



# BULLETIN

No. 122 (198) • September 29, 2010 • © PISM

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## Small Border Traffic with the Kaliningrad District

by Kinga Dudzińska

*Lithuania's objection to a Polish-Russian initiative to extend the border area to the entire Kaliningrad district does not mean that no positive solution to the issue can be found; the European Commission could recognise the situation of the Russian enclave to be exceptional and support a revision of the small border traffic regulation currently in effect. A tripartite compromise reached by Poland, Lithuania and Russia would increase both the likelihood of a positive opinion from the Commission and the chances of winning over for the Polish-Russian initiative those EU states that remain sceptical.*

Late in August Poland and Russia negotiated a small border traffic agreement under which the border area is to encompass the entire Kaliningrad district and, on the Polish side, the Pomorskie and Warmińsko-Mazurskie voivodeships. Yet this solution is incompatible with EU regulations in effect, in particular with Regulation (EC) no. 1931/2006 of the European Parliament and of the Council of 20 December 2006, laying down rules on local border traffic at the external land borders of the member states. As things are, states are free to enter into agreements defining the border area as having a width of between 30 km and 50 km.

Poland and Russia have sought jointly an exception for the Kaliningrad district, pleading the enclave's specific circumstances and arguing that if separate bilateral agreements were to be signed between Russia and Poland and Russia and Lithuania, this would result in the region's division into three separate zones: two border areas (Russian-Polish and Russian-Lithuanian) and the remaining territory with the region's largest city, Kaliningrad. What's more, Russia reckons that a joint position with Poland on this matter will receive stronger support in the EU than its own efforts to establish visa-free traffic between the entire Russia and the Union.

**Lithuania's Position.** In the same month the government of Lithuania objected to the Polish-Russian initiative, citing the provisions of EU law on local border traffic. Soon, however, it relented to some extent, and President Dalia Grybauskaitė declared that Lithuania would not object to the introduction of visa-free traffic with Russia, Belarus, or any other third state which would have won the trust and support of the EU. From this rather cryptic statement it can be inferred that if the Polish-Russian proposal were to win the European Commission's approval, Lithuania would not object, particularly as the Lithuanian authorities are generally in favour of a phased-in liberalisation of the border traffic regime—a preference confirmed by last week's New York meeting of the ministers of foreign affairs of Lithuania and Russia, Audronius Ažubalis and Sergei Lavrov.

Lithuania's objection to the Polish-Russian motion is prompted chiefly by its own security concerns. According to the Lithuanian State Border Guard Service's records, in 2009 the number of smuggling cases rose 17% on 2008, with the highest incidence on the border with Russia (53% of all thwarted cigarette smuggling attempts). The value of contraband goods seized in the first six months of 2010 is estimated to be over three times higher than between January and July 2009. In this illegal traffic Lithuania is both the country of destination and a trans-shipment point for goods bound for Western European countries. Moreover, contraband can be expected to continue to rise, including on the borders with Latvia and Belarus, encouraged by a relatively high level of corruption (4.9 on a scale of 0–10, according to Transparency International ratings) and social permissiveness. Nearly two-thirds of Lithuanians admit to having bought smuggled goods in the recent two years and 20% often make such purchases.

Research has established that these attitudes are partly a response to the government's policy; the authorities, anxious to rescue the budget during the economic downturn, raised VAT and excise rates in 2009. Price rises and high unemployment (18.3% in the second quarter of 2010), which are partly an offshoot of the crisis, have been encouraging the rise in contraband. Lithuania is also pointing to social threats arising, for instance, from the Kaliningrad district's high ratio of persons infected with HIV (3,925 cases, at official 2009 figures, to Lithuania's 1,506). The Lithuanian authorities are also concerned that once local border traffic is introduced in the entire district, it will be increasingly difficult to monitor Russian citizens staying in the Schengen zone. While persons crossing the Lithuanian-Russian border are subject to the visa requirement, simplified rules apply to transit by rail from the Kaliningrad district to other parts of Russia, with travellers required only to hold permits that are easily obtainable. Each day some 300 people use the rail connection with Kaliningrad, with the traffic tripling on holidays.

Last but not least, Lithuania's objection has been prompted by the general state of the country's relations with Russia. Lithuania depends on Russia for energy, in particular following the decommissioning of the Ignalina nuclear power station in December 2009. Russian plans to build a power station in Kaliningrad have put a spoke in the wheel of Lithuania's Ignalina II project, for which strategic investors are currently sought. As a result of crisis according to the Kaliningrad district, transit through Lithuania—in particular the level of transit rates set by Lithuanian railways—has become a contentious issue in relations between Lithuania and Russia, as has the competition between the Klaipeda and Kaliningrad ports. Also, Lithuania has for years been seeking the opening of the Curonian Lagoon for its inland waterway transport, but Russia, despite an agreement with Lithuania on free navigation in the Lagoon concluded in 2007, has not yet established a border control point for vessels at the village of Rybachy.

**Prospects for a Solution to the Problem.** The formal requirement that needs to be met for the border area extension to be possible is to modify the current border traffic regulation governing the contents of bilateral agreements concluded by member states. For this reason, a tripartite Polish-Russian-Lithuanian initiative would provide a strong argument in a push to win the support of the European Commission as the initiator of the process of amending the contents of the regulation under the "co-decision procedure." So far, the Polish-Russian motion has been supported by France and Germany; on the other hand, Finland and probably the other Baltic countries could be sceptical about the opening of borders.

Failing the EU's consent to the necessary modification, it is possible to negotiate bilateral agreements under the provisions currently in effect. Yet even if the regulation is amended to include new provisions, Lithuania and Poland might sign with Russia agreements in which border areas of different widths will be determined. Russia, for its part, wants to avoid the district's subsequent division into several different zones.

**Conclusions and Recommendations for Poland and for the EU.** The procedure for amending the regulation which lays down framework principles of small border traffic is lengthy and involves all key EU institutions. It would be necessary for Poland to persuade the remaining member states to support its motion. Hence the most advantageous solution would be to reach a tripartite Polish-Lithuanian-Russian compromise on the matter. Russia holds a number of bargaining cards: it could agree to establish a border control point at Rybachy and open navigation in the Curonian Lagoon, as well as propose, as part of economic cooperation in the district, projects preferred by Lithuania (chiefly in construction, which has been hit the hardest by the crisis)—particularly as Lithuania and Russia remain important economic partners, the economic crisis regardless.

To persuade Lithuania to support the motion, Poland could propose the strengthening of cooperation between border guards and customs services in charge of border protection and the fight against smuggling. This would improve the chances for obtaining additional funds under EU programmes to modernise border crossing infrastructure (for instance, under the ENPI Cross Border Cooperation project approved in 2009).

Those EU states that view the Polish-Russian motion sceptically should be persuaded that the introduction of visa-free traffic between the EU and Russia should be preceded by a pilot programme. Small border traffic with the entire Kaliningrad district could be just the way to put that project to a test.