

KALININGRAD TRANSIT: IMPLEMENTATION PRINCIPLES AND ISSUES

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Abstract. *Lithuania is a small country with limited natural and other resources and market, so it is why Lithuania is interested in being as open to the world as possible. The geographical location of Lithuania between the West and the East and its membership in the Schengen area help to be open as much as possible. Lithuania's status as a transit country is valued and recognized in the world. For this reason, one of the priority areas of our country is an efficient transit system, with an efficient transit procedure. Kaliningrad transit also plays an important role in the general transit system of Lithuania.*

Kaliningrad transit is an integral part of EU law. This is a special EU agreement with the Russian Federation. The Kaliningrad region is a typical enclave surrounded by the European Union, an integral part of the Russian Federation that has no direct land connection with its continent.

The study aims to assess Lithuania's role and powers in the implementation of Kaliningrad transit and its control. The article, using the analysis of scientific literature and legal acts, aims to assess the aspects of legal regulation and the general situation regarding Kaliningrad transit scheme, to identify problematic aspects, and to suggest possible solutions.

Keywords: *Kaliningrad transit, transit procedure.*

Introduction

Freedom of movement and residence for persons in the European Union is the cornerstone of EU citizenship, established by the Treaty of Maastricht in 1992. The gradual phasing-out of internal borders under the Schengen agreements was followed by the adoption of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the EU.

The free movement of persons was the conclusion of the two Schengen agreements, i.e. the Agreement proper of 14 June 1985, and the Convention implementing the Schengen Agreement, which was signed on 19 June 1990 and entered into force on 26 March 1995. Initially, the Schengen implementing Convention (signed only by Belgium, France, Germany, Luxembourg and the Netherlands) was based on intergovernmental cooperation in the field of justice and home affairs. A protocol to the Amsterdam Treaty provided for the transfer of the “Schengen acquis” into the Treaties. Today, under the “Lisbon Treaty”, it is subject to parliamentary and judicial scrutiny. As most Schengen rules are now part of the EU acquis, it has no longer been possible, since the EU enlargement of 1 May 2004, for accession countries to ‘opt out’ (Article 7 of the Schengen Protocol).

The free movement of persons is guaranteed in the Schengen area territory. Single external border checks and common rules were created in line of control between each of member state. Apart from external borders, rules and procedures with regard short stay visas and asylum request were established too. Moreover, simultaneously in order to achieve appropriate level of security compensatory measures were provided. The Schengen acquis was incorporated into the EU legal framework by the Amsterdam Treaty in 1997.

The purpose of establishing a transit procedure in accordance with the acquis of the European Union (hereinafter EU) is to ensure the security of the EU. Security, in the traditional sense, has always been associated with the desire of a particular state to ensure the security of its territory. The researchers from the last century are still analyzing the existing link between migration (including transit) and security, researchers are still analyzing from the last century (especially after the events of September 11, 2001) (Lahav, 2003). According to researchers, the mere possibility, that the actions of a small and relatively weak non-governmental organization could have such catastrophic consequences, fundamentally changes the perception of international security. Until then, the subjects of international security were considered to be almost exclusively sovereign states, and the practice of international security has largely collapsed (Ticu, 2021). In certain cases, migration, including transit, may have an impact on international security: international migration may pose a threat to international security when it is massive and out of control (Adacher and Flamini, 2020).

Therefore, the migration process and the transit procedure must be controlled not only at national level, but also internationally. The EU has enshrined this in its legislation, establishing transit procedures for individuals and designating authorities responsible for transit control. In the case of Lithuania, Lithuania has never been a center of attraction for immigration - but Lithuania has long been a transit country. The transit procedure seeks to control and, in certain cases, restrict the passage of persons through the territory of the country.

The article, analyzing legal acts, aims to assess the role and powers of Lithuania in the implementation of Kaliningrad transit and its control.

Development and main provisions of the legislation on Kaliningrad transit

After regaining independence in 1990, Lithuania signed a number of intergovernmental agreements with neighboring countries on border management, security and control issues. Although the relations between Lithuania and Russia have always been quite tense, despite the development of relations, on July 29, 1991 an agreement was signed between the two countries on cross-border relations. This treaty laid new foundations between two sovereign equivalent states, Lithuania and Russia. The parties agreed to maintain friendly cross-border relations and to cooperate on an equal footing for mutual benefit in accordance with the norms of international law. According to prof. dr. Dainius Žalimas, “On the basis of cross-border relations, the agreement could be compared even with the acts of restoration of Lithuania’s independence, the 1920 peace treaty between Lithuania and Russia, or at least the 1994 treaty with Poland on friendly relations and good neighborly co-operation” (Žalimas, 2018). The above-mentioned Agreement on Cross-Border Relations is accompanied by another Agreement of the Parties on Cooperation in the Economic and Socio-Cultural Development of the Kaliningrad Region. Article 7 of this document stays, that the parties undertake to regulate the conditions of transit through the Republic of Lithuania.

The procedure for transit of citizens of the Russian Federation through the Republic of Lithuania was established in February 24, 1995 in the protocol of the Interim Agreement between the Government of the Republic of Lithuania and the Government of the Russian Federation “On the travel of citizens of the Russian Federation and other persons without Visas to the Kaliningrad region of the Russian Federation and back” The agreement stipulates that when trains stop in the territory of the Republic of Lithuania, personal documents and customs control will be carried for those citizens of the Russian Federation and other persons who disembark at designated stations, and persons who do not disembark in the territory of the Republic of Lithuania are not subject to border checks.

In preparation for Lithuania's membership in the European Union, the above-mentioned provisions had to be reviewed and amended. External border crossing procedures had to be applied to citizens of the Russian Federation, as third-country nationals transiting through the territory of the Republic of Lithuania.

This procedure for transit through the territory of the Republic of Lithuania has been implemented for the citizens of the Russian Federation since 1 February 2003 in accordance with the order No. 589/172 of 20 December 2002 approved by the Minister of the Interior of the Republic of Lithuania and the Minister of Foreign Affairs of the Republic of Lithuania; "Control on citizens of the Russian Federation in transit by transit trains through the territory of the Republic of Lithuania" (Order No. 589/172, 2002)

Following this order, the travel documents of citizens of the Russian Federation in transit through Lithuania were checked and only those persons who had valid travel documents and had applied for transit through the territory of the Republic of Lithuania could cross the border.

Kaliningrad's transit in the European Union is unique, with third-country nationals traveling through the European Union between two parts of the Russian Federation, which are not geographically bordered (Kiseleva, 2011). The degree of risk and threat is quite high. In view of this situation, the European Union and the Russian Federation issued a joint statement on 11 November 2002, "On transit between the Kaliningrad region and the rest of the Russian Federation". The document acknowledges that in order to develop a strategic partnership, special steps have been agreed to ensure the transit of persons and goods between the Kaliningrad region and other parts of Russia. The document also emphasizes that from 1 January 2003 Lithuania will comply with special provisions regarding the transit of third-country nationals through the country.

After the signing of the Treaty of Accession of the Republic of Lithuania to the European Union on 16 April 2003 the Facilitated Transit Scheme would apply to Kaliningrad transit from 1 July 2003.

According to the agreement signed between the European Union and the Russian Federation on 11 November 2002 on transit between the Kaliningrad region and the rest of the Russian Federation, citizens of the Russian Federation are issued a Facilitated Transit Document (hereinafter - STD) or for travel from the territory of the Russian Federation to the Kaliningrad Region of the Russian Federation in transit through the territory of the Republic of Lithuania they are issued the Facilitated Rail Transit Document (hereinafter - FRTD) (COM/2006/0840 final, 2006).

The purpose of FTDs and FRTDs was defined by the Council Regulation (EC) No 693/2003 of 14 April 2003. This Regulation establishes and validates FTDs and FRTDs as documents equivalent to transit visas and allows their holders to enter the territory of a Member State in order to transit through the territory of a Member State in accordance with the Schengen provisions on the crossing of external borders. Passengers traveling with FRTD are not allowed to disembark from the train and their travel time is limited. The European Union has committed itself to providing financial assistance to the Republic of Lithuania in implementing the arrangements provided for in the agreement. Lithuania agreed to recognize the internal passports of the Russian Federation and to issue FTDs and FRTDs on the basis of them until 31 December 2004. Since 1 January 2005 transit documents are issued only to holders of Russian foreign passports, this procedure was valid for one year until 1 January 2006, after this date all passports on the basis of which FTDs and FRTDs were issued had to be foreign passports of the Russian Federation. The Republic of Lithuania and the Russian Federation also

undertook to sign a readmission agreement, which was to enter into force no later than 30 June 2003. Such agreement on the readmission of illegal immigrants was signed on 12 May 12, 2003.

The Council of the European Union has approved Regulation No. 694/2003 on 14 April 2003 on a standard for Facilitated Transit Document (FTD) and Facilitated Rail Transit Document (FRTD), which definitively established those documents. The Regulation also lays down standard STD and FRTD “stickers” (Figure 1 and Figure 2), their security features and requirements, and a standard procedure for filling.



Figure 1. Example of FTD

Source: Order of 26 June 2003 of the Minister of the Interior of the Republic of Lithuania No. IV-238 “On the Approval of Forms”



Figure 2. Example of FRTD

Source: Order of 26 June 2003 of the Minister of the Interior of the Republic of Lithuania No. 1V-238 "On the Approval of Forms"

The Commission also obliges Member States to choose one authority which would be entitled to print the stickers and to notify the Commission and the Member States of the choice of such authority. The security measures for FTD and FRTD documents shall not be published, they shall be provided only to the authorities responsible for printing the stickers. It is interesting that the regulation could be applied by any member state of the European Union, the regulation did not mention either the Russian Federation or the transit of its citizens through Lithuania. Article 12 of the Regulation states that "Member States which decide to issue an FTD / FRTD shall communicate that decision to the Council and to the Commission. The Commission shall publish that decision in the Official Journal of the European Union. The decision shall enter into force on the day of its publication." (Council Regulation No 694/2003).

Procedures on Kaliningrad transit

EU membership gives a relatively large degree of freedom to transit persons within the territory of the Member States, and the regulation of the transit procedure for third-country nationals includes restrictions and more stringent requirements. EU legislation has sought to codify Community legal instruments in the field of transit in order to make them as easy as possible, which not only facilitates the implementation of the free transit procedure but also helps to ensure the rights of persons in transit. After Lithuania became a member of the EU and joined the Schengen area, the legal regulation of the transit procedure for persons changed significantly. Transit, its procedural issues have become a Community-wide policy, as EU legislation has become hierarchically superior to national legislation.

A facilitated transit document (STD) is issued to citizens of the Russian Federation traveling through the Republic of Lithuania. A facilitated transit document is a special transit facilitation permit issued for multiple transit operations by all land vehicles. A consular fee of EUR 5 shall be charged for the issue of a document. The period of validity of an STD shall not exceed 3 years. The duration of transit with an STD through the territory of the Republic of Lithuania may not exceed 24 hours each time. A response to the issuance of an STD shall be provided within 7 working days.

Citizens of the Russian Federation who have expressed a wish to transit by rail through the Republic of Lithuania must apply to the Consular Section of the Ministry of Foreign Affairs of the Republic of Lithuania no later than 24 hours before departure. Twenty-four hours before the train arrives at the border checkpoint, the SBGS already has information on the number of arriving passengers and can anticipate the forces required to inspect the train.

The FRTD is a special document facilitating transit through the territory of the Republic of Lithuania, which the Republic of Lithuania may issue to citizens of the Russian Federation to enter the Kaliningrad region once from the Russian Federation and return from the Kaliningrad region to the Russian Federation by rail. The duration of stay with an FRTD in the territory of the Republic of Lithuania each time (round trip) may not exceed 6 hours. The FRTD is valid for up to 3 months. Transit trains run on the 227 kilometer-long Kena-Vilnius-Kaunas-Kybartai railway line. The average time of crossing the territory of the Republic of Lithuania by train is 4 hours and 37 minutes. An additional 1 hour 23 minutes between the average crossing of the territory of the Republic of Lithuania and the validity of the FRTD (6 hours) is intended for unforeseen train stops.

Kaliningrad transit is an integral part of EU law. The existing measures for the proper implementation of the Kaliningrad Transit Scheme are reviewed annually and new preventive solutions, both technical and procedural, are added. Given the current situation between Russia

and the European Union over the war in Ukraine, Lithuania cannot take any independent decisions, as this is a special EU agreement with the Russian Federation.

Conclusions

Independence of Lithuania in 1991 led to creating a new foundation for statehood. Bilateral agreements between Lithuania and Russia prescribed for the liberal mode of transit even when in 1995 Lithuania introduced visas for visits and road transit transportation.

Kaliningrad's transit in the European Union is unique, with third-country nationals traveling through the European Union between two parts of the Russian Federation that are not geographically bordered. The degree of risk and threat is quite high and can occur at any time.

Kaliningrad transit is an integral part of EU law. Lithuania cannot take any independent legal decisions to change the transit status of Kaliningrad, as this is a special agreement between the EU and the Russian Federation. The transit procedure, in geographical terms, has been extended from one state to the whole of the Schengen area, and the legislation has become applicable not only to the national aspect but also to the Schengen area.

A transit procedure is an established and controlled procedure for traveling through a country that is not a country of destination. This procedure is aimed at ensuring the security of the EU and Lithuania, therefore the transit procedure can be treated as a preventive measure. The situation of the Kaliningrad transit scheme must be constantly assessed with additional technical and procedural preventive measures.

References

1. Adacher, L. and Flamini, M. (2020) *Optimizing airport land side operations: check-in, passengers' migration, and security control processes* [Online]. Available at: <https://www.hindawi.com/journals/jat/2020/6328016/> (Accesed: 6 June 2022)
2. Kiseleva, E. (2011) *Kaliningrad Transit: Why to facilitate?* [Online]. Available at: <https://www.lunduniversity.lu.se/lup/publication/1761741> (Accesed: 6 June 2022)
3. Lahav, G. (2003) *Migration and security: the role of non -state actors and civil liberties in liberal democracies* [Online]. Available at: https://www.un.org/en/development/desa/population/events/pdf/2/ITT_COOR2_CH16_Lahav.pdf (Accesed: 30 May 2022)
4. Ticu, I. (2021) *Migration as a (Non) Traditional Security Issue of the Risk Society* [Online]. Available at: <https://lumenpublishing.com/journals/index.php/po/article/download/4405/2947/13436> (Accesed: 10 June 2022)
5. Žalimas, D. (2018) *Significance of the 1991 Treaty on Fundamentals of Interstate Relations between Lithuania and Russia* [Online]. Available at: <https://www.lituanistika.lt/content/75698> (Accesed: 30 May 2022)
6. *Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual* [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R0693&from=LT> (Accesed: 30 May 2022)
7. *Council Regulation (EC) No 694/2003 of 14 April 2003 on uniform formats for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) No 693/2003* [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R0694&from=LT> (Accesed: 30 May 2022)

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8. *Control on citizens of the Russian Federation in transit by transit trains through the territory of the Republic of Lithuania*. 20 December 2002, Order No.589/2002 [Online]. Available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.4A6CE67E59AB/asr> (Accessed: 30 May 2022)
 9. European Union, *Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the Gradual Abolition of Checks at their Common Borders ("Schengen Implementation Agreement")*, 19 June 1990, [Online]. Available at: <https://www.refworld.org/docid/3ae6b38a20.html> (Accessed 8 June 2022).
 10. *Report from the Commission on the functioning of the facilitated transit for persons between the Kaliningrad region and the rest of the Russian Federation COM/2006/0840 final* [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52006DC0840&from=FR> (Accessed 8 June 2022).
 11. *Minister of the Interior of the Republic of Lithuania 2003 June 26 order No. 1V-238 "On the Approval of Forms"* [Online]. Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.214188?jfwid=gvy9zhv8h> (Accessed: 30 May 2022)