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STRENGTHENING CIVIL SOCIETY IN THE WESTERN BALKANS,  
EASTERN EUROPE, CENTRAL ASIA AND THE SOUTH CAUCASUS

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## **Time to De-link Visas and Migration Control:** *What can we Learn from the EU's Success in the Past?*

### **LOSING MOMENTUM TOWARDS VISA-FREE MOVEMENT**

The year 2013 is likely to be a crucial year for the prospects of visa-free movement between the EU and its neighbours in the Western Balkans and the Eastern Partnership region. Continued progress in meeting the technical requirements for visa liberalisation is expected with Moldova and Georgia, but the stalemate over democratic governance in Ukraine may delay if not derail talks with Kyiv.

At the same time, the introduction of a suspension clause may result in the reintroduction of visas for nationals of some Western Balkans countries that had only recently won this freedom. These developments are symptomatic of a broader trend in the visa policies of the EU – a growing preoccupation among EU member states with its impact on the volume of irregular migration.

The reintroduction of visas for Western Balkans states or the freezing of negotiations on the liberalisation of the visa regime with Eastern

Partnership states would be the wrong response to the real problem of abuse of the migration systems of some EU member states.

A recent report by the European Stability Initiative<sup>1</sup> demonstrates that the increase in asylum applications from the Western Balkans can be tackled effectively only through the tightening of the national asylum systems in several West European countries. ESI points out that the implementation of the European Commission's recommendations on improving migration management in countries of origin could not turn around the situation in the short term.

In fact, the reversal of the recent decisions to lift visas to the states on the path towards accession to the European Union, or a stall in talks with countries in the EU's eastern neighbourhood, could not only fail to stem the tide of illegal migration, but in fact limit the EU's appeal to

<sup>1</sup> *Saving visa-free travel : Visa, asylum and the EU roadmap policy*, European Stability Initiative, 1 January 2013. See: [http://www.esiweb.org/pdf/esi\\_document\\_id\\_132.pdf](http://www.esiweb.org/pdf/esi_document_id_132.pdf)

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society in the respective countries, as well as reduce incentives for government reforms in migration control.

It may be relevant in this context to ask a broader question: should the EU continue to treat visa liberalisation as a "carrot" rewarding neighbouring countries' efforts at reforming their migration and border control systems? Or should it perhaps revisit the well-tested alternative approach that it had applied successfully towards countries that joined the EU in 2004 and implemented Schengen in 2007.

These questions are valid since concerns over the perceived threat of uncontrolled migration resurface regularly within the EU, and are not peculiar to a given country that is considered a source of the problem. As will be demonstrated below, the EU has developed over the years a standard set of measures that place the burden of demonstrating that a given country is not a source of illegal migration on that state alone.

This approach at first became intertwined with the broader question of EU accession, and was successfully used to induce candidates to undertake fundamental reforms of migration controls as part of the adoption of the Freedom, Security and Justice legal framework. Factors that made it effective were: a clear perspective of accession, the technical and verifiable set of criteria presented and enforced by the EU, and the consensus within the state administrations of candidate states on the need for reform.

However, none of these factors applies when it comes to co-operation on migration controls with the EU's neighbours to the east. The declarations by the leading reformer countries within the Eastern Partnership initiative of their ultimate interest in EU integration were merely acknowledged by the EU, and the deterioration of democratic standards in some of the six Eastern Partner countries has made this aspiration unrealistic for the time being.

As Moldova, Ukraine and Georgia are deepening their co-operation with the EU, concluding first readmission and visa facilitation agreements and moving towards liberalisation of the visa regime (visa-free travel), the criteria

for evaluation are becoming less definite and no deadlines are given.

Finally, unlike in the accession process, the EU is facing the fundamental problem of how to achieve progress in the face of unstable political systems, unreformed state administrations, and inefficient operational services.

To put it bluntly, while visa-free movement may have been a serious incentive for reform for governments accountable to their citizens, it might lose its appeal in the context of countries where the public has limited opportunities for influencing policy decisions.

### **VISAS AND MIGRATION CONTROL: EU SWITCHES GEARS IN 2004**

The linkage made between the EU's visa regime and a neighbouring state's capacity for controlling the movement of not only its own but third-country nationals first gained prominence with regard to Romania and Bulgaria. Unlike the case with previous enlargements, the nationals of those two countries saw the Schengen visa requirement lifted only once accession negotiations were underway.

Another novelty was the conditional form of extending freedom of movement to the citizens of the two states upon their accession to the EU in 2007. The new members were obliged to ensure that their nationals would not abuse the visa-free regime, and a series of additional measures for controlling the movement out of these countries into the EU were instituted.

In an unprecedented move for an EU member state, for instance, Romania introduced additional exit controls to verify whether its citizens were travelling for genuine and legal purposes.

In a departure from the practice with the previous enlargement wave, the two South-East European states failed to enter the Schengen zone according to the original schedule. The removal of border controls was made conditional upon the consensus within the Council of the EU that

it would not result in a rise of illegal migration from and through these states.

Moreover, for the first time, some member states pledged to consider the possibility of reintroducing border controls in case the new entrants failed to stem the flow of illegal migrants - a clause that had been on the books but never applied. The full integration of Romania and Bulgaria was delayed twice upon opposition from several member states, and is to be decided upon at a Council meeting in March 2013.

Ironically, the watershed in the EU's thinking on the freedom of movement for citizens of neighbouring states was the accession of 10 new members in 2004, which was hailed as mutually advantageous to both sides of the European continent, finally bridging the Cold War divide.

However, the enlargement, followed by the expansion of the Schengen zone in 2007, marked a turning point, differentiating the current approach from the path that had been taken with regard to the Central European countries.

The Schengen zone's visa requirement was waived for countries such as Czechoslovakia (and the successor Czech Republic and Slovak Republic), Hungary, Poland, and the Baltic states in the first half of the 1990s - even prior to these countries' formal process of association with the EU. Thus, the lowering of barriers to movement was not directly tied to the process of EU membership accession, and the impact on migratory pressure was of secondary importance to the political and symbolic significance of the end of the Cold War.

In the pre-accession period, the member states put the European Commission in charge of the technical process of legal and institutional harmonisation that led to the further liberalisation of movement, consisting of the opening of labour markets from 2004 onwards and the eventual removal of border controls in 2007.

Although the process that culminated in 2011 in full mobility for the nationals of the Central

European and Baltic countries took nearly two decades, it proved to be an overall success, with practically no delays or reversals.

The two approaches demonstrate strikingly different responses to a fundamentally similar problem. Co-operation with Central European and Baltic states on migration controls proceeded independently of the termination of the visa regime with the EU, which was undertaken both as a consequence of a broader political process (the end of the Cold War) and as a recognition of these nations' interest in getting closer to the West European institutions.

Importantly, progress in combatting illegal migration and cross-border criminality was achieved *after* the visa regime was liberalised and the partner countries had signed readmission agreements with the EU in the early 1990s.

It is also worth noting that these liberal solutions were adopted against the background of serious concerns over the likely increase in the irregular movement of people (especially from and through Poland).

Granting the right of visa-free movement for the nationals of Central European and Baltic countries turned out to be a bold yet prudent decision made by the EU member states at the beginning of the 1990s. It ushered in a consistent policy of trust-based co-operation on migration control, commencing with a spate of modern readmission agreements, in which the EU's then neighbours agreed to readmit all third-country irregular migrants that had passed through their territory.

By 2004, these states had developed operational capacity to guard the large stretch of the EU's external land border from the Gulf of Finland to the Adriatic, managing gradually to shift the burden of control further eastwards from the old Cold-War frontier.

Nowadays, the entire perimeter of the EU's eastern border from Finland to Slovenia is considered safe, and it is commonly acknowledged that this was only possible thanks to very intensive co-operation between the "old" and "new" members' border

and migration services, involving transfer of equipment, standards, and operational experience.

The EU's eastern border, especially in the northern and central sections, has been at the same time a setting for successful initiatives, facilitating cross-border mobility. Finland and Poland have been able to maintain the issuance of very high numbers of Schengen and national visas (in 2011, a total of 1.2 million visas issued by Finland to Russia, and nearly a million visas granted by Poland to its three non-EU neighbours).

Moreover, it became possible to modify the small-border traffic rules to cover in 2012 all 950,000 residents of the Kaliningrad region of Russia, as well as reciprocally for over 2 million inhabitants of two Polish provinces.

The waiver of work permits for seasonal workers from Belarus, Russia, and Ukraine has helped Poland address gaps in its labour market and maintain growth in the current crisis. Significantly, the Finnish, Baltic, and Polish frontiers have seen very low levels of illegal migration, which is attributed as much to the EU's strong investment in equipment and staffing as to successful co-operation with the border guards of non-EU neighbours.

### **OPENING THE DOORS TO ASPIRING DEMOCRACIES**

Unfortunately, the EU fell short in its response to citizens of other budding democracies as another democratisation wave swept through several countries, later subsumed into the Eastern Partnership initiative. The EU failed to respond to Ukraine's Orange Revolution when in a symbolic gesture President Viktor Yushchenko unilaterally dropped visa requirements for EU nationals.

Instead of demonstrating its openness, the EU's response to the democratic transitions in Georgia and Moldova was also limited. The nationals of these countries were covered by the Mobility Partnership scheme, yet the declaration that the

ultimate objective of the Eastern Partnership is promotion of people-to-people contacts did not translate into any regional Community policies, and has been realised only with regard to certain categories of travellers (through visa facilitation and small border traffic schemes).

The only area where relative progress was achieved with regard to freedom of movement after 2004 was the Western Balkans, but even there visa-free travel turns out to be precarious, and its continuation is dependent on the positions of individual member states concerning migration.

This new conditionality, linking visas and migration controls, has come to prevail in the EU's relations with other accession candidates and countries interested in closer integration. The current scheme is characterised by a shift in the format of negotiations, the key players, and the stakeholders involved.

In the period leading up to the 2004 accession, the talks on the reforms of the migration and border security sector had a relatively technical and closed format, involving delegations of the European Commission, which had a clear mandate from the member states to set the pace as well as verify progress of the candidate countries. As the issue of the freedom of movement for nationals of these countries was not directly at stake, virtually no debate was held on the impact of the accession on the volume of migratory movements, either in the EU or in the societies in question.

In contrast, the reforms to combat illegal migration in South-East and Eastern European countries have been tied closely with the question of visa-free movement for these states' nationals. The later candidates (Bulgaria and Romania and then the Western Balkan states) were not granted visa-free movement until well into the process of integration with the EU, and progress towards the next phases of the process was made conditional on meeting not only strict technical criteria but also on demonstration that it would not result in a rise in illegal migration into the EU.

This broader agenda and clear conditionality element opened the process to other stakeholders. More attention is being paid by the EU member states and their societies to the impact of the visa regime on the volume and directions of migration.

At the same time, the governments of candidate countries are tying the visa regime to the broader question of EU integration, which may make the visa liberalisation process hostage to the overall assessment of these countries' readiness to adopt EU norms.

This "paradigm shift" has significant implications for advocates of visa-free movement, both within and outside the EU.

Firstly, the lifting of restrictions on movement is not a once-for-all process, and setbacks, stalls, and reversals are possible. Additional hurdles were set up through the division of the process into stages, upon whose completion the member states have the final say. Although completing one stage is a precondition for entering another one, it is no guarantee of ultimate success.

Furthermore, successive stages involve different sets of indicators, necessitating a new set of skills on the part of the candidate countries' negotiation teams and more broadly of the national administrations. For instance, visa liberalisation builds on the infrastructure, legal solutions and practices implemented during the process of visa facilitation, but requires much deeper institutional reorganisation and higher administrative capacity.

Secondly, as the partner countries clear successive hurdles, the focus shifts from technical standards for border and visa management, which are measurable and easy to interpret, to a more holistic evaluation, encompassing quality of governance, compliance with international human rights standards, and effectiveness of adopted solutions.

This is all the more pertinent in the cases of countries that aspire to closer integration with the EU, even membership, such as many among the Eastern Partnership states and all the Western Balkan countries. Progress towards EU

standards is likely to be watched closely not only by the member state governments, but by the national and European media as well as civil society advocates within the EU.

Finally, over time we may observe that the EU is increasingly reluctant to adopt group solutions, and prefers to judge each case on its own merits. The format of country-by-country evaluation, evident in the negotiations with Western Balkans and Eastern Partnership states, is a mixed blessing for the candidate countries.

On the one hand, the progress of one country may not hinder that of another. On the other hand, no deadline for the completion of the exercise by all the countries of the region may be set as was the case in 2004 and 2007 with the Central European and Baltic states entering the EU and Schengen.

Moreover, differentiation among states implies that parallels from other locations will no longer apply - as can be seen for instance in the discrepancy in the rules for local border traffic with the Kaliningrad region and with western Ukraine.

## **RETHINKING THE ROLES OF CIVIL SOCIETY, GOVERNMENTS, AND THE EU**

The distinctive features of a new framework for advancing towards visa-free movement represent a challenge for civil society as well as for the governments in the Western Balkans and Eastern Partnership states. The uncomfortable fact is that the process of visa liberalisation is going to be longer and less predictable than the declarations of the governments or sympathetic observers would indicate.

Its pace and scope is going to be determined as much by the EU institutions (Commission, External Action Service) as by the member states, which are likely to request a much greater share in supervision, ask for substantive evidence of progress, and insist on genuine commitment to reforms from the partner governments.

Moreover, it will feature civil society in a new role - as a source of objective information as well as a guardian of policy standards and human rights.

A new, more precarious and complex picture thus emerges, placing new demands on the various actors in this process. Civil society and think-tanks in Eastern Partnership and Western Balkans states need to redefine their position vis-à-vis governments, responding to the demand from EU member states and societies to emerge as a vital "second voice". They are advised to raise their standing by establishing partnerships with organisations in Brussels and advocacy groups in key member states.

In turn, the governments of applicant and candidate states should rise to the challenge by responding to concerns over the impact of current and future immigration in a balanced manner, drawing on various sources, including analyses supplied by civil society.

They face the challenge of preparing the public in their respective countries for the difficulties involved in the process and in managing expectations. This can be done through launching information campaigns on the actual rights to free movement for various categories of citizens so as to dispel persisting myths.

At the same time, a continuing challenge is the need to counter the operation of dishonest visa intermediaries through closer co-operation with the embassies of Schengen states on exposing corrupt networks.

Nonetheless, these partial measures cannot be effective in themselves without engaging the EU in a major reconsideration of its current strategy. It is high time for the EU to reassess the effectiveness of holding visa-free movement for neighbouring societies hostage to the evaluation of the state administration's capacity and commitment to EU standards.

In an atmosphere of doubt as to the appeal of the EU model for its neighbourhood, it is worth looking at the model that did work: the accession of Baltic and Central European states whose nationals had been granted visa-

free entry far in advance of the opening of association negotiations.

While arguably risky and daring, the decoupling of free movement from combating illegal migration might be the best demonstration that the EU project retains its relevance and attractiveness for the candidates and neighbours. Conversely, stalling or reversing the progress runs the risk of further corroding the neighbouring societies' trust in the EU as an anchor of regional stability.

### **A BOLD UNILATERAL MOVE BY THE EU ON VISA-FREE TRAVEL COULD BREATHE FRESH AIR INTO THE EASTERN PARTNERSHIP**

As the EU is seeking to engage not only accession candidates, but also its eastern neighbours in sharing the responsibility for migration controls, the question of holding out proper incentives resurfaces.

This paper acknowledges the EU's progress where it has been made - most clearly in the case of the Central European and Baltic states, which progressed from being viewed as likely sources of migratory risk to crucial elements of the European system of combating illegal migration.

The lengthy process of building the new member states' capacity for controlling the EU's frontiers relied from the outset on the support of the public as the societies in the candidate countries could benefit from the EU's fundamental right of movement throughout the reform process. Such support is as crucial nowadays not only in the countries already on the path towards accession (such as the Western Balkans) but also in the EU's neighbours that are located on the transit paths for East-West migration.

While the dilemma for the EU in the Western Balkans is to achieve stabilisation of the migratory situation without alienating the societies on the threshold of integration, it is even more acute in the post-Soviet space. The EU needs to ask itself whether it is willing to

offer a tangible incentive for choosing a pro-EU course by the societies at a time when the dialogue between Brussels and EU capitals on the one hand and Moscow, Minsk, or Kyiv are hitting new lows over fundamental issues of human rights, democratic institutions, and civil liberties.

Gradual unilateral extension of opportunities to travel to the EU for ordinary citizens of the EU's Eastern neighbours might be such an incentive, equal to that which initiated a lengthy process of stabilising the migratory situation in Central Europe two decades ago.

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This policy brief emerged from the panel around one of the principal conference themes, **Mobility and Integration of Migrants through Participatory Policymaking - national and regional (including EU) strategies to foster social inclusion and mobility, and policies towards minorities, migration, asylum-seekers.**

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