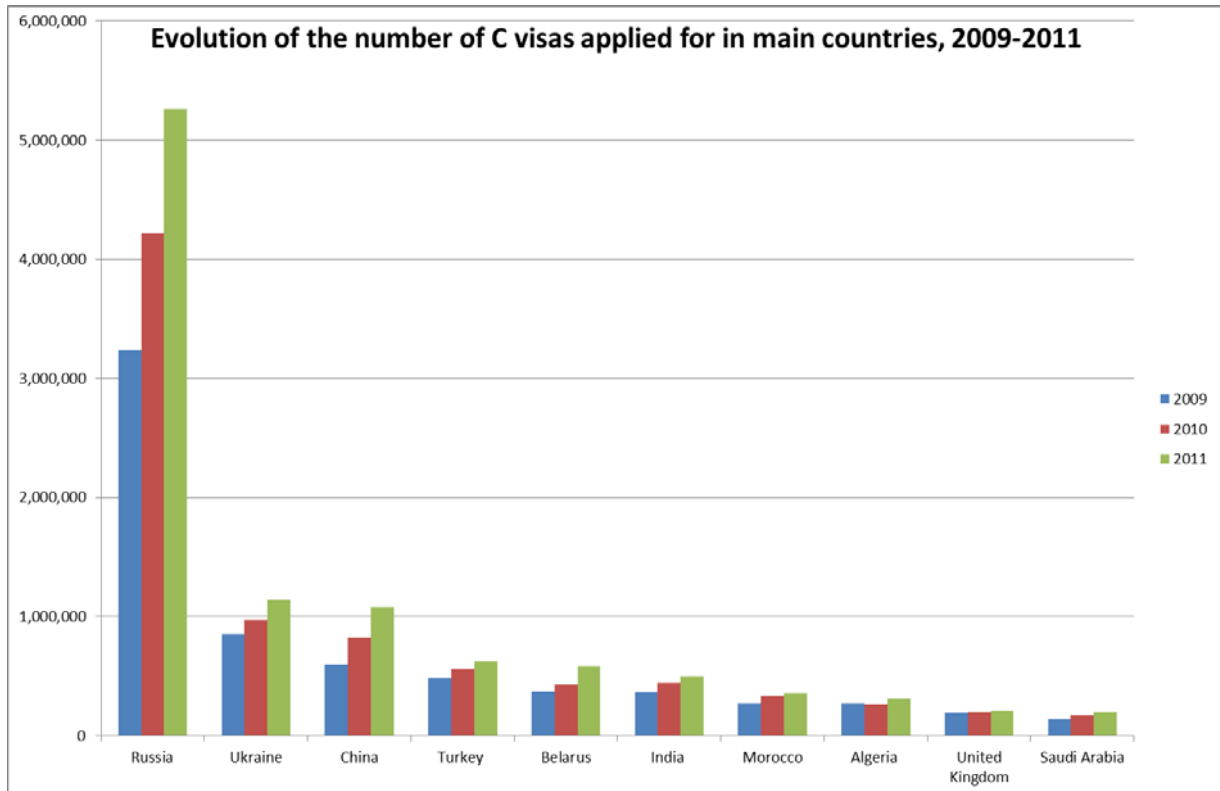
Source: RF FMS (2012), p. 8.

Figure A2. Top 20 countries for Schengen C visa applications



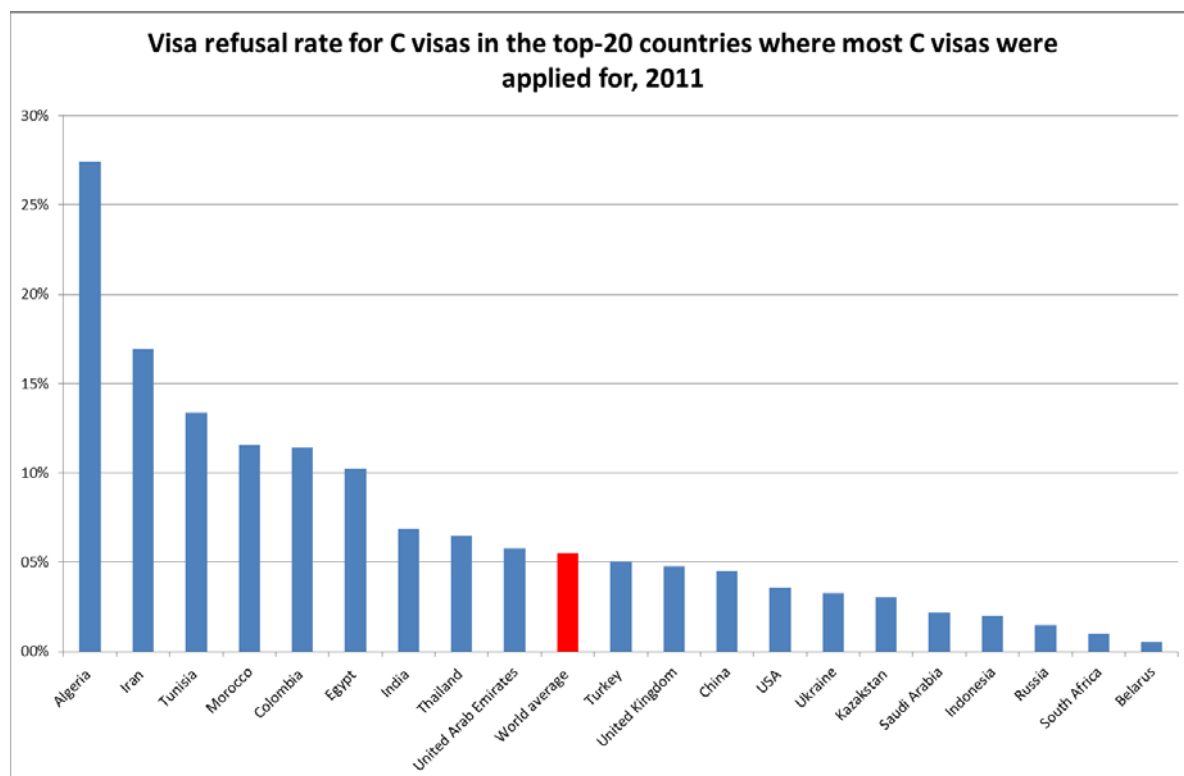
Source: European Commission (2012), p. 12.

Figure A3. Evolution of the number of Schengen visa applications



Source: Source: European Commission (2012), p. 7.

Figure A4. Visa refusal rate for the top 20 countries for C visa applications



Source: European Commission (2012), p. 15.

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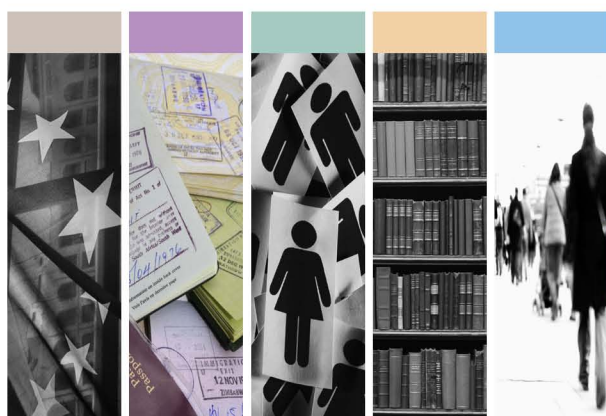
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