

Keeping the door ajar

*Local border traffic regimes
on the EU's eastern borders*

Andrei Yeliseyeu

Analyst

Belarusian Institute for Strategic Studies (BISS)



FIIA REPORT 41

Keeping the door ajar

Local border traffic regimes on the EU's eastern borders

Keeping the door ajar

*Local border traffic regimes
on the EU's eastern borders*

Andrei Yeliseyeu

Analyst

Belarusian Institute for Strategic Studies (BISS)

andriyeliseyeu@gmail.com

FIIA REPORT 40

Reports can be ordered from the Finnish Institute of International Affairs.

+358 9 432 7707

erja.kangas@fia.fi

All FIIA reports and other publications are also available on our website at www.fia.fi.

Language editing: Lynn Nikkanen

Graphic design: Nordenswan & Siirilä Oy / Tuomas Kortteinen

Layout: Tuomas Kortteinen

The Finnish Institute of International Affairs

Ulkopoliittinen instituutti

PL 400

00161 Helsinki

Finland

www.fia.fi

firstname.lastname@fia.fi

ISBN 978-951-769-420-9

ISSN 2323-5454

The Finnish Institute of International Affairs is an independent research institute that produces high-level research to support political decision-making and public debate both nationally and internationally. The Institute undertakes quality control in editing publications but the responsibility for the views expressed ultimately rests with the authors.

About the author

Andrei Yeliseyeu is an analyst at the Belarusian Institute for Strategic Studies (www.belinstitute.eu). He holds a Master's degree in Historical Studies from the Belarusian State University in Minsk and an MA in Political Science from the European Humanities University (Vilnius, Lithuania). Andrei was also awarded an LL.M. in International and European Law from the Riga Graduate School of Law.

Acknowledgments

The background research for this paper was conducted during an internship undertaken at FIIA in August 2013 in the framework of NORDEN's support programme "Raising the Expertise of Grassroots-Level Researchers in Belarus". The author wishes to thank the Nordic Council of Ministers and the East European Studies Center (Vilnius) for granting him this research fellowship. The author is very grateful to Anaïs Marin and Arkady Moshes for their guidance and comments on earlier drafts of this paper. Thanks are also due to Aleksei Ignatyev, Aliona Cara-Rusnac, Andriy Lepak, Grzegorz Gorzelak, Heikki Eskelinen, Igor Studennikov, Iryna Sushko, Laura Yli-Vakkuri, Laurynas Kasčiūnas, Małgorzata Samusjew, Margit Säre, Olga Sasunkevich, Olha Yehorova, Pekka Järviö, Serhii Ustych, Soltész Béla, Stanisław Domaniewski, Svitlana Mitryaeva, Thomas Nilsen, Tomasz Dubowski, Valeriu Mosneaga, Vladimír Benč and three anonymous experts and practitioners who spent their time completing questionnaires for the purposes of the research. The author would also like to thank Berbeca Veaceslav, Doliwa Klepacka, Mieczysława Zdanowicz, Radosław Kamiński, Tamás Molnár, and Viktor Romanovskiy, who assisted in the search for the necessary information or shared their research. The author is equally grateful to the relevant departments of the European Commission, the Estonian Ministry of Foreign Affairs, the Latvian Ministry of Foreign Affairs, the Lithuanian Ministry of Foreign Affairs, the Hungarian Ministry of Interior, as well as the Royal Norwegian Consulate General in Murmansk, the Consulate General of Russia in Kirkenes, and the Embassy of the Republic of Hungary in Kyiv for their replies to requests for information.

List of abbreviations

BCP	Border crossing point
CJEU	The Court of Justice of the European Union
ENP	European Neighbourhood Policy
GDP	Gross domestic product
GDP (PPP)	Gross domestic product at purchasing power parity
EurASEC	The Eurasian Economic Community
FM	Foreign Minister
ICJ	The International Court of Justice
LBT	Local border traffic
LBTP	Local border traffic permit
LBTR	Local border traffic regime
LDPM	Liberal Democratic Party of Moldova
LTV	Limited territorial validity
MFA	Ministry of foreign affairs
MS	Member state
PPS	Purchasing Power Standards
QMV	Qualified majority voting
SIS	Schengen Information System
VAT	Value added tax
VCLT	Vienna Convention on the Law of Treaties

Contents

INTRODUCTION	11
1 DEVELOPMENT OF THE LOCAL BORDER TRAFFIC ACQUIS	17
1.1 History of the local border traffic regimes and their significance at the EU's eastern borders	17
1.2 Discussions over the LBT <i>acquis</i> in the EU	22
1.3 The LBT Regulation as a derogation from the Schengen <i>acquis</i>	25
2 THE LBT REGIMES AT THE EU'S AND NORWAY'S EASTERN BORDERS	33
2.1 Characteristics of enforced LBT regimes	33
2.1.1 Russia	35
2.1.2 Ukraine	41
2.1.3 Belarus	46
2.1.4 Romania-Moldova LBTR	48
2.2 The rules under the LBT agreements	50
2.3 The functioning of the LBT regimes	52
2.3.1 How adequate is the border infrastructure?	54
2.3.2 Abuse of the LBT rules	54
2.3.3 Trade in excisable goods and state counter-actions	57
2.3.4 LBT as an instrument of the European Neighbourhood Policy	60
3 WHY SOME BILATERAL LBT REGIMES ON THE EU'S EASTERN BORDERS HAVE NOT BEEN LAUNCHED	65
3.1 Finland-Russia	65
3.2 Estonia-Russia	67
3.3 Lithuania-Russia	69
3.4 Lithuania-Belarus and Poland-Belarus	70
3.5 Romania-Ukraine	74
CONCLUSION	79
ANNEXES	84
PREVIOUSLY PUBLISHED IN THE SERIES	89

Introduction

The 1985 Schengen Convention supports the notion that the established rules of crossing the EU's external borders may be derogated by a local border traffic regime (LBTR). Despite this wording in the text of the Convention, Community rules on LBTRs did not exist prior to the adoption of a special Regulation in 2006.¹ The EU eastward 2004 enlargement and the consequent entry of new EU member states into the Schengen area in December 2007 resulted in a considerable increase in visa fees and complications concerning visa procedures for applicants. This ushered in a sharp decrease in the number of issued visas, especially in Ukraine, Belarus and the Kaliningrad oblast (Russia). As a result, the LBT Regulation appeared to be a timely legal tool for the eastern EU member states to mitigate the negative effects of their accession to the Schengen area and to keep the borders ajar for legitimate border-crossing for family, cultural, social and economic reasons, with the aim of increasing the mobility of people living in the border areas.

The 2006 EU Regulation makes it possible for the EU countries and Schengen non-EU members to conclude agreements with neighbouring third states on a visa-free land border-crossing regime for border residents (30-50 km zone on both sides of the border). As of early 2014, out of the 14 border sections at the EU's eastern borders (namely the borders with Russia, Belarus, Ukraine, and Moldova),

¹ Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention. OJ L 405, 31.12.2006.

eight are covered by an operational LBT regime. This comprises LBTRS between Norway and Russia, Latvia and Russia, Latvia and Belarus, Poland and Russia, Poland and Ukraine, Slovakia and Ukraine, Hungary and Ukraine, and the one between Romania and Moldova.

Since the adoption of the LBT Regulation, about 600,000 local border traffic permits have been issued, which allowed for many millions of border-crossings and stays in the adjacent border areas without visas. The impact of the LBTRS is multidimensional, with various effects on the mobility of the border population, and the economic and social development of the borderlands. In some cases, the LBT factor had a visible effect on bilateral state relations, and even some noticeable impact on domestic politics. LBT is associated not only with positive consequences for bona vide border residents, but likewise brings with it some concerns over security and technical matters.

The aim of this report is to provide a comprehensive analysis of the functioning and potential (not yet functioning) LBT regimes on the European Union's and Norway's eastern borders. To this end, LBT regimes with four eastern neighbours – Russia, Belarus, Ukraine and Moldova – are reviewed. Although Norway is not an EU member state, the Norway/Russia LBT regime is also reviewed in the report. In order to avoid long explanations and repetitive references throughout the text, the Norway/Russia LBT regime is included under the LBT regimes on the EU's eastern borders.

The main questions that the report addresses are:

- What is the main rationale for the EU Regulation on local border traffic, and how do the LBT regimes contribute to the promotion of the European Neighbourhood Policy's aims and cross-border cooperation?
- How do the bilateral LBT agreements (LBTAs) differ? How can the countries make the LBT rules easier for their border population under the existing EU Regulation?
- How successful are the LBTAs from a technical (i.e. adequate border infrastructure, access to information about the LBT regime for the public) and security (abuses by the LBT permit holders, etc.) perspective?
- What is the economic effect of the LBT regimes for the border regions? To what extent do the LBT regimes promote smuggling, and what counter-measures do states undertake?
- Why are some countries reluctant to introduce LBT regimes, while others are very enthusiastic about the LBTRS? What are the reasons

behind the absence of progress or deliberate delays in launching some of the LBT regimes at the EU's eastern borders?

- What will the added value – if any – of the LBT agreements be, after the eventual introduction of visa-free regimes between the EU and its eastern neighbours?

Some quantitative and qualitative data regarding the functioning LBT regimes are provided in the second report of the Commission on the implementation and functioning of the LBT regime,² issued in early 2011. However, by that time, only four LBT Agreements had been concluded under the LBT Regulation, namely the Poland-Ukraine, Slovakia-Ukraine, Hungary-Ukraine, and Romania-Moldova agreements. For this reason, recent data for all the currently functioning LBT regimes were collected.

The principal empirical work was organised around the collection and perusal of relevant official documents, reports, statements, and press material. Since information regarding the functioning LBT regimes contained in the European Commission's reports is incomplete and outdated, relevant quantitative data were additionally collected from many different public sources, and duly processed. Missing quantitative data and/or official explanations were provided at the author's request by the European Commission, the Ministries of Foreign Affairs and of Internal Affairs of the EU member states, and a number of consulates of the respective states. Fairly comprehensive statistical information on unregistered cross-border commodity flows across the Polish eastern border is available, thanks to the coherent research system undertaken by the Polish statistics offices, in collaboration with the Border Guard and Customs offices.³

Semi-standardised questionnaires with both single choice (mostly according to the Likert scale⁴) and open elements were sent to 50 prospective respondents (see Annex 1 for the text of a standard questionnaire). Each was asked to complete a questionnaire which concerned the LBT regime that corresponded to their research or professional interests. About 30 completed questionnaires were received. Respondents were mostly established researchers and

2 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0047:FIN:EN:PDF>.

3 See detailed methodology on the website of the Polish Statistical Committee, http://www.stat.gov.pl/cps/rde/xbcr/rzesz/ASSETS_zeszyt_metodyczny_ENG.pdf (accessed 20.03.2014).

4 A Likert scale, or rating scale, scales responses in survey research. See the description of the Likert scale method at: Dane Bertram, 'Likert Scales', *Topic Report*, 2012, <http://www.al-huda.net/2012/PA/2014/topic-dane-likert.pdf> (accessed 20.03.2014).

practitioners in the border issues, and sometimes representatives of the European cross-border regions and state agencies involved in cross-border issues.

The report is structured as follows. The first section gives an overview of the LBT predecessors that used to exist in Europe; reviews the process of negotiations over legislation on local border traffic and analyses the content of the LBT Regulation. The second section presents quantitative characteristics of border areas under the LBT regimes, and examines how stricter bilateral LBT agreements are compared to the facilitations envisaged under the 2006 LBT Regulation. An overview of the LBTRs from technical, security, and foreign policy perspectives is likewise given in the second section of the report. The third section looks into the reasons why some EU member states and neighbouring third countries are reluctant to launch LBT regimes with each other, paying attention to each of the six border sections at the EU's eastern borders with a non-functioning LBTR.

1

1. Development of the local border traffic *acquis*

The Community's *acquis* on LBT was not adopted until late 2006.⁵ Prior to this, the LBT regimes existed only as bilateral agreements on LBT that some EU member states had concluded with neighbouring third countries. However, local border traffic as a mode of cooperation between nation states traces its history back to the pre-war era.

1.1

HISTORY OF THE LOCAL BORDER TRAFFIC REGIMES AND THEIR SIGNIFICANCE AT THE EU'S EASTERN BORDERS

A simplified border-crossing regime for residents of the border areas is not a recent phenomenon. In past decades, border-crossings between nation states were facilitated by bilateral agreements on local border traffic. The regime might be referred to as 'minor' or 'excursion' traffic, but sometimes it was just termed a 'simplified mode of passing the state border'.

Some of the predecessors of the present-day LBT regimes date back to the interwar period, as in the case of the Poland/Czechoslovak Republic, Poland/Romania, or Poland/Germany LBT conventions

5 Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006, laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:405:0001:0022:EN:PDF>.

signed in the 1920s.⁶ Between 1933 and 1938, a local border traffic regime (*Kleiner Grenzverkehr*) existed between Nazi Germany and Austria. After World War II, dozens of LBT agreements were concluded between pairs of European states, including France and Switzerland (1946), Italy and Switzerland (1955), Slovakia and Hungary (1963), Romania and Bulgaria (1971), Hungary and the USSR (1985), and Germany and Poland (1992).⁷ The Slovenia/Croatia LBT agreement, although signed back in 1997, is still functioning, notwithstanding Croatia's accession to the EU, given that Croatia is not yet a full member of Schengen area. Some local border traffic regimes were introduced between states with completely different political and economic systems. Such was the case in the LBT agreements between Italy and Yugoslavia concluded in 1955 (the so-called Udine Agreement), or the one between the German Democratic Republic (GDR) and the Federal Republic of Germany (FRG) that was introduced in 1972.

Former Soviet states (Belarus, Russia, Ukraine) had their own functioning LBT agreements (normally, they were termed agreements on a simplified mode of passing the state border) with their western neighbours. LBT agreements between Poland, Hungary, and Romania on one side, and their eastern neighbours on the other, were originally concluded with the USSR in 1985 and applied *mutatis mutandis* to newly emerged states, either until the 1990s when they were replaced with amended bilateral agreements (as in the case of the Hungary/Ukraine LBT agreement of 1993), or until their termination in 2003, on the eve of the 2004 EU enlargement. While Lithuania preserved its LBT regime with Russia until 2003, Estonia and Latvia had terminated their LBT agreements with Russia even earlier, back in 2000.

Two important observations can be made concerning the LBT agreements that were concluded prior to the introduction of the EU's *acquis* in 2006:

- Bilateral LBT agreements varied in many respects, including geographical scope (the width of the border area), personal scope

6 See detailed information on these LBT agreements in: Mieczysława Zdanowicz, 'Agreements on local border traffic between Poland and neighboring states – selected legal aspects', in Mieczysława Zdanowicz (ed.), *Local border traffic on the Polish section of the European Union external border*, Warsaw-Białystok, 2014, pp. 77–80.

7 See an incomplete list of the previously existing LBT agreements in: Commission Staff Working Paper "Developing the Acquis on 'Local Border Traffic'", Annex I of doc 11933/02 VISA 128 COMIX 505. Brussels, 16 September 2002, pp.18–25, <http://bit.ly/1cCdFm0> (accessed 20.03.2014).

(categories of persons covered), and conditions to be fulfilled in order to be able to benefit from the LBT regime.

- Former LBT agreements set much stricter rules than the current LBT regimes under the 2006 LBT Regulation. Normally, border areas were extended no further than 10–15 km from the border; the maximum length of stay was often limited to 5–7 days, with fixed border-crossing hours; only nationals of the contracting parties, excluding third country nationals lawfully residing in the border area, could benefit from the LBT regime, etc.

Poland's LBT regime with Belarus, Russia and Ukraine, based upon the agreement of 1985 between Poland and the USSR, is a notorious example of a previously existing LBT regime in the Central and Eastern European region. According to the Poland/USSR LBT agreement (*Agreement on simplified mode of border-crossing for the citizens residing in the border localities*),⁸ permits for simplified border crossing were issued by border guards based on written applications by citizens lodged at the units closest to the border troops. Legitimate reasons included: a) joint meetings and mass events at the border or in its vicinity; b) births and other important family matters; c) serious illnesses, deaths of relatives and accidents; d) urgent medical aid, in the event that it could not be provided on the territory of a contracting state without delay. A stay in the adjacent border area was limited to 7 consecutive days, but could be prolonged in special cases on the basis of a decision made by the border guards. The simplified mode of border-crossing was in effect only in the daytime and covered the settlements located no further than 50 km from the border. Similar agreements between Hungary and the USSR, and Romania and the USSR were likewise concluded in 1985. Seemingly, all these agreements between the USSR and the then USSR-aligned governments were launched in response to the 1985 Schengen agreement, signed between five of the then ten member states of the European Economic Community.

James Scott maintains that the 2004 enlargement can be seen as a high water mark in the political attempt to 'de-border' European territories: since 2004, borders in Europe have re-emerged in practical and discursive terms as markers of sharp – to an extent civilisational

8 Soglasenie mezhdru Pravitel'stvom SSSR i Pravitel'stvom Pol'skoj Narodnoj respubliki ob uproshhennom porjadke propuska cherez gosudarstvennuju granicu grazhdan, prozhivajushhih v prigranichnyh naseleennyh punktah [in Russian]. Signed on 14 May 1985. *Sbornik mezhdunarodnyh dogovorov SSSR*, edition XLII Moscow, 1988, pp. 46–49.

– difference.⁹ Arguably, the entry of the new EU member states to the Schengen area in 2007 implied a much greater push towards re-bordering for the nationals of Belarus, Ukraine and the Kaliningrad region, and a more subtle impression of dividing lines.

Notwithstanding the introduction of visa obligations for the nationals of the neighbouring eastern countries on the eve of the 2004 entry to the EU, the new EU member states preserved their permissive national visa policies until their accession to the Schengen area in late 2007. Up to that point, Poland, Hungary, Romania and Slovakia had been issuing national visas for Ukrainians free of charge; since 2003 Belarusians had been paying a standard visa fee of EUR 10 for a single national Polish visa, and EUR 5 for a Lithuanian visa, whereas the fee for Latvian visas was waived; Polish and Lithuanian national visas for Kaliningrad residents were also issued free of charge until mid-2007.¹⁰ With the entry of the new EU member states into the Schengen area, the standard fee for single- and multiple-entry Schengen visas was raised to EUR 60 for citizens of Belarus and to EUR 35 for Russians and Ukrainians.¹¹

Romania pursued an open border policy towards Moldova until 2001, when passports became required for crossing the border. The Romanian-Moldovan border had been gradually tightening as Romania approached EU accession. As of January 1, 2007 a visa regime for Moldovans was introduced, as Romania became an EU member state and had to implement the supportive measures of the Schengen acquis. However, as Romania was not yet a full Schengen member, it maintained, in contrast to Hungary, Poland, or Lithuania, a flexible visa regime for Moldovans. As a result, the new visa regime for Moldovans has been less painful than for the residents of Belarus, Ukraine and Kaliningrad, whose direct western neighbours became full members of the Schengen area in late 2007.¹² Moreover, since Moldova had met all the benchmarks set out in the Visa Liberalization Action Plan, in April 2014 the EU lifted visa requirements for Moldovan citizens

9 James W. Scott, 'Borders, Border Studies and EU Enlargement', *CRN Working Paper*, 1 February 2008, p. 16.

10 Poland had to raise the visa fees for Russia even before Poland's entry into the Schengen area in June 2007, when the EU-Russia Visa Facilitation agreement came into force.

11 This difference is explained by the fact that both Russia and Ukraine signed visa facilitation agreements with the EU, which came into force in June 2007 and January 2008, respectively.

12 See discussion over potential difficulties in freedom of movement for Moldovans after Romania's accession to the EU: George Dura, 'A Tale of Two Visa Regimes: Repercussions of Romania's Accession to the EU on the Freedom of Movement of Moldovan Citizens', *UNISCI discussion papers*, N° 10, 2006.

holding a biometric passport. As a result of the increasing complexity of visa procedures and the immediate manifold increase in visa fees, the number of visas issued in Belarus and Ukraine in 2008 by the consular offices of the neighbouring EU countries decreased sharply. Since the consulates of these neighbouring countries traditionally issue a large proportion of all visas provided by the EU states,¹³ the overall number of visas issued also decreased considerably. In 2008 the number of border-crossings at the Poland–Russia, Poland–Belarus and Poland–Ukraine border sections decreased by 45.85%, 47.8% and 47.9%, respectively.¹⁴ In the case of Belarus, the traffic dropped below the level registered in 1990, which prompted talk of a ‘true collapse of the bilateral movement of persons’ at the Polish borders with Belarus, as well as with Ukraine.¹⁵ Only in the last two years have the numbers of visas issued by EU countries’ consulates in Belarus and Ukraine surpassed the 2007 visa statistics.

The steep decrease in the number of issued visas inevitably resulted in reduced people-to-people contacts between the neighbouring states and a considerable slump in ‘shuttle’ business. The latter not only meant lost revenue for a part of the population in the Ukrainian and Belarusian borderland, but in some cases also resulted in a substantial decrease in the revenue of the border area businesses of the EU member states. In his request of May 2008 to Poland’s Foreign Ministry, member of the Polish parliament Adam Abramowicz, who represented the border region of Biała Podlaska, complained about the deterioration of the wellbeing of local entrepreneurs, who are highly dependent on tourism from Belarus.¹⁶

In order to mitigate the negative effects of the EU – or rather, of the Schengen area enlargement – new EU member states undertook

13 In Belarus, Polish and Lithuanian consulates issue two-thirds of all visas provided by the EU states’ consulates; in Ukraine, Polish and Hungarian consulates issue around a half of all Schengen visas.

14 Tomasz Dubowski, ‘Local Border Traffic – European Union and Member States’ Perspective (based on Polish Experience)’, *European Journal of Migration and Law*, 14 (2012), p. 384.

15 Tomasz Komornicki, ‘Flows of persons and goods across the Polish segment of the outer boundary of the European Union – results of a research project’ in Tomasz Komornicki et al (ed.), *European Union: External and Internal Borders, Interactions and Networks*, Volume 20 of Europa XXI, Polish Academy of Sciences, Stanisław Leszczycki Institute of Geography and Spatial Organization, Warsaw, 2010, p. 13.

16 Odpowiedź sekretarza stanu w Ministerstwie Spraw Zagranicznych – z upoważnienia ministra – na zapytanie nr 1600 w sprawie podjęcia natychmiastowych działań w celu poprawienia sytuacji związanej z opieszałością w wydawaniu wiz dla obywateli Białorusi przez Konsulat RP w Brześciu [in Polish], 26 May 2008, Warsaw, <http://orka2.sejm.gov.pl/1Z6.nsf/main/462BE7DE> (accessed 20.03.2014).

a number of measures, including optimisation of the operation of their consulates, widening the categories of persons eligible for national long-term visas, and activating bilateral negotiations on LBT regimes.

Local border traffic regimes at the EU's eastern borders are of great significance, taking into account the large number of border crossings at this section of the EU's external borders. In fact, it is worth emphasizing that out of the total number (16.3 million) of Schengen visas issued in the world in 2013, more than half (9.3 million, or 57% of the total) were provided by the Schengen countries' consulates in Russia, Ukraine, Belarus and Moldova.

Russia and Ukraine lead in absolute numbers of Schengen visas received among all the third countries which are subject to a visa regime with the EU (42.3% and 9.6% of the total number of Schengen visas issued in the world in 2013). Although Belarus ranks fourth in the world in absolute numbers of Schengen visas received, it outstrips Russia and Ukraine in per capita terms. In fact, Belarus leads globally in the number of Schengen visas received per capita.¹⁷ Since the LBT Regulation entered into force in early 2007, about 600,000 LBT permits have been issued. Tens of millions of border-crossings between the Schengen states and their eastern neighbours were undertaken by LBTP holders. At some border sections (Poland/Ukraine, Norway/Russia, Poland/Russia), LBTP holders perform up to half of all border-crossings, which demonstrates the significance of the LBT instrument for border residents, chosen by hundreds of thousands persons instead of, or along with, applying for a Schengen/national visa.

1.2

DISCUSSIONS OVER THE LBT ACQUIS IN THE EU

Local border traffic is mentioned in the 1985 Convention implementing the Schengen agreement. Article 3(1) of the Convention stipulates that external borders may in principle only be crossed at border crossing points and during the fixed opening hours, but exceptions and arrangements for local border traffic... shall be adopted by the Executive Committee.¹⁸ Despite this, for many years neither the

17 Prior to the introduction of a visa-free regime in 2010, Serbia and Macedonia were leading in relative numbers of Schengen visas per capita.

18 Convention implementing the Schengen agreement of 14 June 1985. *Official Journal of the European Communities*, L239, 22 September 2000, pp. 19–62.

Table 1.

Schengen visas (categories A, C, LTV) issued in 2013 in the Eastern Partnership countries and Russia.

Country	Number of visas received	Issued visas per 1,000 inhabitants	Total population
Azerbaijan	60,282	6.3	9.5m
Armenia	40,182	13.4	3.0m
Belarus	772,120	81.3	9.5m
Georgia	72,737	16.2	4.5m
Moldova	49,929	14.3	3.5m
Russia	6,901,421	48.3	142.9m
Ukraine	1,558,805	34.2	45.6m

Table 2.

Leaders in Schengen visas (categories A, C, LTV) in 2013. Source: Author's compilation on the basis of the European Commission's visa statistics. See the file with the visa statistics for 2013 at the bottom of the Webpage: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm (accessed 30.03.2014).

Country	Number of visas issued	Share in the total number of Schengen visas issued globally (in %)	Visas per 1,000 citizens
Russia	6,901,421	42.3	48.3
Ukraine	1,558,805	9.6	34.2
China	1,431,540	8.8	1.05
Belarus	772,120	4.7	81.3
Turkey	743,031	4.6	9.2
India	479,312	3.5	0.39

Schengen Executive Committee nor the Council, which replaced the former one after the entry into force of the Treaty of Amsterdam, proceeded to define the LBT rules. This situation continued until 2002 when the Council finally indicated its interest to proceed with the specification of a Community LBT arrangement. In September 2002, the Commission, on the basis of the Council's mandate,¹⁹ put forward a working paper titled *Developing the Acquis on 'Local Border Traffic'*. The document indicated that neither a clear definition of local border traffic nor any special *acquis*, except for bilateral agreements on LBT that some member states had concluded with neighbouring third countries, existed at that time. The working paper thus identified the need to develop the *acquis* on 'local border traffic' and to set common minimum LBT rules.²⁰ In August 2003, after the reactions of both the EU and future member states to the working paper were taken into account, the Commission put forward two proposals,²¹ laying down Community rules on the criteria and conditions for establishing an LBT regime.

After submission of the proposals to the Council, the Visa Working Party of the Council continued its deliberations on the wording of the documents. As the preliminary work shows, from the outset the delegations of Germany, France and Greece rejected the idea of defining the LBT rules, arguing that they would undermine the Schengen *acquis*.²² Taking into account the position adopted by some of the EU member states, the Presidency sought and received a reaffirmation of the mandate given by the Council to the Commission to draw up proposals on LBT.

As of April 2004, the member states had conflicting views on a whole range of LBT issues, including the LBT rules for the third countries that are exempt from and subject to the visa obligation,

19 Until 1 May 2004, according to Article 67(1) EC, border control powers were subject to the shared initiative of the Commission and the member states. From 1 May 2004, according to Article 67(2) EC, the Commission gained the sole right of initiative on all border matters.

20 Commission Staff Working Paper "Developing the Acquis on 'Local Border Traffic'", Annex I of doc 11933/02 VISA 128 COMIX 505. Brussels, 16 September 2002.

21 Proposal for a Council Regulation on the establishment of a regime of local border traffic at the external land borders of the Member States; Proposal for a Council Regulation on the establishment of a regime of local border traffic at the temporary external land borders between Member States, Brussels, 14 August 2003, COM(2003) 502 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0502:FIN:EN:PDF> (accessed 05.01.2014).

22 Doc 8083/04 VISA 62 COMIX 240, *The Council of the EU*, Brussels, 1 April 2004.

the definition of the border area, practical ways to facilitate border-crossing on the grounds of LBT, as well as the sanctions for abuse of the LBT rules.

Given the political salience of migration issues and the diversity of views among the member states, it is hardly surprising that it took more than two years to reach a compromise on the wording of the Regulation. It could easily have taken much more time to finalise the text of the LBT Regulation if the decision-making procedure in the Council had not been changed from unanimity to qualified majority voting (QMV) in 2005. Apparently, the Council's decision to replace the unanimity requirement with QMV²³ after a transitional period of five years following the entry into force of the Treaty of Amsterdam largely contributed to the progress in deliberations and the adoption of the LBT Regulation. As of 1 January 2005, the Council was no longer required to act unanimously in the area of adoption of LBT measures (Article 62(2)(a) of the Treaty) and thus started acting in accordance with the co-decision procedure (Article 251 of the Treaty). The finalised text of the LBT regulation of December 2006 allegedly ensures the correct balance between facilitation for *bona fide* residents of the border areas, on the one hand, and the maintenance of a high level of security on the other.

1.3 THE LBT REGULATION AS A DEROGATION FROM THE SCHENGEN ACQUIS

Regulation No 1931/2006, laying down rules on local border traffic at the external land borders of the member states and amending the provisions of the Schengen Convention (hereafter: 'the Regulation'), was adopted on December 20, 2006,²⁴ and entered into force in early 2007. The Preamble to the Regulation states that *it is in the interest of the*

23 Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004D0927:EN:NOT> (accessed 20.03.2014).

24 Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention, *Official Journal of the European Union*, L 405/1, 31 December 2006, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:405:0001:0022:EN:PDF> (accessed 20.03.2014).

*enlarged Community to ensure that the borders with its neighbours are not a barrier to trade, social and cultural interchange or regional cooperation.*²⁵ The Regulation authorises member states to conclude or maintain bilateral agreements with neighbouring non-EU countries, provided that these agreements fully comply with the parameters set by the Regulation.

In essence, the Regulation allows those border area residents who have legitimate reasons for regular crossings to obtain special permits that entitle them to stay in the neighbouring border area without a visa.²⁶ The LBTPs are issued by either a consulate or any administrative authority of a member state and are valid for a minimum of one year and a maximum of five. They may be either in the form of stickers pasted into a passport (as was the case with Hungarian LBT permits until September 2011, for example), or in the form of a separate card, as is the case in most, if not all, of the currently functioning LBT regimes. LBT permits may be issued free of charge, but must not cost more than the fee charged for processing applications for short-term multiple-entry visas. LBT permits are valid only for stays in the border area. Sanctions, including revoking a permit, are imposed by member states for any misuse of the LBT regime. As a security measure, those Schengen states that are contracting parties to a bilateral LBT regime have to maintain regular surveillance and carry out random checks in border areas.

The term ‘border area’ under the 2006 Regulation refers to an area that extends no farther than 30 kilometres from the border. However, if part of any administrative district lies between 30 and 50 kilometres of the border line, it will nevertheless be considered part of the border area.²⁷ An additional regulation²⁸ introduced in late 2011, as a specific

25 Ibid.

26 In order to secure legal integrity, the LBT Regulation entered into force in conjunction with another amending Regulation, namely with Council Regulation No 1932/2006 of 21 December 2006 amending Regulation No 539/2001, which is designed to exempt from the visa obligation those border residents who benefit from the LBTR, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:405:0023:0034:EN:PDF> (accessed 20.03.2014).

27 It should be noted, however, that some LBT agreements, in violation of the LBT Regulation, included areas that lay outside the 50-km zone. For example, the Hungarian city of Nyíregyháza, which is included in the LBT border area, is located about 60 km from the Ukrainian border.

28 Regulation (EC) No 1342/2011 of the European Parliament and of the Council 13 December 2011 amending Regulation (EC) No 1931/2006 as regards the inclusion of the Kaliningrad oblast and certain Polish administrative districts in the eligible border area, *Official Journal of the European Union*, L 347/41, 30 December 2011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1342:EN:NOT> (accessed 20.03.2014).

exception to the LBT Regulation, allows the entire Kaliningrad oblast to be regarded as a border area. A specific territory on the Polish side that goes beyond the 30(50) km perimeter and includes major centres in the north of Poland was also recognised as an eligible border area. Such an exception is explained by the *homogeneous nature of the Kaliningrad oblast* and the shared intention to enhance *trade, social and cultural interchange and regional cooperation*²⁹ between the Russian enclave and its EU neighbours.

‘Local border traffic’ is defined as *the regular crossing of an external land border by 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* (Article 3 of the LBT Regulation).

The Preamble to the Regulation also states that the LBT regime constitutes a derogation[*emphasis added*] *from the general rules governing the border control of persons crossing the external borders of the Member States of the European Union*. This is a very important legal notion that served as the grounds for a landmark ruling by the Court of Justice of the European Union (CJEU) in the case concerning the length of stay in the adjacent border area (see below). In addition, as distinct from the Schengen Borders Code,³⁰ the LBT Regulation does not include requirements such as justifying the purpose and conditions of the intended stay, nor proof that the applicant has sufficient means of subsistence.

Pursuant to Article 4 of the Regulation, border residents may cross the external land border of a neighbouring member state under the LBT regime, on condition that they are in possession of a LBT permit and a valid travel document or documents (passport or other travel documents equivalent to a passport), and providing that they are neither in the Schengen Information System (SIS) nor considered to pose a threat to public policy, internal security, public health or the international relations of any of the member states.

In order to qualify for ‘border resident’ status, a person (including citizens of non-contracting parties and stateless persons) must be a lawful resident in the border area for a period of at least one year. This

29 Ibid.

30 Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), *Official Journal of the European Union*, L 105/1, 13 April 2006, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R0562:EN:NOT> (accessed 20.03.2014).

period may be longer, depending on the provisions of the text of the bilateral LBT agreement. In exceptional and duly justified cases (for example, for the close relatives of the border residents), ‘a period of residence of less than one year may also be considered appropriate’ (i.e. it may not matter). In most of the functioning LBT agreements, relatives who qualify for such justified cases include spouses, children under 18, and dependent adults.³¹ Border crossing under the LBT regime is facilitated by fewer systematic checks on holders of LBT permits, specific border-crossing points (BCPS) and/or lanes for border residents.

In March 2013 the Court of Justice of the EU ruled on the landmark case C-254/11 (Szabolcs-Szatmár-Bereg Megyei Rendőrkapitányság Záhony Határrendészeti Kirendeltsége v Oskar Shomodi),³² which concerned the interpretation of the rule of stay in the adjacent border area according to the LBT *acquis*. At the CJEU, the Hungarian government argued that the LBT Regulation should be viewed as an integral part of the Schengen *acquis*.³³ They allow 90 days visa-free travel within the Schengen area during each 180-day period. However, the CJEU stated that this runs contrary to the letter and spirit of the Regulation. The Court ruled that since the Regulation is a derogation from the Schengen *acquis*, the limitation of stays to periods ‘not exceeding three months per six-month period’ does not apply to the LBTRS. The holder of the LBTP *must be able... to move freely within the border area for a period of three months if his stay is uninterrupted and to have a new right to a three-month stay each time that his stay is interrupted*,³⁴ ruled the CJEU.

31 The Latvia-Belarus LBT is the most inclusive in this regard. In addition to spouses, minor children, adopted minors or minor children under guardianship, the relatives eligible for ‘border resident’ status include parents, grandparents, minor grandchildren and minor great-grandchildren.

32 In early 2010, for the first time since the launch of the Hungary/Ukraine LBT agreement in 2008, Hungarian border guards started systematically checking the period of stay of the LBT permit holders. Those LBT permit holders who exceeded the 90-day limit within a half-year period were denied entry into Hungary. This provoked a number of protests on behalf of Ukrainian LBTP holders, who blocked the roads at the Hungary-Ukraine border-crossing points. As a result, the Ukrainian consul brought in an action on behalf of 28 Ukrainian LBT permit holders at a local Hungarian court. The court adopted a decision in favour of the Ukrainian nationals. One of the Ukrainian LBTP holders who successfully contested the police authorities’ decision was Oskar Shomodi. The Supreme Court of the Republic of Hungary, upon hearing the appeal, referred a number of questions to the CJEU for a preliminary ruling.

33 This position was also favoured by the Polish government, which submitted its observations on the case to the CJEU, along with the observations of the Romanian and Slovak governments and of the European Commission.

34 Judgment of the Court of Justice of the European Union (Fourth Chamber) on 21 March 2013 in Case C-254/11, <http://bit.ly/1cvzujh> (accessed 20.03.2014).

Interruption of stay was determined to take place *upon the crossing of the border between the neighbouring Member State and the third country in which the holder of the local border traffic permit resides*. In practice, it means that an LBT permit holder, unlike the holder of a Schengen visa, has the right to stay in the border area for 90 consecutive days (or less, as specified in the bilateral agreement),³⁵ then return to his/her country for a minute or so, which is considered to be an interruption of stay, before returning to the adjacent border area for another 90 consecutive days, and so on.

In fact, this interpretation of the rule of stay gives LBT regimes an added value even after the eventual introduction of a visa-free regime between the EU and eastern neighbouring countries,³⁶ even though conventional wisdom would suggest otherwise. Interestingly enough, just three of the experts surveyed for the purpose of this study gave a positive answer to the question on whether LBTRs would be useful after the eventual introduction of a visa-free regime between the EU and its respective eastern neighbours. It is no coincidence, however, that a number of LBTRs used to function, or are still functioning, between countries which introduced a visa-free regime for each other's nationals (and even between the member states of the EU, as in the case of the Slovenia/Croatia LBT regime).³⁷ The LBTR between

35 The LBT Regulation allows the contracting parties to specify a shorter maximum permissible duration for each uninterrupted stay under the LBTR. E.g., Norway and Russia agreed on just 15 days maximum uninterrupted stay.

36 In addition to the right to longer stays on the territory of the neighbouring state (albeit limited to the border area), the LBTRs would arguably have additional, albeit less significant, types of added value for some categories of border residents after the visa-free regime is introduced. First, if the infrastructure is well developed and measures have been taken to facilitate border crossing for the LBT holders according to Article 15(1) of the LBT Regulation (inter alia, setting up specific border-crossing points open only to border residents and reserving specific lanes for them at ordinary BCPS), this would create a more favourable system for border residents heading to the adjacent border area. Due to their frequent crossing of the border, border residents are supposed to be well-known to the border guards and should therefore be subject only to random checks (Article 15(3)). This, in turn, improves the time management of border guards. Second, LBT agreements, in accordance with the LBT Regulation, allow citizens of a country not party to the bilateral LBT agreement and stateless persons to apply for an LBT permit, provided that they comply with the definition of 'border resident'. If such an individual has legitimate interests in the adjacent border area but he/she is a national of a country that is subject to a visa, then the LBT regime is a much better option, even in the event of visa liberalisation for the citizens of the contracting parties, as such border residents would need to travel to the consulate often in order to undergo visa-claim procedures.

37 For additional information about changes in border management, including at border-crossing points for LBT, after Croatia's accession to the EU as of 1 July 2013, see the website of the Slovenian Ministry of Interior at <http://bit.ly/KEHWxe> (accessed 20.03.2014).

Moldova and Romania remains in place, although Moldovans holding a biometric passport do not need a visa to travel to Romania after the EU exempted Moldova from visa requirements on April 28, 2014.³⁸

Shortly after the ruling, the Hungarian government, in line with the principle of sincere cooperation enshrined in Article 4(3) TEU, carried out different administrative measures and provided detailed information to the authorities concerned in order to ensure their full compliance with the CJEU ruling.³⁹ With the EU-law conform interpretation of the HU-UA bilateral agreement, according to Article 31 of 1969 VCLT, Hungary does not deem it necessary to formally amend the LBT agreement.⁴⁰ According to the Commission's competent department, discussions are currently underway between the Commission and the relevant member states 'to ensure that all LBT agreements are applied in accordance with the decision of the Court in case C-254/11'. The member states concerned have informed the Commission that they had started applying the Court's interpretation in practice even without formal changes to the agreements.⁴¹ Despite this, our monitoring of the webpages of the consular organs of a number of respective EU member states did not reveal the existence of any public information for the border residents on this important interpretation of the LBT rules.⁴² It also remains to be seen whether all the eastern neighbours will follow the interpretation provided by the CJEU.

38 See the press release issued on April 27, 2014 by the Romanian Border Police on the occasion of the introduction of the EU-Moldova visa-free regime at <http://www.politiadefrontiera.ro/> (accessed 30.05.2014).

39 According to the reply from the Migration, Asylum and Border Management Unit of the Department of EU Cooperation of the Ministry of Interior of Hungary to the author's request, received on 27 November 2013.

40 Ibid.

41 The Commission's reply to the author's request, received on 13 November, 2013.

42 E.g., old information on the '90 days in the 180-day period' rule in the overview of the LBTR on the website of the General Consulate of Poland in Kaliningrad has not been upgraded. See http://kaliningrad.msz.gov.pl/ru/consular_information/mrg_ru/ (accessed 20.05.2014). At the same time, as reported by the Polish Border Guard, the CJEU's ruling was upheld as of 21 October, 2013.

2

2. The LBT regimes at the EU's and Norway's eastern borders

2.1

CHARACTERISTICS OF ENFORCED LBT REGIMES

The border regions at the EU's eastern border are heterogeneous in many respects when it comes to density of population, political and economic development, and quality of road infrastructure, for example. Due to their peripheral location, border regions are often economically underdeveloped. For instance, Aluksnes, Balvu and Ludzas in Latvia and Ida-Virumaa in Estonia are among the most economically less developed and least politically integrated regions within those states.

Out of the 14 border sections at the EU's eastern borders, only eight are currently covered by an operational LBT regime.

Significantly, the date of entry into force of an LBT agreement does not equate with the first day of actual use of the LBTR benefits. At best, on the day of entry into force, the first applicants will be able to submit their applications for the LBT permits. In cases where the countries agree that local government organs should prepare the lists of border residents, which are then passed to the other state's organs responsible for issuance of the LBT permits, the necessary procedures will take longer. For example, the first Latvia/Belarus LBT permits were issued on 28 February 2012, three months after the LBT agreement had come into force.

The proportion of potential LBT permit holders (i.e. the number of people who fall under the category of border resident) in relation to the country's total population ranges from 1–3% as in the cases

LBT regime	Date of signature	Date of entry into force	Length of the land border (in km)	Population in the EU MS border area	Population in the border area of the third state
Hungary/Ukraine	18.09.2007	11.01.2008	137	450,000	550,000
Poland/Ukraine	28.03.2008	01.07.2009	542	800,000	1.2m
Slovakia/Ukraine	30.05.2008	27.09.2008	98	340,000	415,000
Romania/Moldova	13.11.2009	22.01.2010	450	1.7m	1.2m
Latvia/Belarus	23.08.2010	01.12.2011	141	166,000	65,000
Norway/Russia	02.10.2010	29.05.2012	196	10,000	32,000
Latvia/Russia	20.12.2010	06.06.2013	214	84,000	88,000
Poland/Russia	14.12.2011	27.07.2012	232	1.4m	950,000

Source: Author's compilation on the basis of open sources and own calculations.

Table 3.
Functioning
LBT regimes
at the EU's
eastern borders
in chronological
order of the date
of signing the
bilateral
agreement

of Russia, Slovakia, and Poland, to 12% in the case of Latvia,⁴³ and to about a third of the total population of the country in the case of Moldova. If or when Belarus starts implementing the LBT agreements signed with Lithuania and Poland, the share of the eligible Belarusian population would reach 15% of the country's total population. If the Lithuania/Belarus and Lithuania/Russia LBTRs are launched, more than a third of the Lithuanian population will qualify as border residents. It should be kept in mind, however, that only *bona fide* border residents with legitimate and duly substantiated reasons for frequently crossing an external land border are eligible to benefit from the LBT regime. In addition, the actual popularity of LBT regimes is affected, *inter alia*, by the peculiarities of the application procedures, the border residents' reasons for travelling, and the availability of other instruments of legal stay in the neighbouring country. Below is a more detailed overview of the functioning LBT regimes, broken down by eastern European country.

43 About 240,000 people live in the areas covered by the Latvia–Russia and/or the Latvia–Belarus LBT agreements. About 10,000 of them are eligible for LBT permits under both LBTRs.

2.1.1

Russia

Out of the six eligible land border sections, three are currently open to local border traffic with Russia: Norway/Russia,⁴⁴ Poland/Russia⁴⁵ and Latvia/Russia⁴⁶. The Lithuania/Russia LBT agreement was on the verge of being signed by the parties, but stalled in 2010. Negotiations on the Finland/Russia and Estonia/Russia LBT agreements have never got underway.

The Latvia/Russia LBT agreement is the most recent of all the existing LBTRS. It came into force on 6 June 2013, and the first LBT permits were issued on 7 October.⁴⁷ It would therefore be premature to draw conclusions on the functioning of this particular LBTR. Interestingly enough, only Latvia and Poland have two functioning LBT regimes each with eastern neighbouring countries. Other EU member states have just one functioning LBTR.

The first LBT agreement with Russia was signed by Norway, which is not a member of the EU but which has been a party to the Schengen Agreement since 2001. The border between Norway and Russia being quite short (less than 200km), there is only one legal land border crossing point, the Storskog–Borisoglebsk BCP. The border between Norway and Russia was defined by a bilateral treaty in 1826. This is Russia's only external border with a neighbouring state that has remained unchanged since the 19th century.

Since Norway liberalized its visa regime for Russians living in the Barents region in 2010,⁴⁸ traffic at the Norway/Russia border has

44 Soglashenie mezhdru Pravitel'stvom Rossijskoj Federacii i Pravitel'stvom Korolevstva Norvegija ob uproshhenii porjadka vzaimnyh poezdok zhitelej prigranichnyh territorij Rossijskoj Federacii i Korolevstva Norvegija [in Russian], <http://www.rosgranitsa.ru/ru/activity/international/countries/norway/legalbase/8367> (accessed 20.03.2014).

45 Soglashenie mezhdru Pravitel'stvom Rossijskoj Federacii i Pravitel'stvom Respubliki Pol'sha o porjadke mestnogo prigranichnogo peredvizhenija [in Russian], <http://www.rosgranitsa.ru/ru/node/4648> (accessed 20.03.2014).

46 Soglashenie mezhdru Pravitel'stvom Rossijskoj Federacii i Pravitel'stvom Latvijas Respubliki ob uproshchenii vzaimnyh poezdok zhitelej prigranichnyh territorij Rossijskoj Federacii i Latvijas Respubliki [in Russian], <http://likumi.lv/doc.php?id=257588> (accessed 05.01.2014).

47 Sāk pieņemt alūksniešu dokumentus pie robežas satiksmes atļauju noformēšanai [in Latvian], *Delfi.lv*, 10 October 2013, www.delfi.lv/novados/aluksnes-novads/zinas/sak-pienemt-aluksniesu-dokumentus-pierobezas-satiksmes-atlauju-noformesana.d?id=43722926#ixzz2nJ3ApAlk (accessed 20.03.2014).

48 Residents of the Murmansk, Arkhangelsk regions and Nenets Autonomous Okrug are entitled to the so-called Pomor visa. Multi-entry Schengen visas are issued by Norwegian consulates without holding a prior invitation from the Norwegian side, if the applicant was previously granted at least one single-entry Pomor visa.

Table 4.
Functioning
LBT agreements
with Russia

LBT regime	Number of permits issued	Share of permit holders (in % of the population of the border areas)
Norway/Russia	1,247 by Norway as of late October 2013	4% on RU side
	2,941 by Russia as of late October 2013	30% on NO side
Latvia/Russia	35 by the end of 2013 by Latvia	Very low figure (less than 0.1%) since the issuance started in October 2013
	Not communicated	
Poland/Russia	117,000 by Poland (approximate, as of 30.08.13)	12% on RU side
	30,000 by Russia (approximate, as of 30.06.13)	2% on PL side

Source: Public sources and information provided by the Norwegian Consulate-General in Murmansk, the Russian Consulate General in Kirkenes, and the Ministry of Foreign Affairs of Latvia.

been constantly on the rise. Indeed, the Russian Consulate General in Kirkenes cites the issuance by Norway of the so-called Pomor visas through a simplified procedure as one of the main reasons for the rather low number of applications for LBT permits on behalf of Russian border residents.⁴⁹ Since 2009, traffic at the Storskog-Borisoglebsk BCP has almost tripled, with nearly 300,000 border-crossings in 2013. In their forecast, the Norwegian police with assistance from the Norwegian Barents Secretariat concluded that by 2014 the number of border-crossings may reach 400,000 yearly.⁵⁰ The rise in traffic was partly instigated by the LBTR, launched in late May 2012. By November 2013, some 4,200 LBT permits had been issued and about 50,000 border-crossings by LBT permit holders had taken place.⁵¹

In March 2011 a Norwegian-Russian intergovernmental agreement on the status of the Storskog-Borisoglebsk border checkpoint was

49 Reply from the Russian Consulate General in Kirkenes to the author's request, received on November 12, 2013.

50 Thomas Nilsen, 'Barents roadmap towards visa-freedom' in AtleStaalesen (ed.), *Barents Borders: Delimitation and Internationalization*, Barents Review, Kirkenes, 2012, p. 32.

51 Statistics provided to the Norwegian Barents Secretariat by the Norwegian immigration officials and published on the *BarentsObserver* online information platform (cf. <http://barentsobserver.org>).

signed, with the aim of developing infrastructure to handle the increasing number of border-crossings. Nearly 80% of the border-crossings are undertaken by Russians, but the LBT regime prompted more Norwegians to visit the Russian borderlands, such as the urban centres of Zapolyarny and Nikel. It is reported that more than half (54%) of the Norwegians who crossed at Storskog in November 2012 were LBT permit holders.⁵² The main rationale for Norwegians is buying cheaper petrol on the Russian side of the border. Russians, for their part, are eager to buy certain categories of goods (including foodstuffs) which are cheaper in Norwegian shopping malls than in the Russian border area. Despite recommendations by experts and the parliament, and failing to meet the expectations of the regional police authorities, the Norwegian government has not yet decided whether or not to provide the necessary funding from the state budget in order to refurbish the Storskog BCP. After it turned out that the 2014 budget plan does not foresee long-awaited funding, the head of the Kirkenes Police Station supported the experts' earlier claims, warning that the situation at the Storskog border-crossing point could soon become chaotic. Particularly on Saturdays, when Russians head to Norway to shop, the traffic is so dense that it affects the quality of the border control, the head of the local police confirmed.⁵³

Information recently became public that the Russian and Norwegian sides are considering the possibility of expanding the LBT border zone. This issue was reportedly discussed by Russian and Norwegian politicians in early December 2013.⁵⁴ Igor Chernyshenko, a member of the Committee on Problems of the North and Far East in Russia's Federation Council, specified that discussions concerned expanding the border area to the whole territory of Murmansk Oblast (which has a population of 780,000) and of the Finnmark county (74,000 inhabitants).⁵⁵ However, this initiative seems unfeasible for legal and political reasons. Expanding the border areas would require the European Commission to come up with a legal initiative that would need to be endorsed by the Council and the Parliament. Given that the Kaliningrad enclave has a special location and status, the EU organs were supportive of the idea of making an exception for the

52 Thomas Nilsen, 'Up 10 percent in one month', *BarentsObserver*, 5 December 2012.

53 Trude Pettersen, 'Police fear chaos on border crossing,' *BarentsObserver*, 16 October 2013.

54 Trude Pettersen, 'Valentina Matvienko visited Norway', *BarentsObserver*, 9 December 2013.

55 *Bezvizovyyjrezhim s Norvegiej mozhet byt' vveden na vsej territorii Murmanskoy oblasti* [in Russian], *Newsagency Interfax*, 09 December 2013, www.interfax.ru/tourism/tourisminf.asp?sec=1466&id=345730 (accessed 20.03.2014).

initial LBT Regulation rule of a 30(50) km-wide border zone. However, talks on the expansion of the border zone in the case of the Norway/Russia LBT may legitimately provoke similar initiatives regarding other LBTRS. This, in turn, would raise objections in the EU organs over unjustified derogations from the existing Schengen acquis. Notably, the Joint Statement by the Council and the Commission attached to the Regulation amending the LBT Regulation as regards the inclusion of the Kaliningrad oblast and certain Polish administrative districts in the eligible border areas reads: *The border area on the Polish side together with that on the Russian side is considered to be a single, unique and particular case. This amendment does not constitute a precedent for the future.*⁵⁶

Thanks to the concerted actions of Poland and Russia⁵⁷ and the favourable position of the Commission and other EU organs, an exception was made in the Kaliningrad case with regard to the width of the border area. The Polish-Russian LBT border area included the entire Kaliningrad region and an approximately equal area on the Polish side (15,100 and 16,526 square kilometres, respectively). This LBTR, as well as all the others, in conformity with the initial LBT Regulation, allows for land border-crossings only.

The signing of the Polish-Russian LBT Agreement in December 2011 is regarded by some observers as an unequivocal success for the Polish Presidency in the Council of the EU.⁵⁸ Officials of the two countries have repeatedly praised the functioning of the LBTA, pointing to the enhancement of Polish-Russian neighbourhood relations in economic, social and cultural dimensions in a relatively short period of time after the entry into force of the agreement (27 July 2012).⁵⁹ It is even argued that the launch of the LBTR gave such a

56 Addendum to draft minutes at the 3134th meeting of the Council of the European Union (Transport, Telecommunications and Energy). The Council of the European Union, doc 18504/11. Brussels, 29 March 2012, p. 4.

57 E.g. in April 2010 the heads of Polish and Russian MFAs wrote an open letter to the High Representative of the EU for Foreign Affairs and Security, appealing for support for their initiative.

58 Joanna Fomina, 'Local border traffic agreement for the Kaliningrad region: a success story of the Polish presidency and a trust-building exercise for Poland and Russia', *Batory Foundation Policy Brief*, Warsaw, December 2011.

59 E.g., 'Local border traffic with Russia – theory and practice', *Polish MFA Press Office*, 24 October 2013, http://www.mfa.gov.pl/en/news/local_border_traffic_with_russia___theory_and_practice (accessed 20.03.2014).

visible impetus to Polish–Russian bilateral relations that ‘the political value of the Agreement appears to be even more significant than its practical content’.⁶⁰

The practical benefits of the LBTR for various local stakeholders should not be underestimated, however. A survey among the representatives of the local authorities of the two border areas, as well as among the local population, shows a rather high assessment of the LBTR for regional development. 60% of the Polish border residents and 45% of the Kaliningrad border residents believe that the LBTR provides some impetus for the development of the respective local administrative unit. Regional authorities on both sides of the border have even more positive views on this point, with only 3% of respondents in the Polish local authorities and 6% in Kaliningrad disagreeing about the positive impact of the LBTR on regional development. Additionally, 28% and 4% are, correspondingly, undecided, while the rest of the respondents point to some positive LBTR impact.⁶¹

Yet another survey shows that over 70% of respondents consider the LBTR to be beneficial for the two states as a whole, for the respective borderlands, local authorities, economic entities, and ordinary border residents. A third of respondents believe the LBTR contributes to the improvement of bilateral relations, while 24% of those surveyed point to the negative consequences of the LBTR.⁶² While some of the concerns of border residents (an increase in crime, illegal migration, and unemployment) appear to be groundless, some concerns (such as difficulties at the border because of the increased traffic flow and rise in petrol traded on the grey market) are indeed justified, calling for a joint action by the two states in order to resolve them.

According to the Polish statistical offices, the number of border crossings at the Polish/Russian border during the first three quarters of 2013 (4472 thousand) exceeded the figures for the whole of 2011

60 Raúl Hernández i Sagrera & Olga Potemkina. ‘Russia and the Common Space on Freedom, Security and Justice’, The Center for European Policy Studies, *CEPS paper No. 54/February 2013*, pp. 7–8, www.ceps.be/ceps/dld/7768/pdf (accessed 20.03.2014).

61 Izabela Zabielska & Joanna Zielińska-Szczepkowska, ‘„Koszty–korzyści” wejścia w życie umowy o małym ruchu granicznym z obwodem Kaliningradzkim FR – wyniki badań ankietowych’ [in Polish], The Association of Polish Communes Euroregion Baltic, www.eurobalt.org.pl/media/pliki/7.doc (accessed 20.03.2014).

62 Presentation of the results of the research ‘Efekty wejścia w życie umowy o zasadach małego ruchu granicznego między Rządem Rzeczypospolitej Polskiej a Rządem Federacji Rosyjskiej’ [in Polish], *Laboratory of Social Research*, Mikołajki, October 2013, p. 18, <https://www.msz.gov.pl/resource/7361ee6b-715f-4ef6-adb5-e75955d33efb:JCR> (accessed 20.03.2014).

and 2012 (2374 thousand and 4073 thousand, respectively). Still, only about 3% of the border residents on the Polish side have ever used the LBTR, according to a representative phone survey carried out in August 2013,⁶³ which is consistent with the data on issued LBTPs (provided in Table 4 above). In the third quarter of 2013, 374 thousand border-crossings by Russian LBTP holders, and 420 thousand border-crossings by Polish LBTP holders took place, while the Polish-Russian border was crossed 933 thousand times by non-holders of LBTPs.⁶⁴ The figures show that travel across the Polish-Russian border with LBTPs has become almost as popular as trips on visas. The main reasons for travel are trade (59%), tourism (53%), and family matters (9%).⁶⁵

Meanwhile, for Polish LBTP holders the most popular goods on the Russian side of the border are fuel (88.5% of all unregistered expenditure in the third quarter of 2013), alcoholic beverages (5.8%) and tobacco products (2.3%). The preferences of the Russian LBTP holders are more diversified and include such categories of goods as meat and meat products (18.1%), other food products (14.3%), clothing and footwear (17.3%), and household detergents and cosmetic products (10.6%).⁶⁶ This is explained by the price differentials across the border (see details in subsection 2.3.3). A survey of the goods and services turnover, which is unregistered in customs declarations, shows that spending by Russian LBTP holders is constantly rising. It totalled 15.8 million EUR for Russian LBTP holders and 12.5 million EUR for Polish LBTP holders in the third quarter of 2013.⁶⁷

As a result, just one and a half years since the Polish-Russian LBTR launch, it has proved to be an important mobility tool for local residents and a recognized instrument of cooperation for the local authorities across the border.

63 Raport z badania opinii publicznej wśród mieszkańców powiatów objętych Małym Ruchem Granicznym "Mały Ruch w dobrym kierunku" [in Polish], *The Centre for Polish-Russian Dialogue and Understanding*, Warszawa, 2013, p.30, www.cprdip.pl/main/file.php?id=207&w=600&h=400&bgnews=0 (accessed 20.03.2014).

64 Author's estimates on the basis of the quarterly monitoring reports on the movement of goods and services of the Statistical Office in Rzeszów, http://www.stat.gov.pl/rzesz/69_644_PLK_HTML.htm (accessed 20.03.2014).

65 *The Centre for Polish-Russian Dialogue and Understanding*, *op.cit.*, p. 30.

66 'Badanie obrotu owarów i usług na zewnętrznej granicy Unii Europejskiej na terenie Polski w III kwartale 2013 roku' [in Polish], Statistical office in Rzeszów, 20 November 2013, p. 11, http://www.stat.gov.pl/cps/rde/xbcr/rzesz/ASSETS_BAD_OBROT_GRAN_III_KWARTAL_2013.pdf (accessed 20.03.2014).

67 *Ibid.*

2.1.2

Ukraine

The agreement between Ukraine and the EU on facilitation of the issuance of visas, which was signed in June 2007, was accompanied by a Political Declaration on Local Border Traffic from Poland, Hungary, the Slovak Republic, and Romania, in which the four countries declared their willingness to enter into negotiations on bilateral LBT agreements with Ukraine.⁶⁸ The Hungary/Ukraine LBT agreement⁶⁹ was the first under the LBT *acquis* and it came into force concurrently with Schengen accession, while the Slovakia/Ukraine⁷⁰ and Poland/Ukraine⁷¹ LBTRs were launched later in 2008–2009. The LBT agreement between Romania and Ukraine was on the verge of being concluded by early 2009, but deterioration in bilateral relations and diverging opinions on the functioning of the LBTR have hindered the signing of the agreement to date.

Since Ukraine introduced a visa-free regime for citizens of EU countries in 2005 (for Romania in 2008), it is only Ukrainians who have benefited from the LBT rules. There are more than 2 million Ukrainians living in the respective border areas. The proportion of permit holders in Table 5 is shown taking in account that any single permit corresponds to an individual border resident. In reality, some applicants renewed their expired LBT permits, so the figures in the table represent exaggerated indicators. According to monitoring in 2011, 70% of the issued LBTPs in the Hungarian consulate in Uzhhorod were valid for 5 years and 15% for 1 year, while the remaining 15% of the permits had validity for 2–4 years.⁷² At the same time, only 12.8% of holders had Slovak LBTPs which were valid for 5 years, with the

68 The Agreement between Ukraine and European Communities (European Union) on facilitation of the issuance of visas, signed on 18 June 2007, <http://novisa.org.ua/en/dovidnik/normativni-dokumenti/24008-2/> (accessed 20.03.2014).

69 Uгода mizh Kabinetom Ministriv Ukrayiny ta Uryadom Uhors'koyi Respubliki pro pravyla miscevoho prykordonnoho ruxu [in Ukrainian], came into force on 11 January 2008, http://zakon4.rada.gov.ua/laws/show/348_072 (accessed 20.03.2014).

70 Uгода mizh Ukrayinoyu ta Slovac'koyu Respublikoyu pro miscevyj prykordonnyj rux [in Ukrainian], came into force on 27 September 2008, http://zakon4.rada.gov.ua/laws/show/703_076 (accessed 20.03.2014).

71 Uгода mizh Kabinetom Ministriv Ukrayiny ta Uryadom Respubliki Pol'shha pro pravyla miscevoho prykordonnoho ruxu [in Ukrainian], came into force on 01 July 2009, http://zakon4.rada.gov.ua/laws/show/616_138 (accessed 20.03.2014).

72 Vizova polityka Uhorshhyny ta Slovachchyny v konsul'skyx ustanovax na terytoriji Zakarpats'koyi oblasti (V–j etap) [in Ukrainian], *Center for Strategic Partnership*, June–August 2011, p. 22, <http://novisa.org.ua/upload/file/Uzhgorod%20research.pdf> (accessed 20.03.2014).

overwhelming majority of Slovak permits (79.5%) being issued for just one year.⁷³

Table 5.
Functioning
LBT agreements
with Ukraine

LBT regime	Number of LBT permits issued to Ukrainians	Share of permit holders (in % of the population of the border area)
Poland/Ukraine	187,000 (approx., as of 30.06.2013)	Max. 16%
Slovakia/Ukraine	2,655 (as of late November 2013)	Max. 0.6%
Hungary/Ukraine	163,396 (by the end of 2013)	Max. 30%

Source: Public sources and information provided by the Embassy of the Republic of Hungary in Kyiv, the National Institute for Strategic Studies (regional office in Uzhhorod), and the University of Białystok.

According to the last Ukrainian census, in 2001 Ukraine was home to 144,000 members of the Polish ethnic minority, 156,000 Hungarians, 151,000 Romanians, and a few thousand Slovaks.⁷⁴ The absolute majority of the Slovak and Hungarian ethnic minorities reside in the Ukrainian region of Zakarpattia, whereas most of the ethnic Romanians in Ukraine live in the adjacent Chernivtsi region. However, only a small proportion of ethnic Poles in contemporary Ukraine reside in the vicinity of the border with Poland. Mutual ethnic cleansings in 1943/44 and the consequent mass expulsion of Ukrainians from Poland to the Soviet Union, followed by Polish population transfers from Ukrainian territory in 1944/46, largely destroyed family ties between residents of the Polish-Ukrainian borderland.

Classifying the main reasons for travel with an LBT permit throughout LBTRS is possible only with a number of reservations. In Chart 1, the distribution of the main reasons for travel by Ukrainian border residents in three LBTRS is presented, based on three surveys which used different methodologies whereby the naming of the reasons and even the number of options available for respondents varied. One should also keep in mind that one LBTP holder can travel to the adjacent border area for a number of different reasons (some LBT surveys indeed allow a respondent to choose a few options, not

⁷³ Ibid, p. 62.

⁷⁴ Pro kil'kist' ta skladnaseennyaUkrayiny za pidsumkamy Vseukrayins'koho perepysu naseennya 2001 roku [in Ukrainian], State Statistics Committee of Ukraine data, <http://esteticamente.ru/polit/02dksvnp.htm> (accessed 20.03.2014).

just one). This inevitably gives a somewhat distorted picture across the three border areas. However, the chart provides an insight into the main trends in corresponding LBTRs. Whereas for the Slovakia/Ukraine and Hungary/Ukraine LBT permit holders, visiting relatives is quite a common declared reason for border-crossing,⁷⁵ the majority of applications for the Poland/Ukraine LBT permit are filed by Ukrainian residents with the aim of going to Poland to shop, and for shuttle trade purposes. The notorious historical developments in the Polish-Ukrainian border areas consequently result in a low proportion of family reasons in the distribution of LBTP holders' priorities. At the same time, when Ukrainian holders of a Slovak LBTP can differentiate between shopping and cultural reasons for travel (tourism), shopping is chosen by a mere 3% of respondents.

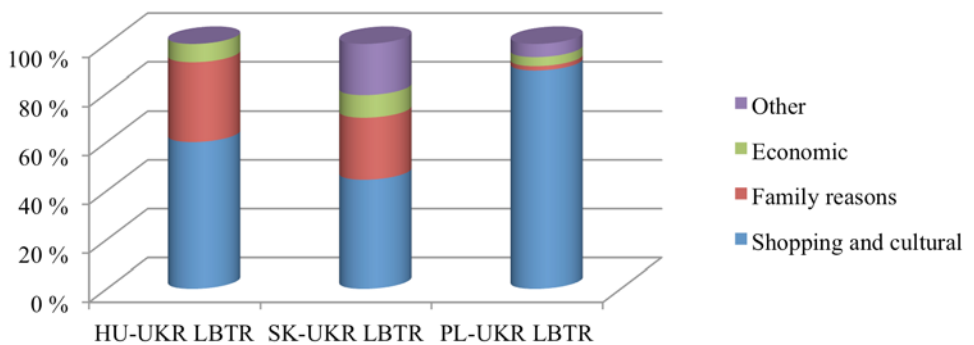


Chart 1. Main reasons for travel by LBTP holders in the three Ukrainian LBTRs
 Source: Author's compilation on the basis of surveys carried out by the Center of Strategic Partnership (Ukraine)⁷⁶ and data from the statistical office in Rzeszów (Poland).⁷⁷

- 75 According to yet another survey of Slovakia/Ukraine LBTP holders, visiting relatives was cited as the main reason for travelling by an even larger percentage of respondents (43.8%). See Svitlana Mitryaeva, 'Miscevyj prykordonnyj rux (Local Border Traffic): shodo modyfikaciyi Uhody mizh Ukrayinoyu ta Slovachchynoyu', *The National Institute for Strategic Studies, regional office in Uzhhorod*, 2011, p. 7, http://www.niss.gov.ua/content/articles/files/pr_ruh-6dc38.pdf (accessed 20.03.2014).
- 76 Data for HU-UKR LBTR represent the surveyed respondents who received permits in the Hungarian consulate in Beregovo; figures for the applicants in the Uzhgorod consular office differ slightly. See Vizova politika Ugorshhini ta Slovachchini v konsul'skih ustanovah na teritorii Zakarpats'koï oblasti (V-j etap) [in Ukrainian], *Center for Strategic Partnership*, June–August 2011, p. 45, p. 63.
- 77 The statistical office in Rzeszów provides an overall distribution of reasons for travel by Ukrainians over the Polish–Ukrainian border, without specifying the LBTP holders. However, the numbers arguably do not differ much, since almost half of the border-crossings are made by LBTP holders.

Recent legislative novelties introduced by Poland, Hungary and Romania facilitated the provision of a legal status for the representatives of their respective national minorities living in neighbouring Ukraine. In the case of Poland, this comprises ‘Karta Polaka’ (a Pole’s Card), which was introduced in 2008 for citizens of the post-Soviet states. Anyone who can prove that at least one of his/her parents or grandparents or two great grandparents were of Polish nationality or had Polish citizenship, and can prove his/her relationship with Polishness through at least a basic knowledge of the Polish language, may obtain a Pole’s Card. The holder is entitled to a long-term national visa through a simplified procedure and is, *inter alia*, exempt from the obligation to obtain a work permit for foreigners. By November 2012, Poland had issued 100,000 Pole’s Cards, about half of which were for Ukrainian citizens of Polish origin.⁷⁸

In the same vein, in 2010 Hungary introduced amendments to the Law on Citizenship to facilitate the accelerated naturalization process for ethnic Hungarians living abroad. Since January 2011, it has taken just 3–4 months to acquire Hungarian citizenship for those with proven Hungarian ancestry, a basic knowledge of Hungarian, and no previous convictions. By late 2013, Hungary had reportedly granted more than 500,000 citizenships to Hungarians ‘beyond the borders’. By August 2013, more than 50,000 Ukrainians had applied for Hungarian citizenship on the basis of this facilitated procedure.⁷⁹ The availability of these legal options for border residents who are entitled to a Pole’s Card, or to Hungarian or Romanian citizenship (Romania’s legal initiative in this respect is discussed in subsection 2.1.4), downgrades the necessity and popularity of respective LBT regimes with neighbouring EU member states.

In contrast to Ukraine’s other western neighbours, Slovakia did not introduce similar legislative measures. Therefore, LBTR is arguably a more significant mobility instrument for Ukrainians living along the Slovak border than for the border residents living in the areas adjacent to Hungary or Poland. Ironically, the LBTR with Slovakia turned out to be the most ineffective of all. In fact, the initial Slovakia/Ukraine

78 Wydano 100 tys. Kart Polaka; MSZ: wzrasta zainteresowanie Polską, depesza PAP [in Polish], Ministry of Foreign Affairs of Poland, 24 October 2012, http://www.msz.gov.pl/aktualnosci/msz_w_mediach/wydano_100_tys_kart_polaka_msz_wzrasta_zainteresowanie_polska_depesza_pap_24_10_2012_printMode=true (accessed 20.03.2014).

79 Pivmil”ëna zakordonnyx uhorciv otrymaly uhors”ke hromadyanstvo [in Ukrainian], *News agency Ukrinform*, 18 August 2013, http://www.ukrinform.ua/ukr/news/pivmilyona_zakordonnih_ugortsiv_otrymali_ugorske_gromadyanstvo_1855229 (accessed 20.03.2014).

LBT agreement set much more burdensome application procedures for LBT permits, compared with the provisions of the Hungary/Ukraine or Poland/Ukraine agreements. Until amendments to the Slovakia/Ukraine LBT agreement were introduced in 2011, the application procedure for an LBT permit at Slovak consulates was more complicated and took more time than an application for a Schengen visa.⁸⁰

Two other discouraging characteristics of the Slovakia/Ukraine LBTR are that on the Slovakian side the border area is relatively sparsely populated and hosts no big city with attractive services, while an uninterrupted stay in the border area was limited to 30 days.⁸¹ Moreover, from September 2011 to January 2013, issuance of the Slovakian LBTPs was stopped because of the lack of an arrangement between the Slovak Ministry of Foreign Affairs and the Ministry of Interior as to the method of biometric data processing.⁸² As a result, the LBTR with Slovakia was and remains largely unpopular,⁸³ even though the LBT agreement was amended in June 2011, allowing for a permitted stay of 90 days and waiving the LBT permit application fees for all applicants. The requirements for collecting biometric identifiers did not result in a similar delay in the case of the Hungarian LBT; the issuance of a new type of Hungary/Ukraine LBT permit started on 5 September 2011. However, this prolonged the waiting period for decisions on LBT applications, since new documents now had to be printed in Budapest, not Uzhhorod or Beregovo.⁸⁴ On 8 November 2013, the Polish parliament endorsed legislation which *inter alia* introduces a requirement to include biometric data in the LBTPs.⁸⁵ Important recent changes in the application procedure for the Polish LBTP include the

80 Svitlana Mitryaeva, op. cit., p. 9.

81 Uhoda mizh Ukrainoyu ta Slovac"koju Respublikoyu pro vnesennya zmin do Uhody mizh Ukrainoyu ta Slovac"koju Respublikoyu [in Ukrainian]. Came into force on 29 December 2011, http://zakon4.rada.gov.ua/laws/show/703_090 (accessed 20.03.2014).

82 Ol"ha Pavlova, 'Henkonsul"stvo Slovac'hyny ne vydaye zakarpatsyam dozvoliv na malyj prykordonnyj rux' [in Ukrainian], Zakarpattya onlajn, 11 February 2012, <http://zakarpattya.net.ua/News/92848-Henkonsulstvo-Slovachchyny-ne-vydaie-zakarpattsiam-dozvoliv-na-malyi-prykordonnyi-ruk> (accessed 20.03.2014).

83 By 1 August 2010, the Slovakian consulate in Uzhhorod had issued only 1,132 LBT permits, compared to 62,029 Hungarian and 39,316 Polish LBT permits by this date. Only 835 LBT permits were issued by the Slovak consulate in January–September 2013.

84 Oleksandr Popovych, 'Dozvoliv Maloho prykordonnoho ruxu v Uhorshhynu mistytmut" biometrychni dani', *Mukachevo.net*, 26 August 2011, <http://www.mukachevo.net/ua/News/view/45162-Dozvoliv-Malogo-prikordonnogo-ruxu-v-Ugorshhynu-mistytmut-biometrychni-dani> (accessed 20.03.2014).

85 Ustawa o cudzoziemcach, Project introduced by the Council of Ministers to the Sejm, pp. 27–30, www.handelludzmi.eu/download/91/12305/ProjektustawyskierowanydoSejmu.pdf (accessed 20.03.2014).

requirement to register and submit a completed application along with scans of required documents via a special internet information system, or at the visa centre.

As the statistical data show, the number of border-crossings by Polish LBTP holders is increasing year by year. In 2012, the figure totalled almost 6 million (in 2011 it stood at 5 million, and in 2010 it equalled 3.6 million), or 48% of all border-crossings.⁸⁶ Thanks to the comprehensive methodology for estimates of sales and services regarding the border traffic on external Polish borders, which Polish statistical offices apply, fairly reliable data exist on the economic impact of the LBTR. It shows that spending by LBTP holders is constantly on the rise. It is calculated that 40.8% of all spending by Ukrainians in Poland in 2012 could be attributed to LBT permit holders.⁸⁷ Most of the spending by LBTP holders in the Polish border area (which is assessed at about 360 million EUR) goes on building materials (37.6% of all spending in 2012), motor spare parts (17.4%), household appliances (11.6%), and meat and meat products (7.4%).⁸⁸

Most of the Ukrainians who obtain LBT permits make frequent use of them. In 2012, 74.6% of LBTP holders were reportedly crossing the Polish border a few times a week, while 6% use their permits daily. Just 0.9% of LBTP holders make use of the LBT document a few times a year or less. The remaining 18.5% of Ukrainians holding respective permits travelled to the Polish border area a few times a month.⁸⁹

2.1.3

Belarus

Belarus shares borders with Latvia, Lithuania and Poland, but only the LBTR with Latvia⁹⁰ is effective as of May 2014. At present, Belarusian citizens receive more Schengen visas per capita than citizens of any

86 Marek Cierpień-Wolan, Edyta Giełbaga, Elżbieta Wojnar (ed.), *Ruch graniczny oraz przepływ towarów i usług na zewnętrznej granicy Unii Europejskiej na terenie Polski w 2012 r.*, Główny Urząd Statystyczny, Urząd Statystyczny w Rzeszowie, Warszawa-Rzeszów, 2013, p. 45, http://www.stat.gov.pl/cps/rde/xbcr/rzesz/ASSETS_ruch_graniczny_2012.pdf (accessed 20.03.2014).

87 *Ibid.*, p. 39.

88 *Ibid.*, p. 46.

89 Marek Cierpień-Wolan, Edyta Giełbaga, Elżbieta Wojnar, *op.cit.*, p. 46.

90 Law of the Republic of Belarus of 31 December 2010 No231-3 'O ratyfikacji Soglasheniya mezhdru Pravitel'stvom Respubliki Belarus' i Pravitel'stvom Latvijskoj Respubliki ob uproshhennom porjadke vzaimnyh poezdok zhitelejprigranichnyh territorij Respubliki Belarus' i Latvijskoj Respubliki' [in Russian], <http://www.pravo.by/main.aspx?guid=3871&p0=H11000231&p2={NRPA}> (accessed 20.03.2014).

other third state subject to a visa regime with the EU. Taking into account the population density in the border areas with Lithuania and Poland (see Table 6 below), the introduction of LBTRs would certainly increase the mobility of the Belarusian population even further. As one can see, the Belarusian border area under the Latvia/Belarus LBT is much narrower and less densely populated, compared to areas covered by the Lithuania/Belarus and Poland/Belarus LBTRs. In fact, this peculiarity is one of the factors that made the Belarusian authorities supportive of the idea of launching an LBTR with Latvia.

LBTR	Border length	Population in the EU MS border area	Population in the Belarusian border area
Latvia–Belarus	171 km	166,000	65,000
Lithuania–Belarus	680 km	800,000	700,000
Poland–Belarus	605 km	600,000	920,000

Table 6. Characteristics of the border areas under functioning/hypothetical LBT regimes

Source: The population totals are provided on the basis of the author’s calculations and figures provided by the civic coalition ‘Visa–Free Travel Campaign: Go Europe, Go Belarus!’ (www.novisa.by).

It should be noted that all the LBTPs issued by Belarusian and Latvian consulates so far are valid for just one year, even though the bilateral agreement allows the issuance of documents valid ‘from one to five years’. The Belarusian and Latvian MFAs are currently discussing the possibility of extending the validity of LBT permits.⁹¹ In 2012 about 1,600 LBTPs were issued by Latvia (about 2.5% of the population of the Belarusian border area), while Belarus issued about 9,500 LBTPs to Latvians,⁹² which means the proportion of permit holders stands at 6% of the respective border area population.

The Belarusian side consequently issues more LBT permits to Latvian residents than vice versa. In fact, more Belarus–born people who migrated to Latvia during Soviet times live in the Latvian border area, including in the second–largest Latvian city, Daugavpils, than Latvia–born people in the Belarusian border area. This explains

91 ‘Belarus, Latvia seek to ease local border traffic permits rules’, *Belarusian Telegraph Agency*, 17 June 2013, <http://news.belta.by/en/news/society?id=718423> (accessed 05.01.2014).

92 Žmicier Kustoŭski, ‘Latvijcy ježdziac u Biełaruś biež vizaŭ u 6 razoŭ čašciej, čym biełarusy da jich’ [in Belarusian], *Euroradio*, 18 January 2013, <http://euroradio.fm/report/latviycy-ezdzyc-u-belarus-bez-vizau-u-6-razou-bolshchym-belarusy-u-latviyu> (accessed 05.01.2014).

the more frequent visits by Belarus-born Latvian residents to their parents and other relatives on the other side of the border. Apparently, family ties constitute very important grounds for applications for LBT permits in the Latvia/Belarus border areas. Significantly, among all the functioning LBT agreements, the one between Latvia and Belarus provides the most extensive list of types of relatives across the border which LBT permit applicants may evoke to justify their request. It includes, for example, great-grandparents and great-grandchildren, uncles and aunts, nephews and nieces, brothers-in-law and sisters-in-law, mothers-in-law and fathers-in-law.

2.1.4

The Romania-Moldova LBTR

Since Romanians enjoy visa-free travel to Moldova,⁹³ the LBTR has been meaningful only for Moldovans. They had obtained about 60 thousand LBTPs as of mid-2013, which corresponds to about 5% of the population of the Moldovan border area. Whereas the Moldovan communist ruling elite was not enthusiastic about increasing people-to-people contacts with Romania and did not start negotiations on the LBT agreement, the then opposition parties were always vocal supporters of an LBTR with Romania. Signing the LBT agreement with their western neighbour was one of the election commitments of the oppositional Liberal Democratic Party of Moldova (LDPM) led by Vlad Filat, who was Prime Minister of Moldova from September 2009 to April 2013. The LDPM party successfully played the LBT card on the eve of the 2009 parliamentary election. In April 2008 the party initiated a widespread public campaign in support of signing the LBT agreement. In July-September 2008 the LDPM claims it organized 86 meetings with border residents and distributed 200,000 leaflets with information on the LBT agreement and its potential benefits. This is an illustrative case of how LBT is also used in the domestic politics of the states concerned.

The Romania/Moldova LBT agreement was signed on 13 November, 2009⁹⁴ and came into force in January 2010. The issuance of the LBT permits for Moldovans started on 31 March 2010 and lasted until

93 Moldova unilaterally abolished visas for EU citizens in 2007. A visa regime for Romanians was temporarily introduced by Moldova in 2009 during a diplomatic row between the two countries.

94 Acordul între Guvernul României și Guvernul Republicii Moldova privind micul trafic de frontieră din' [in Romanian], signed on 13 November 2009, <http://lege5.ro/Gratuit/geztcnbugq/acordul-intre-guvernul-romaniei-si-guvernul-republicii-moldova-privind-micul-traffic-de-frontiera-din-13112009> (accessed 05.01.2014).

October 2012 when it abruptly stopped. The Romanian consulates kept accepting the applications but did not issue the LBT permits within a reasonable period of time. Unlike all the other reviewed LBT agreements, the Romania/Moldova agreement does not specify a time limit for issuance of the LBT permits, and only sets a requirement to adopt a decision *in the shortest time from the date of receipt of all the required supporting documents*. However, similar to the above-mentioned problems with the Slovakia/Ukraine LBTR, the transition to the new system of processing biometric data disrupted the issuance of Romanian/Moldovan LBT permits for almost a year.

However, at present the LBT regime has limited appeal for Moldovans due to the availability of other legal instruments which allow beneficial travel to Romania and other EU states. In addition to the opportunity for Moldovans to apply for a Romanian national visa or a Schengen visa, in 2009 Romania resumed its policy of citizenship restitution.⁹⁵ The legislation grants the right to acquire Romanian citizenship to those citizens of the Republic of Moldova who lived in the region of Bessarabia in 1918–1940, as well as to three generations of their descendants. Over 50% of Moldova's population is thus eligible for Romanian citizenship.⁹⁶ It is estimated that at least 400,000 Moldovans have already acquired Romanian citizenship.⁹⁷ A visa-free regime between Moldova and the EU introduced in late April 2014 and growing numbers of Moldovan residents holding Romanian passports will make the Romania/Moldova LBTR even less popular. Thus the LDPM's argument that the LBT agreement would allow 'more than one million citizens to travel freely in the EU border area' was a fine-sounding political slogan at an opportune point in time, rather than a long-lasting reality.

95 Previously, Romanian law adopted in 2003 contained a residence clause of four years, which made it very difficult for most Moldovans to become eligible for Romanian citizenship.

96 The same applies to certain parts of the Odessa and Chernivtsy regions of modern Ukraine, which is discussed in detail in subsection 3.5 of the report.

97 Sergiu Panainte, 'Pericolul „nevăzut” al moldovenilor cu pașaport românesc', *Website of the Soros Foundation in Romania*, 11 November 2013, <http://www.soros.ro/?q=blog%2Fpericolul-nev%C4%83zut-al-moldovenilor-cu-pa%C5%9Faport-rom%C3%A2nesc> (accessed 20.03.2014).

2.2
THE RULES UNDER THE LBT AGREEMENTS

The LBT Regulation sets a number of benchmarks, but it leaves some discretion to the states as to the actual length of residence in order to comply with the ‘border resident’ definition, actual LBT permit fees, or types of relatives under the LBT regime. According to the Commission’s 2009 report on the implementation and functioning of the LBT regimes, most EU member states apply stricter requirements than those laid down by the 2006 LBT Regulation: *in none of the consulted bilateral agreements has the full range of facilitation measures been used.*⁹⁸ Since then, new LBT agreements have been signed and existing agreements have been amended. Still, none of the functioning LBT agreements uses the facilitation measures envisaged by the Regulation to the fullest extent (see Annex 2 for a detailed overview of the LBT agreements). In particular:

Fee: Whereas the Regulation stipulates that LBT permits can be issued free of charge, only two LBT agreements – Latvia/Russia and Slovakia/Ukraine⁹⁹ – comply with this principle. LBTPs are also issued free of charge to Moldovans, since the issuing fee for LBTPs ‘shall not exceed the fees charged for processing applications for short-term multiple-entry visas’ (Article 11 of the LBT Regulation), and national Romanian visas for Moldovans are free. All the other LBT agreements set the fee at EUR 20.¹⁰⁰

Period of residence requirements: Only two functioning LBT agreements – between Latvia and Belarus, and Romania and Moldova – and one non-functioning one (Lithuania/Belarus) set the minimum term of lawful residence in order to be considered a ‘border resident’ at one

98 Report from the Commission to the European Parliament and the Council on the implementation and functioning of the local border traffic regime introduced by Regulation (EC) No 1931/2006 of the European Parliament and of the Council laying down rules on local border traffic at the external land borders of the Member States, COM/2009/0383 final, 24 July 2009, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0383:FIN:EN:HTML> (accessed 20.03.2014).

99 Initially, the Slovakia–Ukraine LBT agreement set the fee at EUR 20. However, in 2011 the bilateral agreement was amended to make it more liberal.

100 According to Article 4.2 of the Romania/Moldova LBTA, the LBTP issuing fee shall not exceed the fee for a short-term visa in accordance with the bilateral agreements. One should bear in mind that a visa-free regime between Moldova and the EU was introduced in April 2014.

year. The minimum term of residence in all the other LBT agreements is as long as three years.

Period of validity: Many LBT agreements give the consulates the right to issue LBT permits that are valid for just one year, while the LBT regulation allows for validity of up to five years. The Romania/Moldova LBT agreement sets a permit's validity 'from 2 to 5 years'; the LBT permit is valid for three years in the case of the Norway/Russia LBTR. According to each of the LBT agreements that Poland concluded, the first LBT permit is issued for two years and subsequently renewed for five years.

Duration of stay: A number of LBT agreements limit the duration of uninterrupted stay in the neighbouring country to 15 days (Norway/Russia), to 30 days (Poland/Russia, Poland/Belarus), or to 60 days (Poland/Ukraine) instead of the maximum duration of three months established by the Regulation. Moreover, in all LBT agreements except for two – Norway/Russia, and Romania/Moldova – the rule of stay is interpreted according to the Schengen *acquis*, namely limited to three months in a period of six months,¹⁰¹ whereas the Regulation only limits the length of *uninterrupted stay*, not implying compliance with the rule under the Schengen *acquis* (see subsection 1.3 above for details).

Medical insurance: A number of LBT agreements (Latvia/Russia, Latvia/Belarus, Poland/Ukraine, Poland/Belarus) introduce an additional requirement to have medical insurance, a provision which conflicts with Article 3 of the Regulation that exempts LBT permit holders from this requirement. Taking this into account, in its second report on the implementation and functioning of the LBTRs the Commission expressed its position on the incompatibility of such a requirement with the Regulation, and maintained that other solutions should be considered, such as concluding a bilateral agreement between the member state and the third country on the reimbursement of any medical costs incurred during the permit holder's stay in the border

101 According to the recently amended rules, the stay is limited to 90 days in any 180-day period preceding each day of stay. Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, Official Journal of the European Union, L 182, 29 June 2013, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:182:0001:0018:EN:PDF> (accessed 20.03.2014).

area.¹⁰² According to the Commission's relevant department, *the appropriate procedures to address the situation are underway.*¹⁰³

Consequently, there is room for improvement and simplification of the LBT rules for all LBT agreements. As of late 2013, just one initial LBT agreement concluded under the LBT Regulation – the Slovakia/Ukraine one – was amended with a view to providing a more simplified set of rules. Among other things, the new version of the agreement made LBT permits more affordable by cancelling the issuance fee. It is reported that Poland and Ukraine agreed in May 2014 to amend the LBT agreement by *inter alia* extending the duration of an uninterrupted stay to 90 days and removing the requirement to have medical insurance. It is assumed that state organs apply stricter requirements in order to acquire additional security guarantees against possible abuses. Since the local border traffic *acquis* has been adopted relatively recently and not much time has passed to learn from the experiences of other states with functioning LBTRS, governments are cautious about using the full range of facilitation measures. The introduction of fees for the LBT permit issuance is tentatively justified by the need to cover expenses related to the functioning of LBTRS. At the same time, according to the Commission's report, the border area under some of the functioning LBT agreements (e.g. HU/UA, SK/UA) goes beyond what is allowed by the LBT Regulation.

2.3

THE FUNCTIONING OF THE LBT REGIMES

LBT is rooted in the European Union's justice and home affairs and the LBT *acquis* constitutes an element of the area of freedom, security and justice of the EU.¹⁰⁴ Two Commission reports contain some relevant information on the functioning of LBTRS, as well as statistics pertinent to the security perspective. Article 18 of the LBT Regulation obliged the Commission to submit a report to the Parliament and the Council on the implementation and functioning of LBT regimes by January 19, 2009. Given that in 2009 very limited data were available on LBTRS,

102 Communication from the Commission to the European Parliament and the Council 'Second report on the implementation and functioning of the local border traffic regime set up by Regulation No 1931/2006', COM (2011) 47 final, Brussels, 09 February 2011, p. 8.

103 The Commission's reply to the author's request, received on November 13, 2013.

104 See Dubowski, *op.cit.*, pp. 374–376.

the Commission adopted a second report in 2011, even though it was not obliged to. By the time the second report was submitted, four LBTRS at the eastern EU borders were effective, namely Hungary/Ukraine, Slovakia/Ukraine, Poland/Ukraine, and Romania/Moldova.

Subsequently, when the LBT Regulation concerning the border area of the Poland/Russia LBTR was amended, the Council and the Commission issued a joint statement which compelled the Commission to submit regular reports on the implementation and functioning of the amendment and on the Poland/Russia bilateral agreement. This report, on which the Commission services are currently working, according to the Commission's relevant department, will in particular 'evaluate their impact [of the amendment to the initial LBT Regulation and of the bilateral Poland/Russia LBT agreement] in the area of security and migration'. Meanwhile, only one EU body, Frontex, seems to have precise data on abuses surrounding LBTRS.

Established in 2005, Frontex is an EU agency which promotes, coordinates and develops European border management in line with the EU Charter of fundamental rights, applying the concept of Integrated Border Management. In 2012 Frontex published a monitoring document identifying two main challenges at the EU's eastern borders. First, increasing passenger traffic which derives from several LBT agreements and from the relatively high demand for EU visas in the neighbouring eastern countries. The second identified challenge is the expanding flow of illicit goods. The trade in illicit goods is caused mainly by price differentials between the two sides of the common borders on a wide range of products, particularly excise goods. Cigarettes, alcohol and fuel continue to be smuggled mostly towards the EU, while the smuggling of stolen vehicles and the reselling of household goods (electric appliances, spare parts) cause problems in the opposite direction.¹⁰⁵ According to another Frontex document, even '[t]hough gasoline smuggling is commonly believed to have only a limited and local impact on the EU economy, fuel smugglers present a challenge to the management of the movement at the borders'.¹⁰⁶

105 Eastern borders annual overview 2012, FRONTEX, Warsaw, July 2012, p. 7, http://frontex.europa.eu/assets/Publications/Risk_Analysis/EB_AO.pdf (accessed 20.03.2014).

106 Annual Risk Analysis 2012, FRONTEX, Warsaw, April 2012, p. 31, http://frontex.europa.eu/assets/Attachment_Featured/Annual_Risk_Analysis_2012.pdf (accessed 05.01.2014).

2.3.1

How adequate is the border infrastructure?

9.3 million Schengen visas were issued in Russia, Belarus, Ukraine and Moldova in 2013, which is about 57% of all Schengen visas issued globally. This figure does not include national long-term visas, the national visas of Romania, Bulgaria and some other EU states, nor local border traffic permits. Obviously, such a large number of visas and LBT permits (close to 600,000 LBT permits issued overall since 2008)¹⁰⁷ results in increasing flows of persons annually.

In light of the above, how well do LBT regimes function from a technical perspective? As part of this research, established experts and practitioners in the field of cross-border cooperation provided answers to this question. From the technical perspective, the border infrastructure was assessed first, as well as the quality of public access to information about LBT regimes, and so forth. According to the findings, no border section's technical capability was rated 'very good'. All of them were evaluated as either 'good' (PL/UA, PL/EU, RO/MD, HU/UKR), or 'barely acceptable' (NO/RU, SV/UA).¹⁰⁸ These results corroborate the conclusions of previous border studies which point to the inadequacy of the border infrastructure at the eastern land borders.

2.3.2

Abuse of the LBT rules

Article 17(3) of the LBT Regulation stipulates that information on all cases of abuse of the LBT Regulation shall be forwarded every six months to the other member states and to the Commission. However, it seems that this requirement is not always followed. In reply to the author's request to provide comprehensive statistics on cases of LBT abuses, the Commission's relevant department (which is Unit C1 'Border management and Schengen governance/relations with Frontex' at the Directorate-General Home Affairs) noticed that 'the Commission has only very limited information given the short time elapsed since

107 Author's own calculation on the basis of available data.

108 The functioning LBTRs mentioned here are those which were assessed by at least one expert/practitioner in border issues from each of the two respective countries (i.e. if at least one expert from Slovakia and one expert from Ukraine assessed the functioning of the Slovakia/Ukraine LBTR in the questionnaire sent by the author). For the sake of simplification, the final results were processed in the following way: if the assessments by the experts over a given LBTR differed, the mean assessment was defined (e.g., one 'poor' and one 'good' would equal 'barely acceptable') or alternatively, a more positive assessment was chosen to be presented in the table (e.g., one 'barely acceptable' and one 'good' assessment of a given LBTR would result in a final 'good' mark).

most of the agreements came into force'.¹⁰⁹ In fact, all the functioning LBT agreements except one (between Latvia and Russia) had come into effect much earlier than the required six-month period before the Commission's reply. According to the Commission's relevant department, 'the Commission together with Frontex is looking at ways to improve collection of this data'.¹¹⁰

According to Article 17 of the LBT Regulation, member states shall ensure that any abuse of the LBT regime is subject to penalties as provided for by national law. Those penalties shall be effective, proportionate and dissuasive and shall include the possibility of cancelling and revoking LBT permits. As follows from the available statistics,¹¹¹ abuses of the LBT rules are rare and exceptional. As the second European Commission's report on the functioning of the LBTRS reads, *there is no evidence that LBT holders would systematically travel to other Member States in violation of the rules*.¹¹² However, the lack of evidence may result from the increased difficulty that border guards and police authorities experience in detecting abuse. In fact, their geographical zone of surveillance has been considerably widened, and includes a second, invisible border – the one delimiting the validity of LBT permits, 30–50km from the actual border line.

According to the available statistics, between September 2008 and June 2010 Slovakia detected one case of abuse concerning the LBT rules, while 27 cases of abuse were detected by Romania between October and December 2010.¹¹³ In the period from June 2012 to October 2013, abuse of the operational rules of the Poland–Russia LBTR was found in only seven cases involving 15 adults and two children. No case of abuse of LBT rules by Polish citizens in the Kaliningrad region was reported. The Polish Border Guard's previous concerns – that the LBTR with Kaliningrad would lead to higher levels of border crime, smuggling, and greater numbers of people seeking to cross the border illegally – proved unfounded.¹¹⁴ Similar observations were provided by Thomas Nilsen on the Norway–Russia LBT: *The LBT regime is a very cool showcase for proving in practice that visa freedom actually does not mean an increase*

109 Reply from the Commission to the author's request, received on 27 November, 2013.

110 Ibid.

111 Second report on the functioning and implementation of LBT regimes, op. cit., pp. 5–6.

112 Ibid.

113 Ibid.

114 Kinga Dudzińska & Anna Maria Dyner, 'Small Border Traffic with Kaliningrad: Challenges, Opportunities, Threats', *PISM policy paper*, No. 29 (77), October 2013, p. 5, http://www.pism.pl/files/?id_plik=15094 (accessed 20.03.2014).

*in illegal immigration between east and west, and based on the experiences of the LBT on the Russian– Norwegian border there is no increase in crime on either side of the border.*¹¹⁵

The Poland–Ukraine LBTR is seemingly associated with the largest number of abuses of LBT rules. 219 cases of LBTR violations were reported in 2011. Out of these, 157 LBTP holders had overstayed the permitted time in the border area, while 62 persons had gone beyond the prescribed border area.¹¹⁶ Overstaying should no longer pose a major problem (it was quite noticeable in the case of the Hungary–Ukraine LBTR, too) since the respective EU countries have to implement a recent liberal CJEU interpretation of the rule of stay, where only an uninterrupted stay is calculated while the total length of stay in a given period is not. Taking into account the millions of border-crossings by LBTP holders across the Polish–Ukrainian border annually, a few dozen violations in the LBT border area hardly seem significant.

From the rational perspective, it is hardly surprising that LBT rules are abused very rarely. The combination of high sanctions in the event of abuse being detected (which may lead to the LBT permit being revoked and a ban on entry into the Schengen area) and the comparatively low cost of obtaining a Schengen visa (as well as the other available legal instruments such as long-term national visas or second citizenship mentioned above), which allows for movement across the whole Schengen area, make decisions to abuse the LBT rules irrational. Rejection rates regarding applications for Schengen visas are comparatively low in eastern European countries. Belarus has one of the lowest rates (0.51% in 2012) among all the third states subject to a visa regime with the EU. Furthermore, as the SIS database and member states' security databases are integrated for applicants for a Schengen visa, as well as for those applying for LBT permits,¹¹⁷ it is pointless to play with the consular agencies and border guard authorities with the aim of penetrating the Schengen area, in case an alert is entered into either the SIS or a national database.

As for the potential for LBTP forgery, lately, in the framework of a number of LBTRS (i.e. Hungary/Ukraine, Romania/Moldova, Slovakia/Ukraine), only LBT permits consisting of biometric data are issued. One of the LBT agreements, namely between Norway and Russia, specifies

115 Reply to the questionnaire by Mr Thomas Nilsen, received on 11 November 2013.

116 According to the presentation made by the Polish Border Guard officers at the conference on the Polish LBTRS held at Białystok University on 21–22 October 2013.

117 I.e. consulates check whether applicants are persons for whom an alert has been issued in the SIS, in conformity with Article 4 of the Regulation.

the requirement for the LBTPs to contain biometric data. LBT permits incorporate all the security standards. Article 8 of the Regulation stipulates that the security features and technical specifications of the LBTP shall comply with the relevant provisions of Council Regulation No 1030/2002 laying down a uniform format for residence permits for third-country nationals. A number of LBT agreements (Latvia/Russia, Latvia/Belarus) foresee the procedure of enforcement of the lists of border residents between local authorities and the consular organs of the two states. This mechanism serves as an additional check on the genuine residence of an applicant in the respective border zone.

The LBT rules consequently seem to strike a good balance between the facilitation of mobility for bona fide border residents and the maintenance of Schengen area security. Political concerns should therefore centre not on the LBT rules as a derogation of Schengen legislation, but rather on the technical capacity of the border infrastructure and on finding an effective solution to the challenges stemming from the increasing shuttle trade.

2.3.3

Trade in excisable goods and state counter-actions

Petty trade is an important aspect of the functioning of LBT regimes for two reasons. First, the LBTR makes frequent trips to an adjacent border area cheaper and less burdensome for larger categories of residents, resulting in the problem of a growing shuttle trade per se. Differences in prices stimulate the retail sale of cigarettes, alcohol and automotive fuel across borders, but sometimes also of goods such as medicine. Second, increased crossings by petty traders result in the increased movement of persons and cars through border-crossing points (BCPs). This puts additional pressure on the human resources at the border agencies and prolongs the border-crossing time for many other categories of travellers.

On the one hand, if residents carry their goods, including excisable goods, in permitted quantities, their activities cannot be deemed smuggling. On the other hand, states see a legitimate reason to reduce the economic stimuli for this kind of local business in order to make the border-crossing by other categories of residents easier. The long hours entailed in crossing the Polish-Russian border prompted the Kaliningrad regional Duma to address the deputies of the Polish Sejm to ask for their assistance in accelerating the check procedures at the

border.¹¹⁸ Other victims of the large-scale retail sale of cigarettes, alcohol and automotive fuel across borders are the companies that operate on the legal markets. The state budget also suffers from the shortfall in excise duty revenues that is incurred.

The legal and illegal transportation of fuel is especially attractive in the case of imports from Russia and Belarus. For example, an audit of the Estonian-Russian BCP determined that nearly four-fifths of cars cross the border in order to buy motor fuel.¹¹⁹ As Serghei Golunov pointed out in his latest book on Russia's north-western borders, the relationship of shuttle traders with the authorities of adjacent states is ambiguous. On the one hand, the authorities often disapprove of such activities; on the other, this phenomenon is regarded as a necessary evil, which decreases poverty for local households and thus contributes to maintaining social stability in borderland regions.¹²⁰ However, the constant increase in shuttle trade, especially of automotive fuel, has seemingly exasperated the authorities. In order to cope with local motorists who resell Russian or Belarusian gasoline, Lithuania, Latvia and Poland have recently tightened the inspection procedures for all vehicles entering their countries, including the level of fuel in the tanks, and have introduced some restrictive legislative measures.

For Polish citizens travelling in the eastern neighbourhood, fuel and alcohol are the two predominant items of expenditure (up to 80% of the total expenditure in the border area). The structure of their eastern neighbours' preferences in Poland is more varied, however. It includes building materials, motor spare parts, clothing and footwear, household detergents and cosmetic products, household appliances, radio and television appliances, meat and other food products.

Due to the steep devaluation of the Belarusian rouble in the course of 2011 and a further widening of fuel price differentials with neighbouring countries, Belarus enacted special legislation in 2011 in order to counteract the resale of local automotive fuel abroad. On 11 June 2011 a duty was imposed on exported motor fuel in the

118 Raúl Hernández i Sagera & Olga Potemkina, op. cit., p. 13.

119 European Commission, *A Study on Common Border Crossing Points Management between Schengen Area and Russia/Belarus*, Draft Study Report, Project No. 2011/277280, Version 1, p. 3, http://www.ndptl.org/c/document_library/get_file?folderId=16355&name=D_LFE-1602.pdf (accessed 20.03.2014).

120 Serghei Golunov, *EU-Russian Border Security: Challenges, (Mis)Perceptions and Responses*, Routledge, 2012, pp. 109–122.

event of travel abroad by a vehicle more than once every five days.¹²¹ A few months later, the period for duty-free export of motor fuel was increased to eight days. Fuel control was introduced not only with regard to drivers, but also for vehicles as the rules had previously been bypassed by con men using the same vehicle for smuggling gasoline. As a result, shortly afterwards, queues at the western borders of Belarus were reduced by 50%.¹²²

Similarly, in mid-2011, Lithuania amended its regulations for the application of VAT and excise duty exemptions with respect to imported goods by persons entering the country. The new legislation compels persons who enter Lithuania by car from Belarus and Russia more than five times a month to pay a duty on all excise goods (including fuel in the tank of the vehicle).¹²³ These measures largely discouraged the residents of the areas along the Belarus-Lithuania and Belarus-Poland borders from reselling automotive fuel. Residents of the Belarus-Latvia border area found themselves in a somewhat better position: without making a big detour, they could still enter Latvia from Belarus via Russia, since the two states are in the EurAsEC Customs Union (together with Kazakhstan) and fuel transportation restrictions do not apply to the Belarus-Russia border.

Nevertheless, this situation only prevailed until 2012 when Latvia followed Lithuania's example and toughened the rules on the transportation of excisable goods. Under the new edition of the Latvian Law 'On Excise Duties' enacted on 1 January 2012, the import of excisable goods, including by motor vehicle, more often than once every seven days (not per one day, as before), is considered to be a commercial activity and therefore subject to excise duty.¹²⁴

Border residents continue to master the circuitous routes, however. For instance, Latvians would enter the territory of the EU through the Estonian-Russian border. A similar situation is observed in the Lithuanian-Russian-Polish 'triangle': Lithuanians shop for petrol in

121 Decree of the Council of Ministers of the Republic of Belarus No753, 'O nekotoryh voprosah regulirovanija vyvoza avtomobil'nogo topliva s territorii Respubliki Belarus', 10 June 2011.

122 Viktorija Tereshonok, 'Posle uzhestochenija norm po vyvozu avtotopliva ocheredi na granice sokratilis' bol'she chem v 2 raza' [in Russian], *Newspaper 'Respublika'*, N°229 (5392), 30 November 2011.

123 Isakymas Nr. 1B-392 „Dėl Keleivių įvežamų prekių neapmokestinimo import pridėtinė svirtės mokesčių ir akcizais taisyklių, patvirtintų Lietuvos Respublikos Vyriausybės 2004 m. balandžio 16 d. nutarimu Nr. 439, 5 punkto nuostatųta ikymo tvarkos aprašo patvirtinimo“ [in Lithuanian], adopted on 12 July 2011.

124 Grozījumi likumā "Par akcīzes nodokli" [in Latvian], *LatvijasVēstnesis*, 204 (4602), 29 December 2011.

Russia and return through Poland.¹²⁵ According to the Border Guard Service of the Kaliningrad region, 80% of the vehicle traffic between the Russian enclave and Poland results from the border-crossings of fuel traders.¹²⁶

Since 6 May 2013, Poland has limited exemption from payment of customs duties on fuel export to cases when a traveller crosses the border not more than 10 times per month. Fuel traders responded with mass protest actions by temporarily blocking the access to two border crossing points. It is estimated that ‘professional’ fuel traders make a monthly sum that exceeds the average wage in Poland’s eastern border areas.¹²⁷ It is reported that between 27 July 2012 and 1 July 2013 Polish Border Guard officers imposed customs duties on petrol brought into Poland by 2,000 Poles and 60 Russians.¹²⁸ In its communication of June 2013, the Polish Customs reported that notwithstanding these new rules, after the customs regulation was toughened, 8.8 million litres of fuel were imported to Poland in one month.

Monitoring by the customs authorities indicates that some residents keep crossing the border more often than once per week, their visits are very short, and they carry a full fuel tank every time. The customs authorities have duly emphasized their commitment to implement further measures directed against those who regularly and systematically abuse the rules regarding fuelling.¹²⁹

2.3.4

LBT as an instrument of the European Neighbourhood Policy

Despite the optimistic EU narrative and rhetoric on border issues (‘Wider Europe free of dividing lines’), it is clear that the expansion of the Schengen area went hand in hand with reinforcing control at the external borders and tougher visa regimes for the nationals of eastern neighbouring states. Thus a new ‘iron curtain’, or alternatively a

125 A Study on Common Border Crossing Points Management between Schengen Area and Russia/Belarus. p. 3.

126 Ul’jana Vylegzhanina, ‘Kanistra vne zakona’ [in Russian], *Rossijskaja gazeta*, 04 June 2013, <http://www.rg.ru/2013/06/04/reg-szfo/benzin.html> (accessed 20.03.2014).

127 Ibid.

128 Kinga Dudzińska & Anna Maria Dyner, op. cit., p. 5.

129 Adam Nawacki, ‘Komunikat dotyczący kontynuowania zintensyfikowanych działań kontrolnych paliwa przywożonego na terytorium RP przez podróżnych wielokrotnie przekraczających granicę na przejściach granicznych z Federacją Rosyjską’, *Customs Chamber in Olsztyn*, 13 June 2013, http://www.olsztyn.ic.gov.pl/index.php?idz=akt&id_akt=888 (accessed 20.03.2014).

‘golden curtain’¹³⁰ emerged instead of more porous borders. Stronger security measures vis-à-vis third countries restricted the mobility of the citizens of Russia, Ukraine, Belarus, and Moldova, as shown in subsection 1.1 above.

The European Neighbourhood Policy is apparently only partially successful in avoiding this situation.¹³¹ At the same time, LBT is seemingly one of the instruments which partially solves the contradictory nature of the ENP, allowing for a derogation from the Schengen *acquis* in favour of the borderland population. The preamble to the Regulation is indeed clearly consistent with the ENP aims, stating that *it is in the interest of the enlarged Community to ensure that the borders with its neighbours are not a barrier to trade, social and cultural interexchange or regional cooperation*. Indeed, the Commission was clear that the aim of the LBT *acquis* adoption was to secure an additional tool to keep the borders ajar. Its 2003 landmark communication ‘Wider Europe – Neighbourhood...’ states that *an efficient and user-friendly system for small border traffic is an essential part of any regional development policy*.¹³² During the debate on LBT in the European Parliament in February 2006, the then Vice-President of the Commission, Franco Frattini, made it clear that the ‘adoption of Community rules on local border traffic is included in the much broader European neighbourhood strategy. It is thus one of the measures aimed at strengthening cross-border cooperation with the EU neighbours and people-to-people contact’.¹³³ Thus, although the LBT mechanism is legally rooted in the sphere of EU Home Affairs, it is likewise treated as a ‘tool to fulfil certain aims also in the field of the EU external relations’.¹³⁴ It makes the ENP more effective by making border-crossing rules more friendly for the borderland populations, which have been confronted with rather tough Schengen legislation.

130 Jessica Allina-Pisano, ‘From iron curtain to golden curtain: remaking identity in the European Union borderlands’, *East European Politics and Societies*, No 23(2), 2009, pp. 266–290.

131 See a brief description of four different perspectives (geopolitical, institutional, topological, and a social constructivist approach) of existing research on the ENP: Filippo Celata & Raffaella Coletti, ‘Soft, mobile or networked? Cross-border cooperation and the topology of the European Union external frontier’, *EUROBORDERREGIONS Working Paper Series 2*, April 2012, pp. 4–5, <http://www.euborderregions.eu/files/Wp%20series%202.pdf> (accessed 20.03.2014).

132 Communication from the Commission to the Council and the European Parliament ‘Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours’, COM(2003) 104 final, Brussels, 11 March 2003, p. 11.

133 Local border traffic (debate), The European Parliament, 14 February 2006, Strasbourg, <http://bit.ly/1bXn7hf> (accessed 05.01.2014).

134 Dubowski, op. cit., p. 380.

The following table represents some of the principal critical arguments put forward by the experts in border studies at the ENP, and LBT in relation to each of them. One can see that in some cases LBT is instrumental in mitigating a critical argument towards the ENP, while in others, it is not.

Critical argument	LBT perspective
ENP 'enlargement methodology' challenges the effectiveness of the policy as the request for adoption of the <i>acquis</i> is not supported nor justified by an enlargement perspective (ambiguity and false expectations).	LBT agreements facilitate border-crossings before approximation of the third-country's legislation has taken place with the EU norms in the areas of justice and home affairs (which would eventually lead to visa liberalization between the EU and its eastern neighbours).
Contradiction between the EU's alleged intention to develop cooperation with its neighbours and its aim to use it for the securitization of the external borders and 'hard threat' minimization such as illegal migration and terrorism (borderless Europe vs. fortress Europe).	LBT partly softens the incoherence by facilitation of the border-crossing regime.
Reinforcing the perception of a hard border between the EU and the outside world by spreading the narratives of 'common values' on which relations should be based, on the one hand, and stressing the diversity and differences on the other.	Ambiguity. On the one hand, LBT agreements do not contain a discourse of common values and the third country is not viewed as subject to the EU policy. On the other hand, holders of LBT permits have to undergo checks at BCPS, therefore imagined (and real!) dividing lines are still in place.
Contradictory strategies of European countries. Although in the ENP Action Plans democracy and human rights are given priority, in practice migration control, energy resources or strategic interests are often more important.	Despite the noble aim to secure (semi)open borders for bona fide border residents, the analysis of the functioning LBTRS and of the reasons behind the delay of a number of LBTRS (see section 3 below for details) shows that the political considerations of the ruling elites (of the EU MSS, as well of the neighbouring third countries) usually prevail over the interests of the wider public.

Table 7. LBT in relation to the principal critical points of the ENP.

Source: Author's elaboration. The left-hand column is based on the analysis by the ENP critics presented in Celata & Coletti, 2012.¹³⁵

135 Celata Filippo and Coletti Rafaella, 'Soft, mobile or networked? Cross-border cooperation and the topology the European Union external frontier', *EURORDERREGIONS Working Paper Series 2*, pp. 5-7, <http://www.euborderregions.eu/files/Wp%20series%202.pdf> (accessed 05.01.2014)

3

3. Why some bilateral LBT regimes on the EU's eastern borders have not been launched

This section looks into the reasons that make countries unwilling or undecided to launch the agreed LBT agreements or even start negotiations on such agreements. The six border sections where no LBT regime is operating as yet can be divided into three groups. Firstly, negotiations on two LBT regimes – between Finland and Russia on the one hand, and Estonia and Russia on the other – never got underway. Secondly, two bilateral LBT agreements – Lithuania/Belarus, and Poland/Belarus – were endorsed by the governments of the two EU countries, but their enforcement has been stalled by the contracting party – Belarus – for political reasons. Thirdly, two LBT agreements – Lithuania/Russia, and Romania/Ukraine – were extensively negotiated and nearly agreed by the sides, but the negotiation process came to a standstill for specific, largely political, reasons.

3.1 FINLAND-RUSSIA

The Finnish-Russian border is the longest (1300 km) among all the eastern borders of the EU. At the same time, the border areas are often very sparsely populated, with a relatively populous area around Lappeenranta/Imatra on the Finnish side and Svetogorsk/Vyborg on the Russian side.¹³⁶ The Finnish authorities consider the introduction

¹³⁶ The total population in the cities of Lappeenranta and Imatra is about 100,000, while some 100,000 people live in Svetogorsk and Vyborg, taken together. Some additional inhabitants in the respective municipalities would add to these figures.

of an LBT regime with Russia useless for a number of reasons. In a special questionnaire prepared for the purposes of this research, the Director of the International Affairs Unit at the Finnish Ministry of the Interior, Laura Yli-Vakkuri, pointed out two main reasons. First, due to the specifics of the historical development of the Finnish–Russia borderland, where the absence of relatives over the border apparently meant fewer visits. Second, a well-functioning and flexible Schengen visa system between the two countries allegedly meets the current needs related to cross-border traffic, whereas an LBT regime would entail an extra administrative burden related to border-crossing management: *since there are no real grounds for LBT at the Finnish–Russian border it would be a kind of misuse of the system to introduce this regime at this border (and, in a way, harm the Schengen system).*

Pekka Järviö, Laura Yli-Vakkuri's predecessor in the post of Director of the International Affairs Unit, elaborated on the historical development point: given that the majority of the 470,000 Finnish citizens residing in the areas ceded to the Soviet Union in 1944 emigrated to Finland, there are very few family ties across the border. He agrees with the view that Finland finds itself in a better position with the effective implementation of the Schengen *acquis* with the abolition of internal border control, rather than with a derogation from it that would *unnecessarily muddle the system*.¹³⁷ Pekka Järviö's additional point on the impracticability of the bilateral LBTR is that its introduction would place a small number of border residents around the Imatra–Svetogorsk zone in a preferential position. In contrast to the very sparsely populated areas along the border, this area is the only urbanised section of the Finnish–Russian border. Furthermore, he claims, travel by LBT permit holders beyond the designated LBT border area would allegedly be *frequent and almost impossible to control*.¹³⁸ Taken together, both actual and former representatives of the Finnish Ministry of the Interior consequently find these reasons legitimate enough for not introducing an LBT regime, and do not find it appropriate to reconsider the current decision to abstain from adopting one.¹³⁹

137 Reply to the research questionnaire by Pekka Järviö, received in August 2013.

138 Ibid.

139 The publication *Ex Borea Lux? Learning from the Finnish and Norwegian Experience of Cross-Border Cooperation with Eastern Neighbours*, Eva Rybkova et al. (ed.), Prague, November 2012, lists the following reasons for not introducing an LBT agreement: a) generally non-applicable because of long distances from communities to the border; b) no or few family ties across the border; c) well-functioning visa procedures mean that no LBT agreements are needed; d) LBT agreements undermine general Schengen border management principles.

Indeed, historical developments do matter, and Finland pursues a very generous visa policy towards Russian nationals. The visa procedures at Finnish consulates are relaxed. The Finnish consulate in St. Petersburg is the largest of all Schengen state consulates in terms of the number of lodged visa applications (1,022,443 category C Schengen visas issued in 2012, 97.9% of them multiple-entry).¹⁴⁰ In addition, Finnish tourists who arrive in St. Petersburg from Helsinki, or in Vyborg from Lappeenranta by ship, can stay in Russia for 72 hours visa-free. This is a rather innovative and well-functioning regime introduced unilaterally by the Russian government in 2008.¹⁴¹

However, some border experts disagree with the Finnish Ministry of the Interior's view. Professor Heikki Eskelinen, for example, questions the legitimacy of the reasons officials give for justifying their disinterest in a bilateral LBTR: *official Finland follows a very state-centrist tradition in its contacts with Russia, and local and regional interests are seen of secondary importance*.¹⁴² Eskelinen argues that a Finnish-Russian LBTR would increase contacts between the residents at a local level, albeit moderately. He is also of the opinion that *border trade (shopping tourism) also promotes cultural learning and interchange, in its own way*.¹⁴³

3.2 ESTONIA-RUSSIA

Apparently, the rather frosty Estonian-Russian relations serve to stymie progress towards an LBTR. Indeed, bilateral relations were soured by, among other things, the events surrounding the 2007 Bronze Soldier. Moreover, there is no effective border treaty between the two countries. Although the Estonia-Russia border treaty was signed in May 2005, conflict arose in the process of its ratification as the Estonian parliament amended the preamble to the treaty by adding a reference to the Tartu peace treaty of 1920. Russia saw this amendment as giving Estonia the possibility to file territorial claims

140 Overview of Schengen visa statistics 2009–2012. Directorate-General Home Affairs, European Commission, p. 22.

141 It is applied to Kaliningrad, Sochi and some other Russian ports, too. A similar facilitation has not yet been backed by the EU organs, although discussions on this potential measure are ongoing.

142 Reply to the research questionnaire by Professor Heikki Eskelinen, Karelian Institute, University of Eastern Finland (Joensuu), received in August 2013.

143 Ibid.

over the lands that it had ceded to Soviet Russia in 1945. As a result, Russia withdrew its signature from the bilateral border treaty. The new text of the latter was signed on February 18, 2014 and currently awaits ratification by the two sides in order to take effect. The negative political context of interstate relations as a reason why negotiations over an LBTR have not started was mentioned by Margit Säre,¹⁴⁴ who was contacted as an expert in the field of Estonian–Russian cross-border cooperation as a part of this research.

In its official reply, the Estonian Foreign Ministry does not accentuate problems in bilateral relations and does not link the absence of negotiations on a possible LBTR with that of a border treaty.¹⁴⁵ The Estonian government's position is to learn from the implementation of the Latvia–Russia LBTR before considering the introduction of a similar border-crossing regime for its own border residents. However, the Latvia–Russia LBTR has only recently come into effect, *so it's too early to draw far-reaching conclusions*.¹⁴⁶

Besides the wait-and-see approach with regard to the existing Latvia–Russia LBTR, the Estonian MFA gave two specific reasons for its unwillingness to progress towards concluding a bilateral LBT agreement with Russia. First, it evoked the allegedly high costs of introducing such a regime: *in 2009 the Estonian Ministry of Interior made calculations which demonstrated that introducing such a system would be disproportionately costly*. In the light of Estonia's active participation in the discussions between the EU and Russia both over amendments to the present visa facilitation agreement and visa liberalisation, *it would be difficult to justify spending to temporarily introduce a new and costly border-crossing system*. Second, the lack of the necessary infrastructure to provide a decent service to potential beneficiaries of the bilateral LBTR was cited: *the implementation of such an agreement would considerably increase the burden for the border infrastructure, which even with the present intensity can sometimes not guarantee smooth and quick service for all customers*.

On the one hand, the Estonian government's position on the issue of a possible LBTR with Russia implies that a bilateral agreement, should it actually be aimed at, would only be launched after many years. On the other hand, Estonia is not categorical about the unfeasibility of such an agreement, as the official answer implicitly states that the prospects are real in the longer term.

144 Reply to the research questionnaire by Margit Säre, received in August 2013.

145 Letter by Leena Prozes, Russia Desk Officer at the Political Department of the Estonian Ministry of Foreign Affairs, received on November 1 in answer to the author's request.

146 Ibid.

3.3 LITHUANIA-RUSSIA

Lithuania was the first country that approached Russia with a proposal to conclude an LBT agreement under the rules of the 2006 LBT Regulation. Negotiations opened as long ago as January 2008; the provisional text of the bilateral LBT agreement was endorsed by the foreign ministries of Russia and Lithuania in early 2009. However, as of early 2014, the agreement has not yet been finalised and both sides occasionally blame the other for the delay.

After Poland and Russia agreed, in late 2011, to broaden the scope of the LBT border area to the entire Kaliningrad region, and the territory on the Polish side to about 100 km from the border, Russia insisted that only a similar process with regard to the Lithuania–Russia LBTR would be acceptable. However Lithuania seemingly does not intend to follow Poland’s example. Lithuania supports the idea of extending the regime over the whole Kaliningrad region, but not on its own territory to include the larger towns of Druskininkai and Kaunas. Currently, the two states are digging their heels in over their conflicting positions amid rather tense bilateral relations.

Prior to a regular negotiation round with Lithuania in 2008, the Russian MFA requested the Kaliningrad local authorities to express their views on the text of the bilateral agreement proposed by Lithuania, and to prepare a map showing the areas that would potentially fall under a standard border area under the 2006 LBT Regulation. This is when the Kaliningrad regional authorities realised that compliance with the rules of the initial LBT Regulation would mean dividing the region into four sectors. Should the standard LBT rules apply, residents of some administrative units would be eligible for travel to Lithuania, residents of other units would be eligible only for an LBTR with Poland, while residents of the tripartite border junction would benefit from both LBTRS. Finally, Kaliningrad residents living by the Baltic Sea coast would be unable to benefit from either of these LBT regimes. Given that such developments would justifiably provoke discontent on the part of the Kaliningrad population, the regional authorities recommended in their reply letter of August 2008 that the MFA should regard the entire oblast as a border area and raise this issue for the EU’s consideration.¹⁴⁷

147 Viktor Romanovskiy’s communication at the conference on the Polish LBTRS held at Białystok University on 21–22 October 2013.

Oddly enough, it was actually the former *Lithuanian* foreign minister who came up with an initiative to amend the LBT regulation, taking into account the specific situation of the Kaliningrad region. According to Viktor Romanovsky, the former head of the international relations department in the Kaliningrad oblast administration, *it was Vilnius that came up with a proposal to address the Commission with an initiative to include the entire region in the LBTR.*¹⁴⁸ During his visit to Moscow in 2009, Lithuania's foreign minister, Vygaudas Ušackas, allegedly discussed with his Russian counterpart Sergei Lavrov the possibility of a joint appeal by the foreign ministers of Lithuania, Poland and Russia to the European Commission. However, the conflicting relations of Ušackas with the newly elected Lithuanian president, Dalia Grybauskaitė, resulted in his replacement by Audronius Ažubalis: *after Ažubalis's accession to the post of foreign minister, Lithuanian-Polish relations deteriorated. Lithuania discontinued its support of Ušackas' initiative; and the nearly completed text of the [Russia-Lithuania] agreement was stalled.*¹⁴⁹

Consequently, Lithuania withdrew its support for Russia's and Poland's joint declaration, calling on the EU organs to amend the LBT Regulation. The Commission came up with a legal initiative for such amendments, which was eventually endorsed by the Council and the Parliament in 2011, paving the way for Poland and Russia to sign a bilateral LBT agreement in December 2011. Enforced in late July 2012, the agreement extends the border area to cover the whole Kaliningrad region and major urban centres in the north-east of Poland. Lithuania, meanwhile, preferred to opt out.

3.4

LITHUANIA-BELARUS AND POLAND-BELARUS

Both the Lithuania-Belarus and the Poland-Belarus LBT agreements were ready to be launched back in early 2011. After approval by the legislative organs and the signature of the president, the Belarusian side in each of the two cases stopped short of taking the final necessary step, namely sending a diplomatic note indicating readiness to launch

148 Ibid.

149 Ibid.

the agreement. According to the texts of both LBT agreements,¹⁵⁰ they come into force 30 days after the day of acceptance of the last written notification (diplomatic note), which informs the other side of the termination of all necessary domestic procedures. Belarus has not sent a reciprocal note to Vilnius, nor replied to the two notifications sent by Warsaw. In addition to the diplomatic notes, the sides called Belarusian counterparts to proceed with the LBTR at the political consultations between the MFAs, but to no avail.¹⁵¹ Therefore, contrary to the Commission's expectations expressed in its second report on the functioning of the LBTRs, the Latvian-Belarus LBT came into force earlier than the ones between Lithuania and Belarus, and Poland and Belarus, which have been shelved with little prospect of entering into force any time soon.

At first, the Belarusian side came up with apparently legitimate reasons for delaying the LBTRs. In mid-2011 the Belarusian consul in the Polish city of Białystok, Aliaksandar Biarybienia, explained that the delay over the Poland/Belarus LBTR was caused by the lack of special printers for issuing LBT permits.¹⁵² Belarusian officials also stated that they would be ready to launch the LBTR with Lithuania after they 'work through the cooperation [on the LBT regime] with Latvia'.¹⁵³ Subsequently, Belarus made it clear that the actual rationale for delaying the Polish and Lithuanian LBTRs was not petty technical issues, but political tensions.

150 See the text of the signed agreement with Lithuania: The Law of the Republic of Belarus № 239-3 of 10 January 2011 "O ratifikacii Soglashenija mezhdru Pravitel'stvom Respubliki Belarus' i Pravitel'stvom Litovskoj Respubliki o porjadke vzaimnyh poezdok zhitel'ej prigranichnyh territorij Respubliki Belarus' i Litovskoj Respubliki" [in Russian], <http://www.pravo.by/main.aspx?guid=3871&po=H1100239&p2={NRPA}> (accessed 20.03.2014). See the text of the Poland/Belarus LBT agreement: The Law of the Republic of Belarus № 201-3 of 01 December 2010 "O ratifikacii Dogovora mezhdru Pravitel'stvom Respubliki Belarus' i Pravitel'stvom Respubliki Pol'sha o pravilah prigranichnogo dvizhenija" [in Russian], <http://www.pravo.by/main.aspx?guid=3871&po=H1100201&p2={NRPA}> (accessed 20.03.2014).

151 'Minske surengtos Lietuvos ir Baltarusijos užsienio reikalų ministerijų konsultacijos' [in Lithuanian], Communication by the Lithuania's Ministry of Foreign Affairs, 28 March 2013, <http://www.urm.lt/index.php?2586070165> (accessed 20.03.2014).

152 Jakub Medek, 'Tajemniczy Mały Ruch Graniczny. Winne są drukarki i... klimat' [in Polish], *Gazeta.pl Białystok*, 13 June 2011, http://bialystok.gazeta.pl/bialystok/1,35241,9778483,Tajemniczy_Maly_Ruch_Graniczny__Winne_sa_drukarki.html (accessed 20.03.2014).

153 See the statement of Ihar Piatryshenka, Vice Foreign Minister of Belarus: 'Belarus' cherez neskol'ko dnej zapustit v dejstvie mehanizm malogo prigranichnogo dvizhenija s Latviej – MID', *Interfax.by*, 12 November 2011, <http://www.interfax.by/news/belarus/102335> (accessed 20.03.2014).

The Belarusian ruling elite's reluctance to launch LBTRS with neighbouring Poland and Lithuania can be explained by an amalgam of political and economic considerations.

First, the Belarusian authorities are dissatisfied with Poland's and Lithuania's democracy promotion and their manifest support of the EU's sanctions policy towards Belarus. According to Uladzimir Drazhyn, former Belarusian ambassador to Lithuania, *Latvia behaved in a different way [compared to Lithuania], that is why tangible progress [with the LBT regime] exists.*¹⁵⁴ Since early 2011, the EU has pursued a double-track policy towards Belarus, with high-level relations on hold, visa bans and an assets freeze policy towards Belarusian officials, on the one hand, and intensification of cooperation with civil society and enhancement of people-to-people contacts, on the other. After the April 2012 Council's decision to put sanctions against Myanmar on hold, the EU's sanctions list with regard to Belarus – comprising more than 200 physical and legal persons – became the longest of the EU's existing sanctions lists, outnumbering the ones targeting Iran, Syria and Zimbabwe.¹⁵⁵

Second, the Belarusian authorities are concerned about the predictable increase in the number of trips to the EU in the event that LBTRS are introduced, which is annoying for the current regime for both political and economic reasons. President Lukashenka and other representatives of the ruling elite maintain unfriendly if not aggressive rhetoric towards the West. The largely controlled media allow official propaganda to report on the living standards in Belarus and in neighbouring EU countries quite efficiently (i.e. overstating the achievements of the Belarusian economy while diminishing the living conditions in the West), as sociological surveys show. Growing awareness among the Belarusian population of a better political and economic situation in the West, particularly in neighbouring Lithuania and Poland – countries which are faring better in terms of GDP (PPP) per capita – would allegedly give rise to distrust in the integrity of the official media and in the efficiency of the Belarusian economic governance model.

154 'Posol Belorussii v Litve: Glavnoe, chtoby politiki ne putalis' pod nogami' [in Russian], *News agency REGNUM*, 11 April 2012, <http://www.regnum.ru/news/1520011.html> (accessed 20.03.2014).

155 Andrei Yeliseyev, 'Belarus' – mirovoj lider po dline chernogo spiska es', *Online Magazine 'New Europe'*, 26 April 2012, http://n-europe.eu/article/2012/04/26/belarus_%E2%80%94_mirovoi_lider_po_dline_chernogo_spiska_es (accessed 20.03.2014). As of Spring 2014, the length of the EU sanctions list against Iran exceeds the one introduced in relation to Belarus.

In 2011, Belarus was hit by a severe macroeconomic crisis, with a very high annual inflation rate of 108.7% and local currency depreciation of around 65%. The crisis was a product of loose macroeconomic policies in previous years, when economic growth was instigated by domestic demand. At the same time, Belarusian goods became less competitive on foreign markets in the absence of decent structural reforms in the country. The dramatic depreciation of the Belarusian rouble brought gains for Belarusian exporters in external price competitiveness. However, this positive effect fizzled out during 2012 and the external trade deficit began increasing again. Taking into account the high devaluation expectations among the population and the high dollarization of the economy, in order to keep the situation on the foreign exchange market under control, the National Bank has to keep real interest rates in local currency as high as 35%–40%. The estimated EUR 1.5 billion that Belarusians spend yearly on goods and services in the EU¹⁵⁶ (here, cross-border trade not registered through customs declarations), even under the existing visa framework and in the absence of functioning LBTRS with Poland and Lithuania, compounds the fragile financial situation in the country. Belarusian officials occasionally voice their dissatisfaction with the frequent shopping trips made by Belarusians abroad. In September 2013 President Lukashenka even came up with a contested idea of imposing an exit duty worth USD100 on Belarusians who go abroad.¹⁵⁷

As a sociological survey carried out in December 2012 by the Independent Institute of Socio-Economic and Political Studies (IISEPS) shows, Belarusians are quite well aware (37.7% of the total population) of local border traffic regimes.¹⁵⁸ There is a clearly uneven regional distribution of responses to the question of whether a respondent supports the LBT initiative. In the EU bordering regions (Brest, Hrodna, and Viciebsk), the numbers of supporters of LBT regimes reach 54.2%, 72.0% and 58.1%, respectively. At the same time, in the three countries' regions that do not border any of the EU states (Miensk, Mahiloŭ, and

156 According to the estimates of Poland's Statistical Office in Rzeszów, spending by foreigners in Poland who crossed the Polish-Belarusian border in 2012 totalled EUR 630 million.

Taking into account substantial spending by Belarusians in neighbouring Lithuania and in the rest of the EU, the figure probably reaches EUR 1.5 billion. Here, turnover of goods not registered in customs documents is implied.

157 "'Exit tax': authorities look for most suitable mechanism to implement initiative', *Belarus in focus*, 17 September 2013, <http://belarusinfocus.info/p/6030> (accessed 20.03.2014).

158 "'Small border traffic' and big-time politics', *Independent Institute of Socio-Economic and Political Studies*, 1 December 2012, www.iiseps.org/analitica/18/lang/en (accessed 20.03.2014).

Homiel), the numbers of supporters are 36.4%, 23.7% and 40.7%, respectively, with high numbers of indifferent respondents. These figures indicate that a considerable proportion of Belarusian border residents are enthusiastic about the potential benefits to be derived from local border traffic regimes.

At the same time, awareness of *who* to blame for delays in enacting the LBT agreements is not very high. Less than a quarter of respondents (22.7%) are of the opinion that it is the Belarusian side blocking the LBT regimes. Only 13% of Belarusians believe that the Polish and Lithuanian sides are to blame. At the same time, 10.3% point to technical reasons, 17.2% acknowledge 'other reasons', and the remaining 36.8% of respondents are either uncertain or unable to provide an answer.¹⁵⁹

Despite the very fertile ground for political action, the Belarusian opposition parties, unlike the Moldovan opposition in 2008, are quite inactive when it comes to promoting awareness about the LBT regimes among the border residents (almost 1.5 million border residents on the Belarusian side). Apart from a number of internet petitions and the occasional small-scale distribution of leaflets on the issue, no systematic public campaign, similar to the one carried out by the Liberal Democratic Party of Moldova in 2008, has been conducted in Belarus.

3.5 ROMANIA-UKRAINE

The negotiation process over the LBT agreement between Ukraine and Romania started in 2007. The signing was scheduled to take place during the official visit by Romanian President Traian Băsescu to Ukraine in late February 2009. However, the visit was postponed indefinitely and never took place. Despite the repeated statements by the two sides about the importance of the LBTR, it has not been launched as of early 2014. However, on April 2, 2014 the two sides initialled the LBT agreement, which gives reason to believe that the LBTR will be enforced soon.

When the previously articulated aspirations of the Romanian and Ukrainian MFAs to sign the LBT agreement by the end of 2008 did not materialize,¹⁶⁰ in January 2009 foreign ministers of both countries

¹⁵⁹ Ibid.

¹⁶⁰ 'Ukraina ta Rumunija pidpishut' ugodu pro malij prikordonnij ruh' [in Ukrainian], *News agency UNIAN*, 14 November 2008, <http://eunews.unian.net/ukr/detail/189205> (accessed 20.03.2014).

announced that the signing procedure would take place during Bănescu's expected visit to Ukraine on February 24–25. The launch of the LBT agreement with Romania was listed in the official Priority Plan of the Ukrainian Ministry of Foreign Affairs for 2009.¹⁶¹ A subsequent round of bilateral negotiations on the LBTA in early February resulted in an optimistic press release by the Romanian MFA, saying that 'the talks have made significant progress' and that the agreement 'is to be signed as soon as possible'.¹⁶²

However, about a week before Bănescu's visit was due to take place, it was suddenly announced that the visit had been 'postponed' and would subsequently take place after the necessary final preparations by the two sides had been made. In August, the Ukrainian ambassador to Romania, Markiyan Kulyk, placed the responsibility for the postponement/cancellation of the official visit on Romania, citing two reasons for this. First, the Romanian side was allegedly not ready to sign the LBT agreement during the visit. The second reason voiced by the diplomat was that the preparations for the second meeting of the joint Romania-Ukraine presidential commission had not been finalized.¹⁶³

Markiyan Kulyk also described the differences in the negotiation positions of the two sides. It turned out that Romania had insisted on not limiting the length of stay in the border area to 90 days in a three-month period. Ukraine did not support this proposal, referring to the previously signed texts of the LBTAs with Hungary, Poland, and Slovakia. As the CJEU's ruling of March 2013 showed, it was Romania's position which corresponded to the provisions of the LBT Regulation (see subsection 1.3 above for details). The other main bone of contention between the two sides concerned the number of Romanian consular offices responsible for processing LBT applications. Romania was counting on the establishment of two additional consulates for LBTR purposes, while Ukraine argued that this was excessive, and opposed the idea.¹⁶⁴ It subsequently emerged that the Ukrainian side, in turn,

161 'Prioritetni zavdannya Ministerstva zakordonnykh sprav Ukrayiny na 2009 rik' [in Ukrainian], Ukraine's MFA presentation, mond.at.ua/load/0-0-0-4-20 (accessed 20.03.2014).

162 'Negocieri la acordul româno-ucrainean privind micul trafic de frontieră' [in Romanian], *Jurnalul online*, <http://www.jurnalulbtd.ro/articol-Negocieri-la-acordul-romano-ucrainean-privind-micul-traffic-de-frontiera-5-1713.html> (accessed 20.03.2014).

163 Andrei Peia, 'Ambasadorul Ucrainei: Vizitalui Bănescu la Kiev e amânată din vina României' [in Romanian], 20 August 2009, *Curierul National*, <http://www.curierulnational.ro/Politica/2009-08-20/Ambasadorul+Ucrainei%3A+Vizita+lui+Basescu+la+Kiev+e+amanata+din+vina+Romaniei> (accessed 20.03.2014).

164 Ibid.

insisted on the opening of additional BCPS and invited their Romanian counterparts to issue national visas valid for 5 years for free.¹⁶⁵

Importantly, a significant event occurred which contributed to the worsening of Romania-Ukraine relations on the eve of Bănescu's anticipated visit. The International Court of Justice, the principal judicial organ of the United Nations, rendered its judgment in the case concerning *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*. The ICJ established the single maritime boundary delimiting the continental shelf and exclusive economic zones of Romania and Ukraine. To Ukraine's chagrin, the ICJ decision, which is final, binding and without appeal, awarded Romania about four-fifths of its original claim.¹⁶⁶ The ICJ's judgment can be seen as a major setback for the Ukrainian MFA, since the case concerned not just seemingly unimportant territory inhabited by some 100 people – the rocky island of Zmiinyi (Snake Island) – but ultimately resolved that it is Romania which has the right to exploit the rich oil and natural gas deposits near the island. In order to embark on full-fledged exploration and development of the deposit fields, a bilateral agreement on the shelf boundary line between Ukraine and Romania was among the documents which were expected to be signed during Bănescu's visit.

Bilateral relations were further strained when only a week after the date of Bănescu's abandoned visit to Ukraine, Romania declared two Ukrainian diplomats *personae non grata*, claiming that they had been involved in espionage, and duly expelled them. Kyiv responded with similar actions towards two Romanian diplomats, accusing them of encouraging separatism and propagating anti-Ukrainian ideas.¹⁶⁷ Additionally, the ongoing proceedings in the bodies established to assist in implementing the Espoo Convention¹⁶⁸ with respect to the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian

165 'Ucraina vrea vize gratuite pentru cetățenii săi și până la 5 ani drept de ședere în România' [in Romanian], *Revista 22*, 09 July 2013, <http://www.revista22.ro/ucraina-vrea-vize-gratuite-pentru-cetatenii-sai-si-pna-la-5-drept-de-sedere-n-romnia-28619.html> (accessed 20.03.2014).

166 A map detailing the Ukrainian and Romanian claims as well as an image showing the ICJ's delimitation can be found at the end of the ICJ's press release at: <http://www.icj-cij.org/docket/files/132/14985.pdf>. For the ICJ's argumentation in its entirety, see <http://www.icj-cij.org/docket/files/132/14987.pdf> (accessed 20.03.2014).

167 'Ukraina, Rumynija: shpionomanija procvetaet' [in Russian], *Internet-newspaper 'Sejchas'*, 11 March 2009, <http://www.seychas.ua/politics/2009/3/11/articles/5302.htm> (accessed 20.03.2014).

168 The UNECE Convention on Environmental Impact Assessment in a Transboundary Context.

sector of the Danube Delta ('the Bystroe Canal Project') likewise contributed to the strained relations between the two countries.

Yet another detrimental factor in Romania-Ukraine relations concerns the national minority issue. While Bucharest was pointing to the alleged policy of assimilation of the Romanian minority in Ukraine, Kyiv repeatedly expressed its dissatisfaction with the Romanian policy of citizenship restoration for ethnic Romanians. Some territories of the former Romanian kingdom were occupied by the Soviet Red Army in 1940, and were ceded to the Ukrainian SSR after the Second World War. According to Romanian law, descendants of the people who lived in inter-war Romania (including parts of the present-day Odessa and Chernivtsy regions of modern Ukraine) are granted the right to restore their Romanian citizenship.¹⁶⁹ It is suggested that up to 50,000 Ukrainian nationals have already acquired Romanian citizenship to date, despite the fact that dual citizenship contradicts Ukrainian laws.

It is not only the Ukrainian authorities that frown upon this legal initiative by Romania. Some members of the Ukrainian academic community are highly critical of the policy as well. For example, Ihor Melnychuk from the Chernivtsy National University considers the Romanian policy to be 'a significant tool for creating a powerful lobby' on the territory of Ukraine: *By issuing Romanian passports to ethnic Romanians of Ukraine, Bucharest intends to integrate these territories culturally, economically and politically in order to create a solid basis for further expansion of its own interests... One may suggest that at the present time Bucharest by its actions in Moldova is perfecting a scenario which, in the mid-term, may be directed in relation to Ukraine*.¹⁷⁰ One political scientist even suggests that Romania was not really interested in launching an LBTR with Ukraine in order to create additional incentives for the Bukovina and Zakarpattia regions' inhabitants to acquire a Romanian passport in order to facilitate their own mobility.¹⁷¹

Recently, Romania and Ukraine have seemingly intensified their rhetoric on the necessity to overcome the differences in their negotiation positions and to conclude the long-awaited agreement.

169 In November 2013, Romania further facilitated the procedure of citizenship restoration, allowing applicants to take an oath of allegiance at any Romanian diplomatic office, not necessarily at the Citizenship Agency in Bucharest.

170 Ihor Melnychuk, 'Problema pasportyzaciyi Rumuniyeyu ukrayins'koho naseleण्या: suchasni realiyi ta mozhlyvi naslidky rozvytku podij' [in Ukrainian], *Chernivtsy News agency BukInfo*, 26 July 2010, <http://www.bukinfo.com.ua/show/news?lid=8478> (accessed 20.03.2014).

171 Ibid.

Indeed, in late 2012, the regional authorities of Romania and Ukraine (Suceava's County Council and the Chernivtsy regional council, respectively) called upon the national authorities to launch the LBTR as soon as possible.¹⁷² During the meeting between the Ukrainian FM and its Romanian counterpart in Bucharest in September 2013, the two sides again acknowledged that the LBTA was a mutual priority and voiced their intention to 'complete the negotiations and sign the agreement as soon as possible'. The Romanian FM referred to the CJEU's ruling in the Shomodi case, saying that the 'judicial precedent gives us a direction in which to move'.¹⁷³ It remains to be seen how long the bilateral LBTR will be held hostage to the strained bilateral relations.

172 'Deputaty Chernivets"koji obrady ta Suchavs"koji povitovoyi rady provely spil"ne zasidannya', *Bukovyns"ka Toloka*, 24 November 2012, bit.ly/1HLid6 (accessed 20.03.2014).

173 'Pro malyj prykordonnyj rux mizh Rumuniyeyu ta Zakarpattiam' [in Ukrainian], *News portal Novyny Zakarpattia*, 19 September 2013, <http://bit.ly/19dvubA> (accessed 05.01.2014).

Conclusion

The LBT *acquis* is an important EU instrument and a timely derogation from the Schengen *acquis* in that it mitigates the negative effects of the Schengen area expansion on population mobility. The work towards the elaboration of Community rules on the LBTR was reinvigorated in 2002, in the aftermath of the Amsterdam Treaty, and largely benefited from the QMV that replaced the unanimity rule in 2005. There are 14 potential LBT regimes on the EU's and Norway's eastern borders. Eight of them are currently enforced, four (Lithuania/Belarus, Lithuania/Russia, Poland/Belarus, Romania/Ukraine) have stalled for various – predominantly political – reasons. The Romania/Ukraine LBTR is expected to be enforced soon after the two sides initialled the agreement in April 2014. Negotiations on two additional potential LBT regimes (Finland/Russia, Estonia/Russia) have never got underway. The functioning LBTRs are technically working well, with minimal abuses, and are benefiting from the rather effective work of the EU agencies and national bodies on reducing security threats and counteracting other negative consequences, such as those associated with large-scale shuttle trade. However, in some cases (Slovakia/Ukraine LBT), excessive bureaucratic rules and procedures have rendered the LBTR largely ineffective and unpopular.

Overall, the LBT regimes contribute considerably to the population's mobility across the EU's eastern borders. Close to 600 thousand LBT permits have been issued since the LBT Regulation was adopted in late 2006, and dozens of millions of border-crossings have been undertaken by LBTP holders. At some border sections (Poland/Ukraine, Norway/Russia, Poland/Russia), LBTP holders perform up to half of all border-crossings. In the case of some LBTRs, the main motive for LBT

permit holders is shuttle trade (Norway/Russia, Poland/Russia, Poland/Ukraine), while for others, family ties constitute an important reason for travel (Slovakia/Ukraine, Hungary/Ukraine, Romania/Moldova, Latvia/Belarus). However, there is no clear distribution of LBTRS when it comes to the main reason for travel: there is an economic and cultural component in all of them, even the most ‘family-related’ LBTRS, and vice versa.

Incidences of bypassing the permitted border area by LBTP holders are rather rare, not least because of the high costs of non-compliance. Severe security threats associated with the LBTRS have not been identified. However, there is room for improvement in the collection of data on registered abuses and on the total number of LBT permits issued. An open issue concerns the possible amendment of the Regulation to establish an LBTR for the border air and water ports, and not limiting the LBT only to the external *land* borders of the member states. Despite talks on a possible extension of the border areas (as in the Norway/Russia case) over the 50-km zone, such a development, akin to the Poland/Russia LBTR, is unfeasible as the EU organs explicitly stated the exceptionality of the Kaliningrad case.

LBT is an important instrument of the European Neighbourhood Policy. The LBT *acquis* has contributed to the ENP aims and Cross-Border Cooperation and has mitigated some of the critical points expressed by the experts in respect of the implementation of the ENP. The LBTRS undoubtedly foster more active social, economic, and family contacts between EU member-state border residents and their eastern neighbours. In this way, the LBT legislation, although it formally belongs to the area of the EU’s home affairs, intersects with the foreign policy realm of the EU. However, the existing LBT *acquis* does not establish functioning LBTRS per se. It is the prerogative of the EU member states to conclude bilateral agreements with a neighbouring state, and therefore it is also an instrument in bilateral relations. Apparently, cold political relations between the countries hinder LBTRS from being launched. There are cases (Lithuania/Russia, Romania/Ukraine, Lithuania/Belarus, Poland/Belarus, and Estonia/Russia to a limited extent) where the political considerations of national authorities block the progress on the LBTRS, despite the clear interest in the LBTR expressed by the borderland communities and/or the local authorities. Since LBTRS instigate greater mobility, which carries certain economic and financial developments with it, in some cases economic considerations likewise play an important role in decisions to withhold the LBTRS (Lithuania/Belarus, Poland/Belarus).

As LBTRS make border crossing easier and less burdensome for wider categories of the border population, this, in turn, enhances shuttle trade. This factor prompted the adoption of a series of national legislative measures to counteract regular large-scale trade in excisable goods, which negatively affects border management and incurs a loss of revenue. However, national governments are usually less active when it comes to activities such as building and upgrading border infrastructure, for example. Surveyed experts and practitioners in border issues point to the inadequate border infrastructure at most of the functioning LBTRS. The mere introduction of an LBTR does not guarantee its effective implementation and smooth functioning, which is detrimental to national interests and to the interests of border residents. In the case of the Norway/Russia LBTR, the Norwegian government has turned a deaf ear to repeated requests by regional police authorities, experts in migration issues and the Norwegian legislative assembly to finance a new border station to manage the sharply growing number of border-crossings. Similarly, the operations of the Romania/Moldova and Slovakia/Ukraine LBTRS have been disrupted due to the absence of a timely solution to problems posed by the biometric data-processing of LBT permits.

The impact of the LBTRS is multi-dimensional. They not only bring practical benefits for the borderland populations (e.g. the economic benefits for borderlands such as Poland/Ukraine, Poland/Russia, and to a lesser extent Hungary/Ukraine are quite important), but in some cases have an important symbolic significance. The LBTRS may also enhance bilateral relations (Poland/Russia, Norway/Russia, and Romania/Moldova in part). In other cases, conversely, the inability to agree on the LBTR has contributed to further misunderstandings and even to the further cooling of relations (Romania/Ukraine, Lithuania/Russia and Poland/Belarus in part). Interestingly enough, LBT is also used in domestic politics. The LBT card was quite successfully played by the Moldovan opposition in 2008–2009, and far less successfully by the Belarusian opposition in 2012–2014.

There is a clear tendency by national governments to establish stricter rules and a manifest reluctance to negotiate more liberal provisions. None of the existing LBT agreements use the flexibilities provided by the LBT Regulation to their fullest extent. Moreover, in many cases, they introduce requirements incompatible with the Regulation, such as the obligation for an LBT holder to have medical insurance. But the most notable securitising drift is the erroneous interpretation of the LBT *acquis* regarding the authorised length of stay in the border

area by all LBT agreements except two. In contradiction to the LBT Regulation wording, in most of the cases, national governments, until recently, limited the period of stay akin to the Schengen rules, which was irrevocably disproved by the Court of Justice of the European Union in March 2013. The Court confirmed that the LBT legislation is a derogation of the Schengen legislation for the interest of *bona fide* border residents, The ruling on the Shomodi case illustrates the added value of LBTRS even after the eventual introduction of the visa-free regimes, since the former provide LBT permit holders with the right to a quasi-permanent stay in the foreign border area, beyond the '90 days in a period of 180 days' rule.

Annex 1.

Standard questionnaire sent to experts and practitioners in the area of border cooperation (note: some questions differed depending on LBT agreement and nationality of a respondent).

Question 1.

How good is the functioning Poland/Ukraine LBT regime from a technical perspective (i.e. sufficient border infrastructure, access to information about the LBT regime for the public etc.)?

Very good	Good	Barely acceptable	Poor	Very poor
-----------	------	-------------------	------	-----------

Please, provide any relevant observations on the matter, if available.

Question 2.

How important is the functioning LBT regime for the achievement of the European Neighbourhood Policy aims (security, stability and prosperity) and enhancement of trans-border cooperation between the two countries?

Very important	Important	Moderately important	Of little importance	Unimportant
----------------	-----------	----------------------	----------------------	-------------

If important, please, write how exactly the LBT regime facilitates the promotion of the ENP aims/enhancement of the trans-border cooperation.

Question 3.

In many cases, acting LBT agreements introduce stricter requirements than those that the EU Regulation on LBT regimes allows (i.e. they reduce the maximum stay within a given period, introduce fees for the LBT permits, etc.). Do you agree that the functioning LBT agreement holds much stricter rules than the minimal requirements of the EU Regulation would allow?

Strongly agree	Agree	Neutral	Disagree	Strongly disagree
----------------	-------	---------	----------	-------------------

Question 4.

The Poland-Ukraine LBT regime is more important for the social and cultural interchange rather than for the development of border trade.

Strongly agree	Agree	Neutral	Disagree	Strongly disagree
----------------	-------	---------	----------	-------------------

Question 5.

The Poland-Ukraine LBT regime has little to do with promotion of genuine regional cooperation but rather facilitates shopping in the border area.

Strongly agree	Agree	Neutral	Disagree	Strongly disagree
----------------	-------	---------	----------	-------------------

Question 6.

Taken as a whole, the functioning LBT regime is equally beneficial for both sides.

.....

Strongly agree	Agree	Neutral	Disagree	Strongly disagree
----------------	-------	---------	----------	-------------------

.....

If disagree, please explain why.

Question 7.

The Poland-Ukraine LBT regime will be worthless after eventual introduction of visa-free regime for the short-term travel.

.....

Strongly agree	Agree	Neutral	Disagree	Strongly disagree
----------------	-------	---------	----------	-------------------

.....

If possible, explain why.

Question 8.

The Poland-Ukraine LBT regime harms Schengen border management.

.....

Strongly agree	Agree	Neutral	Disagree	Strongly disagree
----------------	-------	---------	----------	-------------------

.....

If agree, explain why.

Question 9.

The functioning Poland-Ukraine LBT regime is an important step towards visa-free regime between Ukraine and Schengen states.

.....

Very good	Good	Barely acceptable	Poor	Very poor	Not relevant
-----------	------	-------------------	------	-----------	--------------

.....

Question 10.

If the border area had been extended something more than 30-50 kilometres from the border, it would have brought repercussions for Poland's security.

.....

Strongly agree	Agree	Neutral	Disagree	Strongly disagree
----------------	-------	---------	----------	-------------------

.....

Thank you for your time!

Annex 2.

How stricter the rules in the LBT agreements are: duration of an uninterrupted stay, LBTP issue fee, LBTP validity, minimal term of lawful residence.

LBT agreement	Duration of an uninterrupted stay	Issuing fee
EU Regulation	Three months	Free
Norway–Russia	15 days	EUR 20 Free for: minors, students, persons aged 60 or more.
Latvia–Russia	90 days	Free
Poland–Russia	30 days	EUR 20 Free for: minors under 16 and aged more than 65, disabled people.
Lithuania–Belarus (Non–functioning LBTR as of early 2014)	90 days	EUR 20 Free for: children under 6, pupils and students, aged more than 60, certain categories of disabled people.
Latvia–Belarus	90 days	EUR 20 'May have a waiver on a reciprocity basis': pensioners, disabled people and minor under 18.
Poland–Belarus (Non–functioning LBTR as of early 2014)	30 days	EUR 20 Free for: disabled, pensioners, minors under 18.
Poland–Ukraine	60 days	EUR 20 Free for: disabled, pensioners, minors under 18.
Slovakia–Ukraine	90 days (initially, 30 days)	Free Initially, before amendments to the LBTA were introduced in 2011: EUR 20, except for special categories of persons not able to work, minors under 15 and pensioners aged more than 60.
Hungary–Ukraine	Three months	EUR 20 Free for: disabled people, pensioners, minors under 18 and dependent children under 21.
Romania–Moldova	Three months	Free According to the agreement, the issuing fee "shall not exceed the fee for issuing short–stay visas". In practice, the LBTPs are issued for free, as Romanian visas for Moldovans are free as well.

Validity	Minimal term of lawful residence
Min 1, max 5 years	1 year
3 years	3 years
1 to 2 years	3 years
First LBT permit is issued for 2 years, renewed for 5 years	3 years
1 to 5 years	1 year
1 to 5 years (in practice, as of early 2014, all LBTPs are issued for 1 year).	1 year
First LBT permit is issued for 2 years, renewed for 5 years	3 years
First LBT permit is issued for 2 years, renewed for 5 years	3 years
1 to 5 years (in practice, most of the LBTPs are issued with a term of validity of one year).	3 years
1 to 5 years	3 years
from 2 to 5 years	1 year

Previously published in the series

MIKA AALTOLA, JUHA KÄPYLÄ,
HARRI MIKKOLA, TIMO BEHR
*Towards the Geopolitics of Flows:
Implications for Finland*
FIIA Report 40 (2014)

JUHA JOKELA, MARKKU KOTILAINEN,
TEIJA TIILIKAINEN, VESA VIHRIÄLÄ
*EU:n suunta:
Kuinka tiivis liitto?*
FIIA Report 39 (2014)

JUHA JOKELA (ED.)
*Multi-speed Europe?
Differentiated integration in the external
relations of the European Union*
FIIA Report 38 (2014)

SEAN ROBERTS
*Russia as an international actor:
The view from Europe and the us*
FIIA Report 37 (2013)

ROSA BALFOUR, KRISTI RAIK
*Equipping the European Union for the 21st century:
National diplomacies, the European External
Action Service and the making of EU foreign
policy*
FIIA Report 36 (2013)

KATRI PYNNÖNIEMI (ed.)
*Russian critical infrastructures:
Vulnerabilities and policies*
FIIA Report 35 (2012)

TANJA TAMMINEN (ed.)
*Strengthening the EU's peace mediation capacities:
Leveraging for peace through new ideas and
thinking*
FIIA Report 34 (2012)

HARRI MIKKOLA, JUKKA ANTEROINEN,
VILLE LAUTTAMÄKI (eds.)
*Uhka vai mahdollisuus?
Suomi ja Euroopan puolustus- ja
turvallisuusmarkkinoiden muutos*
FIIA Report 33 (2012)

TOUKO PIIPARINEN & VILLE BRUMMER (eds.)
*Global networks of mediation:
Prospects and avenues for Finland as a
peacemaker*
FIIA Report 32 (2012)

MIA PIHLAJAMÄKI & NINA TYNKKYENEN (eds.)
*Governing the blue-green Baltic Sea:
Societal challenges of marine eutrophication
prevention*
FIIA Report 31 (2011)

ARKADY MOSHES & MATTI NOJONEN (EDS.)
*Russia-China relations:
Current state, alternative futures,
and implications for the West*
FIIA Report 30 (2011)

TEIJA TIILIKAINEN & KAISA KORHONEN (eds.)
*Norden – Making a Difference?
Possibilities for enhanced Nordic cooperation
in international affairs*
FIIA Report 29 (2011)

TIMO BEHR (ed.)
*Hard Choices:
The EU's options in a changing Middle East*
FIIA Report 28 (2011)

JYRKI KALLIO
*Tradition in Chinese politics:
The Party-state's reinvention of the past and
the critical response from public intellectuals*
FIIA Report 27 (2011)

- STEVEN PARHAM
*Controlling borderlands?
 New perspectives on state peripheries in
 southern Central Asia and northern Afghanistan*
 FIIA Report 26 (2010)
- MARI LUOMI
*Managing Blue Gold:
 New Perspectives on Water Security
 in the Levantine Middle East*
 FIIA Report 25 (2010)
- TAPANI PAAVONEN
*A New World Economic Order:
 Overhauling the Global Economic Governance
 as a Result of the Financial Crisis, 2008–2009*
 FIIA Report 24 (2010)
- TOBY ARCHER, TIMO BEHR, TUULIA NIEMINEN (eds)
*Why the EU fails
 – Learning from past experiences
 to succeed better next time*
 FIIA Report 23 (2010)
- LOUISE WIUFF MOE
*Addressing state fragility in Africa:
 A need to challenge the established ‘wisdom’?*
 FIIA Report 22 (2010)
- TARJA CRONBERG
*Nuclear–Free Security:
 Refocusing Nuclear Disarmament and the Review
 of the Nuclear Non–Proliferation Treaty*
 FIIA Report 21 (2010)
- KRISTIAN KURKI (ed.)
*The Great Regression?
 Financial Crisis in an Age of Global
 Interdependence*
 FIIA Report 20 (2009)
- ANNA KORPPOO & ALEX LUTA (ed.)
*Towards a new climate regime?
 Views of China, India, Japan, Russia and the
 United States on the road to Copenhagen*
 FIIA Report 19 (2009)
- MINNA–MARI SALMINEN & ARKADY MOSHES
*Practise what you preach
 – The prospects for visa freedom
 in Russia–EU relations*
 FIIA Report 18 (2009)
- CHARLY SALONIUS–PASTERNAK (ed.)
*From Protecting Some to Securing many:
 Nato’s Journey from a Military Alliance
 to a Security Manager*
 FIIA report 17 (2007)
- TOBY ARCHER & TIHOMIR POPOVIC
*The Trans–Saharan Counter–Terrorism Initiative:
 The us War on Terrorism in Northwest Africa*
 FIIA Report 16 (2007)
- SERGEI MEDVEDEV
*EU–Russian Relations:
 Alternative futures*
 FIIA Report 15 (2006)
- HANNA OJANEN (ed.)
*Peacekeeping – Peacebuilding:
 Preparing for the future*
 FIIA Report 14 (2006)
- HANNA OJANEN
The EU and the UN: A shared future
 FIIA Report 13 (2006)
- GRZEGORZ GROMADZKI,
 RAIMUNDAS LOPATA & KRISTI RAIK
*Friends or Family?
 Finnish, Lithuanian and Polish perspectives on
 the EU’s policy towards Ukraine, Belarus and
 Moldova*
 FIIA Report 12 (2005)
- HU ANGANG, LINDA JAKOBSON & SHEN MINGMING
China’s Transforming Society and Foreign Policy
 FIIA Report 11 (2005)
- KRISTI RAIK & TEEMU PALOSAARI
*It’s the Taking Part that Counts:
 The new member states adapt to EU foreign
 and security policy*
 FIIA Report 10 (2004)
- HISKI HAUKKALA & ARKADY MOSHES
*Beyond “Big Bang”:
 The Challenges of the EU’s Neighbourhood
 Policy in the East*
 FIIA Report 9 (2004)

LINDA JAKOBSON

*Taiwan's Unresolved Status:
Visions for the Future and Implications
for EU Foreign Policy*
FIIA Report 8 (2004)

LINDA JAKOBSON

*Taiwanin kiistanalainen asema:
Tulevaisuudennäkymät ja niiden
vaikutukset EU–Kiina–suhteisiin*
UPI–raportti 8 (2004)

TOBY ARCHER

Kansainvälinen terrorismi ja Suomi
UPI–raportti 7 (2004)

HANNA OJANEN (ed.)

Neutrality and non–alignment in Europe today
FIIA Report 6 (2003)

SOILE KAURANEN & HENRI VOGT

*Piilopoliittisuudesta poliittisuuteen:
Afrikan, Karibian ja Tyynenmeren valtioiden
ja Euroopan unionin yhteistyön kehitys*
UPI–raportti 5 (2003)

ARKADY MOSHES (ED.)

*Rethinking the Respective Strategies
of Russia and the European Union*
Special FIIA –Carnegie Moscow
Center Report (2003)

ARKADY MOSHES

Ukraine in tomorrow's Europe
FIIA Report 4 (2003)

HANNA OJANEN

*EU:n puolustuspolitiikka ja suhteet Natoon:
Tervetullutta kilpailua*
UPI–raportti 3 (2003)

HISKI HAUKKALA

*Towards a Union of Dimensions
The effects of eastern enlargement
on the Northern Dimension*
FIIA Report 2 (2002)

HISKI HAUKKALA

*Kohti ulottuvuuksien unionia: Itälaajentumisen
vaikutukset pohjoiselle ulottuvuudelle*
UPI–raportti 2 (2002)

CHRISTER PURSIAINEN & SINIKUKKA SAARI

Et tu Brute!
Finland's NATO Option and Russia
FIIA Report 1 (2002)

CHRISTER PURSIAINEN & SINIKUKKA SAARI

Et tu Brute!
Suomen Nato–optio ja Venäjä
UPI–raportti 1 (2002)

Keeping the door ajar

Local border traffic regimes on the EU's eastern borders

Andrei Yeliseyeu

The EU eastward 2004 enlargement and the consequent entry of new EU member states into the Schengen area in December 2007 resulted in a considerable increase in visa fees and complications concerning visa procedures for applicants. This ushered in a sharp decrease in the number of issued visas, especially in Ukraine, Belarus and the Kaliningrad oblast (Russia). As a result, the Local Border Traffic (LBT) Regulation appeared to be a timely legal tool for the eastern EU member states to mitigate the negative effects of their accession to the Schengen area and to keep the borders ajar for legitimate border-crossing for family, cultural, social and economic reasons.

The 2006 EU Regulation makes it possible for the EU countries and Schengen non-EU members to conclude agreements with neighbouring third states on a visa-free land border-crossing regime for border residents (30–50 km zone on both sides of the border). As of early 2014, out of the 14 border sections at the EU's eastern borders, namely the borders with Russia, Belarus, Ukraine, and Moldova, 8 are covered by an operational LBT regime.

Since the adoption of the LBT Regulation, about 600,000 local border traffic permits have been issued, which allowed for many millions of border-crossings and stays in the adjacent border areas without visas. The impact of the LBTRs is multidimensional, with various effects on the mobility of the border population, and the economic and social development of the borderlands. The aim of this report is to provide a comprehensive analysis of the functioning and potential LBT regimes on the European Union's and Norway's eastern borders.