



Brussels, 19.2.2014  
COM(2014) 74 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**Report on the implementation and functioning of Regulation (EU) No 1342/2011 of the  
European Parliament and of the Council amending Regulation (EC) No 1931/2006 as  
regards the inclusion of the Kaliningrad oblast and certain Polish administrative  
districts in the eligible border area and on the bilateral agreement concluded thereof  
between Poland and the Russian Federation**

## 1. INTRODUCTION

The European Parliament and the Council adopted in 2006 a Regulation laying down rules on local border traffic at the external land borders of the Member States ("Local Border Traffic Regulation")<sup>1</sup> which allows derogating, for persons living in a border area, from the general rules on border checks set out in the Schengen Borders Code. The Regulation authorises Member States to conclude bilateral agreements with neighbouring non-EU countries, provided these agreements fully comply with the parameters set by the Regulation.

In February 2011, the Commission concluded in its second report on the implementation and functioning of the local border traffic<sup>2</sup> that this regime makes life significantly easier for people living near the external land borders, while ensuring at the same time the internal security of the Schengen area.

The Commission also stated in the report that given the specific position of Kaliningrad, in order to avoid its isolation from immediate neighbours and facilitate travel for its inhabitants an amendment of the Local Border Traffic Regulation was justified. Kaliningrad is a region of the Russian Federation with a population of almost one million inhabitants that became the only enclave within the EU surrounded by two Member States as a consequence of the 2004 EU enlargement. Such amendment would allow the entire Kaliningrad area to be eligible as a border area in a bilateral agreement between a Member State and the Russian Federation.

Even though the EU-Russian Federation agreement on visa facilitation in force since 2007 already represented a significant step forward to enhance opportunities for mobility, the local border traffic regime should offer additional facilitations in particular for frequent needs for travel within the local area. Border residents would not have to prove sufficient means of subsistence, the permits might be issued free of charge, or separate lanes and/or specific border crossing points could be reserved or set up for local border traffic. Also, all residents of the Kaliningrad area, including the inhabitants of the city of Kaliningrad, would enjoy these facilitations, whereas some of the facilitations in the EU-Russian Federation visa facilitation agreement apply to certain categories of persons only.

In light of this particular situation, an exception to Article 3 paragraph 2 of Regulation (EC) No 1931/2006 was introduced allowing the entire Kaliningrad oblast to be considered as a border area.

A specific border area on the Polish side was included in the eligible border area as well, in order to facilitate and enhance cooperation between the Kaliningrad oblast on the one hand and major centres in the North of Poland on the other.

This exceptional extension of the border zone in the Kaliningrad area did not affect the general definition of the eligible border area (the 30/50 km zone) or any other rules and conditions set in the Local Border Traffic Regulation to guarantee the security of the entire Schengen area.

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<sup>1</sup> Regulation No 1931/2006 of 20 December 2006, OJ L 405, 30.12.2006, p.1.

<sup>2</sup> COM(2011)47 final

Council Regulation 1342/2011/EU of 13 December 2011<sup>3</sup> amending Regulation 1931/2006/EC entered into force in January 2012. The bilateral agreement between Poland and the Russian Federation entered into force on 27 July 2012.

Upon adoption of this Regulation, Council and Commission have issued a joint declaration, which states as follows (excerpt):

*'(...) Particular attention will be paid to security measures pertaining to the practical implementation of the amended Regulation in the territory of the Republic of Poland. The relevant Polish authorities will ensure the application of security safeguards, in line with the standards set out in the Regulation. The Commission will submit biennially and for the first time one year after the entry into force of this Regulation a report to the European Parliament and the Council on the implementation and functioning of the present amendment and on the bilateral agreement concluded in conformity thereof, in particular to evaluate their impact in the area of security and migration(...).'*

## **2. FUNCTIONING OF THE LOCAL BORDER TRAFFIC REGIME IN PRACTICE**

This report has been drawn up on the basis of the information provided by Poland and on the results of the visit of a joint EU-Russian delegation to the border crossing points of Mamonovo II (RF) and Grzechotki (Poland) in July 2013.

According to Poland, the implementation of the agreement with the Russian Federation on local border traffic, one year after it entered into force, has been very positive and no serious infringements have been noted.

The entry into force of the new regime was preceded by an important information campaign. During this campaign, information on local border traffic was provided to inhabitants of the region in particular through hauliers' associations, touristic and tour operators. Also, an information brochure in Polish and Russian was circulated and sent electronically to all local government bodies whose areas are covered by the LBT agreement. Information signboards displaying the most important information on the LBT regime were prepared and placed in appropriate locations such as road border crossings and along national and district roads.

A number of measures have been adopted to ensure that the rights under the LBT agreement are being used correctly. This is the case of a special 'LBT' module directly linked to the LBT database at the Foreigners' Office, which is the central authority responsible for such matters in Poland. This system allows officials of the Border Guard to control border crossings and the duration of stay of holders of LBT permits and to record instances of failure to comply with the requirements of the agreement or any decisions or measures taken in association with it.

Border crossing movements under the LBT regime are systematically recorded by both Poland, except for its own citizens, and Russia in their respective entry/exit systems.

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<sup>3</sup> OJ L 347, 30.12.2011, p.41

## **2.1. Facilitation measures used by the Member State**

### *2.1.1. Number of permits issued*

By 31 January 2013, the Polish Consulate-General in Kaliningrad had received 29 000 applications and issued almost 19 000 permits to cross the border under the LBT agreement. In the course of 2013, a significant growth of these figures was noticed with statistics pointing to, as of 31 October, a total of more than 160 000 applications received and more than 140 000 permits issued since the agreement entered into force.

The main reasons given for permit applications are the wish to make use of consumer services, tourism and visiting friends and family.

Both parties make effective use of outsourcing to process the majority of LBT permit applications.

An external entity selected by means of a tender procedure has set up application centres in Kaliningrad, Chernyakhovsk and Sovetsk. These application centres receive around 90% of the applications, with the rest being received directly by the Consulate. Russia has established outsourced application centres in Olsztyn and Gdansk, which receive two thirds of all LBT permit applications in Poland. The waiting period for filing applications is around two weeks.

As at the end of January 2013, the Russian Consulate-General in Gdansk had received 15 500 applications and issued 14 500 permits to Polish citizens. The total number of permits issued by Russian authorities was 22 589 by August 2013.

Polish local border permits are issued in ID1 format and at the moment do not contain contact chips. The Commission is currently assessing the compliance of all existing LBT agreements with the requirements set out in Council Regulation (EC) 1030/2002 of 13 June 2002<sup>4</sup> laying down a uniform format for residence permits for third country nationals, including the use of biometrics. In accordance with the new Polish Act on Foreigners of 12 December 2013, the biometrics will be introduced in the LBT permits as of 1 May 2014.

## **2.2. Use made of the bilateral agreement by border residents**

Since the parties began issuing LBT permits, a constant increase has been noted in the number of persons crossing the border under such permits. In 2012, the total amount of traffic of persons across the Polish border from the Kaliningrad Oblast reached the level, which it had before Poland joined the Schengen area, which is seen also as a result of the implementation of the LBT agreement.

### *2.2.1. Number of crossings*

From July 2012 to January 2013, more than 1.2 million non-Polish nationals crossed the Polish-Russian border to Poland with 43 653 persons (around 3.6%) crossing on the basis of LBT permits. December 2012 saw the number of these persons increase by almost 100% as compared to the previous month. In January 2013, non-Polish nationals crossing the border on the basis of LBT permits accounted for around 8% of the total number of non-Polish travellers

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<sup>4</sup> OJ L 157, 15.06.2002, p.1

in the area. These numbers have grown exponentially in the course of 2013 with more than 400 000 non-Polish nationals under LBT permits entering Poland by October, which represent 31% of the total traffic to Poland at the land border with Russia. From November 2012 to end of January 2013, there were more than 150 000 crossings under LBT permits by Polish citizens, accounting for around 31.2% of the total traffic of Polish citizens. This number of crossings was already over 350 000 until the end of October 2013.

### *2.2.2. Cases of abuse and withdrawals of permits*

Neither Russia nor Poland has so far reported serious infringements of the rules on LBT stays in the border areas, including cases where the permitted length of stay would have been exceeded or of citizens being recorded as perpetrators or victims of criminal offences. Overall only 25 cases<sup>5</sup> of refusal of entry have been signalled by Poland.

According to the information provided to date, only 14 cases have come to light since the agreement came into force. Nine cases concerned Russian citizens who were found outside the border area and the other five concerned persons who have stayed beyond the authorised period. Those foreign nationals had their permits revoked, were fined, and were ordered to leave the territory of Poland and banned from entering it again for a period of six months. Before the entry into force of the LBT agreement, the vicinity of border crossings (on the Russian side) was marked by incidents involving people waiting for entry, which have stopped since then.

The Commission has not received any report by the Member States or complaint from other stakeholders on possible abuses of the system.

The information available suggests that the LBT Agreement between Poland and Russia decreased the numbers of illegal border crossings or attempts of illegal border crossing at Polish–Russian border.

## **2.3. Passenger flows at the border**

There are no specific lanes dedicated only to LBT beneficiaries in the Polish border crossing points along the border with Russia.

According to Poland, the queues at border crossing points are temporary and connected with the build-up of personal traffic at certain hours of the day or week. Despite the 80% increase this year in the number of vehicles being cleared, there are no queues during 95% of customs shifts and on average border check takes no more than an hour in total. At peak crossing times, checks can take around two hours. The overall trend is that border traffic is increasing while the average time to carry out checks at border crossing points is falling.

Training has been organised by Poland on the rights and responsibilities under the LBT rules for individual institutions, bodies and services involved. This took the form of training sessions for police officers from all the districts in the area, officials of the Warmińsko-

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<sup>5</sup> 7 cases: missing or falsified LBT permit

8 cases: alert in the SIS for refusal of entry

10 cases: exceeding the maximum duration of stay

Mazurskie Road Transport Inspectorate and railway police officers. The Polish Consulate-General in Kaliningrad organised training for VFS Global, the company that was awarded the contract to receive applications and issue the LBT permits.

The LBT Agreement with the Russian Federation is also a standard element of the training provided to consular staff by the Polish Ministry of Foreign Affairs.

### **3. Calculation of the duration of stay in the border area**

According to the judgment of the Court of Justice of the European Union in case C-254/11 (*Shomodi*), Article 5 of the LBT Regulation means that the holder of the local border permit is entitled, on each entry, to stay within the border area for an uninterrupted period of up to three months. Moreover, this person has a new right to the same period of stay of up to three months each time his/her stay was interrupted. Article 4 of the Polish/Russian LBT agreement authorises the person to stay in the border area of the other Contracting Party for up to 30 days at a time, 'but no longer than a total of 90 days during each 6 months from the day of the first crossing of the border. It is therefore more restrictive towards LBT holders than what the Regulation allows.

Discussions are on-going between the Commission and Poland to ensure that the Agreement is applied in accordance with the judgment.

### **4. CONCLUSION**

Given the short time since its entry into force, any assessment on the implementation and functioning of the Agreement can only be limited at this point.

In the absence of reports of abuse and from the available information, the LBT regime in the specific case of Kaliningrad appears to be functioning well, contributing to an increase in the border crossings of people living in the border area.

According to the regional and local authorities in Poland, implementation of the agreement has resulted in an increase in the number of people coming to Poland to shop, for tourism, or for medical and care services while it has had positive effects on the economy of these areas.

This positive assessment of the functioning of the agreement is shared by both parties, as confirmed at the Polish-Russian inter-ministerial review held in Gdansk on 29 November 2012 and stated by the joint mission in July 2013.

The Commission will continue to follow closely the implementation and functioning of the Agreement. To this end, it calls for the collaboration of the Member States and recalls the need to report any abuse promptly.

Meanwhile the Commission encourages Poland and the Russian Federation to continue its efforts to reduce waiting times at the border while ensuring that all safeguards of the system are fully respected.