



CENTRAL EUROPEAN UNIVERSITY
CENTER FOR POLICY STUDIES



OPEN SOCIETY INSTITUTE

ELENA JILEVA

New Borders and Old Neighbors in Europe

2001 / 2002

CPS INTERNATIONAL POLICY FELLOWSHIP PROGRAM ▲

ELENA JILEVA

New Borders and Old Neighbors in Europe

The views in this report are the author's own and do not necessarily reflect those of the Center for Policy Studies, Central European University or the Open Society Institute. We have included the reports in the form they were submitted by the authors. No additional copyediting or typesetting has been done to them.

New Borders and Old Neighbors in Europe

Elena Jileva

The Context

During the 1990s the relations between the EU and the ten former socialist CEE states advanced from traditional external relations to the CEE countries' now being involved into negotiations for EU accession. At the same time, the EU migration policies have come to the center of EU integration process in the 1990s. These two parallel developments became interrelated after the launching of the eastern enlargement process in March 1998. Technically, the accession process consists in the transposition of the EU acquis, broken into 31 accession negotiating 'chapters', to the candidate states. Issues regarding migration and free movement of people fall under the chapter on JHA, regulating visa, asylum, immigration, and border issues. The recent developments in the EU in the area of justice and home affairs (JHA) have led to an expanded and still developing acquis, which is to be adopted by the EU candidates as well. The EU's requirement for the adoption of the JHA acquis by the current applicant states demonstrates a marked difference between this round of enlargement and the previous four, as the JHA policies of the EU member states became a matter of common concern only after the Maastricht Treaty (1992) and therefore were not part of the requirements for membership extended to the previous EU applicants.

The Policy Process

The process of enlargement of the EU has been organized as an extension of a club membership, with the focus on the CEE countries' adjustment to the rules of the club as set out in the EU acquis. One of the most far-reaching externalities of European enlargement policy is that, in an effort to adopt the EU acquis, the CEE countries have been revising their visa policies. The harmonization with the EU visa regime is one narrow aspect of the adoption of the JHA acquis. For the purposes of the negotiations for the admission of new member states into the EU, the previously intergovernmental Schengen acquis and further measures taken by the institutions within its scope are regarded as an acquis which must be accepted in full by all states candidates for admission. Ironically, while the EU makes demands on applicant countries, it has currently absolved some of its own members such as the UK and Ireland from the duty to be bound by the Schengen acquis. However, Article 8 of the Schengen Protocol to the Amsterdam Treaty obliges the applicant states to adopt the acquis upon accession without an option for derogation. The Tampere European Council in October 1999 reaffirmed that as a consequence of the integration of the Schengen acquis into the EU legal framework, the candidate states must take it in full. The EU's common visa policy - despite the fact that it is only one of the constitutive elements of the broader EU migration regime has externalities that extend the EU migration regime beyond the immediate – or even the enlarged – territory of the EU.

The Policy Problem

The transposition of the EU visa acquis by the EU accession states is an example of policy transfer whereby an existing policy has been transposed in a technical and depoliticized manner without consideration of the policy rationale behind it. EU expectations not only create challenges for CEE countries, but also exhibit internal contradictions: The CEE countries are expected, at one and the same time, to implement new and restrictive policies

vis-à-vis their non-EU neighbors and other countries while also being urged to establish and maintain good neighborly foreign relations. One prominent externality with which the CEE countries must now grapple is the creation of obstacles to the cross-border movement of people from countries neighboring CEE countries. In many cases, this has led to tensions rather than to the desired good neighborly relations, which are important for peace and stability in the whole continent. Even prior to the accession of the CEE countries to the EU, the adoption of the EU's common visa policy by the CEE countries has produced significant undesirable consequences for bilateral relations in the region by disrupting family, economic and societal links. Thus the transfer of the EU visa policy to the CEE accession states has effects on third parties that are not involved in the EU accession process, i.e. Eastern European countries on the border of a future enlarged Union, which, however, are non-candidate countries and some do not have prospects for accession to the EU in the near future.

Possible Solutions to the Policy Problem

In terms of the implementation of the EU visa policy, there are some feasible solutions that might cushion the negative consequences outlined above. As Emerson and Wahl, researchers at the Center for European Policy Studies note, the seemingly technical matters of consular practices for visas have potentially harmful political and societal impacts in the CEE countries subject to the EU visa regime. Therefore, the CEE countries could mitigate the undesirable effects of introducing visas for their neighbors' citizens by ensuring fast and efficient visa issuing procedures without jeopardizing their and EU's security concerns. The policy options summarized below were discussed in detail by practitioners and academics from candidate and EU member states at a conference on New European Borders and Security, organized by the Center for European Policy Studies and the CITRA foundation, which took place in July 2001 in Brussels and from my research in Schengen consulates in Bulgaria until the lifting of the visa regime for Bulgarian citizens in April 2001.

The recommendations presented here deal with implementable and immediate possibilities for the facilitation of the visa issuing procedures. For broader and more long-term alternatives, including reconsidering the rationale behind the EU visa policy and the role of other policies, such as aid, migration policies and police and judicial cooperation, see my research paper.

How?: Common rules of the application procedure

The restrictions on free movement are caused not by the actual prevention of the desired travel, but by the inconveniences, the complicated bureaucratic procedures, and the time necessary to be invested for obtaining a visa. According to interviews with the French, German, Spanish, Belgian, and Austrian consuls which I conducted in Sofia in November and December of year 2000 while Bulgaria was still on visa regime with the EU, the vast majority of all applications for visas submitted by Bulgarian citizens were granted by the Schengen consulates. Visa applicants, however, were obliged to wait sometimes for up to three weeks and in some cases, the visa was refused for reasons that were not communicated to the applicant. While on the one hand according to the statistics of the member states the large majority of visa applications by Bulgarians were granted, on the other - these statistics hide the lengthy, dissuasive and often humiliating process introduced by Schengen states for Bulgarians seeking visas before their applications were accepted as 'valid'. Thus the statistics only counted those applications where the dossier was so complete as to be granted. The

heavy document requirements which could take an individual months to fulfill were hidden as are all persons unable or unwilling to spend time and money required to assemble a dossier capable of being accepted by a Schengen state

In order to facilitate the visa application procedures, EU members and CEE countries which apply the Schengen acquis could modify both their approach and application requirements. For example, applicants often have to go through in-depth interviews that intrude on their privacy, although the latter are not obligatory according to the acquis. In the process of visa granting, the applicants are presumed to be a security threat until they prove their bona fide intentions. A visa must not be considered a privilege, but a right unless there is evidence suggesting a prior illegal stay of a given citizen in the country issuing the visa, or criminal activities on record.

An important measure facilitating the visa application procedures consists of the option to submit an application by mail (the application forms could be also made available from the consulates' web sites), whereby only a single visit to the consulate would suffice to obtain the visa. Regarding the required supporting documents (such as invitations, bank statements, hotel reservations, medical insurance), the visa issuing authorities should ensure that these requirements, as well as the visa fees, are further harmonized and that the visa applicants could submit their application forms and supporting letters in the language of the country where the visa is issued.

Where?: Posts responsible for accepting visa applications

Consulates

After the introduction of visas by Poland for all fifteen countries with which it has so far maintained a visa-free regime, it has been estimated that the number of visas issued will grow from the present level of 230 thousand annually to 3.5 million. In particular, a substantial development of Polish consular services is needed. Due to financial constraints, only three new offices in Ukraine are planned, which would bring the total to six consulates. Therefore, the Polish authorities themselves expect up to 40% decrease to the 10 million people that currently cross the border between Poland and Ukraine every year.. In order to avoid a scenario of that kind, the possibility of granting support for the development and modernization of consular services of the Eastern European countries with the assistance of aid programs should be made part of the allocations under the JHA budget. A further option would be the creation of a new category of EU consulates, so as to facilitate the issue of the short-term Schengen visa.

At the border

At present, visas are issued on the border only in exceptional cases. The future development of the technical infrastructure of the Schengen Information System (SIS), (introduction of easy-to-use magnetic readers, popularization of passports with a magnetic code) would allow for visas to be issued at the border. That would require the application of readers able to immediately and automatically print visa stickers. Such a possibility could apply to persons who have passed the procedure of visa application before, and have a clear record in the SIS (Apap 2001). The EU should invest in the technical infrastructure at border crossings, which should ensure the efficient and speedy crossing of the border. It should also contribute more to the establishment of new border crossings on an external frontier where needed. The new

members, on whom the core burden of responsibility for protecting the external border will rest, will need to receive technical and financial support from the Union.

What? The definition and types of visas

National visas

National visas issued by candidate countries before accession could function as types of visa which do not expose the EU members to any risk, yet facilitates crossborder movement between Eastern European neighboring states. Once the candidate countries become members, border controls will be maintained on the existing internal borders (e.g. Polish-German, Hungarian-Austrian) for some time. The applicant countries will continue to be able to issue national visas since the citizens of the states of Eastern Europe possessing such visas will not be able to cross the border of the country that issued the visa.

Multiple-entry visas

The granting of multiple-entry visas valid for one year, which the Schengen acquis allows for, could also provide practical facilitation. The persons who should be regarded as the first in line to be entitled to access to these two categories of visas, i.e. the long-term national visa and the multiple-entry Schengen visa valid for one year (allowing a stay of a 6-month duration) may be divided into the following categories: persons involved in business activities, persons active in culture, science, scholarship holders, students, sports, persons visiting their families, inhabitants of border regions (it could become a substitute for a simplified non-visa cross-border movement in borderland areas which will not be compatible with Schengen), and representatives of local government authorities, activists of NGOs.

Finally, the budgetary resources dedicated to the JHA and the implementation of the EU visa policy in particular should be expanded. In 2001 financial year the total budget for justice and home affairs amounts with Euro 113.15 million to only 0.12% of the total budget or - to chose another basis for comparison - 0.26% of the budget for the common agricultural policy. These figures do not take into account that some of the activities in the context of JHA - because of their intergovernmental basis - are financed out of national budgets but still the JHA budget is disproportionately small compared to the communitarization of the JHA field.