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The EU visa suspension mechanism

by Florian Trauner

Visa liberalisation will be high up on the EU agenda in 2017, with the Union about to waive visa requirements for 45 million Ukrainians and 5 million Georgians. Kosovo is hoping for near visa-free travel, as is Turkey: the Turkish government has repeatedly emphasised that only a visa waiver will guarantee a continuation of its efforts to curb the flow of irregular migrants in the Aegean Sea.

Against this background, in December 2016 the EU agreed to undertake reforms in order to be able to re-introduce visa requirements in a quicker, easier fashion (the so-called visa suspension mechanism). This is conceived as an insurance mechanism for the EU should migration flows run out of control or a partner renege on reform commitments. But how feasible is it actually for the EU to trigger the mechanism – or indeed to resist triggering it?

Why a visa safeguard

Obtaining a Schengen visa can be an administratively tedious and costly procedure for third-country citizens. The EU has sometimes been accused of creating a ‘paper wall’ which prevents even *bona fide* travellers from entering its border-free area. The Union has therefore started Visa Liberalisation Dialogues, which seek the eventual removal of visa requirements with a number of neighbouring countries to counter such an image and boost the EU’s influence abroad. The EU is

prepared to lift visa requirements for Ukrainian citizens, for instance, because it hopes this will deliver tangible results for Ukrainians at a time of increasing competition with Russia over Kiev’s strategic orientation.

The Ukrainian government – like the three other parties currently participating in a Visa Liberalisation Dialogue – has been working for years to meet a list of preconditions set by the EU. They include reinforced border controls, the introduction of biometric passports, the fight against corruption and better protection of minority rights. The EU insists that these conditions be fulfilled, as Ankara has recently found. The EU-Turkey visa liberalisation process has ground to a halt over a disagreement about the application and revision of Turkey’s anti-terror laws. Nevertheless, Ankara is (still) sticking to the commitments made as part of the so-called EU-Turkey deal of March 2016 and has prevented irregular migrants from leaving its shores.

Ukraine, Georgia and Turkey are not the first countries to seek the lifting of visa restrictions. Serbia, the Former Yugoslav Republic of Macedonia and Montenegro were granted visa-free travel in 2009, while Albania and Bosnia and Herzegovina received it in 2010. For their citizens, the end of visa requirements was a first visible sign of the countries’ integration into the EU. Yet, the Union’s difficult experiences in the Western Balkans also led to the establishment of

a visa suspension mechanism in 2013. In fact, in the first year after visa liberalisation, asylum applications from Serbia increased by 76% and applications from the former Yugoslav Republic of Macedonia rose seven-fold. Presented as a ‘temporary measure in a clearly defined emergency situation’, this safeguard measure was tailor-made for the situation of the Western Balkans. Its introduction was based on the argument that only a country which meets the EU’s rule of law standards and respects human rights qualifies for visa liberalisation. If this is indeed the case, there should be no reason for the citizens of the country in question to flee and apply for asylum in the EU.

The 2016 reform

For the EU, relaxing its visa regime has always been a politically contested decision, irrespective of how well-prepared a third country becomes over the course of the Visa Liberalisation Dialogue. Critics maintain that visa liberalisation opens up new channels for irregular migrants into the EU. Their concerns are particularly pronounced with Turkey, a historically problematic partner, and Ukraine, also a populous country. Given the rise of populism on the continent, the current political climate in Europe is not conducive to more liberal admission and migration policies. From the EU’s perspective, it is therefore crucial to point to the existence of a functioning visa suspension regime. If visa liberalisation is abused, the EU will be able to react in a quick and comprehensive way – so goes the argument.

In the reformed suspension mechanism, the EU has defined three scenarios that could trigger a reintroduction of visa requirements: a sudden increase of irregular migrants or manifestly unfounded asylum applications, lack of cooperation on return and readmission, and nationals of a visa-exempt country being linked to internal security threats in the EU.

As part of the suspension reforms, the EU has streamlined procedural rules: the reference period for verifying that a situation has deteriorated was shortened from six to two months, for instance. Moreover, although every member state has the right to request the activation of the suspension mechanism, it is the Commission which decides whether or not to do so. If a (simple) majority of member states request the activation of the safeguard, however, the Commission must comply with the request. Initially, visa requirements would be reintroduced for a period of nine months. If the country concerned is unable to

address the EU’s concerns, the Commission may prolong the suspension period for an additional 18 months. The suspension mechanism is accompanied with a monitoring regime aimed at tracing how a target third country fulfils the criteria set by the EU in the post-visa liberalisation period.

Using the safeguard

Triggering the suspension mechanism not only requires clear procedural rules and political will-power. It also needs a degree of (financial) solidarity among member states. While all EU members are likely to benefit from visa-free travel with neighbours (e.g. less spending on consular infrastructure and more income from tourism), the costs of any abuse of the new regime may be borne by only a few. For instance, after the visa liberalisation with the Western Balkans, the majority of new asylum applications were made in only three countries, namely Belgium, Germany, and Sweden. Some states such as Austria even noticed a decrease in Balkan asylum seekers after the region’s visa liberalisation. Any member state(s) keen to trigger the suspension mechanism will therefore have to expend political energy convincing fellow member states and the Commission that the situation warrants an activation.

This need for solidarity may increase over time. The longer citizens of a third country are allowed to travel without visas to EU, the higher the administrative and financial costs will be for member states to reintroduce consular infrastructure. Many governments already outsource visa application processes to private actors. These service providers reduce their staff and administrative structures once a country has obtained visa-free travel. It will incur considerable financial costs to re-establish their services, in particular for a short period of nine months (the first phase of the suspension mechanism). A practical solution to this problem could be to pool resources and establish Common EU visa application centres – for certain third countries at least.

The reform of the visa suspension mechanism has, ultimately, aided and complemented the EU’s ongoing visa liberalisation processes, which remain important yet politically sensitive foreign policy tools.

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