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To No. _____ from _____

FAO CO-ORDINATOR OF THE PROJECT
ON VISA FACILITATION REGIME, EU-
RUSSIA CIVIL SOCIETY FORUM

K.SMOLIJANINOVAITÈ

FAO CO-ORDINATOR OF THE
COALITION “VISA-FREE EUROPE”,
STEFAN BATORY FOUNDATION

J.FOMINA

On the Regime of Trespassing of the Russian Border by
Crew Members of EU Transport Vehicles

Dear Ms Smolijaninovaitè, / Dear Ms Fomina,

In reply to your letter to V.V. Putin, the President of the Russian Federation, D.A. Medvedev, the Prime Minister of the Russian Federation, and S.V. Lavrov, the Minister of Foreign Affairs of the Russian Federation, we would like to inform you on the following points.

According to the Russian legislation, the exemption from visa formalities for crew members of regular aviation lines, citizens of states, with whom the Russian Federation does not have international treaties on simplified and visa-free order of trespassing the state border, regardless of them leaving or not leaving the airborne vehicle on Russian territory, is not anticipated. This category of foreign citizens should have valid national passports with Russian visas while entering or leaving the territory of the Russian Federation, if international agreements do not prescribe another order. Otherwise, the Russian legislation would prescribe this category of the citizens to the administrative responsibility.

For a longer period, the Russian authorities had been pursuing a simplified procedure: crew members of foreign airborne vehicles were not required to have visas under the condition that they would not leave the airport area. This practice was implemented in accordance with paragraphs 3.86.1 and 3.86.2 of the Appendix 9 of the Chicago Convention on International Civil Aviation 1944,

however, it was not included in the Russian legislation. At the same time, the requirement for crew members, of airborne vehicles fulfilling irregular operations (including business aviation) to the Russian Federation, to possess valid national passports with Russian visas, had not been changed. Following the examination of the General Prosecutor's Office of the Russian Federation, it was decided, last year, to keep the norms in this field existing in the Russian legislation.

In this sense, the assertions expressed in your letter regarding the illegitimacy and inconsequence of the above-mentioned Russian procedures do not correspond to reality.

Upon a plea of the Ministry of Foreign Affairs and the Ministry of Transportation of Russia, the Border Police of the Federal Security Service of Russia decided to not apply the administrative responsibility norm for crew members of regular aviation lines in case of absence of Russian visas until 31 October 2012. A further prolongation of the moratorium was not prescribed.

Besides, we can hardly agree with your thesis regarding the "unexpectedness" of the decision of the Russian authorities to cancel the moratorium for the visa-free entries to the Russian Federation for crew members of regular aviation lines, citizens of foreign states. We repeatedly warned partners from the EU (from ambassadors to Ministers of Foreign Affairs of the EU member states) on various occasions of the fact that this period would not be amended.

Notably, a briefing for ambassadors of the EU member states and the Head of the EU Representative Office to Russia was held at the Ministry of Foreign Affairs and attended by representatives of the Ministry of Transportation of Russia on 14 September 2012, was devoted, among other things, to the possibility to approve a modernized EU-Russia agreement on the simplification of the visa issue. The Russian side distributed a non-paper among the participants of the event with the title "The Regime of Trespassing the Border by Crew Members of Civil Airborne Vehicles as well as the Visa Cancellation for Owners of Biometrical Service Passports".

On 19 October 2012, the Ministry of Foreign Affairs of Russia sent to the Embassies of EU member states a note explaining the procedures of termination of the moratorium on visa-free entry to Russia by crew members of civil airborne vehicles from the EU member states after 31 October 2012.

Also, on the day before the expiry date of the moratorium, on 30 October 2012, at a briefing of the Ministry of Foreign Affairs of Russia, the representatives of foreign air companies with flight operations to Russia were informed on the amendments to the order of trespassing the Russian state border starting from 1 November 2012.

Above this, we would like to direct your attention to the fact that this norm of the Russian legislation extends to all foreign civil airborne vehicles and not only to crews from European Union member states. That is why there is not and cannot be any reason for speaking of a discrimination towards the EU. On the contrary, a discriminatory character, in our opinion, is inherent to possible counter measures taken by the EU towards Russia by establishing a visa regime for crew members of Russian airborne vehicles, if these are not prescribed by the legislation of the EU member states.

The Russian side repeatedly proposed to solve the question of visa-free journeys of the crew members within a bilateral agreement or by means of an amendment to the EU-Russia Agreement on Simplification of Issue on Visas 2006. A corresponding norm on the visa abolition for crew members of civil airborne vehicles was included in the agreement project on amendments to the EU-Russia Agreement on Simplification of the Issue on Visas 2006, which is being discussed by us and the EU at the moment. Unfortunately, the completion of its work has been postponed caused by disagreements among the various EU member states on the question of visa-free journeys of owners of service passports, which was also included in the project of the above-mentioned agreement.

In essence, the losers in this situation are both representatives of civil society and of non-governmental organizations, for whom the modernized EU-Russia agreement mentioned above prescribes a simplified order for acquiring visas, too, if they apply to

receive a visa for educational purposes, participation in various seminars and conferences, including exchange programmes.

Besides, it turned out that to this point it has not been possible to solve the question of visa-free entry for crew members of foreign airborne vehicles to the Russian territory by making use of the bilateral order. This is because the European Commission prohibits EU member states to sign corresponding bilateral agreements on the pretext of this institution being the only one possessing a mandate to discuss the agreement on visa-free entries for foreign crew members as part of the on-going negotiations on the modernized EU-Russia Agreement on Simplification of the Issue on Visas 2006.

In any case, the Russian Federation has been continuing to work intensively in a direction towards liberalisation of visa issues, and we hope that all the disagreements between the parties on the project of the agreement on amendments to the EU-Russia Agreement on the Simplification of the Issue on Visas 2006 will be resolved in the nearest future. In this sense, we do support your appeal to the EU leaders with a plea to facilitate the dialogue on the simplification of the visa regime and extension of the circle of people, who would benefit from visa liberalisation.

Director of the Department of the
Common European Co-Operation

I.Soltanovsky