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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

KALININGRAD: TRANSIT

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Introduction

1. Following the discussion on Kaliningrad at the Moscow EU-Russia Summit, the Seville European Council invited the Commission to "submit, in time for its Brussels meeting, an additional study on the possibilities for an effective and flexible solution of the transit of persons and goods to and from Kaliningrad oblast, in compliance with the acquis and in agreement with the candidate countries concerned".

2. The Commission has therefore proceeded on the assumption that the Council wishes to explore all possible options for flexibility within the acquis, for movement of both people and goods between Kaliningrad and the rest of Russia. At the same time, whatever "effective and flexible solutions" emerge from the study must be acceptable to the candidates. It is also assumed that the Council does not wish as such to modify the Common Positions in which the EU set out its requirements regarding the application of the acquis by the candidates. The Common Line agreed by the General Affairs Council on 13 May 2002 (doc. 8304/02), setting out the basic positions of the Schengen acquis, remains valid (Annex III). This Communication does not cover small border traffic since this issue is not specific to the situation of Kaliningrad and therefore needs to be considered on an horizontal basis for all the new border regions of the enlarged Union. The question of small border traffic is being examined separately in the Council on the basis of a working paper of the Commission services.

3. While respecting the Council's wish that solutions should comply with the acquis, the study does not start from the premise that the acquis is so inflexible that it cannot cater for special circumstances. Indeed the acquis is continually under development, and there is as yet no specific acquis on transit of persons through EU territory from a third country to the same third country. It follows that the EU's position should, having reviewed a range of options, be defined both by its legal obligations and by its (and the candidates') political interests. These might be summarised as follows:

- to ensure that the EU and its current and future Member States retain their sovereign ability to ensure the security and safety of all current and future EU citizens by controlling their borders and the movement of people and goods on their territory;

- to avoid taking any steps which might hinder the success of the enlargement process. This includes safeguarding the integrity of the acquis the EU has itself required the candidates to adopt, and ensuring that no obstacle to the lifting of internal border controls is created by any "solution" for Kaliningrad;

- to address Russian concerns in a manner consistent with the enlargement process and the political aim of creating a strategic partnership and enhancing co-operation, not least on issues related to border management.

Positions of Russia, Poland and Lithuania

4. **Russia:** Following a memorandum presented in April by PM Kasyanov, President Putin's personal representative on Kaliningrad, Mr Rogozin, has circulated a draft "memo of intent" setting out Russia's proposals for ensuring transit between Kaliningrad and mainland Russia with a minimum of bureaucratic obstacles. He proposes that the EU and Russia adopt a political commitment to work towards the goal of visa-free travel. As part of this process, he suggests that negotiations be launched in 2002 concerning

readmission, illegal migration, law enforcement and border control issues. The memorandum proposes that a EU-Russia Ad hoc Joint Working Commission be set up which should report quarterly.

5. As an interim solution, pending the introduction of a visa free travel regime, Russia proposes a "simplified procedure" for transit of Russian citizens travelling to and from Kaliningrad. Non-stop trains and buses would transit Lithuania in accordance with approved schedules and routes. Lists of Russian citizens travelling would be provided by Russia to the Lithuanian authorities. Russian citizens, who have committed offences in Lithuania and whose names would appear in agreed lists would not be entitled to buy train and bus tickets. Those carrying valid international passports would not require additional documentation, although the passports would be stamped, while those carrying internal passports would be issued with a Lithuanian transit permit. Lithuanian officials would travel on the trains and buses and controls en route could be carried out. Car passengers would be issued with transit visas, if necessary at the border.

Russia and Lithuania would sign a readmission agreement.

6. **Lithuania:** No corridors. No relaxation of the acquis as regards transit. As regards Kaliningrad residents, Lithuania is interested to find flexible arrangements within the acquis provided that they are not considered by the EU as an impediment to lifting internal border controls on schedule. It is ready for co-operation with Russia on practical issues provided that this is in line with the obligations of Lithuania under the acquis. Lithuania will only be able to agree on any arrangement beyond what has been already agreed by the Accession Conference, provided that guarantees are inserted into the Accession Treaty ensuring that such arrangements will in no way prejudice the lifting of the internal border controls. Any option going further than the measures contained in the Common line will have to be accompanied by clear political, legal and burden sharing guarantees. In particular, Lithuania stresses that discussions concerning further exploration of visa-free non-stop trains must not in any way disturb the political conditions for Accession Treaty ratification in Lithuania and EU Member States. Thus any future evaluation of this option should be taken by the enlarged Union, after Lithuania's accession takes place.

7. Lithuania requires visas (normally issued by consulates on the basis of international passports) for all car passengers coming from mainland Russia. No visa is required for rail passengers or truck drivers. Visas will be required for these categories as from 01.01.2003. Kaliningrad residents will be visa exempt until 01.07.2003. Military personnel require a special permit from the Lithuanian Ministry of Defence before the transit visa is issued (grouped – no individual visa needed).

8. **Poland**: Does not consider itself to be a transit country, since there are no economic or humanitarian reasons to use Polish territory for traffic between different parts of Russia. No concessions regarding Kaliningrad which cannot also be applied on other borders. No relaxation of the acquis. No corridors. Readiness to co-operate on all practical possibilities within the acquis on the basis of flexibility and reciprocity.

At present Poland does not allow Russian citizens to enter without international passports. Visas will be required as from 01.07.2003.

Movement of people within the acquis

9. The flexibilities set out in the EU Common Line of 13 May include:

- issue of multiple-entry visas which could be valid for a substantial period of time. These include favourable treatment for certain professionals like lorry drivers and could be issued on a case by case basis;
- before the lifting of internal border controls, flexibility with the visa fees;
- visa exemption for certain categories of persons (e.g. holders of diplomatic and service passports and air and sea crew members).

As a rule, visas will be issued by consular offices.[1]

Normally such arrangements would be reciprocal. At present there is no reciprocity on fees, nor on delivery times (Russia is slower and more expensive than the candidates).

10. Apart from the Russian proposal for segregated ("non-stop") trains and buses, which are considered further below, examination of scope for flexibilities concentrates on three areas: issuing travel documents at the border; use of internal Russian identity documents; and the possibilities for delivery of special travel documents exclusively for transit to and from Kaliningrad.

Issuing travel documents at the border

11. It is legally possible to issue visas at the border, but this is generally not recommended on the grounds that it is a lengthy procedure which will hamper smooth crossing. Delivery of visas at the border could also create problems with assuring security. After the abolition of internal border controls, issuing visas at the border is admitted "in exceptional circumstances if, due to lack of time and for pressing reasons, an alien has been unable to apply for a visa, (for example, serious and sudden occurrences involving family members, medical treatment, change of destination of aircraft, urgent professional reasons); moreover, a list shall be kept of those visas issued at the border". This is reflected in the EU Common Positions in view of the eventual full integration of the candidate countries into the Schengen system.

Use of internal Russian identity documents

12. According to the existing Lithuanian legislation, only a passport valid for international travel can be accepted for crossing the border, unless an international agreement provides otherwise. For the moment, residents of Kaliningrad (but not Russians living in the mainland unless they use the existing transit train) can use internal passports for crossing the border. Lithuania has asked the EU to clarify its view on valid travel documents, especially in view of the possibility that at the time of the accession not all Russians wishing to travel to and from Kaliningrad will have a passport valid for international travel.

13. The Russian internal passport is not in accordance with the ICAO recommendations (it is not securised, it is easy to forge, the text is in cyrillics); its use therefore makes control procedures considerably slower. It is not a secure document and no current Member State accepts it as a valid travel document.

14. However, although it is clear that the use of passports valid for international travel is strongly recommended, there is nothing in the acquis that would prevent Lithuania from accepting the internal passport for crossing its territory (with a visa attached to a separate sheet in accordance with Regulation 333/2002) before the lifting of internal border controls, if deemed necessary in cases where Russians travelling to and from Kaliningrad do not yet have passports valid for international travel. Acceptance of Russian internal passports (accompanied by a visa or a special transit document) could only be a temporary measure and could not continue after internal border controls have been lifted.

15. Russia has earlier promised that it would phase out the internal passports by the end of 2003. Now the deadline seems to be in 2006. In the memorandum Russia makes no promises as far as the internal passports are concerned. Russia wants to offer internal passports (+ birth certificates for minors) as valid travel documents after accession as well and also to extend the use to other Russians than Kaliningraders. However, in several preceding contacts Russia has informed the

[1] In any event, upon lifting the internal border controls, the common rule that visas can be issued at the border only in exceptional cases must be fully applied.

Commission that about 25 % of Kaliningraders already have passports valid for international travel and that the printing of such passports for this category would be stepped up. It was noted in the EU Common Line of 13 May that the EU expects Russia to issue passports which meet the conditions set out in ICAO regulations.

16. Lithuania has indicated that for security and practical reasons it would not like to continue accepting internal passports as valid travel documents after accession. Lithuania would probably prefer not to extend the use of these passports the way Russia has suggested.

17. Thus, if internal passports are to be accepted by Lithuania on a temporary basis after accession, it should be clear that their use must be phased out as soon as possible. Russia will have to accept and acknowledge this fact.

Scope for delivery of special (EU) travel documents

18. The common rules on visas include the list of third countries whose nationals must be in possession of visas when crossing the external borders; the procedures and conditions for issuing visas; and a uniform format for visas and rules on a uniform visa (Article 62 of EC Treaty). Procedures and conditions for issuing visas are introduced by secondary legislation; technical and practical modifications of secondary legislation is almost a continous exercise, due to new circumstances arising or the need to respond to new challenges. This would be the case should the Council decide to develop a travel document which would have equivalent value to a transit visa, specifically for transit between Kaliningrad and mainland Russia.

19. The issue of publicity within Russia about the new requirements is important. Otherwise, there is a risk of substantial numbers of Russians arriving at border posts or on trains without the necessary documents.

Movement of goods within the acquis

20. The international conventions on transit of goods by road (TIR) and rail (COTIF) to which the EC and the candidates have acceded already offer the possibility to facilitate the international transport of goods under seal (where required). For TIR, the presentation of internationally recognised documentation (the TIR Carnet) provides a guarantee for any duty and taxes which might ultimately be payable (i.e. if any of the goods in transit fail to reach their declared destination). Because of the high risk of fraud, alcohol and tobacco products are currently excluded from the TIR Convention. For rail movements, the requirements of the COTIF provide the means to relax certain Customs transit requirements including the need for a guarantee. Although Russia is not a party to the COTIF rail convention (it is a signatory of another international rail agreement, SMGS, as are Poland, Lithuania and the other Baltic States),the candidate countries may, if they are satisfied that EC rules will be implemented, accept Russian documentation; SMGS-based documents, for instance, are already accepted by Germany (and Poland).

21. All the alternatives present substantial difficulties. The acquis requires all goods entering the Community's customs territory to be placed under a customs procedure, if not already covered by a transit procedure. The lifting of all formalities (whether or not leaving it to the Russians to inform the EC, after transit, whether any merchandise has remained in the EC, rather than proceeding to the stated destination) would be contrary to this basic requirement. It would leave the EU exposed to fraud/duty and tax evasion as well as evasion of non-fiscal measures. This possibility would moreover offer Russia a laxer regime than that applicable to movements of non-Community goods between EC Member States, which the candidate countries will have to apply. In addition, the

absence of any transit formalities whatsoever would make it impossible for Russia to distinguish imports from such transit goods and would put their own revenue collection at risk.

22. It would be difficult or impossible to segregate road traffic by means of a "corridor". Whereas it might be easier to imagine such a solution for rail traffic, safeguards against abuse would be expensive and the risk of diversion or fraud would remain high. Moreover, such a system would not be acceptable to the candidate countries concerned and would not be consistent with the wider political objective of creating a common economic space with Russia aiming, inter alia, at trade facilitation.

23. Russia could, in theory, accede to the EC-EFTA Common Transit Convention. But this would be a very long process, especially given the fact that one of the pre-conditions for accession is that Russia must be in a position to apply the fully computerised version across its entire territory, which cannot be envisaged in the short term due to Russia's current administrative capacity in the field of customs. In addition, the only advantage for Russia over using the TIR procedure would be that alcohol and tobacco products excluded from TIR regime are available under the Common Transit procedure, although at the price of stringent conditions or very high guarantees.

Assessment

24. On the key political issue, **movement of people,** the acquis is based on the principle that the EU's security can best be protected if persons transiting through the territory of EU Member States provide adequate documentation. The visa requirement for Russian citizens will remain as long as Russia appears on the list of third countries whose nationals must be in possession of visas when crossing the external borders of the Member States of the EU.

25. The Commission notes with interest the Russian proposal to open discussions on defining the conditions necessary for the eventual establishment of a **visa-free travel** regime. The Commission believes that the Russian proposal contains useful elements which are already under discussion within the PCA structures. Even before, the EU and Russia are able to identify and carry out the measures needed to set the conditions for abolishing the visa regime, co-operation on crime and illegal migration should be stepped up immediately including preparation of a readmission agreement. It would be premature at this stage to foresee a specific timetable for the abolition of the visa requirement.

In this context, it will be essential that the timing of the lifting of the internal border controls with new Member States concerned is kept completely independent of the timing for the eventual establishment of a visa-free regime between the EU and the Russian Federation.

The Subcommittee dealing with JHA matters (N°6) could be used as the forum for such discussions. Whenever relevant, notably with regard to the border management and control, candidate countries concerned should be invited to participate.

26. In addition to the flexibilities set out in the Common Line (cheap or free multiple-entry transit visas) solutions could be explored by considering some or all of the following transitional measures (subject to review after an appropriate period of time):

(i) the Commission believes that issue of a special transit document ("Facilitated**Transit Document**" should be considered. The document would be deemed equivalent to a multiple-entry transit visa for bona-fide persons who are Russia citizens travelling frequently and directly between Kaliningrad and the Russian mainland. Lists of frequent travellers could be provided in advance by the Russian authorities. The Document would then be issued at low cost or free of charge by the

consulates of the candidate countries concerned. Fuller details of how such a new system could work are set out in annex I.

(ii) the Commission is open to study further the feasibility of **visa-exemption for passengers on non-stop trains** (adequate segregation could not be assured for transport by bus). The security of these trains would require that they travel at sufficiently high speed, and that the coaches are so constructed, as to prevent passengers from leaving the train without the permission of the Lithuanian authorities. At present, such trains do not yet exist. It is clear that significant upgrading of the trains and track will be required; necessary investment will take time and Lithuania in particular will need substantial support in order to achieve it. As set out in the Russian memorandum, the Lithuanian authorities must retain the right to refuse entry and carry out controls during transit. Adoption of such an option could not imply that Russia would obtain extraterritorial rights analogous to the "corridor" concept. Any decision concerning this option could only be taken by the enlarged EU on the basis of a thorough evaluation and once the technical obstacles have been overcome. After the accession of Lithuania, the EU is ready to examine the legal and technical feasibility of visa-free non-stop trains.

This option is examined in greater detail in annex II.

27. The introduction of the Transit Facilitation Document would require the full cooperation of the candidate countries and adequate administrative and financial support from the EC. Full cooperation would also be needed from Russia, especially regarding the establishment of new consulates, the provision of lists of Russian citizens considered eligible for the “Facilitated Transit Document”, the readmission of overstayers by way of the conclusion and implementation of a readmission agreement and the ratification of the border agreement with Lithuania. Moreover, Russia is expected considerably to accelerate the issuance of international passports to its citizens within a fixed timetable. During a short transitional period, internal Russian passports could be accepted in conjunction with visas/Facilitated Transit Document.

28. The implementation and management of the arrangement proposed for the Facilitated Transit Document should be monitored, if necessary, through meetings involving all the parties concerned including candidate countries, in the context of the PCA institutions. [2]

29. The EU would need to guarantee to the candidate countries that their acceptance, and implementation, of the above flexibilities would not in itself create any risk of delay in lifting internal border controls, i.e. full integration into the Schengen area.

30. On the **movement of goods**, the Commission's assessment is that the customs transit regime which will apply after enlargement, ensuring the free movement of goods between Russia and Kaliningrad across the Community without customs duties or any other transit duties other than charges for transport and administration (as set out in the Partnership and Cooperation Agreement) is apt and that, in terms of formalities, existing Conventions/procedures offer appropriate flexibility.

31. Any decision to waive formalities for goods in transit across the Community would not meet the basic requirement, which applies world-wide, including in Russia, that the movement of third country goods within the territory of a country should be monitored. This would therefore be incompatible with the acquis. In addition, the transit of goods via designated corridors would present considerable practical problems. It would also be unacceptable to the candidate countries.

Conclusions

[2] Technically more advanced solutions such as electronic cards equivalent to visas would require time and a great deal of money to introduce, as well as particularly close co-operation with the third countries (i.e. Russia and Belarus). If need be, these ideas could be pursued in the longer term.

32. The Commission considers that regarding the transit of persons between Kaliningrad and mainland Russia, a number of the proposals presented by Russia merit serious consideration. It recommends, therefore, that the EU's position be based upon the following package of measures in addition to what has already been set out in the Common line of 13 May 2001:

(a) a “Facilitated Transit Document” could be issued by consular authorities in EU or candidate countries to Russian citizens travelling by road or rail, under the conditions set out in annex I, exclusively for direct transit between Kaliningrad and the Russian mainland. The operation of the Document would be reviewed regularly through meetings involving all the parties concerned including the relevant candidate countries, in the context of the PCA institutions.

(b) this would assume Russian co-operation in quickly agreeing to the establishment of new consulates requested by Lithuania.

(c) transit visas would be obtainable at borders in humanitarian cases, as foreseen in the acquis. In the very short term, before the opening of the essential consular facilities, some latitude may be necessary. The Facilitated Transit Document would not be issued at the border.

(d) for a period of two years up to the end of 2004, the Lithuanian authorities may agree, for the purposes of issuing visas or Facilitated Transit Documents, to accept Russian internal travel documentation. As a consequence, Russia is expected to accept, that in 2005 only internationally-recognised passports would be accepted.

(e) the EU should be open to explore with Russia and Lithuania the feasibility of allowing visa-exempt travel by specific "non stop" trains, as proposed by Russia, and in particular the conditions for secure transit. Any decision concerning this option could only be taken by the enlarged EU on the basis a thorough evaluation and once the technical obstacles have been overcome. After the accession of Lithuania, the EU is ready to examine the legal and technical feasibility of visa-free non-stop trains.

It would need to be clear that the Lithuanian authorities must retain the right to refuse entry and carry out controls during transit. Adoption of such an option could not imply that Russia would obtain extraterritorial rights analogous to the "corridor" concept.

(f) the EU should examine the Russian proposal to open discussions on defining the conditions necessary for the eventual establishment of a visa-free travel regime. Discussions in PCA institutions, notably sub-committee 6 should be intensified and should involve candidate countries. This sub-committee also discusses co-operation on border management, including combating trans-border crime and illegal migration, and should prepare a readmission agreement. Progress on JHA issues in general will be important in the wider context.

33. The EU would need to provide legally binding guarantees to Lithuania that:

- the acceptance of any of the measures in the above package would in no way prejudice or present an obstacle to the lifting of internal border controls;

- assistance will, as appropriate, be provided for the implementation of these measures.

34. As regards the introduction of the Transit Facilitation Document, technical changes to existing regulations would need to be incorporated, as in the case of other relevant secondary legislation, in the lists to be submitted to the candidate countries.

35. Regarding the movement of goods, the existing international convention for road transport (TIR) allows the transit of goods with relatively little bureaucracy, and for transit by rail EC rules allow Member States to adopt simplified procedure, e.g. acceptance of existing Russian documentation (SMGS). The alternatives (passage without formalities, whether or not with post-facto controls exercised in Russia) are either unacceptable or provide no procedural advantage

(Russian accession to the Common Transit and SAD Conventions, which is in any case for the moment unrealistic).

36. The EU has already offered assistance to Russia through Tacis with a view to expediting border crossing and delivery of ICAO-compatible passports, especially to Kaliningrad residents. However, solutions to the problem of movement of people and goods should be paralleled by broader co-operation regarding the future of the Kaliningrad region, covering both the common challenges in the fields of organised crime, border management, environment and human health, and economic development, as foreseen in President Prodi's letter to President Putin of 23 May.

37. If possible, the above “package” of measures should be attached to the Joint Statement submitted for approval to the EU-Russia Summit in Copenhagen on 11 November.

Annex I

OPERATION OF THE "FACILITATED TRANSIT DOCUMENT"

1. All Russian citizens who travel frequently and directly between Kaliningrad and the Russian mainland would be entitled to apply for the "Facilitated Transit Document (FTD)". Russian authorities could send beforehand lists containing suggestions for eligible persons to speed up the issuing of the document. The transit countries will retain the right to disqualify persons, for instance, in case of evidence of abuse of the system or public security concerns of the transit country.
2. The FTD could take the form of a securised booklet, the first page of which would contain personal data similar to those foreseen in the ICAO recommendations on passports. To this, a securised sticker would be attached. Its validity may be of one year or more.

   The booklet would be equivalent to a multiple-entry visa valid exclusively for transit between two territories belonging to the same country but separated by the territory of one or more Member States.

   The FTD would be renewable.
3. Other technical and practical issues should be introduced into the secondary legislation, such as the stamping of the FTD on entry and exit to control the length of stay, the cost of issuance, place of issuance, etc.
4. The FTD would be issued by a consulate of a relevant candidate country. There would be no automatism and therefore no infringement of sovereignty. The candidate countries should consider extending the network of their consulates.

   They could also consider mutually recognising all kinds of visas, including the FTD, in order to avoid the need for Russian citizens transiting through two or three different countries to request two or three visas; in this way they would anticipate the mutual recognition of visas required under the Schengen provisions.
5. Moreover:

- The issue would not need to be addressed in the accession negotiations on chapter 24 as the basic principle of the acquis, in this case the visa requirement for Russia, would remain in place. The technical changes would be included, along with other secondary legislation, in the lists to be submitted to the candidate countries.
- The regulation related to the FTD would be binding on all Member States. Therefore, such a special system would not in itself be an obstacle for the lifting of the internal border controls by the future Member States.

6. An EC Regulation could establish the necessary legal conditions

- to define a new form of transit, from one part of a third country to another part of that same third country via the territory of one or several EU Member States. Such a definition is not specified at the moment in the acquis;
- to confirm that such a FTD would be deemed equivalent to a visa;
- to allow for multiple-entry transit between different parts of the same third country and to set its validity for a substantial period of time (several years, where appropriate);
- to limit transit time, e.g. to 24/36 hours rather than 5 days as for normal transit;

- to prescribe sanctions in case of misuse, such as financial sanctions or ultimately withdrawal of the document;
- to define adequate security features using the procedure provided for in Regulation N° 334/2002.

ANNEX II

VISA EXEMPTION FOR PASSENGERS ON NON-STOP TRANSPORT

1. THE ACQUIS REQUIREMENTS

The relevant acquis is a combination of the Schengen inheritance (now EC/EU acquis) and the Visa Regulation which lists Russia as a country whose citizens should be submitted to a visa obligation for the purposes of entering EU territory.

According to Article 5 of the Schengen Convention, for stays not exceeding three months, third country nationals fulfilling the following conditions may be granted entry:

1. Possession of valid travel document and visa if required**.**

2. If necessary, to produce documents justifying the purpose and conditions of the intended stay and prove that they have sufficient means of subsistence for the intended stay and return or are in a position to acquire such means lawfully.

3. An alert has not been issued for the purposes of refusing entry.

4. The person is not considered to be a threat to public policy, national security and international relations of the Member States.

The first condition is the key issue and has been discussed extensively in the context of Kaliningrad transit. The question of internal passports is addressed below.

The second condition is not directly relevant to transit to and from Kaliningrad. It is quite unlikely that for direct transit to and from Kaliningrad, the Member States concerned (mainly Lithuania) would set conditions concerning, e.g. sufficient means of subsistence for the intended stay. No candidate country has raised this question.

The third condition, which entails using the SIS and Article 96 of the Schengen Convention, can be applied fully as from the lifting of the internal border controls. Until then, the new Member States will use national registers to check unwanted persons and to refuse their entry. Later, the SIS will be used for checking whether entry should be denied. The Member States have to use the common register of Article 96 data in the SIS to refuse entry, because the internal border controls have been lifted.

The Member States exchange information (outside the SIS) also concerning the fourth condition.

Nationals of certain third countries, including Russia, shall be required to be in the possession of a visa when crossing the external borders of the Member States (Article 1(1) Visa List Regulation). The Court has indicated that in the light of Article 3(d) of the EC Treaty, if such crossing of the external borders is not for entry into and circulation within Community territory, a visa may not be required (Case C-170/96, point 22). Therefore, passengers on a through train through Community territory might under certain circumstances not be subject to the requirement of having a visa. However, the Court has applied this approach only to transit in an airport and the Council, following this case law, has formulated Article 2, second

indent, of the Visa Regulation so as not to require transit visa for transit through Member States' territory only for transit at airports. However, a broadening of this exception is not excluded on the basis of the Court's judgement and an adjustment of the acquis on this point would be possible.

2. PROPOSALS CONCERNING TRANSIT

By flying or using the planned ferry connection Russians can travel to and from Kaliningrad without a visa and using internal passports. The acquis requirements come into play only for purposes of travel by land. It is clear (and the Russian memorandum concedes this) that passengers travelling by car will need to be subjected to normal acquis requirements (visa, travel document, border control), including the possibilities within the acquis for facilitating transit (multiple-entry visas, visa fees). This is already the case for car transit from mainland Russia (since 1995).

The Russian memorandum proposes a visa-free transit arrangement for passengers travelling by train and coaches. In addition, Russia has asked for "simplified visa-issuance" at the border for car passengers. These proposals are obviously very relevant to the Seville European Council's invitation to the Commission to study the possibility of flexibility "in compliance with the acquis".

The three ways to travel by land

1.1. Train

In order for the train transit system to be in compliance with the acquis, it would have to conform with one basic requirement: no travellers would be able to leave the train while crossing Lithuanian territory. If this can be guaranteed, the above mentioned acquis requirements, most importantly the visa obligation, need not be applied. However, it is obvious that in order to make this kind of secure transit possible, Lithuania needs to be in a position to exercise full control of the train and its passengers - something which the Russian memorandum appears to concede.

In other words, the transit train possibility can only be used after accession if accepted by Lithuania and if the security of the transit can be guaranteed in order to verify that all persons crossing the external borders are identified before the train enters Lithuania and that nobody can enter or exit the train after the controls have been made. If agreed to be Schengen-compatible, these same rules would equally apply after the lifting of the internal border controls, and would constitute no obstacle to Lithuania applying the Schengen acquis in full.

In practice this means that Lithuania should be able to

1. check travel documents to verify identity and to control who is on the train (including the possibility to refuse entry of unwanted persons),

2. ensure physically the security of transit meaning that no entry to the Lithuanian territory is possible.

The train would have to be a non-stop train, which is fully guarded during the transit through Lithuania. Only technical stops would be possible. Ideally, the transit train would be a "high-speed" train. However, "high speed" in this context means only that such a non-stop transit

train need to travel sufficiently and consistently fast to prevent people jumping from the train. It will be essential to be able to guarantee that this condition is or will be met.

For the moment, Lithuania has clearly stated that the security of the transit is not at an acceptable level: so-called train-jumpers profit from the fact that the train runs slowly, stops several times in the territory of Lithuania and it is not guarded well enough during transit. This option would therefore require careful further examination.

For its part, Russia has made a number of proposals aimed at contributing to the secure functioning of the system.

The EU should look into the Russian proposal concerning transit trains in a positive way, with a view to making a well-informed decision about its Schengen-compatibility and its implications for Lithuania's full application of Schengen. Some further questions related to the functioning of the system should be presented to the Russian side. This will determine whether the EU can guarantee Lithuania that this arrangement will not hinder/delay the lifting of the internal border controls vis-à-vis Lithuania.

1.2. Buses

The same basic requirement applies to the Russian proposal concerning transit buses: In order for the transit system to be in compliance with the acquis, travellers would not be able to leave the bus while crossing Lithuanian territory. However, in the case of buses, the security of transit cannot be guaranteed in an acceptable way. The first condition can be fulfilled: everyone crossing the Lithuanian border will be checked. The second condition, the security of transit, will not be easy to organise and is even impossible to impose on human beings. In practice people can be expected to need to stop during transit which would amount to entering Lithuania without a visa. Further, securing such transit, would put a disproportionate burden for the Lithuanian authorities as they would have to accompany all buses throughout the transit.

In conclusion, transit traffic by buses cannot anyway be organised in a way that would be in compliance with the acquis. Lithuania might in any event find the idea of transit buses hard to accept politically and practically.

1.3. Cars

Russia no longer insists on visa-free transit for private vehicles, but insists on simplified issuance of visas at the border in these cases.

Issuing visas at the borders is legally possible until the lifting of the internal border controls, but it is not in the interests of the EU to recommend that this possibility be used more widely than described in the Schengen acquis (i.e. exceptional cases). It is time-consuming and even difficult to check properly at the border the relevant national registers before issuing a visa. In addition, the visa application form and the modern visa sticker (Regulation 1683/1995 and 334/2002) take time to complete and to print, and this might further hamper smooth border crossing, taking into account the fact how difficult and slow it is at the moment. The border crossing points would also have to be equipped appropriately with the sophisticated and expensive equipment needed for producing visa stickers. Lithuania has stated that it does not wish to use this possibility in a wider sense than provided in the Schengen acquis. It is

essential to ensure sufficient consular facilities to make sure that visas will be issued efficiently and accurately. It is a completely different matter to acknowledge that the candidate countries may have to issue visas at the border than to build this into any understanding with Russia.

If consular facilities could be established near the border, this would greatly facilitate matters, given that the Commission would recommend that the principle of visa issuance at the border should not be accepted in discussions with Russia. Lithuania is ready to open consulates at the borders in Kaliningrad (Sovetsk) and Belarus (Grodno). It will need to be seen whether additional Community funding would be required.

Annex III

COMMON LINE OF 13 MAY 2002

KALININGRAD: MOVEMENT AND TRANSIT OF PEOPLE

In view of efforts made to investigate the possibilities within the acquis and the long list of meetings scheduled this spring between EU and Russia, it is clear that EU treats the Kaliningrad situation with very high priority. However, final responsibility for Kaliningrad remains with Russia. No other actor can do more to improve the situation of Kaliningrad than Russia itself

The EU acquis and its consequences for Kaliningrad

This informal paper refers to the time period between EU-accession and the lifting of internal border controls vis-à-vis the new Member States. After that period, the Schengen acquis will be fully implemented.

The acquis in force requires that third country nationals listed in Annex 1 of Regulation 539/2001, as amended by Regulation 2414/2001, are in possession of visas attached to a valid travel document when crossing the external border of the Member States. This requirement applies for transit as well as for short stay up to three months. The visas issued by the new Member States will be national visas issued in accordance with national legislation, following the principles concerning the issue of visas in the acquis.

The EU has consulted the candidate countries concerned with a clear understanding that before accession, measures are subject to their sovereign national decision. However, no measures should be considered which might put the full implementation of Schengen at risk, and the candidate countries would be expected not to introduce any measures which would run counter to the basic principles of the acquis.

With this in mind, the main possibilities within the acquis are:

- multiple entry visas issued on a case-by-case basis, including favourable treatment for certain professionals such as lorry drivers and crews of means of transport who regularly need to cross the border,
- flexibility with the visa fees until the lifting of internal border controls,
- exemptions from the visa requirement for certain categories of persons as provided in Regulation 539/2001.
- as a rule, visas will be issued by consular offices**.**

When implementing the possibilities within the acquis, the candidate countries will normally expect the application of reciprocity.

It is important to note that the acquis ensures, in the interest of both sides of the border, that the border crossing can take place in a controlled and secure way and without unnecessarily hampering the movement of persons.

The way forward

Further efforts, which would improve the situation of Kaliningrad, are being discussed in the PCA framework. Support is provided, and may be provided, by EU external aid programmes, e.g. development of infrastructure at border crossing points, modernisation of border procedures and training to facilitate the movement of persons and goods, as well as cooperation with Russia in the fight against organised crime and corruption. Useful joint law enforcement operations are in this respect being organised by the Baltic Sea Task Force on organised crime.

Support by other Community programmes are used and may be used, as appropriate, for similar activities, including for consular facilities.

As part of co-operation aimed at facilitating visa issuance and border crossing, the EU would expect Russia to do its part to facilitate collaboration between Russian and EU customs, border management and immigration authorities, as is also foreseen in the Protocol to the PCA. Such collaboration must go wider than purely Kaliningrad-related aspects and should include: conclusion of a readmission agreement and appropriate arrangements in this respect; facilitation of the establishment and operation of consulates on the territory of the Kaliningrad oblast and mainland Russia; border management supported by demarcated borders based on ratified agreements; the issuance in Kaliningrad of passports meeting the conditions required by ICAO regulations; and such other JHA problems as may be considered relevant.

Annex IV

PROVISIONAL TIME TABLE FOR NEXT STEPS

- **12-14 September: informal JHA Ministerial**
- **18 September: Communication to be discussed in Commission**
- **25 September: 1st discussion at COREPER**
- **30 September: 1st discussion at General Affairs Council**
- **24-25 October: European Council to approve the EU's position for the EU-Russia Summit**
- **25 October -10 November: Contacts with Russian government**
- **5 November: Planned EU/Russia JHA Troika**
- **11 November: EU-Russia Summit in Copenhagen (joint declaration)**