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The impacts of visa liberalisation in Eastern Partnership countries, Russia and Turkey on trans-border mobility

STUDY for the LIBE Committee





DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

The impacts of visa liberalisation on trans-border mobility

STUDY

Abstract

Upon request by the LIBE Committee, this study examines the Schengen Visa liberalisation in the Eastern Partnership countries, Russia and Turkey which has proven to have a huge transformative potential across the justice, liberty and security policies of the countries where it has been deployed. Far-reaching technical reforms in the fields of document security, irregular migration and border management, public order security and fundamental rights have to be implemented so that visa-free travel can be allowed. Evidence provided by visa applications data reveals that visa liberalisation is a logical step, provided that the technical reforms are adopted and implemented. This study analyses the current state of play of the implementation of the EU visa policy instruments and assesses the positive impact of visa-free travel on trans-border mobility according to current visa application statistics.

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COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

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CONTENTS

LIST OF ABBREVIATIONS	4
LIST OF TABLES	5
EXECUTIVE SUMMARY	6
1. NORMATIVE FRAMEWORK OF THE EU VISA POLICY	8
2. STATE OF PLAY OF POLICY INSTRUMENTS IN THE FIELD OF VISA POLICY	11
2.1 Visa facilitation regime	12
2.2 Visa liberalisation process	13
2.2.1. Visa liberalisation in the enlargement countries	13
2.2.2. Visa liberalisation in the Eastern Partnership and Russia	15
2.3 Other instruments complementary to the EU visa policy	20
2.3.1. Local border Traffic Agreements	21
2.3.2. Common Visa Application Centres	21
2.3.3. Mobility Partnerships	22
2.3.4. Smart borders package	22
3. ANALYSIS OF POTENTIAL IMPACT OF VISA LIBERALISATION ON TRANS-BORDER MOBILITY	24
4. CONCLUSIONS AND POLICY RECOMMENDATIONS	29
4.1 Conclusions	29
4.2 Policy Recommendations	31
REFERENCES	33
ANNEXES	37

LIST OF ABBREVIATIONS

AFSJ	Area of Freedom, Security and Justice
CEAS	Common European Asylum System
CSOs	Civil Society Organisations
EASO	European Asylum Support Office
EEAS	European External Action Service
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
ECHR	European Convention on Human Rights
ENP	European Neighbourhood Policy
EU	European Union
EUROPOL	European Police Office
EUROJUST	European Union's Judicial Cooperation Unit
FATF	Financial Action Task Force
FYROM	Former Yugoslav Republic of Macedonia
FRONTEX	European Agency for the Management of Operation Cooperation at the External Borders of the Member States of the European Union
GAMM	Global Approach to Migration and Mobility
GRECO	Group of States against Corruption
ICAO	International Civil Aviation Organisation
JLS	Justice, Liberty and Security
LIBE	Committee on Civil Liberties, Justice and Home Affairs
OSCE	Organisation for Security and Cooperation in Europe
SOM	Senior Officials' Meeting
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees

LIST OF TABLES

Table 1

Benchmarks to be fulfilled in the roadmaps and action plans on visa liberalisation **19**

Table 2

Visa facilitation agreements and visa liberalisation processes in enlargement countries and the Eastern Partnership and Russia..... **20**

Table 3

EU visa policy instruments..... **23**

Table 4

Schengen visas issued and refusal rates in the Eastern Partnership, Russia and Turkey..... **27**

Table 5

Top 10 Schengen consulates worldwide in the Eastern Partnership, Russia and Turkey..... **27**

EXECUTIVE SUMMARY

Visa liberalisation towards the countries in its proximity, in particular the enlargement countries, the Eastern Partnership countries, Turkey and Russia, has been high on the EU's agenda. Numerous developments since the launch of the first visa dialogue with Russia in 2007 have taken place, with milestones such as visa-free travel for the Western Balkan countries (except Kosovo) in 2009 and 2011 and the Commission proposal to allow visa-free travel for Moldovan citizens in 2013.

Visa policies are at the core of the EU's cooperation on justice, liberty and security (JLS) with the countries neighbouring it to the east, triggering reforms in the whole institutional JLS set-up in these countries. The Commission has adopted a technical approach towards visa liberalisation, based on the fulfilment of benchmarks encompassing most of the cooperation in the field of JLS. However, it must be taken into account that lifting Schengen visa requirements is only part of the much wider concept of EU mobility with third countries. Visa liberalisation is targeted at holders of biometric passports and for a period of 90 days within six months.

Since the entry into force of the Treaty of Lisbon, the role of the European Parliament in JLS has been substantially strengthened. On the one hand, the extension of the ordinary legislative procedure puts it on an equal footing with the Council on the adoption of new legislation. On the other hand, the European Parliament has reinforced its role in external action, in particular by giving its consent to the signature of EU international agreements.¹

The impacts on trans-border mobility of the Schengen visa liberalisation have so far been under-researched. Very few studies have been conducted, with only uncertain and preliminary conclusions. Therefore, there is a striking lack of solid analyses. This report focuses on generally recognised potential effects of visa liberalisation, such as an increase in the mobility of business travellers, tourists and family visitors. Increased cross-border travel could eventually generate economic growth and reinforce positive developments abroad and at home.

This study is published in the context of the entry into force of an amendment to the Schengen list Regulation (539/2001), whereby a clause to temporarily suspend visa liberalisation could have consequences for the credibility of the liberalisation process. The study partly builds on a study for the Committee of Civil Liberties, Justice and Home Affairs (LIBE) on EU-Russia relations in the Common Space for Freedom, Security and Justice (Hernández i Sagrera and Potemkina, 2013), which concluded that visa-free travelling dominates not only the agenda of cooperation on justice, liberty and security, but the whole set of EU-Russia relations, leaving behind other policies of the Common Space. This study will also build on the past experience of visa liberalisation in the Western Balkans. The study is very timely since significant developments in the area of visa policy took place in 2013, namely the amendment to Regulation 539/2001 with the introduction of the mechanism for the temporary suspension of the visa-free regime. Moreover, the Commission has carried out monitoring of the implementation of visa liberalisation processes and has stepped up cooperation in the field.

¹ The consent of the European Parliament is required for any international agreement covering the areas within the scope of the ordinary legislative procedure, according to article 218 (6) (a) (v) of the TFEU. On the post-Lisbon role of the European Parliament refer to the EP Study at [http://www.europarl.europa.eu/RegData/etudes/etudes/JOIN/2013/493012/IPOL-LIBE_ET\(2013\)493012_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/JOIN/2013/493012/IPOL-LIBE_ET(2013)493012_EN.pdf)

Against this background, the study aims to provide a detailed analysis and up-to-date evidence of the state of play of EU visa policies in third countries where the EU has developed them: the enlargement countries, the Eastern Partnership countries and the Russian Federation.² Methodologically, the study draws on existing statistical data from the European Commission and Eurostat on Schengen visa applications to explain the potential impact of trans-border mobility on visa liberalisation. The study is structured as follows. First, there is a brief section on the normative framework of the EU visa policy. Second, the policy instruments launched by the EU – namely the visa facilitation regime, the visa liberalisation process, the local border traffic regime and common visa application centres – are explained and assessed in the countries where they have been deployed. Third, the study assesses the potential impact of visa liberalisation on trans-border mobility by looking at the figures of current Schengen visa applications in these countries. Finally, the study presents conclusions and a set of policy recommendations to the LIBE Committee in order to give a nuanced picture of the impact of visa liberalisation on trans-border mobility.

The study contends that visa liberalisation constitutes a powerful incentive for far-reaching reforms in the whole spectrum of JLS policies and in fundamental rights, with the adoption of legislation on anti-discrimination and the protection of minorities. The findings also reveal that the EU is promoting a set of international norms. The analysis of the current picture of visa application in the Eastern Partnership, Russia and Turkey shows that the number of applications lodged is far bigger and that refusal rates are lower than was the case in the Western Balkan countries before the introduction of visa-free policies there. Hence, visa liberalisation, provided that the benchmarks set out in the roadmaps and action plans are adopted and implemented, is a logical step forward. These countries account for approximately 60% of the total number of Schengen visa applications and given the low refusal rate, it is logical to reduce the burden of the visa application process.

Therefore, the study recommends that the European Parliament follows closely the implementation of the roadmaps and action plans for visa liberalisation, monitoring the work of the Commission via resolutions on particular aspects of the EU visa policy. Also, the study recommends that the Parliament plays an active role as co-legislator in the field of visa policy, following the Commission recommendations based on a technical approach whereby the visa-free regime is granted once the benchmarks have been fulfilled, in close cooperation with the Council.

² Hereinafter referred to as 'Russia'. On the general framework of EU-Russia relations, see Haukkala (2010).

1. NORMATIVE FRAMEWORK OF THE EU VISA POLICY

KEY FINDINGS

- The origins of the EU visa policy are to be found in the Schengen *acquis*. The EU has exclusive competence in the issuance of Schengen short-stay visas – those for a period up to 90 days within half a year.
- The Visa Code provides the overall framework of EU visa cooperation and gave legal certainty to the EU visa policy in contested issues such as multiple-entry visas, the fixation of 15 days to decide on a visa application and the right to appeal a visa refusal.
- The decision to lift the visa regime in a particular country entails an amendment to Regulation 539/2001, which lists the countries whose nationals require a visa and those who are exempt from it. In December 2013, an amendment to the Regulation was adopted that regulated the temporary suspension mechanism of the visa exemption. It gives legal certainty in the event of a sudden increase in the number of asylum-seekers once visa-free travel has become operational. It should in any case be applied under the principle of proportionality and not be used as a tool to prevent asylum-seekers from having access to protection in the EU, following the criteria set in the Regulation.
- The visa liberalisation process follows a pattern of conditionality whereby neighbouring countries should fulfil a set of benchmarks before the abolition of the visa regime. First, it is only applicable to citizens from third countries holding biometric passports. Second, the process has no specific deadlines to be accomplished as it finalises only when the Commission positively assesses the adoption and implementation of the reforms. Third, the comprehensive list of reforms to be implemented encompasses most of the cooperation on JLS, with a clear security-related component.

The origins of the EU visa policy are to be found in the Schengen *acquis*. Indeed, since the incorporation of the Schengen Convention into the *acquis* in 1999, the EU has had exclusive competence in the issuance of Schengen short-stay visas – those for a period up to 90 days within half a year. As a result, long-term visas fall into the competence of each member state. The Treaty of Lisbon does not stipulate specific provisions on the policy instruments to be developed in the EU visa policy towards third countries. Article 77.2.a of the Treaty on the Functioning of the European Union (TFEU) regulates vaguely that “the common policy on visa and other short-stay residence permits” falls within the ordinary legislative procedure, without giving more specifications (Treaty of Lisbon, 2009).

In April 2010, the Regulation on a Visa Code (European Parliament and Council of the EU, 2009) entered into force. The Visa Code stipulates the goal of creating “a ‘common corpus’ of legislation, particularly via the consolidation and development of the *acquis*” (ibid., point 3).

At the political level, the Stockholm Programme underlines that the Visa Code “will create important new opportunities for further developing the common visa policy” (Council of the EU, 2010, p. 58). The Programme envisages that “the access to the EU territory has to be made more effective and efficient” and that the visa policy should serve this goal (ibid., p. 4). Furthermore, the Stockholm Programme proposes that the Commission studies the possibility of establishing a common mechanism to issue short-stay visas (ibid., p. 58).

This being the legal and political framework of the EU visa policy, it should be stressed that the decision to lift the visa regime entails an amendment to Council Regulation 539/2001 (Council of the EU, 2001), which lists the countries whose nationals require a visa and those who are exempt from it. Nevertheless, Russia has proposed that the EU signs an international agreement regarding the abolition of the visa regime – the Visa Waiver Agreement. In any case, the decision to lift the visa obligation entails an amendment to Regulation 539/2001. In December 2013, following an intense debate in the Parliament, an amendment to Regulation 539/2001 was adopted that regulated the suspension mechanism, to be applied in “an emergency situation, where an urgent response is needed in order to resolve the difficulties faced by at least one member state, and taking account of the overall impact of the emergency situation of the Union as a whole” (European Parliament and Council of the EU 2013, preamble 4). This safeguard mechanism is closely related to the sudden increase in the number of asylum-seekers originating from the Western Balkans after visa liberalisation. As the Commission stated: ‘In order to prevent the misuse of the visa-free regime for purposes other than the intended short-term travel to the EU, the Commission announced its intention to strengthen the post visa liberalisation monitoring in all Western Balkan countries that achieved visa liberalisation. (...) Establishing a suspension mechanism of general application will help to preserve the integrity of the visa liberalisation processes and to build credibility vis-à-vis the public.’ (European Commission, 2013b). Evidence from Eurostat statistics shows that there was an increase in the influx of asylum-seekers from the Western Balkans after visa liberalisation, from 27,000 in 2009 to 47,000 in 2010 (European Asylum Support Office – EASO, 2013). This will be further examined in Section 3.

The Stockholm Programme stresses in particular the external dimension of the Area of Freedom, Security and Justice (AFSJ).³ In the case of EU visa policy, it is mainly deployed in the enlargement countries (currently Kosovo and Turkey), the Eastern Partnership and Russia. The enlargement countries cooperate with the EU in the framework of the Stabilisation and Association Agreements. The Eastern Partnership was launched at the Prague Summit in May 2009 and integrates Belarus, Moldova, Ukraine and the three South Caucasian Republics (Armenia, Azerbaijan and Georgia). It is the first EU multilateral cooperation framework with Eastern Europe. Russia decided not to participate in the initiative. Paradoxically, despite this Russia has been a pioneer in the negotiation of JLS policy instruments. The agenda on JLS with the EU was given impetus at the St. Petersburg Summit in 2003. Brussels and Moscow established a new institutional and non-legally binding setting to reinforce their cooperation with the launch of Common Spaces, among them one on Freedom, Security and Justice. Specific measures are outlined in the Road Map for the Common Space on Freedom, Security and Justice, agreed two years later at the EU-Russia Moscow Summit in 2005.

Once the EU had decided to abolish the visa regime with the Western Balkans in 2009 and in 2011, the attention shifted to the Eastern Partnership. Actually, cooperation on JLS with the Eastern Partnership has been a priority of the Commission (European Commission, 2011d). The abolition of the visa regime could be seen as the main achievable goal in their cooperation with the EU in the absence of a membership perspective. The visa liberalisation process follows a pattern of conditionality whereby neighbouring countries should fulfil a set of benchmarks before the abolition of the regime. In this regard, the Stockholm Programme establishes that “visa policy must also be part of a broader vision that takes account of relevant internal and external policy concerns” (Council of the EU, 2010, p. 58). Three

³ See Wolff et al. (2011) and Wolff et al. (2009) for analysis of the external dimension of the EU policies on Justice, Freedom and Security.

features should be taken into account when dealing with the visa liberalisation process. First, it is only applicable to citizens from third countries holding biometric passports. Second, the process has no specific deadlines to be accomplished, as it finalises only when the Commission positively assesses the adoption and implementation of the reforms. Third, the comprehensive list of reforms to be implemented encompasses most of the cooperation on JLS, with a clear security-related component.

2. STATE OF PLAY OF POLICY INSTRUMENTS IN THE FIELD OF VISA POLICY

KEY FINDINGS

- The EU has developed several policy instruments to ease the visa application procedure in the absence of a visa-free regime: visa facilitation agreements, local border traffic agreements and common visa application centres.
- The visa facilitation regime has been often mistaken for visa liberalisation, when it actually constitutes a first step towards the long-term goal of the establishment of a visa-free regime. In the visa facilitation agreements, visa obligations still prevail but with simplified procedures such as the exemption of visa fees for certain categories of visa applicants, a reduced fixed visa fee for the rest of the applicants and a shorter period for issuance along with the possibility to lodge applications for multiple-entry visas. The entry into force of the Visa Code had implications for the visa facilitation regime, and therefore since its entry into force in April 2010, the agreements that were already in force are being amended. Visa facilitation agreements continue to be applicable to holders of non-biometric passports.
- Visa liberalisation gained momentum when the EU decided to lift visa requirements for citizens of the Former Yugoslav Republic of Macedonia (FYROM), Montenegro and Serbia in November 2009. The two remaining Western Balkan countries where a roadmap on visa liberalisation was implemented, Albania and Bosnia, and Herzegovina, were negatively assessed at a first stage and had to fulfil some requirements before the visa regime was finally lifted in January 2011.
- The Thessaloniki European Council in 2003 set out an agenda for visa liberalisation in the Western Balkans, subject to the fulfilment of the technical reforms proposed in the form of a roadmap. The content of each of the roadmaps is structured into four blocks of reforms to be adopted and implemented: document security, irregular migration including readmission, public order and security, and external relations and fundamental rights.
- The bulk of reforms to be implemented within the visa liberalisation process are international norms, mainly from the United Nations and the Council of Europe. This preference for the EU to act as a transmitter of international norms could be interpreted as a strategy by the EU to make the benchmarks in the visa liberalisation process appear more legitimate in the eyes of the Eastern Partnership countries, Russia and Turkey.
- Uneven paths towards visa liberalisation show that the goal of creating a common visa policy is far from being achieved.
- Eastern Partnership: EU member states were reluctant to use the label “roadmap”, wanting to avoid setting the Western Balkans experience as a precedent for the Eastern Partnership. Instead, the label “action plan” was used. Moldova is the frontrunner in the visa liberalisation process, as the Commission proposed allowing visa-free travel in December 2013. The decision is significant because it sets a precedent in the visa liberalisation process in the Eastern Partnership and it shows that the technical approach of the Commission based on the fulfilment of benchmarks is credible.
- Russia: Limited progress has been made in the implementation of common steps. The state of play reveals the difference in the EU and Russian approaches 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’s decision not to lift short-term visas in the immediate future.

- **Mobility Partnerships:** These are a policy instrument developed in the framework of the Global Approach to Migration and Mobility, which has the goal of stepping up cooperation on labour migration with third countries. Mobility Partnerships, which in the Eastern Partnership have been launched in Moldova, Georgia, Armenia and Azerbaijan, have ended up being an umbrella under which most of the reforms of the visa liberalisation process are encapsulated, including readmission and border management. It should be stressed that because of the intergovernmental nature of the Partnerships, in which the Commission plays a coordinating role, the European Parliament has been almost absent in the negotiations leading to their conclusion and in their monitoring.
- **Smart borders and biometrics:** The proposal of the Commission has strong connections and implications for the visa liberalisation process, since the introduction of the measures change the traditional managerial role of visas. In other words, visas have been tools to manage and control the entry of third country nationals in the Schengen Area. Visa liberalisation is aimed at putting an end to this barrier in order to foster mobility. Yet, the package proposes the setting up of a Registered Traveller Programme and an EU Entry/Exit system that will control those coming in and out the Schengen Area. If adopted, third country nationals will be subject to scrutiny and will have to be registered to enter the Schengen Area. The Commission has made the proposal on the grounds of security and efficiency in border checks. In addition, the restriction of visa liberalisation to only holders of biometric passports goes in the same direction.

2.1 Visa facilitation regime

This section sets out the origin and content of the visa facilitation regime, in order to differentiate it from visa liberalisation. Visa liberalisation constitutes a first step towards the long-term goal of the establishment of a visa-free regime.⁴ The visa obligation still prevails, but with simplified procedures such as the exemption of visa fees for certain categories of visa applicants, 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 origin of the visa facilitated regime was in the negotiations between Brussels and Moscow on the conclusion of a readmission agreement⁵ at the St. Petersburg Summit in 2003, which reaffirmed the importance of people-to-people contacts in a “Europe without dividing lines”, which was translated into a specific measure in the Road Map “... to examine the conditions for visa-free travel as a long-term perspective” (EU-Russia Moscow Summit, 2005, p. 20). Russia asked for a clear and tangible incentive as a precondition for the negotiations to go further. The incentive proposed was a *facilitation* of the issuance of visas. Since then, it has been institutionalised in Eastern Europe as a first step towards a visa-free regime (Averre, 2005). Readmission agreements and visa facilitation agreements are negotiated in parallel and enter into force simultaneously, which has been coined the readmission-visa facilitation nexus (Hernández i Sagrera, 2010, p. 578).⁶

The EU has so far concluded visa facilitation agreements with the Western Balkans, the Eastern Partnership and Russia (see Table 2).⁷ The visa facilitation agreements entered into

⁴ See Finotelli and Sciortino (2013) for a recent account on EU visa policies.

⁵ On the EU readmission policy, see Coleman (2009). For an evaluation of the implementation of EU readmission agreements, see European Commission (2011b).

⁶ On the origin and rationale of the readmission-visa facilitation nexus, see Hernández i Sagrera (2010) and Trauner and Kruse (2008).

⁷ In addition, a visa facilitation agreement was signed with Cape Verde in 2012 with the pending signature of a readmission agreement. A note could be drawn on the EU response to the Arab Spring, which led to a revision of the European Neighbourhood Policy (ENP) with the proposal of a more ambitious agenda focused on mobility (see

force with Russia in June 2007 and with Ukraine and Moldova in January 2008, as well as with five countries of the Western Balkans (Albania, Bosnia and Herzegovina, FYROM, Montenegro and Serbia). In the case of Georgia, whose migration agenda with the EU was set in the wake of the conflict in South Ossetia, the agreement entered into force on the 1 March 2011, becoming the first of the visa facilitation agreements to enter into force with the consent of the European Parliament. The negotiations on visa facilitation and readmission agreements in the Southern Caucasus countries are more recent. The EU and Armenia concluded both agreements in 2013 and a visa facilitation agreement with Azerbaijan was signed in the framework of the Vilnius Eastern Partnership Summit in November 2013. The EU also foresaw signing both agreements with Belarus, despite the fact that this country has no contractual relations with the EU. The Commission finally started negotiations on the agreements in January 2014. The implementation of the Visa Facilitation agreements in Russia, Ukraine and Moldova has been assessed so far as positive.⁸

The entry into force of the Visa Code had implications for the visa facilitation regime, and since its entry into force in April 2010, the agreements that were already in force are being amended (European Parliament and Council of the EU, 2009, point 26). Some of the content of previously agreed visa facilitation agreements was no longer in line with the provisions of the Visa Code, notably those regarding the standardisation of procedures regarding the visa application procedure. Therefore, the visa facilitation agreements that were already in force had to be amended according to the provisions of the Visa Code. The European Commission has the mandate from the Council to renegotiate the agreements, which foresee the exemption of visa fees 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.

However, since visa liberalisation only applies to holders of biometric passports, even if visa-free travel was effective in the Western Balkan countries in 2009 and 2011, visa facilitation agreements continue to be applicable to holders of non-biometric passports. The amended agreements with Moldova and Ukraine entered in force in 2013, while the agreement with Russia is still being negotiated since the parties do not agree on the inclusion of service passport holders among the categories for visa exemption.

2.2 Visa liberalisation process

2.2.1. Visa liberalisation in the enlargement countries

Visa liberalisation gained momentum when the EU decided to lift visa requirements for the citizens of FYROM, Montenegro and Serbia in November 2009.⁹ The two remaining Western Balkan countries where a road map on visa liberalisation was implemented, Albania and Bosnia and Herzegovina, were assessed negatively at a first stage and had to fulfil some requirements before the visa regime was finally lifted in January 2011. In the Socialist

European Commission, 2011c). This reactivation of the agenda foresaw the expansion of mobility instruments that had only been negotiated with enlargement and Eastern Partnership countries, including visa facilitation. In this sense, the Commission recommended to the Council in October 2013 the opening of negotiations on a visa facilitation agreement with Morocco. The lack of political stability in the Southern Mediterranean countries makes it difficult to develop the instruments of the EU visa policy.

⁸ Interviews with representatives from the Permanent Missions of Russia, Ukraine and Moldova. Brussels, May and June 2010.

⁹ Several civil society organisations (CSOs) have been active in advocating and campaigning for visa liberalisation with very detailed information on visa application procedures on the ground, both in the Western Balkans and in the Eastern Partnership countries, for example, the European Stability Initiative, the Project *Schengen White List* and NOVISA (2012).

Republic of Yugoslavia, citizens from the Balkans could travel to most EU member states without visa requirements. Afterwards, EU member states decided to introduce visa obligations for citizens of the Western Balkan countries.

The Thessaloniki European Council in 2003 set out an agenda for visa liberalisation in the Western Balkans, subject to the fulfilment of the technical reforms proposed in the form of a roadmap. The content of each of the roadmaps is structured into four blocks of reforms to be adopted and implemented: document security, irregular migration including readmission, public order and security, and external relations and fundamental rights. The list of benchmarks to be implemented was practically the same for the five countries. The following paragraphs summarise the most significant reforms to be implemented within the four thematic blocks (see also Table 1 for a summary of the benchmarks to be fulfilled).

First, roadmaps enumerate a set of reforms to be undertaken in the field of document security. They ask for the introduction of biometrics in passports and all travel documents, according to the International Civil Aviation Organisation (ICAO) regulations. Biometrics use physical or behavioural features to identify particular individuals. They also contain a chip with information as well as a procedure of information transfer for stolen or lost documents. The reforms in the field of document security also refer to “EU standards”. This reference to EU standards is striking when taking into account that travel documents issued in EU member states follow exclusively ICAO provisions, without a specific *acquis* in the field. In the particular case of Bosnia and Herzegovina, this reform was anything but easy, as there are up to 11 competent authorities in issuing passports in the Federation of Bosnia and Herzegovina (corresponding to its 11 cantons) plus one in the Republika Srpska (European Union-Bosnia and Herzegovina Visa Dialogue, 2008).

The second block refers to “illegal migration” and contains a set of reforms in the field of border management, including the signature of a Working Arrangement with FRONTEX, as well as reforms in the field of asylum and migration management. The FRONTEX Working Arrangement establishes cooperation at the operational level between the Border Guard Service of Bosnia and Herzegovina and the FRONTEX agency.¹⁰ Asylum measures refer to international standards with the adoption of the 1951 Geneva Convention on the Status of Refugees and its adjacent protocol and also to EU regulations. Migration management measures make reference to the creation of migration flows databases and a strategy for returned migrants, with no explicit mention of any particular reforms.

The third block on “public order and security” calls for the adoption of United Nations and Council of Europe norms in the fields of organised crime, particularly trafficking in human beings, the fight against corruption (including a reference to the Group of States against Corruption (GRECO)) and data protection. GRECO is part of the Council of Europe and has been monitoring the implementation of anti-corruption standards since its creation in 1999. The adoption of the Additional Protocol to the Council of Europe Convention on Data Protection (Council of Europe, 2001) is explicitly mentioned and is a condition for the signature of operational agreements with the Europol and Eurojust agencies for third countries. In other fields, such as drug trafficking or money laundering, the reforms to be adopted are not specified. Overall, the third block has the highest number of provisions. Despite the reference to EU standards in the field of document security and asylum, the bulk of the reforms are actually norms emanating from the United Nations and from the Council of Europe.

¹⁰ On FRONTEX Working Arrangements, see Bigo and Guild (2009) and Hernández i Sagrera (2013).

Lastly, the fourth block on “external relations and fundamental freedoms” stresses that the Western Balkan countries have to apply the non-discrimination principle as regards the free movement of people or access to identity documents. In particular, these reforms are aimed at further inclusion of the Roma population in the Western Balkans, in line with the minority protection *acquis* that all enlargement countries have to implement.

With the lifting of borders in Albania and Bosnia and Herzegovina in January 2011, the visa liberalisation process in the Western Balkans, except for the citizens of Kosovo who are non-holders of a Serbian passport, was completed (see Table 2). The visa refusal rate for citizens from Kosovo remains high. The Commission has acknowledged progress in the adoption of the benchmarks, while highlighting the limited capacity of Kosovo to fight corruption and the need to adopt further legislation in the framework of the roadmap (European Commission, 2013a).

Turkey has followed another path. After years of asking for the establishment of a visa-free regime, a roadmap was finally launched in December 2013. The roadmap includes two specificities: a set of requirements in the area of readmission, and a reinforced consultation with the Council, member states and EU agencies in JLS (European Commission, 2013g). In parallel, the readmission agreement with Turkey was signed, which does not incorporate directly the issue of visa liberalisation. This issue has been received with scepticism by Turkish MPs (Kirişci, 2013, p. 2).¹¹

2.2.2. Visa liberalisation in the Eastern Partnership and Russia

The abolition of the visa regime for Eastern Partnership countries and Russia has been a constitutive part of the EU migration agenda for this area (see Table 2 for a summary of the state of play of the visa liberalisation process). On the one hand, the Stockholm Programme envisages “visa liberalisation in a secure environment as a long term perspective in the ENP (Eastern or Mediterranean)” (Council of the EU, 2010, p. 79) and for Russia, it stresses that the visa liberalisation dialogue “must continue” (Council of the EU, 2010, p. 80). On the other hand, the latest Eastern Partnership Summit in Vilnius and the previous ones in Prague (2009) and Warsaw (2011) also made reference to visa liberalisation as a goal for further cooperation in the area (Council of the EU, 2013). The Joint Declaration states that “[e]nhancing mobility in a secure and well-managed environment remains a core objective of the Eastern Partnership. The participants of the Vilnius Summit warmly welcome the progress made by some partners towards Visa Liberalisation through the implementation of the Visa Liberalisation Action Plans. In this context they also welcome the conclusion of Visa Facilitation and Readmission Agreements” (ibid.).

Among the Eastern Partnership countries, Moldova is the frontrunner in the visa liberalisation process. Commissioner of Home Affairs Cecilia Malmström announced in December 2013 that the Commission had assessed positively the implementation of the action plan in Moldova and that it proposed that the Parliament and the Council allow visa-free travel and therefore amend Regulation 539/2001 to allow for the establishment of a visa-free regime (European Commission, 2013c). The decision is significant because it sets a precedent in the visa liberalisation process in the Eastern Partnership and it shows that the technical approach of the Commission based on the fulfilment of benchmarks is credible. The Government of the Republic of Moldova adopted a “pre-emptive approach” whereby most of the provisions of the Action Plan were planned beforehand in order to

¹¹ On the signature of the readmission agreement with Turkey, see Kirişci (2013).

speed up the process. The Action Plan to Moldova was delivered by Commissioner Malmström to Prime Minister Filat during a conference held in Chişinău at the end of January 2011.¹² As for Ukraine, the Report on implementation of the action plan stated that substantial progress has been made (European Commission, 2013d). Nevertheless, the evolution of the implementation of the action plan is uncertain in the context of political instability and huge opposition after the Government of Ukraine decided not to sign the Association Agreement with the EU. Regarding Georgia, the Commission welcomed very good progress (European Commission, 2013e)

Following the example of the Western Balkans, the next step in visa liberalisation in Eastern Europe would have been drafting a roadmap specifying the technical reforms to be met to abolish the visa obligation. However, EU Member States were reluctant to use the label "roadmap", wishing to avoid setting the Western Balkans experience as a precedent for the Eastern Partnership. Instead, the label "action plan" was used. The Vilnius Declaration said that the action plans "should serve as models for other partner countries who wish to engage in the visa liberalisation dialogues with the EU, bearing in mind the specificity and progress of each country" (Council of the European Union, 2013).

Unlike the visa dialogues set up with the Western Balkan countries, the action plans are structured around a dual structure coined by Commissioner Malmström a "two-phased approach: first a set of reforms on legislation and planning and a second set of more specific benchmarks, covering implementation and reforms on the ground" (Malmström, 2011, p. 2). As with the roadmaps, the action plans are subdivided into the four blocks of reforms.

Concerning document security (the first block of reforms), action plans refer only to the international standards of ICAO, in contrast to the road maps, which also mentioned EU provisions. It seems that the EU has taken into consideration that there is no specific EU regulation concerning biometrics and the rules for issuing passports and other travel documents are indeed based on the standards set by ICAO. Besides, it must be stressed that the benchmarks are much more specific and far-reaching than in the road maps. For instance, the action plans set the requirement that the consulates of the Eastern Partnership countries also have to be equipped to issue biometric passports, in an attempt to make it more difficult for them to meet the requirements. We have to take into account that not all EU member states consulate are equipped with to issue them.

As for the second block of reforms on irregular migration, there are two main differences with the roadmaps for the Western Balkans. First, in the field of asylum, besides international norms and EU *acquis*, the action plans add the adoption and implementation of subsidiary protection measures. Second, unlike in the roadmaps, the implementation of the readmission agreement is made conditional on the progress towards the abolition of the visa regime. As the Moldovan Action Plan explicitly states: "The full and effective implementation of the EU-Republic of Moldova readmission agreement remains an underlying condition for the continuation of the visa dialogue and is of paramount importance for the establishment of a sustainable visa-free regime" (EU-Moldova Visa Dialogue, 2010, p. 5). At the institutional level, although they are not explicitly mentioned in the action plans, within the second block, Eastern Partnership countries have reformed their ministries of the interior in order to demilitarise them. Similarly, the border services of

¹² Conference on "The Eastern Partners' contribution to the Stockholm Programme: Synergies to improve mobility and strengthen security", Chişinău, Republic of Moldova, 24-25 January 2011.

both countries have been transformed into civil bodies to be integrated within the structure of the ministry of the interior.

The third block on public order and security includes a list of international organisations whose standards should be adopted and implemented. In the field of drug trafficking, the action plans refer to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), an EU agency based in Lisbon which provides statistical data, capacity-building and awareness-raising. As regards combating money laundering and terrorist financing, the Ukrainian Action Plan includes no specific organisation, while the Moldovan Action Plan refers to the Financial Action Task Force (FATF), an intergovernmental body focused on combating money laundering and terrorist financing.

Lastly, the fourth block on external relations and fundamental rights goes also further than in the roadmaps, not only including the protection of minorities, but also combating hate crimes and ensuring freedom of religion. The action plans enumerate more international organisations working in the field of human rights and antidiscrimination policy, among them the United Nations, the Office of Democratic Institutions and Human Rights from the Organisation for Security and Co-operation in Europe (OSCE) – which assists OSCE members in the transition to democracy – and the European Commission against Racism and Intolerance from the Council of Europe, which monitors the protection of racial discrimination, xenophobia, anti-Semitism and intolerance. To conclude, the list also refers to any “international human rights organisation”.

In light of this, it is clear that the EU has opted to promote the adoption and implementation of international norms, from the United Nations but mainly from regional international organisations based in Europe such as the Council of Europe, regarding organised crime, data protection and the fight against corruption, as well as the OSCE with regards to promotion of democracy, but makes the whole liberalisation process conditional on the “effective implementation” of the readmission agreement. The analysis also shows how the EU opts to promote the standards of specific bodies like FATF, or even an EU agency with no executive powers like the EMCDDA. This preference for the EU to act as a transmitter of international norms could be interpreted as a strategy by the EU to make the benchmarks in the visa liberalisation process appear more legitimate in the eyes of the Eastern Partnership countries. All Eastern partners are members of the Council of Europe and are therefore bound to the adoption of the norms emanating from this organisation.

Regarding Russia, it was the first country where a visa dialogue was launched in 2007. The EU-Russia visa dialogue senior officials’ meetings (SOMs) started in September 2007. The EU and Russia 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.

The Common Steps, unlike the existing roadmaps on visa liberalisation that the EU unilaterally adopted for the Eastern Partnership countries, are expected to commit both sides on the basis of reciprocity. Concerning the legal form that the reciprocal abolition of the visa regime should adopt once the Common Steps are fulfilled, the parties have agreed to sign a visa waiver agreement, which will also provide more legal certainty on compliance with their obligations. Ambassador Vladimir Chizhov, Permanent Representative of 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”.¹³

One issue hindering the dialogue to move forward is the compulsory registration process for short-stay foreigners in Russia, which Moscow proposed to cancel once the Visa Waiver Agreement enters into force. In this sense, it should be noted that some EU member states also require the registration of short-stay foreigners. Another aspect to bear in mind is the breach between willing and non-willing EU member states vis-à-vis the abolition of visas with Russia. Member states such as Spain have shown their willingness to establish a visa-free regime with Russia due to the high rise in the number of tourists, whereas others such as the Baltic countries are against visa liberalisation due to historical reasons. Another issue which has slowed progress in the implementation of the Common Steps is the consequences of the non-adoption of data protection norms in Russia. The respective operational arrangements with Europol and Eurojust have not yet been signed 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 (Hernández i Sagrera and Potemkina, 2013).

The visa dialogue SOM in January 2012 agreed on a monthly schedule to monitor progress in the implementation of the Common Steps. In 2013, the EU published the first progress report on the implementation of the Common Steps, which confirmed progress in the field of document security but stressed the non-adoption of particular reforms such as the norms on data protection (European Commission, 2013f). Russia had the goal of a visa-free regime by February 2014 on the occasion of the celebration of the winter Olympic Games in Sochi, and offered a roadmap for a fast-paced implementation of the Common Steps in 2012. The EU’s reluctance to fix a date for starting the negotiations on a visa waiver agreement discouraged the Russian side, and even prompted anti-EU rhetoric in Russia (Hernández i Sagrera and Potemkina, 2013).

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 that the real reasons of the EU are mainly political, such as 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. In 2012, the European Parliament issued very critical resolutions on the situation of the judiciary and human rights at large in Russia (European Parliament, 2011, 2012). Russia shows a readiness to implement all the technical requirements under the respected list, but rejects progress in human rights and democracy as a key precondition for establishing visa-free travel and insists on including human rights issues in the implementation process only to the extent that they directly touch on the liberalisation of visas, such as anti-discrimination laws.

Uneven paths towards visa liberalisation show that the goal of creating a common visa policy is far from being achieved. Only through the full institutionalisation of the visa liberalisation process can an EU common visa policy be reached. In this regard, the Visa Code provides an overall framework that should put an end to the differentiation that currently characterises the EU visa approach. Regardless of the country, the approach should not differ and should always be based on the fulfilment of the same technical

¹³ 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”.

reforms (Neumayer, 2006). This would also increase the credibility of the process and be an incentive for reform in third countries. The absence of a common approach based on progress made it difficult for third countries to believe in the EU and made cooperation more difficult. The Commission’s approach based on progress towards visa liberalisation was clearly put forward by Commissioner Malmström: “[p]rogress of the road towards visa free travel will depend solely on concrete achievements of our partner country” (Malmström, 2011, p. 2). It is now the turn of member states to fully subscribe to this approach in order to contribute to the creation, following the provisions of the Stockholm Programme, of an EU common visa policy towards third countries.

Table 1: Benchmarks to be fulfilled in the roadmaps and action plans on visa liberalisation

<i>Block of reforms</i>	Western Balkans roadmaps	Ukraine and Moldova action plans
<i>1- Document security</i>	-ICAO -EU standards	-ICAO
<i>2- Irregular migration –readmission</i>	-Readmission agreement -Signature FRONTEX Working Arrangement -Asylum : Geneva Convention / EU regulations	-Readmission agreement -Deepening FRONTEX Working Arrangement -Asylum: Geneva Convention / EU standards/ subsidiary protection
<i>3- Public order and security</i>	-Council of Europe: organised crime, fight against corruption, data protection)	-Council of Europe: organised crime, fight against corruption, data protection -FATF standards on fight against money laundering
<i>4- External relations – fundamental rights</i>	-Antidiscrimination : protection of minorities) -OSCE	-Antidiscrimination: protection of minorities -OSCE -Combating hate crimes. -Ensuring freedom of religion

Source: author’s own elaboration

Table 2: Visa facilitation agreements and visa liberalisation processes in enlargement countries and the Eastern Partnership, Turkey and Russia

Third country	Visa facilitation agreement	Visa liberalisation process
<i>Enlargement</i>		
Albania	In force since January 2008	Visa-free regime in January 2011
Bosnia-Herzegovina	In force since January 2008	Visa-free regime in January 2011
Former Yugoslav Republic of Macedonia (FYROM)	In force since January 2008	Visa-free regime in November 2009
Kosovo	-	Road map launched in June 2012
Montenegro	In force since January 2008	Visa-free regime in November 2009
Serbia	In force since January 2008	Visa-free regime in November 2009
Turkey	-	Road map launched in December 2013
<i>Eastern Partnership</i>		
Armenia	In force since January 2014	-
Azerbaijan	Signed in November 2013	-
Belarus	Start of negotiations in January 2013	-
Georgia	In force since March 2011	Action plan launched in June 2012
Republic of Moldova	In force since January 2008 / amended in July 2013	Commission proposes to allow visa-free travel in December 2013
Ukraine	In force since January 2008/ amended in July 2013	Action Plan launched in November 2010
Russia	In force since June 2007	Common Steps agreed in December 2011

Source: author's own elaboration

2.3 Other instruments complementary to the EU visa policy

Other policy instruments that have been developed or have close connections with the EU visa policy are the Local Border Traffic agreements, Common Visa Application Centres, Mobility Partnerships and the proposed smart border package. Local Border Traffic Agreements and Common Visa Application Centres are complementary to the EU visa policy, Mobility Partnerships enumerate most of the reforms in the visa liberalisation process and the smart border package is a proposal that would keep control on the entry and exit of third country nationals in the absence of visas.

2.3.1. Local border Traffic Agreements

First, EU Member States bordering Eastern Europe have been signing Local Border Traffic (LBT) Agreements. An EU Regulation pins down the possibilities to cross borders to facilitate human contacts. According to the Regulation, “local border traffic” means “the regular crossing of an external land border for border residents in order to stay in a border area, for example for social, cultural or substantiated economic reasons, or for family reasons, for a period not exceeding the time limit laid down in this Regulation” (European Parliament and Council of the EU, 2006, art. 3.3). The Regulation foresees the issuance of special cross-border permits for residents from both sides of the EU common border, issued at the consulates of the respective countries. The main purpose of the LBT regime is to enable people-to-people contact, economic, social and cultural exchanges between both sides of the EU common border within a radius of 30-50 kilometres.

As regards local border traffic, agreements in light of the LBT Regulation have been concluded with three EU neighbouring countries: Russia, Ukraine and Moldova. Regarding the agreements concluded with Russia, in May 2012, the Norway-Russia LBT agreement entered into force. It is worth noting that the LBT Regulation could be applied in the agreement because Norway, despite not being an EU member state, is a member of the Schengen Area. The Russia-Poland agreement came into force in July 2012 regarding cross-border traffic with the Kaliningrad *oblast* (region).¹⁴ It enables cross-border cooperation between the Kaliningrad *oblast* and the Polish *Województwo* (*voivodeships*, or provinces) of Warmia-Masuria and Pomerania. This agreement constitutes an exception to the 2006 EU Regulation by extending the radius to up to 60-100 kilometres on both sides of the border. The reason underlying this exception is “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 EU, 2011, p. 41). Discussions on establishing an LBT regime were part of the agenda for the EU-Russia Permanent Partnership Council held in Kaliningrad in May 2009. Lithuania and Russia have been negotiating an LBT agreement, but negotiations have been at a standby since 2009. The agreements signed between Belarus and Poland and Latvia and Lithuania are pending ratification.

Concerning the agreements in force with Ukraine, they came into operation in January 2008 with Hungary, in September 2008 with Slovakia and in July 2009 with Poland, all of the EU member states neighbouring Ukraine except for Romania. A Romania-Moldova LBT agreement came into force in October 2010 and the Commission noted in its second report on the implementation and functioning of the LBT, issued on 9 February 2011, that this is the only agreement which fully complies with the EU LBT Regulation (European Commission, 2011a).

2.3.2. Common Visa Application Centres

The Common Visa Application Centres, launched so far in Montenegro, Cape Verde and Moldova,¹⁵ constitute another tool to ease the visa application procedure. In countries such as Moldova, where most EU member states have no consular representations, one member state (Hungary) is in charge of issuing visas for the whole Schengen Area. As a result, Moldovan citizens avoid travelling to major capitals in neighbouring countries where EU

¹⁴ Mobility to and from Kaliningrad has been an issue in EU-Russia relations for the past decade. Brussels and Moscow agreed on the issuance of Facilitated Transit Documents for Kaliningrad residents to circulate from the *oblast* into mainland Russia via Lithuania without visas (see Council of the EU, 2003).

¹⁵ See the website of the Common Visa Application Centre in Moldova at http://www.cac.md/index_en.html (last accessed 31 January 2014).

member states have consular representations to apply for their Schengen visas. Common Visa Application Centres are the first development in the eventual creation of common consular services within the EU delegations abroad, as stipulated by the Stockholm Programme (Council of the EU, 2010, p. 58). An ongoing discussion is the extent to which the Common Visa Application Centres should also allow asylum applications to be lodged.

2.3.3. Mobility Partnerships

Mobility Partnerships are a policy instrument developed in the framework of the Global Approach to Migration and Mobility (GAMM), which has the goal of stepping up cooperation on labour migration with third countries. Given the reluctance of member states to cooperate at the EU level on labour migration, though it is a policy under the ordinary legislative procedure, the Commission created Mobility Partnerships as a tool to promote cooperation in this field. They were conceived as non-legally binding joint declarations in which those member states willing to participate would propose a set of projects with the third country. Moldova was chosen in 2008 as a pilot country for launching Mobility Partnerships, which at first were strongly linked to the notion of circular migration. This is a concept developed at the international level whereby third country nationals are recruited to work in the EU for a specific period of time and then return to their country of origin.

However, most member states did not propose circular migration in the framework of Mobility Partnerships, to the extent that circular migration is no longer referred to in documents on the instruments. Mobility Partnerships, which in addition to Moldova have been launched in the Eastern Partnership with Georgia, Armenia and Azerbaijan, have ended up being an umbrella under which most of the reforms of the visa liberalisation process are encapsulated, including readmission and border management. It should be stressed that because of the intergovernmental nature of the Partnerships, in which the Commission plays a coordinating role, the European Parliament has been almost absent in the negotiations leading to their conclusion and in their monitoring. The Parliament is only informed on developments on an *ad hoc* basis by the Commission.

2.3.4. Smart borders package

Finally, a brief analysis of the ongoing negotiations on the adoption of the smart border package should be drawn.¹⁶ Indeed, the proposal of the Commission has strong connections and implications for the visa liberalisation process, since the introduction of the measures changes the traditional managerial role of visas. In other words, visas have been tools to manage and control the entry of third country nationals in the Schengen Area. Visa liberalisation is aimed at putting an end to this barrier in order to foster mobility. Yet, the package proposes the setting up of a Registered Traveller Programme and an EU Entry/Exit system that will maintain control of those coming in and out the Schengen Area. If adopted, third country nationals will be subject to scrutiny and will have to be registered to enter the Schengen Area. This would be discriminatory and calls into question the approach of the EU to ask for reform in non-discrimination policy in third countries in the framework of the visa liberalisation policy. The Commission has made the proposal on the grounds of security and efficiency in border checks. In addition, the restriction of visa liberalisation to only holders of biometric passports goes in the same direction. Visas are dropped, but control is exerted via other means. A debate should be held, in the context on the current

¹⁶ Refer to previous EP Studies on the Smart Border Package at:
[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493026/IPOL-LIBE_ET\(2013\)493026_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493026/IPOL-LIBE_ET(2013)493026_EN.pdf)
and
[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/462513/IPOL-LIBE_ET\(2012\)462513_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/462513/IPOL-LIBE_ET(2012)462513_EN.pdf)

negotiations in the Parliament and the Council, on the need for and adequacy of this proposal, taking into consideration not only the implications it has for mobility, but also the high costs it would entail.

Table 3 summarises the analysis of all the visa policy instruments.

Table 3: EU visa policy instruments

Instrument	Legal base	Content	Legal character	Actors involved
Visa facilitation agreements	Article 77.2.a TFEU on a 'common visa policy'	Visa waiver for categories of citizens: lorry drivers, students, researchers -Fixed visa fees -Deadlines for visa issuance -Right of appeal on a visa refusal	Legally binding: international agreement between the EU and a third State	EU: -Council signs -Parliament gives consent -Commission negotiates (DG Home Affairs) Third State
Roadmaps / action plans on visa liberalisation	Article 77.2.a TFEU on a 'common visa policy'	Benchmarks on the reforms conditional for the establishment of a visa-free regime: document security; migration; public order and security; external relations and fundamental rights	Non-legally binding	EU: -Commission (DG Home Affairs) negotiates and follows the adoption of benchmarks -Parliament and Council amend Regulation 539/2001
Local border traffic agreements	Regulation of the Parliament and the Council 1931/2006	Permits to allow cross-border travel among the citizens of an EU member state and a neighbouring country (radius of 30-50 kms. from the border)	Legally binding – international agreement between an EU member state and a third state	EU: -Member state negotiates and signs -EU institutions ensure compliance with Regulation Third state
Common Visa Application Centres	Article 77.2.a TFEU on a 'common visa policy'	Consulate of an EU member state issues visas for all Schengen Area states	Non-legally binding	EU: -Lead consulate of an EU member state Third state

Source: author's own elaboration

3. ANALYSIS OF POTENTIAL IMPACT OF VISA LIBERALISATION ON TRANS-BORDER MOBILITY

KEY FINDINGS

- The analysis of the impact of visa-free travel in the Western Balkans has shown the benefits it has brought to the citizens of Albania, Bosnia and Herzegovina, FYROM, Montenegro and Serbia holding biometric passports. However, much of the attention on the impact of visa-free travel in the Western Balkans focused on the sudden increase of asylum-seekers originating from these countries once such travel became operational.
- Most of the asylum applications lodged were unfounded, according to the member states authorities, since asylum-seekers moved to the EU for economic reasons rather than on the grounds of persecution in their countries of origin. This sudden increase in the number of asylum-seekers should be properly contextualised and should not have a negative implication for the assessment of the impact of visa liberalisation on trans-border mobility. However, the statistics do not show that the asylum claims were indeed unfounded. First, the Common European Asylum System (CEAS) is far from being accomplished, so that specific asylum recognition rates among member states continue being a challenge. The recognition rate of applications for asylum from the Western Balkans has been traditionally very low at 4%. Second, most of the asylum-seekers were of Roma and Albanian origin. Despite the fact that the protection of minorities is a key element in the accession negotiations, the current situation of Roma in enlargement countries is precarious, as it also is in several member states
- Data confirms that previous visa applications from the Western Balkans do not have very much in common with the current picture of visa applications in the Eastern Partnership countries, Russia and Turkey. First, the number of visa applications lodged is much smaller. Second, most of the Western Balkan countries had very high refusal rates at the time visa-free travel was allowed.
- Differentiation depending on the targeted country is a key element to assess the potential impact of visa-free travel. Evidence provided by data on Schengen visa applications in the Eastern Partnership countries, Russia and Turkey provides a quite different picture from that of the Western Balkans. Once the benchmarks set out in the roadmaps and action plans on visa liberalisation are adopted and implemented, according to the current statistics, visa liberalisation would be a logical step further. These countries account for approximately 60% of the total number of Schengen visa applications and given the low refusal rate, it is logical to reduce the burden of the visa application process.
- Visa-free travel would avoid the always burdensome procedure of visa application, which is very costly and time-consuming. An effect of visa-free travel on trans-border mobility would be that citizens whose applications were previously refused would be able to travel. Second, those who did not apply due to the burden of the visa application procedure (high fees, long distance travel to reach the consulate, time consumed) would now have an incentive for mobility. Finally, visa-free travel would have other effects such as a potential increase in the tourism sector, student and scientific exchanges and the possibility to create more ties to facilitate business.

The potential impact of visa liberalisation on trans-border mobility is a key issue for obtaining a wider picture of the implications of visa-free travel. This analysis draws on the Schengen visa application data published by the European Commission and on data from Eurostat. The precedent of visa liberalisation in the Western Balkans is taken into account

in order to identify if visa liberalisation in the Eastern Partnership countries, Russia and Turkey could have a similar impact on trans-border mobility.

The analysis of the impact of visa-free travel in the Western Balkans has shown the benefits it has triggered among the citizens of Albania, Bosnia and Herzegovina, FYROM, Montenegro and Serbia holding biometric passports. However, much of the attention on the impact of visa-free travel in the Western Balkans focused on the sudden increase of asylum-seekers originating from these countries once visa-free travel became operational. The number of asylum applications lodged in the EU member states from Western Balkan countries more than doubled in the period 2009 to 2012, from approximately 27,000 to 58,000 asylum applications lodged (EASO, 2013). Most of the asylum applications lodged were unfounded as, according to the member states authorities, the asylum-seekers were not persecuted in their countries of origin and were seeking asylum for economic reasons. EASO argued that the 'push factors' for asylum-seekers were unemployment, poverty and the conditions of the health system in their countries of origin (EASO, 2013). However, these statistics do not show that the asylum claims were indeed unfounded. First, the CEAS is far from being accomplished, so that specific asylum recognition rates among member states continue being a challenge. The recognition rate of applications for asylum from the Western Balkans has been traditionally very low at 4%. Second, most of the asylum-seekers were of Roma and Albanian origin. Despite the fact that the protection of minorities is a key element in the accession negotiations, the current situation of Roma in enlargement countries is precarious, as it also is in several member states. A report by the Council of Europe Commissioner for Human Rights (2012) has assessed the Roma as being in 'severe discrimination'.

Other features of the inflow are that it has large peaks just before winter every year instead of regular numbers throughout the year and that it is directed mainly to Germany, France, Sweden and Belgium. In 2012, 43% of the asylum applications from the Western Balkans were lodged in Germany, 16% in France, 13% in Sweden and 9% in Belgium. Luxembourg was one of the countries which expressed more concerns, with only 3% on the asylum applications, since the impact of the sudden increase was higher due to its small size in comparison with the other member states. In any case, the reactions by member states were disproportionate. However, asylum-seekers from the Western Balkans should be treated as legitimate asylum-seekers and should have the venues for international protection in Europe. Therefore, this sudden increase in numbers should be properly contextualised and should not have a negative implication for the assessment of the impact of visa liberalisation on trans-border mobility.¹⁷ As specified in Section 1, the suspension mechanism gives legal certainty in the event of a repetition of this situation, and should in any case be applied under the principle of proportionality and not be used to prevent legitimate asylum-seekers from having access to international protection, following the criteria set in the Regulation.

Data confirms that previous visa applications from the Western Balkans do not have very much in common with the current picture of visa applications in the Eastern Partnership countries, Russia and Turkey. First, the number of visa applications lodged is much smaller, reaching a peak for all the Western Balkans countries of 0.9 million visa applications in 2009 before visas were lifted.¹⁸ This is a very low figure when compared with the over 6 million visas issued in Russia in 2012. Second, most of the Western Balkan countries had

¹⁷ See Bigo et al. (2013).

¹⁸ Data from the European Visa Database, <http://www.mogenshobolth.dk/evd/default.aspx> (last accessed 12 February 2014).

very high refusal rates at the time visa-free travel was allowed. For instance, Albania had a refusal rate of 16% in 2010 and Kosovo had a refusal rate of 24% in 2011.

Evidence provided by data on Schengen visa applications in the Eastern Partnership countries, Russia and Turkey provides a quite different picture from that of the Western Balkans. Once the benchmarks set out in the roadmaps and action plans on visa liberalisation are adopted and implemented, according to the current statistics, visa liberalisation would be a logical step further, because visa application rates from these countries are very high while refusal rates are very low, suggesting a major benefit from visa liberalisation without an apparent large risk of visa-free travellers who would have been refused entry had they needed a visa. The statistics show the extensive travel exchanges between the Schengen Area and, above all, Russia, Ukraine, Belarus and Turkey. As the previous section has underlined, the EU has launched visa liberalisation processes with all these countries except for Belarus, where negotiations on a visa facilitation agreement started in January 2014. These four countries are among the five countries with the highest number of visas lodged in the period 2009 to 2012. Russia accounts for 40% of the total Schengen visa applications, Ukraine for 9%, Belarus for 5% and Turkey for 4%.

Differentiation depending on the targeted country is a key element to assess the potential impact of visa-free travel. Russia has experienced an 87% increase in visa applications, from 3.2 million in 2009 to 6 million in 2012. These have had a very low refusal rate of under 1%. Most of these applications are by tourists to the EU Mediterranean countries. Ukraine also experienced a spectacular increase of 54% in the number of visa applications, from 0.85 million in 2009 to almost 1.3 million in 2012, with a 2% refusal rate. The highest increase, though, has been witnessed in the Schengen consulates in Minsk. Visa applications from Belarus have increased by 90% in the same period, from 0.37 million to almost 0.7 million. Lastly, Turkey experienced a 38% increase from 0.48 million to 0.67 million visa applications in the period from 2009 to 2012, with a 4.5% refusal rate.

The number of visa applications from Moldova and the Southern Caucasus countries is much smaller. In 2012, fewer than 50,000 visas were issued to Moldovan citizens. This is due to the fact that many Moldovan citizens have applied for Romanian citizenship, thus becoming EU citizens. The visa refusal rate was 7% in 2012. In the Southern Caucasus, refusal rates range from 8% in Armenia and Azerbaijan to 13% in Georgia, with a small number of visas issued (over 35,000 in Armenia, over 50,000 in Azerbaijan and slightly under 60,000 in Georgia (see Table 4).

These figures reveal that visa liberalisation is a logical step forward, due to the fact that most Schengen visas worldwide are issued at a very low refusal rate in the countries where the EU visa policies are targeted. Indeed, the busiest consulates where Schengen visa applications are lodged are in Russia, Ukraine and Belarus (see Table 5). Those are the Finnish consulate in St Petersburg (7% of total Schengen visa applications), the Spanish consulate in Moscow (6%), the Italian consulate in Moscow (4%), the Greek consulate in Moscow (4%), the Polish consulate in Lviv (Ukraine) (2%) and the Lithuanian consulate in Minsk (1%). The reasons behind these trends are twofold: first, historical neighbourly ties, as in the case between the St. Petersburg region in Russia and Finland and in the case of Western Ukraine and Poland; and second, the very high increase in tourists from Russia

and Ukraine to the EU, mainly for the purpose of tourism (for which France issued 2.3 million Schengen visas, Spain 1.8 million and Italy 1.7 million in 2012).¹⁹

Table 4: Schengen visas issued and refusal rates in the Eastern Partnership, Russia and Turkey

Third country	Number of visas issued 2009 (approx.)	Number of visas issued 2012 (approx.)	Increase of Schengen visas for period 2009-2012 (approx.)	Visa refusal rate (approx.)	Total of Schengen visas issued (approx.)
Armenia	23,700	35,000	48%	8%	0.6%
Azerbaijan	31,300	50,000	60%	8%	0.9%
Belarus	370,000	700,000	90%	0.5%	5%
Georgia	50,600	60,000	19%	13%	1%
Moldova	32,700	50,000	53%	7%	0.9%
Russia	3,200,000	6,000,000	87%	1%	40%
Turkey	480,000	670,000	38%	4.5%	4%
Ukraine	850,000	1,300,000	54%	2%	9%

Source: author's own elaboration using data from European Commission (2013h) and European Visa Database

Table 5: Top 10 Schengen consulates worldwide in the Eastern Partnership, Russia and Turkey

City of Consulate	EU Member State	Percentage of total Schengen visas issued
St Petersburg (Russia)	Finland	7%
Moscow (Russia)	Spain	6%
Moscow (Russia)	Italy	4%
Moscow (Russia)	Greece	4%
Lviv (Ukraine)	Poland	2%
Minsk (Belarus)	Lithuania	1%

Source: author's own elaboration using data from European Commission (2013h)

Visa-free travel would avoid the always burdensome procedure of visa application, which is very costly and time-consuming. This would have immediate repercussions for the companies dealing with visa applications. In most cases, consulates outsource the visa procedure to service providers, resulting in increased visa fees, even for applicants with a

¹⁹ On the impact of visa requirements on tourism, see Lawson and Roychouhury (2013). The authors contend the gains of the establishment of a visa-free regime are very huge for the tourism industry.

visa waiver under the visa facilitation agreement. One effect of visa-free travel on trans-border mobility would be that citizens whose applications were previously refused would be able to travel. Second, those who did not apply due to the burden of the visa application procedure (high fees, long distance travel to reach the consulate, time consumed) would now have an incentive for mobility. There would not be any more procedural or administrative burdens in the very frequent mobility between the Schengen Area and these countries. Finally, visa-free travel would have other effects such as a potential increase in the tourism sector, student and scientific exchanges and the possibility to create more ties to facilitate business.

4. CONCLUSIONS AND POLICY RECOMMENDATIONS

4.1 Conclusions

This study has assessed the impacts of the increased EU visa liberalisation agenda to the countries of its proximity (enlargement countries, the Eastern Partnership, Turkey and Russia). Despite the numerous developments since the launch of the first visa dialogue with Russia in 2007, with milestones such as visa free-travel for the Western Balkan countries (except Kosovo) in 2009 and 2011 and the Commission proposal to allow visa-free travel for Moldovan citizens in 2013, a first element to take into consideration is that visa liberalisation *per se* only encompasses a small fraction of the much wider concept of mobility. It foresees only short-term travel between the Schengen Area and a third country, excluding long-term stays or any other modalities that the term “mobility” could entail, such as labour mobility or student exchanges. As a result, the impact of visa liberalisation should be assessed bearing in mind the much more ambitious EU mobility policies, which would have a much greater impact on trans-border mobility. Another aspect that should be stressed is that the EU common visa policy is far from being accomplished. Only short-term visas have been integrated at the EU level and only to the member states that have joined the Schengen Area. In addition, consular services for the issuance of Schengen visas have not been created and each member state is in charge of issuing visas so far. A notable exception is the launch of Common Visa Application Centres, as this study has highlighted. The study has also highlighted the potential barriers and discrimination towards third country nationals of the proposed smart border package, currently being negotiated in the Parliament and in the Council.

That being said, the impact of visa liberalisation on trans-border mobility should by no means be underestimated. The analysis of the different visa liberalisation processes in the Western Balkans and in the Eastern Partnership, Turkey and Russia has provided evidence of the powerful incentive that the prospects for a visa-free regime constitute for far-reaching reforms in the whole spectrum of JLS policies. Roadmaps and action plans encapsulate most of the relevant policies in JLS, with a clear security component: effective implementation of the readmission agreement, adoption of border management standards and operation cooperation with the FRONTEX agency, adoption of data protection standards which enable the signature of operational agreement with Europol and Eurojust, among others. EU agencies in the field develop their external relations on the basis of visa liberalisation. The study has also shown how visa liberalisation aims at introducing reforms in fundamental rights (block 4 of the reforms), with the adoption of legislation on anti-discrimination and the protection of minorities.

The findings also reveal that the EU is promoting a set of norms emanating from the Council of Europe and the United Nations in the area of the fight against organised crime (trafficking in human beings, corruption, money laundering) and the protection of fundamental rights. The EU member states themselves are not in full compliance with their obligations as regards the protection of fundamental rights, but promote the adoption of international norms in the field. The current set of requirements for visa liberalisation is more demanding, deeper, more numerous and difficult to implement in the current visa liberalisation processes than in the case of the Western Balkans.

In enlargement countries, the adoption of EU *acquis* and international norms in the field of JLS and fundamental rights is part of the accession process (chapter 23 of Fundamental

Rights and chapter 24 on Justice, Liberty and Security). However, in the absence of the incentive of a membership perspective in the Eastern Partnership, the visa liberalisation agenda is fundamental for triggering reform in JLS. The initial hesitation over the credibility of the technical process has now been dissipated by the recommendation from the Commission to establish a visa-free regime with Moldova. A case of visa liberalisation which has had more limited progress is Russia, which is most illustrative of the differences between a technical and political approach to visa liberalisation. Russia has repeatedly proposed the establishment of a visa-free regime, drafting a visa-waiver agreement, and is against the Commission not setting fixed dates for visa liberalisation. Conditionality proves to be difficult with Russia, which insists on the symmetry of its relations with the EU.

The study has also delved into another policy instrument, visa facilitation, which has been institutionalised in most cases as a first step towards visa liberalisation. This instrument is also relevant once a country has reached a visa-free regime. Visa facilitation agreements are still in force for non-holders of biometric passports and are being amended according to the provisions of the Visa Code.

On the impact on visas on trans-border mobility, the study contends that the sudden increase in the number of asylum-seeker applications from the Western Balkans should be properly contextualised. Most of them were unfounded, according to member states. However, statistics do not show that the asylum claims were indeed unfounded. First, the CEAS is far from being accomplished, so that specific asylum recognition rates among member states continue being a challenge. The recognition rate of applications for asylum from the Western Balkans has been traditionally very low at 4%. Second, most of the asylum-seekers were of Roma and Albanian origin. Despite the fact that the protection of minorities is a key element in the accession negotiations, the current situation of Roma in enlargement countries is precarious, as it also is in several member states. By contrast, the analysis of the current picture of visa applications in the Eastern Partnership, Russia and Turkey shows that application rates from these countries are very high while refusal rates are very low, suggesting a major benefit from visa liberalisation without an apparent large risk of visa-free travellers who would have been refused entry had they needed a visa.

According to the current statistics on visa applications in the Eastern Partnership, Russia and Turkey, visa liberalisation, provided that the benchmarks set out in the roadmaps and action plans are adopted and implemented, would be a logical step forward. These countries account for approximately 60% of the total number of Schengen visa applications. Visa-free travel would avoid the always burdensome procedure of visa application, which is very costly and time-consuming. The effects of visa-free travel on trans-border mobility would be that citizens whose applications were previously refused would be able to travel. Second, those who did not apply due to the burden of the visa application procedure would now have an incentive for mobility. Finally, visa-free travel would have other effects such as a potential increase in the tourism sector, student and scientific exchanges and the possibility to create more ties to facilitate business.

The future orientations of the EU visa policy will be set out in the Rome Programme to be adopted under the Italian Presidency of the Council in the second half of 2014. It remains to be seen to what extent visa liberalisation will be set as a priority in the new Programme and if the technical approach towards the abolition of the visa regime will be institutionalised. The recommendation of the Commission on the establishment of a visa-free regime with Moldova gives room for credibility in the process, even if the decision that will ultimately lead to visa liberalisation is in the hands of the Parliament and the Council. Moreover, the recent entry into force of the amended Regulation 539/2001 could have

implications for the credibility of a process which has proven to have a huge potential for transformation and approximation to EU standards in the whole spectrum of JLS policies.

4.2 Policy Recommendations

In light of the conclusions of the study outlined above, the following recommendations are addressed to the Committee on Civil Liberties, Justice and Home Affairs (LIBE):

- Promote more democratic accountability in how the different policy instruments in the EU visa policy are negotiated and adopted, in particular those where the Parliament is not directly involved (Mobility Partnerships, local border traffic agreements and Common Visa Application Centres), but also the negotiations and implementations of the visa liberalisation process and visa facilitation agreements. Overall, the Committee should pay attention to the consistency of the EU's external action in the field of JLS, following the work of the different actors involved.
- Evaluate and contribute to the strengthening of the rule of law, the promotion of democracy and the protection of fundamental rights within the EU and in any of the countries where the EU visa policy is deployed, by ensuring a better evaluation of the JLS cooperation that has been built so far. For this purpose, special emphasis should be given to the monitoring and promotion of the benchmarks under block 4 on external relations and fundamental rights of the roadmaps and action plans on visa liberalisation. The European Parliament should discuss the impact that electronic borders will have in relation to its own commitments and the EU demands from third countries as regards non-discrimination on the basis of ethnicity, race and other unlawful grounds.
- Follow closely the implementation of the roadmaps and action plans on visa liberalisation, monitoring the work of the Commission via resolutions on particular aspects of the EU visa policy. Monitor also the work of the Commission in negotiations and effective implementation of visa facilitation agreements and local border traffic agreements. Organise missions to the countries where the EU visa policy is deployed to assess the situation on the ground.
- Establish contacts with fellow Members of Parliament from the third countries where the EU visa policy is deployed, by participating in the Inter-Parliamentary meetings with Kosovo, Joint Parliamentary Committees with Turkey and Joint Parliamentary Committees with the Eastern Partnership countries and Russia. Meetings provide an excellent opportunity to construct dialogue and contribute to trust building.
- Organise hearings with members of CSOs working on the ground in close cooperation with Schengen visa applicants, in order to have daily access and up-to-date information on the implications of visa applications, visa facilitation and visa liberalisation among the citizens from third countries.
- Assess objectively the situation of asylum-seekers originating from the countries where EU visa policy is deployed, via the Commission and the United Nations High Commissioner for Refugees (UNHCR). Advocate for the communication of objective data on the extent of the eventual rise of asylum-seekers after visa liberalisation.
- Advocate as co-legislator for the development of mobility policies within JLS, according to the provision in the Treaty of Lisbon and the priorities set out in the Stockholm Programme.

- Play an active role as co-legislator in the field of visa policy, following the Commission recommendations based on a technical approach whereby the visa-free regime is granted once the benchmarks have been fulfilled. Ensure that the successive amendments of Regulation 539/2001 on the visa lists are smooth, in close cooperation with the Council. On the smart border package, a debate should be held, in the context on the current negotiations in the Parliament and the Council, on the need for and adequacy of this proposal, taking into consideration not only the implications it has for mobility, but also the high costs it would entail.
- Give consent to the visa facilitation agreements between the EU and a third country, facilitating especially the quick entry into force of the amended visa facilitation agreements according to the EU Visa Code.
- Ensure the principle of proportionality is taken account in the event of a temporary suspension of visa-free travel, given the particularly sensitive nature of this mechanism adopted in December 2013.
- Keep in mind the evidence revealed by Schengen visa statistics in the Eastern Partnership, Russia and Turkey, with the highest number of visa applications at low refusal rates. Provided that the benchmarks for visa liberalisation are adopted and implemented, visa liberalisation would be a logical step forward.
- Promote the creation of Common Visa Application Centres, so that EU common visa policy can be further developed. In this regard, monitor the work of the European External Action Service with respect to the possibility that EU delegations assume consular services like the issuance of Schengen visas, as outlined in the Stockholm Programme.
- In the context of the post-Stockholm preparations, be active in feeding the debate and reflection in establishing the priorities for the next multiannual programme in JLS – the Rome Programme. In particular, advocate for the further integration of JLS policies at EU level.

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ANNEXES

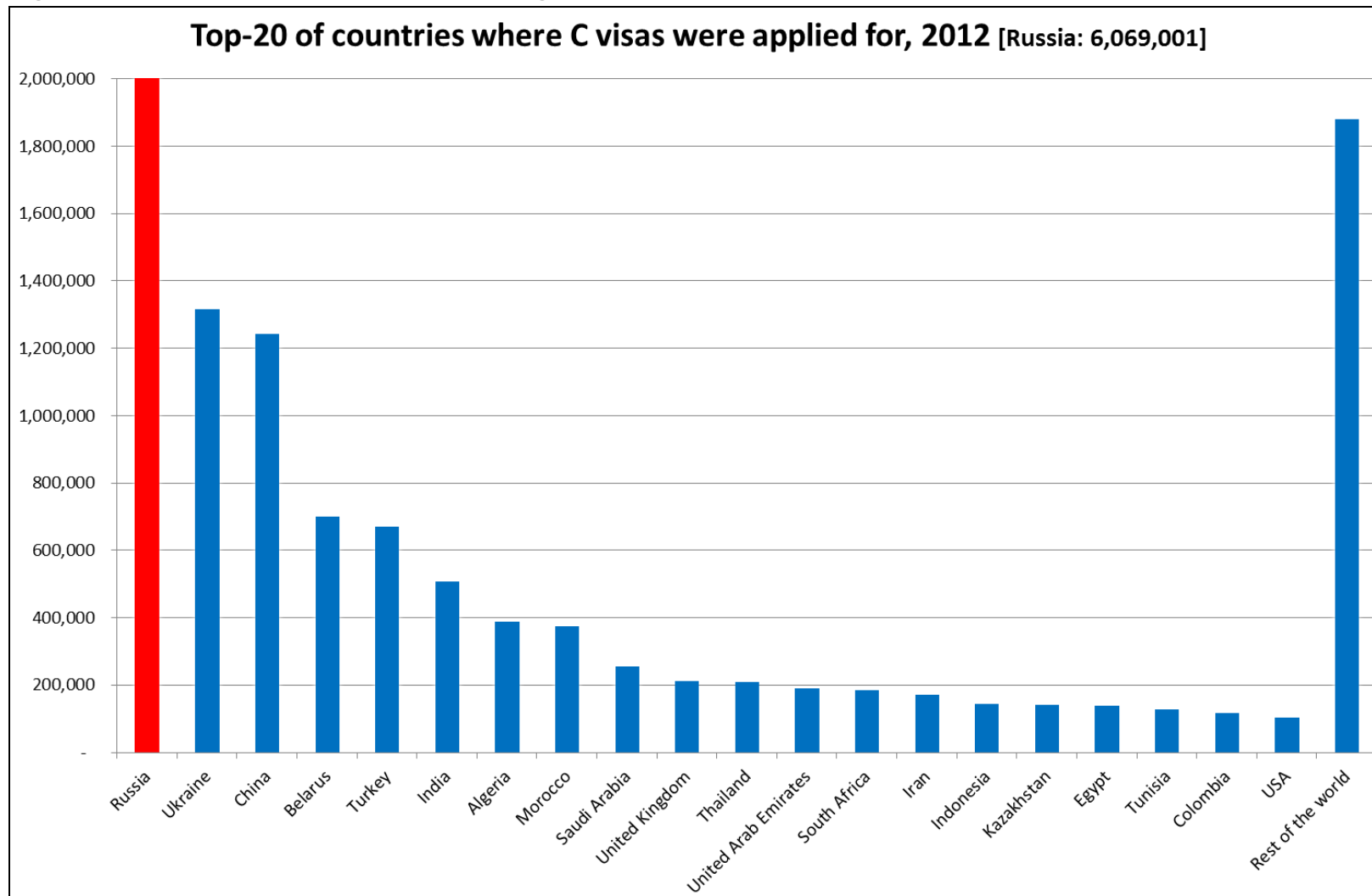
Figure A1. Top 20 countries for Schengen visas applied for/issued in 2012

Top-20 of countries where C visas were applied for/issued in 2012

	C visas applied for	C visas issued (including MEV)	Multiple entry C visas issued	Share of MEVs on issued C visas	C visas not issued	Not issued rate for C visas
Russia	6,069,001	5,939,644	2,906,259	48.9%	54,860	0.9%
Ukraine	1,313,727	1,283,014	494,749	38.6%	26,646	2.0%
China	1,242,507	1,185,569	150,398	12.7%	52,759	4.2%
Belarus	698,404	693,425	326,482	47.1%	3,535	0.5%
Turkey	668,835	637,276	319,067	50.1%	30,175	4.5%
India	506,162	473,661	232,312	49.0%	30,971	6.1%
Algeria	387,942	280,416	96,131	34.3%	103,587	26.7%
Morocco	373,823	322,094	133,837	41.6%	43,954	11.8%
Saudi Arabia	255,083	247,834	168,655	68.1%	4,594	1.8%
United Kingdom	210,610	197,036	68,359	34.7%	10,712	5.1%
Thailand	208,316	189,535	30,446	16.1%	12,661	6.1%
United Arab Emirates	189,653	177,852	94,646	53.2%	10,327	5.4%
South Africa	182,257	180,174	92,547	51.4%	1,627	0.9%
Iran	168,783	136,336	50,835	37.3%	30,798	18.2%
Indonesia	141,976	139,445	47,306	33.9%	2,277	1.6%
Kazakhstan	140,512	137,358	24,523	17.9%	2,966	2.1%
Egypt	137,542	120,896	40,819	33.8%	14,758	10.7%
Tunisia	125,594	110,085	41,180	37.4%	15,109	12.0%
Colombia	114,466	103,293	27,705	26.8%	10,429	9.1%
USA	101,907	99,498	38,828	39.0%	1,695	1.7%
Rest of the world	1,879,873	1,596,154	536,615	33.6%	256,192	13.6%

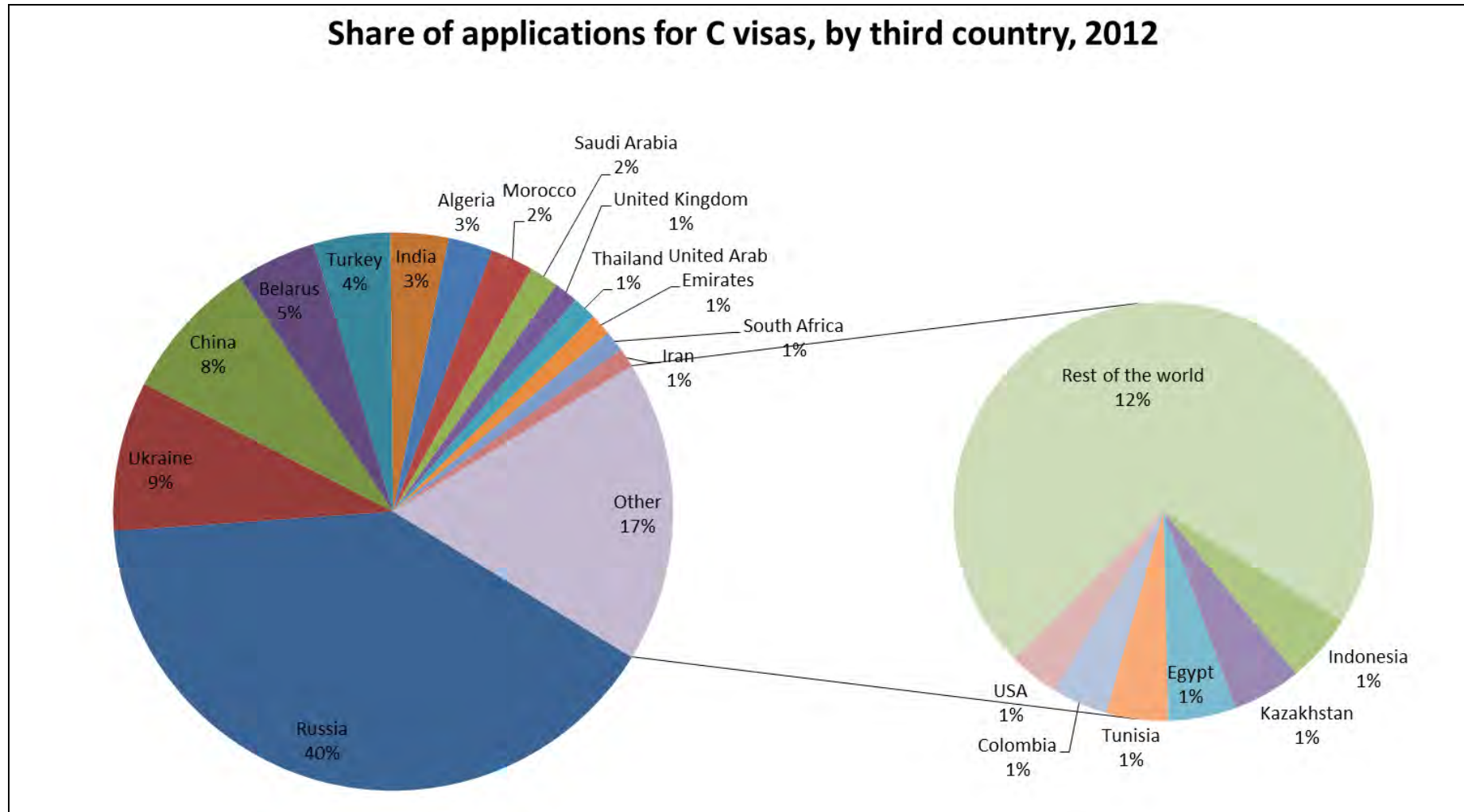
Source: European Commission (2013), p. 17.

Figure A2. Top-20 countries where Schengen C visas were applied for, 2012



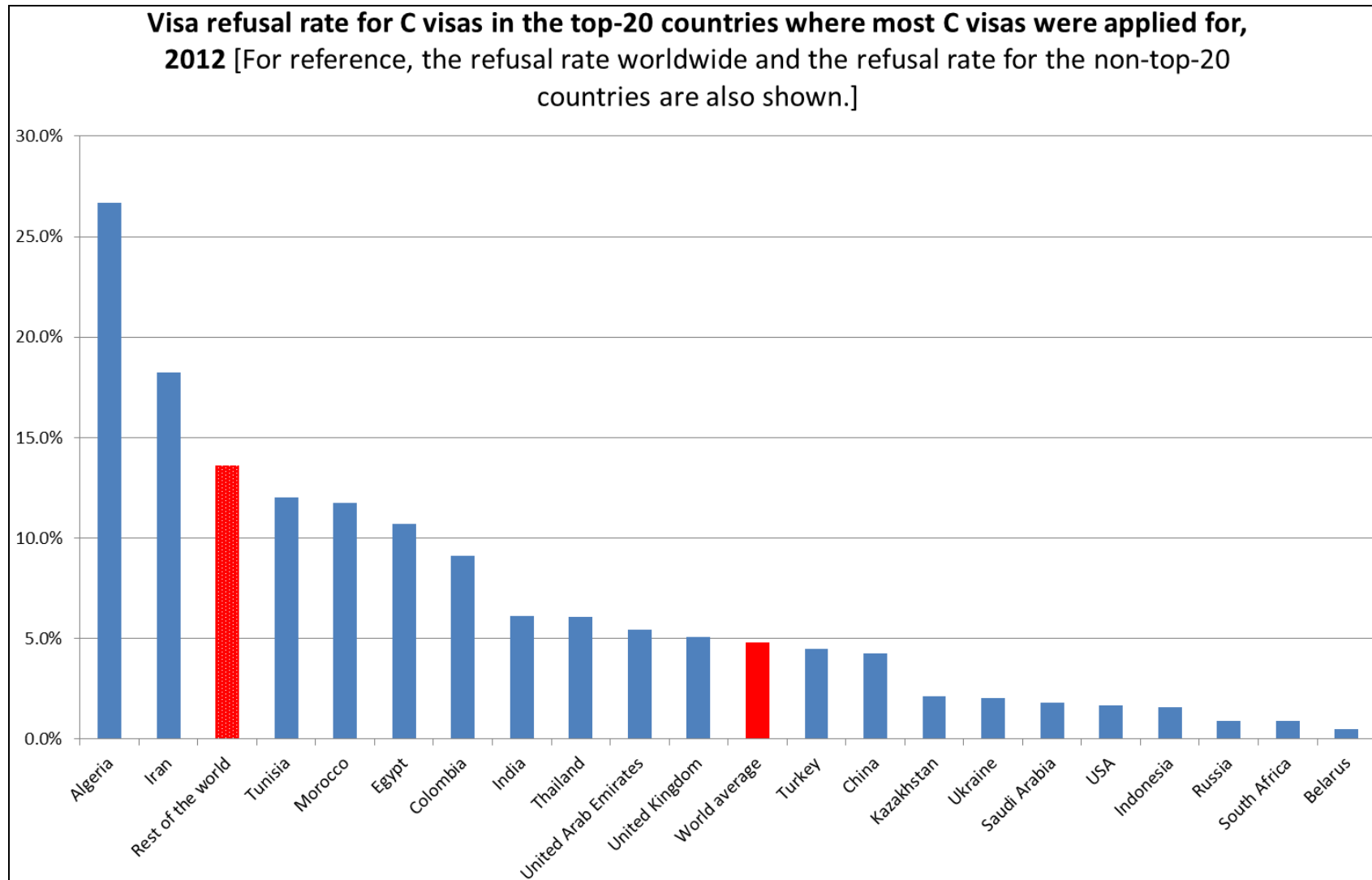
Source: European Commission (2013), p. 18.

Figure A3. Share of application for Schengen C visas, by third country, 2012



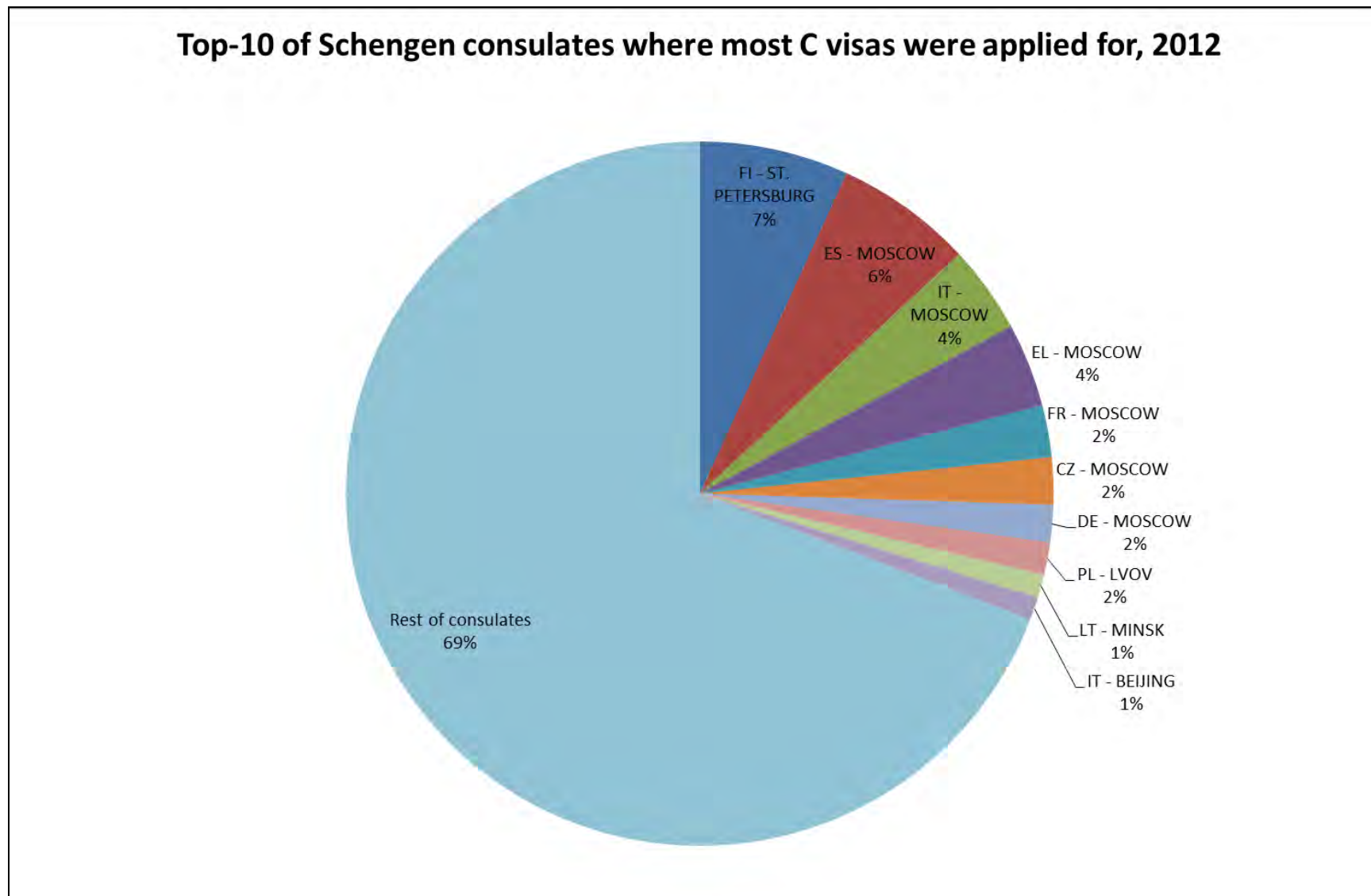
Source: European Commission (2013), p. 19.

Figure A4. Visa refusal rate for Schengen C visas in the top 20 countries where most C visas were applied for, 2012



Source: European Commission (2013), p. 21.

Figure A5. Top-10 of Schengen consulates where most C visas were applied for, 2012



Source: European Commission (2013), p. 23.

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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