

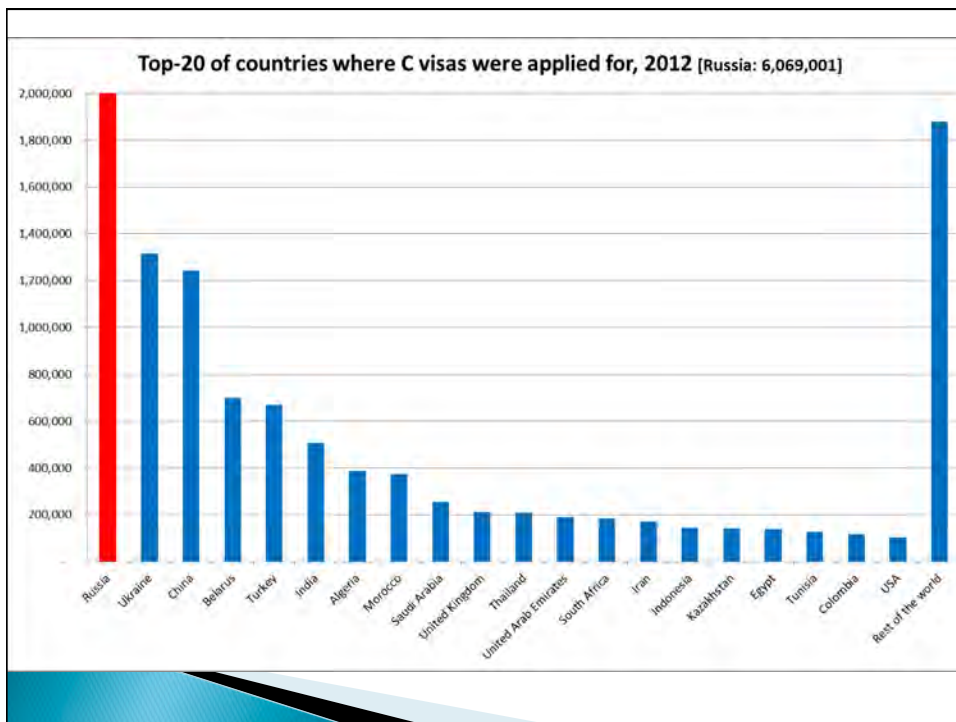
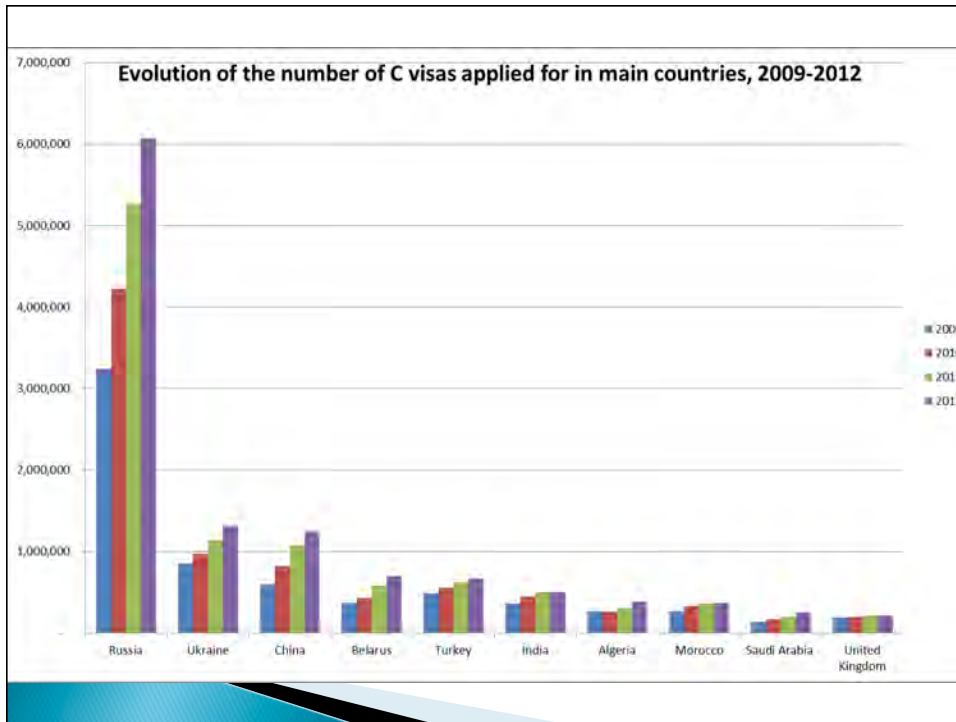


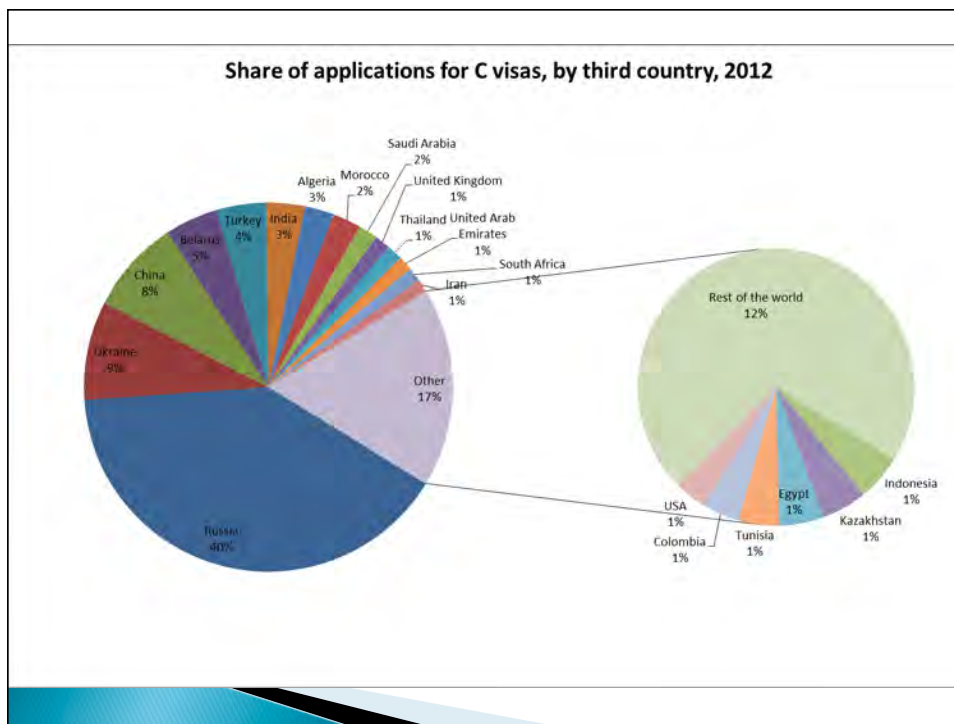
Border regulation between the EU and Russia

Peter.VanElsuwege@UGent.be

Outline

- ▶ Facts and figures
- ▶ Background of EU–Russia border regulation
- ▶ Relevant EU and Russian legislation
- ▶ The Process of Visa Facilitation
 - EU–Russia Visa Facilitation Agreement
 - Local Border Traffic and Kaliningrad transit
- ▶ The Process of Visa Liberalisation
 - Legal options
 - Common Steps towards visa free short travel
- ▶ The way forward ?





I. Background

- ▶ 1990 Copenhagen Meeting ‘on the human dimension of the OSCE’
 - “participating states strive for efficient visa application procedures and reduced visa fees to ensure freer movement of persons”.
- ▶ 1993 Copenhagen European Council (EU)
 - Start of EU’s enlargement process towards Central and Eastern Europe
 - Requirement to adopt EU legislation, *inter alia* on common visa requirements for nationals of non-EU Member States
 - Implications for Russia

Background (II)

- ▶ August 2002: V. Putin proposal to abolish visa requirement between Russia and the EU
- ▶ European Commission response (18 Sept. 2002)
 - First need to overcome technical and political obstacles
 - Passport security and migration control
 - Increased co-operation on crime and illegal migration, including preparation of a *readmission agreement*

Visa liberalisation and facilitation

- ▶ 2003 EU Russia Saint Petersburg Summit
 - “The EU and Russia agreed to examine the conditions for visa-free travel as a long term perspective”
- ▶ 2005 Common Space on Freedom, Security and Justice
 - *Short term*: conclude parallel negotiations on visa facilitation and readmission agreement
 - *Long term*: continue and intensify visa dialogue at expert and political level to examine the conditions for a mutual visa-free travel regime

Background (iii)

- ▶ June 2007
 - VFA and readmission agreement in force
 - Visa dialogue established
- ▶ 2010 Rostov EU–Russia Summit
 - Russian proposal of a draft visa waiver agreement
- ▶ 2011 Brussels EU–Russia Summit
 - Common Steps towards Visa-Free Short Travel of Russian and EU Citizens (publicly released in 2013)
 - Negotiations on upgrading the VFA

EU legal framework – primary law

- ▶ Article 77 Treaty on the Functioning of the EU
 - EU competence to develop a common policy on visas and other short-stay residence permits
- ▶ Protocol No 19 on the Schengen *acquis* integrated into the framework of the EU
 - Schengen rules provide for the abolition of internal border controls between participating Member States together with common external border management
 - Schengen area:
 - EU Member States expect for UK, Ireland ('opt out'); Cyprus, Bulgaria, Romania, Croatia (Schengen candidates)
 - Special position of Denmark (Protocol No 22)
 - Four non-EU Member States (Iceland, Norway, Liechtenstein, Switzerland)

EU legal framework – secondary law

- ▶ Regulation 539/2001 (*EU visa list*)
 - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:081:0001:0007:EN:PDF>
 - ‘negative list’ of third countries whose nationals must be in possession of visas when crossing the external borders
 - Based on a ‘case-by-case’ assessment of criteria including *inter alia* illegal immigration, public policy and security, relations with a third country and the implications of regional coherence and reciprocity
- ▶ Regulation 810/2009 (*EU visa code*)
 - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:243:0001:01:EN:HTML>
 - Laying down common rules on visas for intended stays of < 3 months during any 6 month period
 - Rules about supporting documents, visa fee, issuing procedures,...
- ▶ Regulation 1683/95 (*uniform format for visas*)
 - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995R1683:EN:HTML>

Russian legal framework

- ▶ Russian Federal Law “on the order of departure from the Russian Federation and entrance to the Russian Federation”
 - <http://www.legislationline.org/documents/action/popup/id/4357>
- ▶ Government Regulation on establishment of the visa form
 - <http://en.russia.edu.ru/information/npb/fzakon/post/335/index/>
- ▶ Law on registration of Russian visa with Federal Migration Service
 - <http://www.rq.ru/2011/03/23/migranty-site-dok.html>

Partnership and Cooperation Agreement: Joint Declaration in relation to Articles 26,32,37

- ▶ The Parties shall ensure that the issuing of visas and residents' permits in conformity with the laws and regulations of the Member States and Russia respectively is conducted in a manner consistent with the principles of the concluding document of the CSCE Bonn Conference, in particular with a view to facilitate the prompt entry, stay and movement of businessmen in the Member States and in Russia. Such efforts shall apply in particular to key personnel referred to in Article 32 and to the sellers of cross-border services referred to in Article 37, and ensure that the administrative procedures do not nullify or impair the benefits accruing to any Party under these Articles of the Agreement.
- ▶ The Parties agree that an important element in this context is the timely conclusion of re-admission agreements between the Member States and Russia.
- ▶ The Cooperation Council shall regularly review the evolution of the situation in these areas

EU–Russia Visa facilitation agreement

▶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ.L:2007:129:0027:0034:EN.PDF>

- ▶ In force since 1 June 2007
- ▶ Concluded on the basis of *reciprocity*
- ▶ Beneficial regime for certain categories of visa applicants (*inter alia* members of official delegations, business people, journalists, participants to scientific, cultural and sports events, close relatives etc.)
 - List of supporting documents
 - (possible) issuance of multiple-entry visas
 - Reduced visa fees (35 €) and visa fee waivers
 - Decisions on visa applications within 10 calendar days (or 3 working days or less in urgent cases)
 - Visa exemption for holders of diplomatic passports

Towards an 'upgrade' of the VFA ?

- ▶ Negotiations since 2011 but now 'on hold'
- ▶ Upgrade could include *inter alia*
 - New categories of beneficiaries
 - Civil society representatives, technical crew accompanying journalists, participants to international exhibitions etc.
 - New provisions on the period of validity of multiple-entry visa
 - Rules on visa handling services
 - Visa waiver for biometric service passport holders
 - Etc.

Readmission agreement

- ▶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:129:0040:0060:EN:PDF>
- ▶ In force since 1 June 2007
- ▶ < Art. 84 PCA (cooperation on prevention of illegal activities)
- ▶ Reciprocal readmission obligations for Russia and EU MS
 - E.g. Russia will readmit:
 - Russian nationals who no longer fulfill the conditions for entry or residence in the requesting EU Member State
 - Third-country nationals and stateless persons if those persons no longer satisfy the conditions for entry or residence in the requesting EU Member State and
 - Hold a valid visa or residence authorisation issued by Russia
 - Unlawfully entered the territory of the EU directly from Russian territory
- ▶ Readmission procedure

Local border traffic and Kaliningrad transit

- ▶ **EU Local Border Traffic Regime** (EU Regulation No 1931/2006)
 - Simplified border crossings for residents living, in principle, no more than 30km or exceptionally 50 km from the border [LBT permits]
 - LBT agreements between Russia and Poland, Norway, Latvia
 - Special arrangement regarding Kaliningrad
- ▶ **Special rules for facilitated transit**
 - Facilitated Transit Document (FTD) and Facilitated Rail Transit Document (FRTD)

Visa facilitation in practice

- ▶ **The use of harmonised lists of documents and procedures**
 - http://eeas.europa.eu/delegations/russia/documents/eu_russia/visa_harmlist_docs_en.pdf
- ▶ **The role of external service providers**
 - Implications for total visa cost
- ▶ **The use of multiple entry visa**
 - Article 5 VFA : in principle up to 5 years
- ▶ **Protecting the rights of visa applicants**
 - Effective right of appeal ?

Visa liberalisation process

Two legal options under EU law

1. Amending Regulation 539/2001 (cf. criteria)

- e.g. Moldova : <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0259&qid=1397744253464&from=EN>
- Based on three-step approach
 - Parallel conclusion of VFA and readmission agreements
 - Adoption of a Visa Liberalisation Action Plan (VLAP)
 - Amendment of Regulation 539/2001 on the basis of the ordinary legislative procedure

2. Conclusion of a visa waiver agreement

- E.g. Agreement EU–Brazil on short-stay visa waiver for holders of ordinary passports
 - <http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=15101>
- Based on procedure for conclusion of international agreements (Art. 218 TFEU)

Common steps towards short term visa free travel

- ▶ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/russia/docs/common_steps_towards_visa_free_short_term_travel_en.pdf
- ▶ Adopted at December 2011 EU–Russia summit, released in March 2013
- ▶ AIM: preparation of a bilateral visa waiver agreement limited to holders of biometric passports
- ▶ Four ‘blocks’
 - 1. Document security, including biometrics
 - 2. Illegal migration, including readmission
 - 3. Public order, security and judicial cooperation
 - 4. External relations
- ▶ To be implemented ‘in parallel way and on the basis of equality by relevant authorities of the EU and its MS and Russia’
- ▶ Progress reports adopted by PPC on FSJ and reviewed at EU–Russia summits
 - ▶ First progress report released in December 2013: http://europa.eu/rapid/press-release_IP-13-1295_en.htm

State of play

- ▶ Block 1: Document security
 - Russian Presidential decree No. 1709 on biometric passports entered into force in January 2013
 - Russian flexible rules on changing names
- ▶ Block 2: Illegal migration
 - Implementation of readmission agreement and cooperation with Frontex
- ▶ Block 3: Public order, security and judicial protection
 - Cooperation with Europol and Eurojust
 - Data protection, tackling trafficking in human beings, organised crime etc.
- ▶ Block 4: External relations
 - Comprehensive policy on fighting discrimination and xenophobia

What next ?

- ▶ Full implementation of Common Steps does not automatically lead to visa liberalisation
- ▶ The parties will decide, *in accordance with their respective internal procedures*, on starting negotiations on an EU–Russia visa waiver agreement
 - For EU side: Article 218 TFEU procedural rules
- ▶ March 2014: EU decision “to suspend bilateral talks with Russia on visa matters” (§ 4)
 - http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/141372.pdf

Towards a 'smarter' EU visa policy?

- ▶ European Commission proposal, 1 April 2014
 - http://europa.eu/rapid/press-release_IP-14-347_en.htm
- ▶ Main aims:
 - Take into account the economic impact of the EU's visa policy
 - estimated cost between 4.2 and 12.6 billion € (80,000 to 250,000 jobs)
 - Ensure coherence with other EU policies (e.g. trade)
- ▶ Proposals
 - Reduced document requirements (e.g. no medical insurance)
 - Increased use of multiple-entry visa for *bona fide* travellers
 - Single entry-visa to be issued at external borders
 - Possibility to lodge applications in consulates of other EU Member States than the country of destination
 - ° a new type of visa (Touring-visa) allowing legitimate travellers to circulate in the Schengen area for up to 1 year (without staying in one MS for more than 90 days in any 180 days period)

Question time !