

## **BELARUS-EU: THE LIKELY CONSEQUENCES OF A READMISSION AGREEMENT**

**Andrei Yeliseyeu**

### **SUMMARY**

This research study is concerned with the description of the essence of readmission agreements and analysis of the consequences of the proposed agreement on readmission between Belarus and the European Union. The readmission agreement is instrumental in visa facilitation. Drawing on the analysis of the parameters of illegal migration via the territory of Belarus and assessment of the implementation of equivalent agreements between the EU and Russia and between the EU and Ukraine, the study provides estimates of the probable numbers of third-country nationals and stateless persons that Belarus would have to readmit from the European Union Member States if it had a readmission agreement with the EU.

The main conclusion drawn in the study is that official Minsk tends to exaggerate the negative impact of the implementation of the potential readmission accord with the EU. It appears that Belarus would have to readmit up to 100-200 or, much likelier, a few dozens of third-country nationals and stateless persons annually in the framework of the proposed readmission agreement with the EU.

Despite the balanced approach to agreements on readmission that the EU exercises in its relations with other countries, in the case of Belarus, the EU *de facto* failed to outline any benefits accompanying a readmission agreement. So far, the only explicit benefit offered by the European Union—a visa facilitation accord—is not as strong a driver as it was for the Russian or Ukrainian governments. At the same time, Belarus's delaying the start of negotiations with the EU over the agreements on visa facilitation and readmission fails to act in the interests of Belarusian society.

As a general recommendation to the European Union institutions, it is suggested that a readmission proposal to Belarus should be accompanied with additional incentives/benefits. Besides visa facilitation, which comes in a package with the agreement on readmission, the European Union should reinforce the package by offering additional technical assistance to the border agencies. This assistance should be announced as linked to the proposed readmission agreement. Furthermore, the European Union should notify Belarus, either publicly or by diplomatic channels, that the latter be granted a necessary transition period until the clause on the readmission of third-country nationals and stateless persons comes into effect and make an explicit statement about its commitment to the priority of readmitting illegal immigrants to their country of origin, rather than to the transit country, which would ease the concerns of the Belarusian government about readmission.

The key recommendation to official Minsk is to embark on visa facilitation and readmission negotiations with the EU as soon as possible. Delaying talks with the EU until readmission accords with third countries have been signed or until readmission progress has been made in the framework of the Common Economic Space appears to be a waste of time. Negotiations could also create an alternative platform for dialogue, which would contribute to the normalization of Belarus's relationship with the EU.

## Introduction

Agreements on readmission between the European Union and third countries impose an obligation on the contracting parties to readmit their nationals, third-country nationals and stateless persons who illegally enter the territory of either contracting party or illegally stay there, provided these persons arrive directly from the territory of the other contracting party. The importance of readmission relations between the European Union and Belarus rests on the fact that the EU links the readmission agreement to visa facilitation for Belarus. Agreements on visa facilitation and readmission will enable Belarus to move on to the next phase of visa relations with the EU—dialogue on visa liberalization. An invitation to launch negotiations on corresponding agreements was extended by the EU in June 2011, but official Minsk has not responded so far.

The Belarusian Foreign Ministry attributes the delay in the visa facilitation issue, among other things, to the possible consequences of the readmission agreement. Official Minsk does not rule out that thousands of illegal immigrants expelled from the EU will be accumulated on Belarusian territory as a result of the agreement on readmission<sup>1</sup>. Meanwhile, the procrastination of the launch of the small border traffic agreements with Lithuania and Poland suggests that the concerns over the possible consequences of readmission account for the delay only partially. Official Minsk has repeatedly referred to political reasons, specifically the general level of the relationship with the EU and the visa sanctions imposed on Belarusian state officials by the European Union. Nevertheless, the government's concerns about readmission appear to be warranted and are worth an individual study.

This research sets out to describe the essence of readmission agreements and analyze the aftermath of the proposed agreement on readmission between Belarus and the European Union. The study also estimates the probable numbers of third-country nationals and stateless persons that Belarus would have to readmit from the EU in the framework of a hypothetical readmission agreement.

The main objectives of the study are as follows:

- To explain the essence of the readmission agreements between the EU and third countries and their status in the European Union's migration policy;
- To identify the scope of the readmission agreements between Ukraine and the EU and between Russia and the EU as commensurate to the proposed agreement with Belarus in their substance;
- To outline the amount of illegal migration to the EU via the territory of Belarus and its qualitative parameters (the nationality of the trespassers);
- To estimate the number of persons who will supposedly be subject to readmission to Belarus from an EU Member State if the relevant agreement is concluded;
- To provide recommendations for the Belarusian government, the EU institutions and non-governmental stakeholders concerning readmission relations.

**Section One "Agreements on readmission: essence and treaty obligations"** focuses on readmission obligations, identification of the place of readmission agreements in the EU migration policy and description of complications inherent in the readmission of third-country nationals.

**Section Two "Critical overview of official readmission-related concerns"** is centered on the estimate of the probable number of third-country nationals that Belarus will have to readmit if it launches a readmission agreement with the European Union. The section also describes the progress that Belarus has made in the issue of readmission within the Common Economic Space and presents some results of the implementation of the readmission agreements between the EU and Russia and between the EU and Ukraine pertaining to the readmission of third-country nationals.

---

1 "МИД уверен, что Беларусь придет к безвизовому обмену с ЕС" ("The Foreign Ministry is positive that Belarus will eventually achieve a visa-free regime with the EU"). Tut.by media portal <http://news.tut.by/politics/277179.html>

**Section Three "European Union's compensatory measures to readmission agreements"** analyzes the positive stimuli and various benefits that the European Union offers its partner-countries as a counterbalance to the costs intrinsic in the implementation of the agreements on readmission. The section studies the specific nature of Belarus in this matter and estimates the possible compensatory measures that the EU can offer in a package with the readmission agreement.

The study also comprises recommendations to the Belarusian government, the EU institutions and non-governmental stakeholders.

The main findings are presented in the "**Conclusion**".

## 1. Agreements on readmission: essence and treaty obligations.

### 1.1. Essence of readmission obligations

Readmission is the act of transit of persons illegally residing on the territory of a state to the state, from which they arrived, with consent of the latter state. According to the definition by the European Commission, agreements on readmission are concluded to facilitate the transit of "persons who do not, or no longer fulfill the conditions of entry to, presence in or residence in the requesting state" [European Commission, 2002:26].

Readmission agreements presuppose reciprocal obligations of the EU and third countries to facilitate the return of illegal residents to the country of origin or transit. A standard agreement of this kind provides that Belarus would have to readmit on its territory, upon the request by any of the EU Member States and subject to no additional formalities, its own nationals, third-country nationals and stateless persons who do not fulfill the conditions of entry to or presence in the requesting state, provided there is evidence that they:

- 1) illegally entered the territory of the EU via the territory of Belarus;
- 2) possessed a valid residence permit issued by Belarus at the time of entry, or possessed a valid visa issued by Belarus at the time of entry and entered the territory of the EU directly from the territory of Belarus.

This does not mean that if an agreement on readmission with the EU was concluded, Belarus would have to readmit *all* of the illegal immigrants from third countries who meet the two conditions above. Agreements on readmission impose some additional limitations on the transit of such persons, which will be described in more detail in the next section of the study.

As a rule, agreements on readmission determine that the requesting party shall pay readmission expenses up to the state border, where the person in question is handed over to the requested party, which incurs further expenses. Having in mind a number of principles that restrict the transit of third-country nationals and stateless persons, one of the essential characteristics of readmission that distinguishes it from standard deportation is that in case of readmission the requesting state does not need to identify the foreign citizen (but his or her nationality normally has to be established), whom it transfers to the requested state. It is sufficient to prove that the person in question entered the territory of the requesting state from the territory of the requested state. In this case, a readmission request must contain information about the lack of identification documents, as well as papers and documentary evidence requisite for readmission. Therefore, it is important for the requested state to have readmission agreements with the countries of origin of migrants.

The Partnership and Cooperation Agreements with some of the former Soviet Union states (and, for instance, with Algeria, the Andean Community and Chile) include a special clause introducing a framework of negotiations for signing readmission agreements at some future date. The proposed version of the Partnership and Cooperation Agreement with Belarus, which never came into effect, reads:

*"The Cooperation Council shall examine which joint efforts can be made to control illegal immigration, taking into account the principle and practice of readmission."*  
[European Commission, 1995: 19]

The ratification of the Partnership and Cooperation Agreement was frozen by the EU Member States in the middle of the 1990s because of the poor human rights and democracy record in Belarus.

As of today, all of the EU readmission agreements include obligations on the readmission of third-country nationals (TCNs) as well. The EU has concluded agreements of this kind with 15 countries<sup>2</sup> so far, including four Eastern Partnership states (Ukraine, Moldova, Georgia and Armenia) and Russia. Talks are underway with Cape Verde, Morocco and Azerbaijan. In the cases of China,

---

<sup>2</sup> Albania, Bosnia and Herzegovina, Macedonia, Serbia, Montenegro, Hong Kong, Macao, Turkey (has not entered into force yet), Pakistan, Sri Lanka, Armenia (expected to enter into force in mid-2013), Georgia, Moldova, Russia, Ukraine.

Algeria and Belarus, talks have not started yet, despite the old invitation of the European Commission to begin corresponding negotiations<sup>3</sup>.

It should be noted that the agreements on readmission between the European Union and third countries represent a small part of the corpus of bilateral readmission agreements concluded by individual EU Member States. By August 2010, EU Member States had concluded 63 non-standard agreements linked to readmission and 190 standard bilateral readmission agreements [Cassarino, 2010:27]. 'Standard' readmission agreements are those based on the model recommended by the Council of the European Union in November 1994. The model was adopted to achieve final texts that have as many common features as possible. Among others, the thirteen articles of the standard agreement fix the time limits for replying to a readmission request to a maximum of 15 days [Ibid.: 14-15].

## 1.2. Readmission in the context of the EU migration policy

The readmission relations between the EU and third countries should be considered in the context of the development of the European Union's common migration policy. The Maastricht Treaty (1992) and the Amsterdam Treaty (1999) extended the competence of EU institutions over immigration and visa issues. Subsequently, a number of regulatory acts aiming to introduce uniform rules with respect to illegal immigrants in the EU Member States were passed. Readmission agreements became an essential part of the European Union's strategy to counteract illegal migration adopted at special EU summit meetings in Tampere (1999), Laeken (2001) and Seville (2002).

The Treaty of Amsterdam mandated the European Commission to hold negotiations and conclude readmission agreements between the European Union and third countries. It is believed that the added value of the joint economic, diplomatic and political influence of all of the EU Member States makes the conclusion of agreements on readmission more effective and rapid than the efforts of individual countries. The mandate of the Commission consists in brokering an agreement, which is subsequently implemented at a bilateral level between each Member State and the third country concerned. Member States cannot exercise their competence on readmission when the Union is negotiating or has concluded an EU readmission agreement with a given third country [Cassarino, 2010:17].

Despite considerable efforts by the European Union to promote the common migration policy during the last decade, EU institutions argue that the progress achieved in the sphere of migration is insufficient. In 2008, the European Commission presented, upon request of the Council of the European Union, a document with 10 common principles to achieve a more effective common migration policy [European Commission, 2008].

We can generally distinguish two approaches to dealing with the external dimension of the EU migration policy: the first approach seeks to externalize traditional tools of domestic or EU migration control to sending and transit countries. The second approach is preventive in nature and strives towards eliminating the root causes of migration [Trauner and Kruse, 2008:9-10]. Readmission agreements are tools applied as part of the former, more restrictive approach, in which the EU passes classic migration control instruments on to non-member countries that have to accept provisions for facilitating the return of illegal migrants and rejected asylum seekers.

---

3 The EU invited China and Algeria to start negotiations in November 2002, and Belarus, in June 2011.

### 1.3. Readmission of third-country nationals and stateless persons as a stumbling block

The EU distinguishes two categories of persons in its readmission policy: a) third-country nationals and b) stateless persons and persons that are citizens of neither the EU nor a third country. The readmission of the first category of persons raises no arguments—the obligation to readmit former nationals is a norm of customary international law [e.g., Hailbronner, 1997]. The right to return to their country is part of the Universal Declaration of Human Rights (Article 13). A state's refusal to readmit its own citizens represents a human rights violation, which can as such amount to persecution (in the sense of Article 1 (A) (2) of the 1951 Refugee Convention [Noll, 1999: 6]). Therefore, the agreements on readmission do not impose obligations on states to readmit their nationals, but facilitate this process. Readmission agreements normally comprise a clause for the requested country to readmit its nationals "with no formalities."

Despite the fact that Belarus has no bilateral readmission agreements with any of the EU Member States or any signatory to the Schengen Agreement (Norway, Iceland, Switzerland, Lichtenstein), up to 2,000 Belarusian nationals are expelled from their territories every year. It appears that the conclusion of a readmission agreement will not result in a significant increase in the number of readmitted Belarusian nationals, who illegally reside/stay in the EU or have been denied refugee status. Should a readmission agreement be launched, shorter procedures snarled in less red tape will be a new quality characteristic of the readmission process.

**Table 1**

*Number of returned Belarusian nationals following an order to leave, 2008-2011<sup>4</sup>*

EU Member State or associated country	2008	2009	2010	2011	2012
Belgium	15	10	10	10	35
the Czech Republic	15	15	15	10	5
Germany	115	55	85	100	80
Estonia	10	5	5	10	15
Spain	10	10	20	10	10
France	35	25	25	25	25
Italy	10	5	5	0	5
Latvia	5	15	25	105	240
Lithuania	170	240	350	480	410
the Netherlands	30	30	45	135	:
Austria	35	40	40	40	30
Poland	450	480	495	540	400
Romania	5	10	5	5	5
Finland	50	70	70	100	80
Sweden	290	225	225	250	225
the UK	60	85	80	65	80
Norway	0	:	:	10	:
<b>Total</b>	<b>1,320</b>	<b>1,345</b>	<b>1,510</b>	<b>1,905</b>	<b>1,670</b>

At the same time, international law does not impose an obligation on a state to readmit stateless persons and nationals of other countries who transited to the country of destination via their territory. It is the readmission of this category of persons that turns out to be the stumbling block in the negotiations over readmission agreements between the EU and third countries [Roig and Huddleston, 2007; Noll, 2005].

<sup>4</sup> Source: Eurostat, *Third country nationals returned following an order to leave - annual data (rounded)*. The table omits the countries, in which the number of returned Belarusian nationals for any year was five and fewer (Bulgaria, Hungary, Malta, Slovenia, Iceland, Lichtenstein, Denmark, Ireland, Greece, Cyprus, Luxembourg, Portugal, and Slovakia). The figures in the table are rounded to five. As of the date that the study was published, the data for Norway and the Netherlands were unavailable (marked as ":").

In its evaluation of EU readmission agreements presented in February 2011, European Commission experts questioned whether a TCN clause should always be demanded. They note that the clause often holds little value, while significantly complicating readmission negotiations. Interestingly, Member States' bilateral readmission agreements seldom include a TCN clause, yet Member States always demand a TCN clause at the EU level.

*"This situation raises some important questions since, as the collected data from Member States show, the TCN clause is actually rarely used by Member States, even with transit countries like the Western Balkans, with which the EU shares land borders" [European Commission, 2011].*

The evaluation prepared by European Commission experts reads that if a TCN clause was not demanded by the EU or was underpinned with appropriate incentives to a third country, some negotiations could have been already concluded (e.g. Morocco) and many others could have been concluded much quicker. The paper recommends revising the current approach and refraining from universally applying the principle of a TCN clause:

*"Future negotiating directives should not cover third country nationals, hence there would not be a need for important incentives. Only in cases where the country concerned, due to its geographical position relative to the EU (direct neighbors, some Mediterranean countries) and where exists a big potential risk of irregular migration transiting its territory to the EU, the TCN clause should be included and only when appropriate incentives are offered. In those cases the EU should also explicitly state that, as a matter of principle, it will always first try to readmit a person to his/her country of origin." [Ibid.]*

Some researchers had suggested eliminating the TCN clause from the text of readmission agreements [e.g., Roig and Huddleston, 2007]. They came to realize that the inclusion of the obligation to readmit third-country nationals runs counter to the declared objectives of the EU to promote sustainable return of illegal immigrants and damages the integrated approach of the EU to migration issues. Researchers have been suggesting that readmission policy should be made part of a broader migration track with more attention paid to the development of human potential in the countries of origin, promotion of quality governance and protection of human rights.

The text of the Decision of the Council of the European Union authorizing the European Commission to open negotiations with Belarus<sup>5</sup> is not open to public. In all appearances, it contains the traditional TCN clause. The timeframe for the adoption of the Council Decision on Belarus suggests that if progress in this matter was made at a later phase, the document could contain no TCN clause at all, thus acting on the recommendation of the evaluation report by the European Commission. The Decision on Belarus was adopted at about the same time (late February 2011) as the European Commission presented its account with the criticism of the effectiveness of the EU readmission agreements.

It is the clause stipulating the readmission of third-country nationals that official Minsk *de facto* refers to as the reason behind the delay in the agreement on readmission and, consequently, the delay in the visa facilitation accord for Belarus, which is tied to the readmission deal. A critical analysis of the government's apprehensions about readmission is presented in the following section of the study.

---

5 Adoption of a Council Decision authorising the Commission to open negotiations for the conclusion of a readmission agreement between the European Union and the Belarus, 22 February 2011, 6424/1/11, <http://register.consilium.europa.eu/pdf/en/11/st06/st06424-re01.en11.pdf>

## 2. A critical analysis of the official concerns about readmission.

### 2.1. Illegal migration via Belarus: a sunny picture

Before the entry into force of the agreements on readmission between the EU and Russia and between the EU and Ukraine, some politicians shared their expectations of high numbers of returns of third-country nationals<sup>6</sup>; however, their forecasts were inaccurate. In 2011, Ukraine readmitted 240 third-country nationals<sup>7</sup>. Despite the significant number of Ukrainian nationals working in the EU illegally, there was no major increase even in the number of nationals returned to Ukraine. It is helpful to bear in mind that the scale of illegal migration via Ukraine is several times as large as that via Belarus. In other words, if Belarus should conclude a readmission agreement with the EU, the number of readmitted persons will likely be proportionally smaller.

The number of third-country nationals readmitted by Russia in the framework of the readmission agreement with the EU is significantly smaller compared with the number of TCNs returned to Ukraine. The provision on TCNs and stateless persons came into force as part of the readmission agreement between Russia and the EU on October 1, 2010. By March 29, 2013, the Russian authorities had received only 74 TCN readmission requests; of them 35 were rejected without inquiry, 26 were satisfied, and 13 persons were returned to Russia<sup>8</sup>.

Whereas both the Russian and Ukrainian governments spoke in favor of concluding readmission agreements with the EU as part of the policy to move towards visa-free relationships with the European Union, and it was the opposition that voiced concerns about the potentially grave consequences of the accords, including inflows of illegal aliens (Oleh Tyahnybok in Ukraine), the situation in Belarus is the opposite. Many Belarusian opposition parties call for simplifying the visa relations with the EU (which requires, among other moves, the launch of a readmission agreement), while concerns about readmission are voiced by official Minsk. Spokesman for the Belarusian Foreign Ministry Andrei Savinykh was the one to make the most extended statement on this issue:

*"The EU has claimed ready to begin talks with Belarus over a reduction in visa fees; however, it made it clear that the issue was conditional on the conclusion of a readmission agreement with the Republic of Belarus. This means that all of the illegal migrants who were detained on the territory of the EU may be deported to the Republic of Belarus if they say that they entered the EU from the territory of Belarus. We have no such agreements; we have no border with Russia. Moreover, we have no agreements with the countries of origin of illegal migration. This means that in a certain situation, thousands, if not tens of thousands of illegal migrants will be accumulated on our territory, and we will have to provide them with clothes and footwear, and food, and shelter. We have no money for this."*<sup>9</sup>

Belarus is not a preferable transit country for illegal migrants. In its 2012 report, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) mentions Belarus in the context of the smuggling of cigarettes and petroleum products, rather than as a troublesome transit country [Frontex, 2012:30-31].

In 2011, 140,980 people were detected entering the EU illegally. Of the total, the Central, Eastern and Western Mediterranean routs accounted for 92%. According to Frontex data, the eastern

6 For example, leader of the Ukrainian party "Freedom" Oleh Tyahnybok said that the readmission agreement with the EU, if implemented, would have 'catastrophic' consequences for Ukraine; the 'first wave' alone of illegal migrants from third countries to be deported to Ukraine will allegedly amount to 150,000 people. See: "Олег Тягнибок: Угода про реадмісію – злочин проти нації" ("Oleh Tyahnybok: The Readmission Agreement is a Crime against the Nation"). ПОЛІТИКО, 15.12.2010, <http://politiko.ua/blogpost14828>

7 The UN Refugee Agency analytical note, <http://unhcr.org.ua/attachments/article/317/Zakarpattya%20factsheet.pdf>

8 Реализация Соглашения между Российской Федерацией и Европейским сообществом о реадмиссии от 25 мая 2006 г. (The implementation of the agreement on readmission between the Russian Federation and the European Communities of May 25, 2006). April 8, 2013. Official website of the Federal Migration Service of the Russian Federation [http://www.fms.gov.ru/press/news/news\\_detail.php?ID=63388](http://www.fms.gov.ru/press/news/news_detail.php?ID=63388)

9 "МИД уверен, что Беларусь придет к безвизовому обмену с ЕС" ("The Foreign Ministry is positive that Belarus will eventually achieve a visa-free regime with the EU.") Tut.by media portal, <http://news.tut.by/politics/277179.html>. Note: the text version is abridged compared with the original audio.



border of the European Union accounted for only 0.7% of all of the illegal border-crossings despite the substantial border length (the external borders of Slovakia, Romania, Hungary, Poland, Lithuania, Latvia, Estonia and Finland) [Ibid.: 14]. On the eastern EU border, the Slovakia-Ukraine border remains the most affected section of the common borders in terms of irregular migration with more than 40% of the total detections of illegal border-crossings [Frontex, 2011:6].

The data provided by the border authorities of Belarus and the neighboring EU Member States (Lithuania, Poland and Latvia) correspond to the findings presented in the Frontex analyses. In the period from the early 1990s to the early 2000s, Belarusian border guards annually detained more than 2,000 illegal migrants on the border and about 5,000 illegal migrants at the approaches to the state border. Up until the year 2000, illegal migrants would often move in groups of 20-30 and sometimes even 100 people<sup>10</sup>. However, in recent years, statistics have improved, and the number of detained illegal migrants is currently ten times below the figures registered previously.

To compare: in 2002, Belarusian border guards detained 150 groups of illegal migrants totaling 2,100 people, whereas in 2009, eight groups of illegal migrants counting 36 people<sup>11</sup> were stopped; in 2010, there were five groups (21 people)<sup>12</sup>; in 2011, there were three groups (seven people); and in 2012, there were seven groups (38 foreigners)<sup>13</sup>. This region is becoming less popular with irregular transit migrants. The trend shows that border management systems have improved and that the level of cooperation between border guards on both sides of the border is relatively high [Jaroszewicz, 2012:16].

The reduction in the number of illegal migrants entering the EU via Belarus can also be attributed to some organizational and regulatory arrangements, specifically the entry into force in 2003 of a law introducing criminal liability for the organization or facilitation of illegal migration of foreign nationals and stateless persons via the territory of the Republic of Belarus (Article 371 of the Criminal Offenses Code of the Republic of Belarus). The activities falling within this article include, *inter alia*, the provision of forged entry or exit documents to illegal migrants, harboring of migrants during their illegal stay in a country, organization or management of the transportation of illegal migrants via the territory of the Republic of Belarus [Васильева и Бахур, 2005].

The severe punishment for the facilitation of illegal migration is the reason why such activities by Belarusian citizens are infrequent. Attempts to illegally cross the state border by the nationals of Belarus are quite rare as well: first, there are quite reasonable opportunities for *legal* employment both in Russia and some of the EU Member States, especially in Poland; second, the Belarusians who wish to illegally enter the EU have no critical need to illegally cross the state border. Because the share of visa denials by the consulates of the Schengen Area Member States in Belarus is among the lowest in the world<sup>14</sup>, it is much easier to cross the border having a valid visa and then change the legal status or stay in the EU after visas expire.

Over the last few years, increasing numbers of illegal immigrants from Georgia have been reported to be crossing the eastern border of the EU<sup>15</sup>. This migration flow is also reflected in the statistics of illegal border-crossings by Georgian nationals reported by the Lithuanian and Polish border authorities and of their secondary movements and applications for asylum in some of the EU Member States of the region [Frontex, 2012:30-31]. As it follows from the official statistics by the Lithuanian and Polish border authorities cited in *Table 2*, the nationals of Georgia became the most

10 "Ежегодно белорусскую границу пересекает около 10 миллионов транспортных средств" ("Up to 10 million vehicles annually cross the Belarusian border." Narodnaya Gazeta, M. Osipaŭ, 30.11.2011). Available at: [http://www.ng.by/ru/issues?art\\_id=61869](http://www.ng.by/ru/issues?art_id=61869)

11 «Причины и тенденции незаконной миграции. Противодействие незаконной миграции» (A. Fiedaraka., "Causes and trends of illegal migration. Combating Illegal Migration"). The Journal of International Law and International Relations. 2009, No.4

12 "С начала года в Беларуси задержано пять групп нелегальных мигрантов" ("Five groups of illegal migrants have been detained in Belarus since the start of the year.") BelaPAN news service, V. Budkievič, 13/12/2010 <http://news.tut.by/society/208176.html>

13 "В 2012 году в Беларуси было задержано семь групп нелегалов" ("In 2012, seven groups of illegal migrants were detained in Belarus.") Naviny.by media portal. Available at: [http://naviny.by/rubrics/society/2012/12/17/ic\\_news\\_116\\_407468/](http://naviny.by/rubrics/society/2012/12/17/ic_news_116_407468/)

14 For more detail, see: Анализ консульской статистики стран Шенгенского соглашения в 2007-2011 гг. (Analysis of consular statistics of the Schengen states in 2007-2011). A. Yeliseyeu, BISS research study SA #1/2012RU), [http://www.belinstitute.eu/images/doc-pdf/english\\_research\\_yelis.pdf](http://www.belinstitute.eu/images/doc-pdf/english_research_yelis.pdf)

15 According to Frontex accounts, the largest groups of illegal migrants detained by the border guards of the EU on the eastern border are the nationals of Moldova and Georgia; the largest groups from beyond the CIS are those from Somalia, Afghanistan and Palestine.

frequent illegal migrants in the Belarusian section of the EU border. There are considerably fewer cases of illegal crossings of the Belarusian-Latvian border. In 2011, Latvian border guards apprehended 17 illegal migrants on the border with Belarus (nine Georgian nationals and eight Russians), and in 2012, 23 migrants were detained (all of them Georgians)<sup>16</sup>.

**Table 2. Number of persons detained for illegal border-crossing<sup>17</sup>.**

Citizenship	Poland			Lithuania		
	2010	2011	2012	2010	2011	2012
<b>Belarus</b>	62	143	190	20	15	17
<b>Russia</b>	30	28	55	7	21	16
<b>Georgia</b>	6	5	98	47	109	180
<b>Afghanistan</b>	—	1	61	—	29	46
<b>Vietnam</b>	30	—	20	4	—	75
<b>EU Member State</b>	21	30	20	58	80	90
<b>Other nationals and stateless persons</b>	15	19	23	4	11	21
<b>Total</b>	164	226	467	145	265	445

The statistics of detentions of illegal migrants by the border authorities of Poland, Lithuania and Latvia are crucial for forecasting the amount of readmission of third-country nationals and stateless persons if an agreement on readmission is concluded with the European Union. When it comes to the other EU Member States, which have no common border with Belarus, the likelihood of their requesting readmission of third country nationals would be much lower because of additional complications that concerned EU authorities will encounter when apprehending illegal immigrants and collecting evidence that they have arrived from the territory of Belarus. The readmission agreements with the EU presuppose a quite high level of evidence of transit of a third-country national via the country in question. The testimonies of illegal migrants about the entry from the territory of a specific country are normally perceived as indirect proof and will hardly be considered sufficient and acceptable evidence by the requested party without any additional direct and indirect evidence. The requested party carries out an independent probe and denies a TCN request in case of a lack of evidence of the entry of the given illegal migrant from its territory.

At the same time, the data for the numbers of illegal migrants detained on the border do not imply that Belarus would have to satisfy almost the same number of readmission requests if it had a relevant agreement with the EU. The thing is that the EU readmission agreements with third countries (see Article 10 of the agreement between the EU and Ukraine<sup>18</sup> and article 14 of the agreement between the EU and Russia<sup>19</sup>) introduce the principles that limit the transfer of third-country nationals and stateless persons. Their transit is only allowed when they cannot be returned directly to the country of destination and when their further delivery to the country of transit or the country of origin is guaranteed. These principles also provide that nationals of Russia and Georgia would be sent directly to their countries of origin, because their countries have individual readmission agreements with the European Union. Poland and Vietnam signed a bilateral agreement on readmission in 2004<sup>20</sup>.

Judging by the data presented in Table 2, it turns out that if Belarus had a readmission agreement with the EU, it would only have to readmit the relatively few citizens of Afghanistan, Vietnam (those who entered the EU by illegally crossing the Lithuanian border) and a few other countries. Besides the above principles limiting TCN transit, a country is entitled to refuse to readmit a person

16 The 2011 data of the State Border Guard of Latvia are quoted from the official report (Valsts robežsardzes 2011.gada publiskais pārskats, <http://www.rs.gov.lv/index.php?id=904&top=-4>), preliminary data for 2012 have been provided by the State Border Guard of Latvia on request of BISS.

17 The Polish data are quoted from official accounts of the Polish Border Guard (Statystyki SG, [http://www.strazgraniczna.pl/wps/portal/tresc?WCM\\_GLOBAL\\_CONTEXT=/pl/serwis-sg/polskie\\_formacje\\_graniczne/Statystyki](http://www.strazgraniczna.pl/wps/portal/tresc?WCM_GLOBAL_CONTEXT=/pl/serwis-sg/polskie_formacje_graniczne/Statystyki)), the State Border Guard Service of Lithuania has provided data for Lithuania based on an official inquiry by the BISS.

18 Agreement between the European Community and Ukraine on readmission of persons, OJ 2007 L 332, 48, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:332:0048:0065:EN:PDF>

19 Agreement between the European Community and the Russian Federation on readmission, OJ 2007 L 129, 40, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:129:0040:0060:EN:PDF>

20 Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Socjalistycznej Republiki Wietnamu o przekazywaniu i przyjmowaniu obywateli obu Państw, Dz.U. 2005 nr 156 poz. 1306, <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051561306>

if there is a chance that he/she will be faced with inhuman treatment or religious, ethnic or other persecution in the country of further transit or the country of destination; if there is a likelihood that he/she will be criminally persecuted in the requested state or any other country of transit; or on considerations of public order, state security or other national interests.

Therefore, the statement by spokesman for the Belarusian Foreign Ministry Andrei Savinykh that the illegal migrants detained in the EU may be returned to Belarus "*if they say that they entered the EU from the territory of Belarus*" exaggerates the scope of readmission obligations. Agreements on readmission comprise a number of principles that limit the transit of third-country nationals and require a certain level of evidence about the transit of TCNs via the territory of the given country. The results of the implementation of the readmission agreements between the EU and Russia and between the EU and Ukraine, as well as the analysis of the scope and parameters of illegal migration via the territory of Belarus prove that the concerns voiced by official Minsk regarding significant numbers of illegal migrants that would have to be readmitted by Belarus ("thousands, if not tens of thousands") are greatly exaggerated. The likeliest number of third-country nationals and stateless persons that Belarus would have to readmit annually, given the contemporary volume and parameters of illegal migration, is between a few dozen and two hundred persons.

## 2.2. Unwarranted delay of the start of negotiations with the European Union

The State Program for Migration of the Republic of Belarus for 2006-2010 comprised a special clause with an instruction for the Ministry of Foreign Affairs, Ministry of the Interior and State Border Committee to continue their efforts to enter the negotiation process with the CIS Member States, as well as Lithuania, Latvia, Poland and some other countries with a view to ultimately concluding agreements on readmission<sup>21</sup>. However, during the five years covered by the program, Belarus did not conclude a single readmission agreement. So far, the Republic of Belarus has signed only one agreement on readmission—the one with Turkey in March 2013.

Being part of the Common Economic Space (CES), Belarus signed the "Agreement on Cooperation in Combating Illegal Labor Migration from Third Countries" with Russia and Kazakhstan<sup>22</sup> in late 2010. The conclusion of readmission agreement is a form of cooperation of the CES Member States in combating illegal migration, under Article 5 of the agreement. In March 2013, the board of the Eurasian Economic Commission (EEC) recommended Belarus and Russia to redouble their efforts to complete internal procedures requisite for signing a readmission agreement<sup>23</sup>. At the same time, the EEC board called on the governments of Belarus and Kazakhstan to expedite the draft bilateral agreement on readmission.

The readmission agreements between Russia and Kazakhstan, signed in June 2012, and between Russia and Ukraine, signed in October 2012, became important reasons for Belarus to conclude an agreement of this kind with Russia in the near future. Previously, the Russian side stated that there could be no such agreement between Russia and Belarus, because, as Deputy Director of the Migration Service of the Russian Federation M. Tiurkin was quoted as saying, "readmission incorporates border-crossing, but the border between Belarus and Russia is kind of non-existent."<sup>24</sup>

Judging by the words of spokesman for the Belarusian Foreign Ministry A. Savinykh, Belarus is planning to seek progress in readmission relations either with the European Union or as part of the

21 Resolution of the Council of Ministers of the Republic of Belarus dated December 8, 2005 No.1403 "On the State Migration Program for 2006-2010."

22 The Agreement on Cooperation in Combating Illegal Labor Migration from Third Countries. Registered in the National Register of Legal Acts of the Republic of Belarus on January 12, 2013, No.3/2649. Available at: <[www.economy.gov.by/dadvfiles/002105\\_48294\\_16.doc](http://www.economy.gov.by/dadvfiles/002105_48294_16.doc)>

23 Recommendation of the Eurasian Economic Commission Board of March 19, 2013 No.5 "On Measures to Implement the Decision of the Supreme Eurasian Economic Council of December 19, 2012 No.21 on Migration." Legal portal pravo.by: <http://www.pravo.by/main.aspx?guid=3871&p0=F01300057>

24 "Иностранцы? Это не про нас" ("Foreigners? That's not about us." Sovetskaya Belorussia daily, T. Smaliakova, 09.09.2010, <http://www.sb.by/post/105092/>

Common Economic Space. Another option for Belarus is to conclude readmission agreements with third countries first and only after that begin negotiations with the European Union<sup>25</sup>.

This approach appears to be inefficient and will lead to a waste of time. The negotiations with the European Union, Russia and countries of origin of illegal migration can as well be held simultaneously, the more so, because in 2012, the Interior Ministry said that the agreement on readmission with Russia would be signed "in the near future."<sup>26</sup> It is from the Russian Federation that most of the illegal migrants (up to 95%, according to the State Program for Migration) come to Belarus. Moreover, when negotiating a readmission agreement with the EU, Belarus can seek a transition period of two to three years before the clause on third-country nationals and stateless persons comes into effect. The agreements on readmission between the EU and Russia and between the EU and Ukraine comprise such provisions (the transition periods of three and two years, respectively).

During the transition period, the country in question completes necessary preparations, including the construction of centers for readmitted migrants, improvement of border infrastructure, and conclusion of readmission agreements with other countries. Also during this period, the county is supposed to sign bilateral protocols with the EU Member States, which stipulate the technical and procedural aspects of readmission in detail in addition to the more general agreement on readmission with the European Union.

There is another, specific reason why it is important that Belarus not delay the conclusion of agreements on visa facilitation and readmission with the EU: the possible mass applications of Belarusian citizens for Russian citizenship as soon as Russia and the EU introduce a visa-free regime. The Russian authorities consider significant simplifications of the procedure for the citizens of the former Soviet Union to get Russian citizenship. If Russia adopts corresponding amendments to the Law "On Citizenship" and makes progress in its visa liberalization talks with the EU (Russia is streets ahead of Belarus in this issue), thousands of Belarusians may consider it rationally beneficial to get Russian citizenship in order to facilitate travel to the EU<sup>27</sup>.

In all appearances, the seemingly illogical argument of the Foreign Ministry that negotiations on readmission with the EU will only start after the country concludes readmission agreements with Russia and countries of origin of illegal migration is simply a formal rationalization of Belarus's delay in this area. Apparently, the real constraining factors are the overall status of the relationship with the European Union and insufficient compensation that the EU offers to Belarus alongside the readmission agreement. These aspects are considered in more detail in the following section.

---

25 "МИД уверен, что Беларусь придет к безвизовому обмену с ЕС" ("The Foreign Ministry is positive that Belarus will eventually achieve a visa-free regime with the EU"). Tut.by media portal, <http://news.tut.by/politics/277179.html>

26 "Беларусь и Россия завершают переговоры о реадмиссии - МВД" ("Interior Ministry: Belarus and Russia are finishing readmission negotiations"). Interfax news service, 22.11.12, <http://www.interfax.by/news/belarus/120739>

27 See for more details: Белорусы между «картой поляка» и российским «соотечественником» (A. Yeliseyev, Belarusians between the 'Karta Polaka' and Russian 'Compatriots'). BISS-Blitz, February 2013, <http://belinstitute.eu/ru/node/660>

### 3. EU compensatory measures in a package with readmission agreement.

#### 3.1. Importance of incentives accompanying readmission

Obviously, the obligations stipulated in agreements on readmission are too asymmetric to be meticulously fulfilled. Whereas a destination country has a vested interest in concluding readmission agreements to facilitate the removal of unauthorized migrants, the interest of a country of origin may be less evident, above all if its economy remains dependent on the revenues of its expatriates living abroad, or when migration continues to be viewed as a safety valve to relieve pressure on domestic unemployment [Cassarino, 2010:23].

Despite the obligations in the framework of international law, countries of origin of illegal migration may prevent the return of even their nationals for political, economic and demographic reasons. For instance, emigration can be a 'safety valve' for the many unemployed youths in Senegal, and the government therefore has little interest in preventing it. There is also public opposition to the return of migrants [Reslow, 2011:22, quoting Fall et al., 2010:10]. Cooperation on readmission is a precondition for a Mobility Partnership, but the Senegalese government decided this was too high a cost for such a partnership [Reslow, 2011:17-22].

A state may drag out the issuance of documents required for deportation, or object to the proposed deportation options, or deny that rejected asylum seekers are their nationals. Being unable to bring deportees across the border turns the administrative successes of identifying, locating, apprehending, prosecuting, and detaining deportable immigrants into sunk costs. Even if agencies do succeed in procuring documents, the fiscal costs incurred by the delay—in particular the costs of detention—are substantial [Ellermann, 2008:171-172].

A characteristic example of such a policy is the decades-long attempts of the government of unified Germany to deport in the early 1990s tens of thousands of Vietnamese nationals previously recruited by East Germany. Hanoi weighed all of the costs that it thought it would incur as a result of the move—the loss of remittances as well as the challenges of reintegrating thousands of westernized citizens into a socialist society—and had long refused to issue return documents to deported Vietnamese nationals. In response to the bureaucratic stalemate, Germany made an unprecedented move and discontinued development aid to Vietnam [Ellermann, 2008:168-189].

A third country's decision to cooperate with the EU in migration issues depends on the coherence (or incoherence) between national and EU policy objectives and the cost-benefit balance of this cooperation [Reslow, 2011:2]. The EU bargaining power is directly proportional to **(a)** the degree of coherence of the EU policy objectives with national policy objectives, because then domestic adaptation costs will be low, and **(b)** the degree to which the expected benefits offered by the EU outweigh the costs of cooperation.

Seeing the direct dependence of the progress of readmission relations on incentives and direct benefits offered to a third country, European officials came to an important conclusion that the successful making of readmission agreements "*depends very much on the leverage at the Commission's disposal*" [European Commission, 2002a]. The link between readmission and visa facilitation as an incentive for the partner was introduced for the Russian Federation in 2004. In 2006, this principle was applied to the relations with other neighboring countries [Trauner and Kruse 2008:11]. Another proven incentive is the lure of membership, which worked handsomely in the case of West Balkan states [Roig and Huddleston, 2007:365].

Because neither membership prospects nor visa facilitation (the link only works for the neighboring countries) are available to most of the third countries, and especially for the countries with a poor migration track record, the EU had to offer other types of 'carrot' in a package of readmission agreements. Depending on the country, they became a sort of compensation and favorable offers in various areas, including special trade concessions, preferential trade quotas, technical cooperation and assistance programs, and increases in development aid.

### 3.2. Potential incentives for Belarus and EU's foreign policy dilemma

It follows from the experience of the relationships between the EU and third countries that the more the benefits of cooperation with the EU outweigh internal costs, the likelier the success of readmission relations. Moreover, transit countries' governments are obviously well aware that migration control can be used as a means of "parallel diplomacy" for their own benefits [**Marconi, 2008:5**]. A. Lukashenka has repeatedly voiced his discontent about the EU policy of sanctions, while mentioning the role of the country in protecting the borders of the European Union:

*"They keep pushing us around: 'You're so and so.' But we protect them at our own expense. I tell them: 'Guys, you should be paying for us to keep protecting you. If you don't pay, we'll have no chance to keep working like this.' I was heard exactly where they were listening, and flows started coming across the border. Lots and lots of them came to Lithuania, Poland and so on."*<sup>28</sup>

Some foreign media<sup>29</sup> and Belarusian and foreign experts draw a connection between the increased number of detained illegal migrants coming from Belarus by Polish and Lithuanian border guards in 2011-2012 with the intentionally relaxed control by the Belarusian authorities in response to the EU policy of sanctions. Overall, the case of Belarus in visa facilitation and readmission on a regional scale is quite special.

**First**, visa facilitation as the EU 'carrot' that has proved quite effective in the relations with some of the Eastern Partnership countries and Russia has a limited effect on Belarus. Despite Belarus's formal commitment to visa facilitation<sup>30</sup>, official Minsk seems to have concerns about a greater openness of the country and increase in person-to-person contacts with the EU Member States, especially given the difficult political and economic situation in the country. For one thing, the procrastination of the launch of the small border traffic agreements with Lithuania and Poland proves this. Furthermore, the public pressure concerning the facilitation of visa relations with the EU is relatively weak. In other words, visa facilitation is a weaker incentive to encourage the Belarusian authorities to seek more active readmission relations compared with the cases of Russia, Ukraine or Moldova. In this framework, the issue of compensatory measures (a technical aid program, trade preferences, etc.) coming in a package with the readmission agreement gains special relevance.

**Second**, visa facilitation and readmission have to some extent become hostages to the sharply deteriorated relationship between Belarus and the EU. Previously, the EU itself was unwilling to support Belarus's intention to embark on negotiations over visa facilitation on account of political conditionality and the fact that Belarus was lacking the European Neighbourhood Policy Action Plan<sup>31</sup>. Understanding that linking visa facilitation to political reforms was counterproductive, the EU institutions revised the original approach. However, the opportune period for making progress in visa relations during a 'thaw' in the relationship between the EU and Belarus in 2008-2010 was missed. The decision-making process to authorize the commencement of visa facilitation and readmission negotiations was completed as late as 2011, when the bilateral relations had already sharply deteriorated in the wake of the actions taken by the Belarusian authorities on the election day of December 19, 2010 and the events that followed it. The situation is quite the opposite now: official Minsk has not yet accepted the invitation to start negotiations issued by the EU back in June 2011.

Amid frozen contacts at the top level, the EU policy of sanctions and limitations of financial aid programs targeting Belarus, 'compensation' for official Minsk in the framework of readmission cooperation becomes an increasingly complicated matter. Importantly, Belarus should be

28 "Беларусь ежегодно останавливает десятки тысяч незаконных мигрантов, направляющихся в ЕС" ("Belarus annually stops tens of thousands of illegal migrants heading to the EU"). BelTA news service, [http://www.belta.by/ru/all\\_news/president/Belarus-ezhegodno-ostanavlivaet-desjatki-tysjach-nezakonnnyx-migrantov-napravlajajuschixsja-v-ES-\\_i\\_611957.html](http://www.belta.by/ru/all_news/president/Belarus-ezhegodno-ostanavlivaet-desjatki-tysjach-nezakonnnyx-migrantov-napravlajajuschixsja-v-ES-_i_611957.html)

29 See, for example: Przedostają się z Białorusi. Myślą, że są w Niemczech // Rzeczpospolita, Piotr Kościński, 27-05-2012, <http://www.rp.pl/artykul/882626.html>

30 Visa simplification with the European Union is listed among priorities in the European foreign policy of the Republic of Belarus. See the website of the Foreign Ministry of Belarus: <http://mfa.gov.by/bilateral/>

31 In 2006, the European Commission suggested entering into readmission and visa facilitation negotiations with all of its neighbor states, with which it had European Neighbourhood Policy Action Plan. Belarus, Libya and Syria had no Action Plan.

interested in cooperating with the EU and gaining certain benefits during an extended timeframe after the readmission accord has been concluded, because the agreement on readmission itself does not guarantee conscientious migration collaboration. This situation presents some challenge for the EU and questions the effective implementation of the declared external policy pertaining to Belarus: the isolation of the authorities and freezing of official high level contacts on the one hand; and support for civil society and promotion of human contacts, including through visa facilitation, on the other hand. The latter is linked to the readmission agreement, but to encourage the authorities to sign it, the EU would have to offer incentives that could be adversely perceived by some internal and external actors. Some of the examples of potentially questionable incentives aimed to encourage official Minsk to formalize readmission relations include the unfreezing of European Investment Bank programs or resumption of assistance by the European Bank for Reconstruction and Development in the framework of the programs pursued by the Belarusian government.

Trade concessions and preferences that have been offered to some third states are utterly unlikely in the case of Belarus due to the violations of some of the conventions of the International Labor Organization in Belarus. In this context, in 2007, Belarus was excluded from the EU Generalised Scheme of Preferences (GSP). No progress has been recorded in meeting the ten ILO recommendations in labor relations law<sup>32</sup>. Moreover, Belarus further aggravated its labor rights record in late 2012, when it adopted Decree No.9 "On additional arrangements to promote the woodworking industry".

Somewhat less ambiguous and rather attractive to the Belarusian authorities is the expansion in technical assistance in some areas, including in border management. It is indicative that official Minsk itself admits its interest in this area. Lukashenka has repeatedly complained about insufficient external financial support for the Belarusian border guards and made appeals to the EU in his speeches: *"I told them bluntly: I am capable of increasing the number of customs and border outposts and border guards, but pay us for this, please."*<sup>33</sup>

However, there have been no public statements by the EU about its willingness to provide more technical assistance to the Belarusian border authorities, or to build a readmission center, or any other incentives to counterbalance the costs of the readmission agreement. At the same time, the EU continues to provide technical assistance to Belarus, including for the modernization of border control infrastructure<sup>34</sup>. However, this assistance is part of previously announced EU instruments of technical aid and cross-border cooperation, while there is no individual communication strategy for additional assistance that would accompany a readmission agreement.

As long as there is no unequivocal, at least tentative attractive offer coming in a package with the readmission proposal by the EU, there is a good chance that this issue—along with visa facilitation—will be postponed indefinitely, at least until the complete normalization of relations.

---

32 See, for example, the critical report by the ILO Committee on Freedom of Association published in November 2012: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_193261.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193261.pdf)

33 "Лукашенко: Европейцы, наверное, поняли, что Беларусь для них очень важна" ("Lukashenka: the Europeans must have realized that Belarus is very important to them"). Website of Stolichnoe Televidenie television channel, 26.04.2012. Available at: <http://www.ctv.by//новости/новости-беларуси-новости-могилева-и-могилевской-области/лукашенко-европейцы-наверное>

34 See, for example: "27 млн. евро техпомощи ЕС привлечено на строительство и реконструкцию инфраструктуры белорусской таможни" ("27 million euros in EU technical aid is disbursed for the construction and reconstruction of Belarusian customs infrastructure"). Naviny.by media portal, [http://naviny.by/rubrics/eu/2013/03/27/ic\\_news\\_627\\_413555/](http://naviny.by/rubrics/eu/2013/03/27/ic_news_627_413555/)

### **Recommendations to the European Union institutions:**

- 1.** To offer Belarus explicit incentives/benefits accompanying the readmission proposal. Besides visa facilitation, which is linked to the agreement on readmission, the European Union should reinforce the package by offering additional technical assistance to border agencies. This assistance should be announced as pegged to the proposed readmission agreement.
- 2.** To notify official Minsk, either publicly or by diplomatic channels, that Belarus would be granted a necessary transition period until the clause on the readmission of third-country nations and stateless persons comes into effect, like the two- or three-year transition periods stipulated by the agreements with Russia and Ukraine. This respite is required to complete preparations for the agreement to be fully implemented.
- 3.** To make an explicit statement about the commitment to the principle of deportation of illegal immigrants to their country of origin, rather than to the transit country. This move would rid Belarus of the burden of readmitting the citizens of those countries, with which the EU has individual readmission agreements.

### **Recommendations to the Belarusian government:**

- 4.** To enter the negotiation process with the European Union over visa facilitation and readmission agreements without delay. Drawing on the experience of the other Eastern Partnership countries and Russia, we assume that it will take up to two years and even longer for the agreements to come into effect since the start of the negotiations. Negotiations would also help create an alternative platform for dialogue, which could contribute to the normalization of Belarus's relationship with the EU.
- 5.** When negotiating with the European Union, to seek a transit period until the entry into force of the clause on the readmission of stateless persons and TCNs. Russia and Ukraine managed to agree such a transition period (two or three years), as part of their readmission agreements with the EU. The legal, institutional and infrastructural reforms introduced during this period, as well as the conclusion of readmission agreements with other countries would minimize the negative effects. That said, the provisions on the readmission of nationals should come into effect simultaneously with the visa facilitation agreement.
- 6.** During the negotiations over the readmission agreement with the European Union and bilateral protocols with the EU Member States, to seek mutual commitments to return illegal immigrants primarily to their countries of origin. Because nationals of Russia and Georgia make up two large categories of persons who illegally enter the territory of the EU via the territory of Belarus, this rule would ease the burden of readmission of third-country nationals.
- 7.** To consider introducing a visa regime for nationals of Georgia, the largest category of persons who illegally enter the EU via the territory of Belarus. This would promote confidential relations with the neighboring EU countries and also help address the problem of illegal entry of Georgian nationals to Russia via Belarus.

### **Recommendations to concerned NGOs:**

- 8.** To disseminate information about the estimated consequences of readmission with a view to debunking the overblown concerns about the number of illegal migrants whom Belarus would potentially have to readmit in the framework of a readmission agreement with the EU.



## Conclusion

The concerns of the Belarusian Foreign Ministry about the possible negative aftermath of the agreement on readmission with the EU are exaggerated. The statistics and the very nature of illegal transit via the territory of Belarus, as well as the analysis of readmission agreements between the EU and Russia and between the EU and Ukraine, do not confirm official Minsk's concerns about the potential accumulation of "*thousands, if not tens of thousands of illegal migrants*" on its territory. It appears that Belarus would have to readmit up to 100-200, or, much likelier, several dozen TCNs annually, if it had a readmission agreement with the EU, given the current volume and parameters of illegal migration.

An arrangement with the European Union for a transition period for Belarus and a two- or three-year respite until the entry into force of the clause on the readmission of third-country nationals and stateless persons would enable the country to introduce the entire package of border reforms, conclude additional readmission agreements with Russia and some of the countries of origin of illegal migration, as well as protocols with individual EU Member States in order to be better ready for a full-scale readmission agreement with the EU. Belarus's delaying talks with the EU until the readmission accord with Russia has been signed appears to be a waste of time impeding the country's efforts to move towards visa facilitation with the EU.

The doubts of the Belarusian authorities concerning the readmission agreement can be easily accounted for: there is no obvious benefit from such an accord, while financial costs are apparent. So far, the only explicitly proposed compensatory measure—a visa facilitation agreement—is not a very strong driver for Belarus, unlike it was for the Russian or Ukrainian governments. Visa facilitation accompanying the readmission agreement would have a potential for increasing the number of foreign tourists coming to Belarus. However, it also presupposed a higher degree of openness of the country and stronger person-to-person contacts with the EU, something that official Minsk is very cautious about.

Despite the EU's balanced approach to readmission agreements with other countries, in the case of Belarus, the EU *de facto* failed to outline the benefits accompanying the readmission accord. The situation is further aggravated by the overall level of the relationship between the EU and Belarus and the EU policy of sanctions towards Belarus. On the one hand, the EU should offer official Minsk some benefits to outweigh the costs incurred as a result of the fulfillment of its readmission commitments to the EU Member States. On the other hand, some of these benefits would look rather ambiguous amid the EU's current foreign policy on Belarus. In conditions of frozen political relations, an increase in technical assistance looks as virtually the only unambiguous benefit to counterbalance the readmission agreement costs. However, representatives of the EU have never made public statements about their intention to provide any compensatory benefits to official Minsk explicitly to encourage its progress towards readmission.

Delaying the commencement of negotiations with the EU over the agreements on visa facilitation and readmission fails to promote the interests of Belarusian society. The benefits to be enjoyed by the general public of Belarus—visa facilitation and further progress towards visa-free relations with the European Union—vastly outweigh the costs of the potential readmission of a few dozen (one or two hundred at the most) foreign nationals every year. An increase in tourist flows into Belarus, hence recovery of costs incurred as a result of the fulfillment of readmission obligations, would become a concurrent positive result of mutual visa facilitation.

## References

Adoption of a Council Decision authorising the Commission to open negotiations for the conclusion of a readmission agreement between the European Union and the Belarus, 22 February 2011, 6424/1/11.

Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorisation, OJ 2007 L 334, 149.

Agreement between the European Community and Ukraine on readmission of persons, OJ 2007 L 332, 48.

Agreement between the European Community and the Russian Federation on readmission, OJ 2007 L 129, 40.

Cassarino, Jean-Pierre, Readmission Policy in the European Union, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Civil Liberties, Justice and Home Affairs, Brussels, European Parliament, 2010.

Coleman, Nils, European Readmission Policy: Third Country Interests and Refugee Rights. Leiden: Martinus Nijhoff Publishers, 2009.

Devetak S. and Sirbu O. EU migration policy and its reflection in third countries: Belarus, Moldova, Russia, Ukraine. ISCOMET Institute for Ethnic and Regional Studies, 2012. Chisinau / Maribor, 2012.

DG Home Affairs, Letter from the Directorate-General Home Affairs of the European Commission to the LIBE Committee chairman. Brussels, HOME-02/PAB-as Ares (2011) 201771.

Ellermann, Antie, 2008, "The Limits of Unilateral Migration Control: Deportation and Interstate Cooperation", Government and Opposition, 3 (2), pp.168-189.

European Commission (1995). Proposal for a Council and Commission Decision on the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States of the one part, and the Republic of Belarus, of the other part. COM (95) 44 final. Brussels, 22.02.1995.

European Commission (2002). Communication from the Commission to the Council and the European Parliament on a Community Return Policy on Illegal Residents, COM (2002) 504 final.

European Commission (2002a). Commission of the European Communities, 'Green Paper on a Community Return Policy on Illegal Residents', 2002, 4.1.1.

European Commission (2007). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union, COM/2007/0247 final.

European Commission (2008). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A common immigration policy for Europe: principles, actions and tools. Impact assessment. Commission staff working document accompanying the communication. SEC (2008) 2026 final, 17 June 2008.

European Commission (2011). Communication from the Commission to the European Parliament and the Council. Evaluation of EU Readmission Agreements, 23.02.2011. COM (2011) 76 final.

Eurostat, Third country nationals returned following an order to leave - annual data

Frontex (2011). Eastern Borders Risk Analysis Network Annual Overview 2011. Warsaw, October 2011.

Frontex (2012). Annual Risk Analysis. European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. Warsaw, April 2012.

Hailbronner, Kay, 'Readmission agreements and the obligation on states under Public International Law to readmit their own and foreign nationals', *ZaöRV*57 (1997), pp.1-49.

Jaroszewicz, Marta, 2012, "Making the impossible possible. The prospects for visa-free movement between the EU and its Eastern partners", Centre for Eastern Studies, Point of View №27. Warsaw, May 2012.

Marconi, Giovanna, 2008, "Transit Cities in Transit Countries: steering the consequences of US and EU closed doors policies". Paper presented at the Migration, social cohesion and governability, VI REDGOB (Euro-Latin American network of governability for development) annual meeting.

Noll, Gregor, 1999, "Rejected asylum seekers: the problem of return", *Int Migr.* 1999, 37(1):267-88.

Noll, Gregor, 2005, "Readmission Agreements" in Matthew J. Gibney and Randall Hansen, eds., *Immigration and Asylum: From 1900 to present*, Vol. 2. Santa Barbara: ABC-CLIO, pp. 495-497.

Reslow, Natasja, 2012, "Deciding on EU External Migration Policy: The Member States and the Mobility Partnerships", *Journal of European Integration*, Volume 34, Issue 3, 2012, pp. 223-239.

Reslow, Natasja, 2011, "The external dimension of EU Justice and Home Affairs: the role of third countries in EU migration policy". Paper presented at the UACES 41st annual conference, Cambridge, 5-7 September.

Roig, Annabelle and Huddleston, Thomas, 2007, "EC Readmission Agreements: a re-evaluation of the political impasse", *European Journal of Migration and Law* 9 (2007) 363–387.

Trauner, Florian and Kruse, Imke, 2008, "EC Visa Facilitation and Readmission Agreements: Implementing a New EU Security Approach in the Neighbourhood". CEPS Working Document No. 290/April 2008 [Working Paper].

Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Socjalistycznej Republiki Wietnamu o przekazywaniu i przyjmowaniu obywateli obu Państw, *Dz.U.* 2005 nr 156 poz. 1306.

366th Report of the Committee on Freedom of Association, 316th Session, Geneva, 1-6 November 2012, GB.316/INS/9/2.

Васильева, Лариса и Бахур, Олег, «Незаконная миграция в современной Беларуси: проблемы уголовной ответственности» // *Журн. междунар. права и междунар. Отношений*, 2005, № 1, с. 13—17.

Елисеев А. Белорусы между «картой поляка» и российским «соотечественником». *BISS-Blitz*, февраль 2013.

Постановление Совета Министров Республики Беларусь от 8 декабря 2005 г. №1403 "О Государственной миграционной программе на 2006 - 2010 годы".

Реализация Соглашения между Российской Федерацией и Европейским сообществом о реадмиссии от 25 мая 2006 г. Федеральная миграционная служба Российской Федерации, 8 апреля 2013 г.

Рекомендация Коллегии Евразийской экономической комиссии, 19 марта 2013 г. №5. "О мерах, направленных на реализацию Решения Высшего Евразийского экономического совета от 19 декабря 2012 г. № 21 в сфере миграции".

Соглашение о сотрудничестве по противодействию нелегальной трудовой миграции из третьих государств. Зарегистрировано в Национальном реестре правовых актов Республики Беларусь 12 января 2011 г. N 3/2649.

Федорако, Александр, «Причины и тенденции незаконной миграции. Противодействие незаконной миграции» // Журн. междунар. права и междунар. отношений. 2009, №4, с. 14—18.