

DOC: GA24/EC23/REP/04

**THE TWENTY FOURTH PLENARY SESSION OF THE PABSEC GENERAL ASSEMBLY
ECONOMIC, COMMERCIAL, TECHNOLOGICAL AND ENVIRONMENTAL
AFFAIRS COMMITTEE**

**REPORT ON
"Facilitating the movement of people and goods across borders"**

RAPPORTEUR: MR. Mykola YANKOVSKY (Ukraine)

Text adopted by the 24th General Assembly in Antalya on 24 November 2004

I. Introduction

1. The global economic environment is changing rapidly. Globalization has led to astonishing increases in global movement of goods and people across borders. Today, the free movement of goods and people among the BSEC member countries needs to be reconsidered as policies have to adapt to current and future challenges. Those challenges are posed by the astonishing increases in the flow of goods and people world wide, the new issues that the EU enlargement generates vis-à-vis cross-boundary movements in the continent and the Black Sea region, and the urgency for enhanced and efficient cooperation among countries to deal with the demands for more open but also safer borders.

2. Economic activities are often hampered and enormous amounts of time and money are wasted because of outdated customs and border procedures and practices, stifling growth and holding back economic development, particularly in developing countries. This is the reason why BSEC as a regional economic organization has made facilitation of cross - border movement of goods and people one of its early priorities.

3. The BSEC Member States declared their intention already in June 1992 (BSEC Summit Declaration, para. 14) to facilitate “via bilateral negotiations the prompt entry, stay and free movement of businessmen in their respective territories and encouraging direct contacts among enterprises and firms’ and undertake measures “contributing to the expansion of their mutual trade in goods and services and ensuring conditions favourable to such development by continuing their efforts to further reduce or progressively eliminate obstacles of all kinds, in a manner not contravening their obligations towards third parties”.

4. The present Report reviews the situation in the field of cross-border movement of goods and people in the Black Sea area and gives emphasis on the initiatives undertaken within the BSEC organisation. PABSEC’s both Economic, Commercial, Technological and Environmental Affairs Committee and the Legal and Political Affairs Committee have prepared Reports and Recommendations focusing on specific aspects of the subject such as on harmonization of regulations regarding border crossing procedures, customs, investment, trade development, banking and finance.

5. The findings of this Report are based on material available by international organisations, national sources of the BSEC Member States, the BSEC Organisation and its Related Bodies. A contribution was forwarded by the PABSEC Hellenic delegation.

II. General approach to facilitation of movement of goods and people

6. Free movement of goods and persons has not merely an economic dimension but also social, political and cultural ones.

7. Free movement of goods can only be achieved by removing measures which restrict trade - not only customs duties and quantitative restrictions but all measures with equivalent, i.e. protectionist, effects. At the same time, tight borders in terms of free movement of persons also represent an obstacle for the free cross-border movement of goods and the creation of a free trade zone.

8. At this point, it should be noted that although a definition of free movement of goods is available by the World Trade Organisation there is no general right recognised in international law for free entry into or transit across the territory of states of which an individual is not a citizen. Accordingly, para. 1 of article 2 of Protocol no 4 to the European Convention on Human Rights guarantees liberty of movement and freedom to choose residence only to those lawfully within a state; and paragraph 2, which enshrines the right to leave any country (including one's own, does not override the right of countries of intended destination to impose immigration controls consistent with international law. Nevertheless, as various documents and international instruments of the Council of Europe have emphasised, the freest possible movement of persons is essential to maintain Europe's common fundamental principles and encouragement of harmonious development.

Obstacles to cross-border movement of goods

9. Facilitation of cross-border economic exchanges can be a win-win issue for all countries, developed or developing. Particularly for the BSEC countries, it is the small and medium enterprises which suffer most from outdated rules and burdensome procedures. At the same time, the countries lose investment, when firms decide not to invest because of the difficulties in getting goods in and out of the country; and they suffer the most from loss of revenue associated with fraud, and low levels of duty collection associated with inefficient border controls.

10. Most researches show that institutional weakness, not just infrastructure problems and political conflicts are responsible for a number of obstacles to cross-border movements. Problems include unnecessary and excessive data and documentation requirements, lack of transparency of customs, lack of rapid legal redress, excessive release and clearance times at customs, absence of co-ordination between customs and other inspection agencies, and the absence of modern customs techniques. Especially for the transporters in the BSEC Region it seems that non tariff barriers (border-crossing procedures, customs regulations, passage fees, lack of transparency, the process of visa issuance) consist main restrictive factors for trade.

11. It has to be noted that existing problems in customs' services, infrastructural insufficiencies, problems in banking systems and differences in road taxation constitute additional problems for trade facilitation within BSEC Region.

12. The following represent, *inter alia*, a number of obstacles to cross-border movement of goods:

13. First of all, *it is infrastructure inefficiencies* which relate to the condition of roads, ports and railways as well as to the interconnection and integration of transport networks.

14. *Border Crossing/Customs Obstacles.* There is little formal integration or formal communication between the respective national customs services particularly among the Caucasus countries. Beyond the limited cooperation across agencies, principal crossing stations vary markedly in terms of staff and facilities. A major challenge also lies in streamlining and increasing the efficiency of border agencies customs, and reducing corruption in customs administration.

15. *Tax, Regulatory and Economic Policy Obstacles.* There are a number of instances where domestic privatization processes have either created or contributed to the establishment of a local monopoly. In addition, inequalities in import tax and road taxes lead to corruption and higher costs.

16. *Public Sector Obstacles.* One of the most often cited problems is the rent – seeking behaviour on the part of public officials which is a problem across the region. At the same time, the public sector is extremely bureaucratic while interpretation and application of rules becomes rigid and pernicious. Highly restrictive regulations and heavy bureaucratic formalities on the borders including the way visas are issued are major obstacles to the free movement of goods within the region.

17. *Private Sector Obstacles.* There is limited formal consultation between public and private sectors in the area of trade facilitation. Across the Black Sea region there is a great diversity in terms of the institutional capacity and resource base of the private sector representative bodies.

18. *Political and security* issues also affect the movement of goods and people. Closed borders and economic embargoes between some BSEC Member States in particular in the Caucasus area have undermined free cross-border movement of any type i.e. goods, services, people and capital. Another important political obstacle results from the multiplicity of trade and visa regimes in the BSEC region, i.e. the CIS Agreement, WTO membership, EU membership, other EU agreements, etc.

19. The Black Sea countries in partnership with the European Commission, the World Bank and other donors are implementing a number of projects to improve the current situation. An important regional cooperation framework on trade facilitation has been established under the TRACECA Multilateral Transport Agreement (Baku, September 1998). Regional and national committees have been established notably in Armenia, Azerbaijan and Georgia to improve the overall trade environment. Another framework of cross-border movement facilitation is provided by SECI and covers mainly the South East European countries e.g. Albania, Bulgaria and

Romania, Greece and Turkey. In this respect, the MoU on Facilitation of Road Transport of Goods in the SECI Region was signed in April 1999 while a Regional Road Transport Committee and a Group of Experts on Charging Policies have been established. At the initiative of SECI, regular meetings take place between committees representing border institutions of the member countries. Therefore, regular meetings between Turkish and Bulgarian border officers have resulted in significant improvements in border control and visa issuing for Turkish and Bulgarian carriers.

20. BSEC states have realised that closer cooperation between national customs administrations would help them and the international community to build better monitoring systems and to preserve the integrity of trade. To this end, a number of bilateral agreements about mutual assistance in customs activity field is concluded among BSEC states. Thus, the agreement about mutual assistance in customs activity field among Azerbaijan and Greece (signed on 21 June 2004) is about strengthening cooperation in prevention, investigation and liquidation of customs legal violations illicit drugs, psychotropic substances and precursors, weapons, explosive substances, ammunitions, nuclear materials, objects having cultural importance and archaeological riches trafficking via borders. A similar mutual assistance agreement between customs administrations has entered into force between Armenia and Greece on 10 December 2001. Furthermore, Greece as an EU member has obligations of mutual administrative assistance in customs matters with most of the BSEC member states which result from EU relevant Agreements with Armenia, Azerbaijan, Bulgaria, Georgia, Moldova, Romania, Russia, Turkey and Ukraine. Turkey has signed agreements on mutual administrative assistance in customs matters with most of the BSEC member states; Georgia (1994), Ukraine (1996), Russia (1997), Romania (1997), Bulgaria (1997), Albania (1998), Greece (2000). Other BSEC Member States have concluded similar agreements on customs activity with their neighbouring countries.

Visa Regime - Problems and Perspectives

21. It is often noted that free movement of people is a condition for achieving greater integration and unity in the region. Nevertheless, no member state has entirely abolish visa requirements for nationals of all other member states, even though visa requirements often amounted to complicated, cumbersome and extensive obstacles to free movement of persons. The whole region is covered with a net of visa regimes which hamper normal communication of population.

22. To present a general overview of the visa regime in the region we may consider the following. Ukraine has introduced visa free regime for those coming from the CIS countries of the BSEC, including Romania but visa is still applied for nationals of Albania, Bulgaria, Greece and Turkey. Albania imposes entry tax for all EU states and has visa free regime for the nationals

of Russia, Turkey and Bulgaria. Romania introduced visa for the nationals of the CIS countries of the BSEC with the exception of the Republic of Moldova. It requires also visa for nationals of Albania and Turkey but it requires no visa for Bulgaria and Greece. Armenia on the other side requires no visa from the CIS countries of the BSEC, but it imposes visa to nationals of all other BSEC member states. Turkey has introduced visa to nationals of all BSEC member states but Greece.

23. Schengen visa regime is the core of the visa regime in Europe. The Council of the European Union adopted on March 15, 2001 the list of countries whose national must be in possession of visas when entering Schengen states (including Albania, Serbia and Montenegro, Moldova, Russia and Ukraine) and the list of those which are (or will be) exempt by means of special agreement (including Bulgaria and Romania). At the same time, the Schengen system which is part of the EU acquis, is mandatorily to be incorporated upon accession into the national laws of candidate counties (e.g. Bulgaria, Romania, Turkey). The enlargement of the EU has generated a fear that Europe will be divided in two as a result of the expansion of the Schengen visa system. Should this happen would create an excessive impediment to the free movement of persons throughout Europe and the Black Sea region too with consequences relevant to a number of distinct issues, including tourist travel, business travel, diplomatic travel, cross border small traffic in goods, international labour migration and communal and cultural links.

24. This issue has also alerted the Council of Europe and its Assembly which have requested their members to instigate a series of measures intended to make the procedure of obtaining visas more rapid and flexible. The Parliamentary Assembly of the Council of Europe has even concluded that the goal should be the abolition of the Schengen visa requirement for citizens of all Council of Europe member states.

25. The most comprehensive multilateral framework covering the free movement of persons across the Black Sea area is the one provided by the Council of Europe. In this respect we should recall in particular the 1955 European Convention on Establishment and the 1957 European Agreement on Regulations Governing the Movement of Persons between Member States of the Council of Europe, along with the European Convention on the Legal Status of Migrant Workers and the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities. The combination of the Council of Europe's treaties in the fields of free movement of persons and of police and judicial cooperation bears significant effectiveness. Wider ratification, along with appropriate coordination and is necessary amendment of these treaties could lead to the development of a framework allowing greater freedom of movement throughout Europe.

III. The BSEC experience

26. It has to be noted that BSEC's efforts have primarily focused on the facilitation of cross-border movement of goods and less on the movement of persons across the region. The BSEC Summit Declaration in June 1992 placed as a priority the initiation of measures contributing to the expansion of trade in goods and services and ensuring conditions favourable to such development by continuing efforts to further reduce or progressively eliminate obstacles of all kinds, in a manner not contravening Member States' obligations towards third parties.

27. Nevertheless, an increased interest has been displayed since the early 1990s in the field of people's movement especially as businessmen is concerned. The BSEC Member States declared their intention already in June 1992 (BSEC Summit Declaration, para. 14) to facilitate "via bilateral negotiations the prompt entry, stay and free movement of businessmen in their respective territories and encouraging direct contacts among enterprises and firms'.

28. The established BSEC Working Group on Trade and Economic Cooperation has focused on trade liberalization and facilitation paying attention to the existing non-tariff barriers and border-crossing procedures. The long term aim of creating a BSEC Free Trade Area is seen a step by step process served mainly through the elimination of non-tariff barriers and the conclusion of bilateral agreements on free trade. The ambitious objective to set up a BSEC Free Trade Area (FTA) is therefore achieved gradually, taking into account the Customs Union, the European Agreements as well as the Partnership and Cooperation Agreements of some Member States, and taking into account the obligations resulting from membership in EU and WTO, as well as other international organizations.

29. To boost efforts for freer cross-border movement of goods the paper "Recommendation for the procedure to eliminate non-tariff barriers on trade in the BSEC Region" was approved by the Fifth Meeting of the Council of Ministers in Antalya on 26 October 2001). This document is used as a model in the activities of the Working Group for identification, monitoring and elimination of non-tariff barriers on trade existing in the BSEC Member States.

30. The BSEC Economic Agenda (2001) has placed facilitation of movement of goods among its first priorities stressing the need for the liberalisation of trade in line with the WTO regulations, for measures at the regional level for trade facilitation and border crossing and the harmonization of customs procedures. It calls upon the BSEC member states to devote the necessary attention to harmonizing the existing cross-border and customs regulations with the aim of facilitating the movement of goods and people across national boundaries. Among the main directions for cooperation of the member states in the field of transportation which bear significant effects in cross-border movements it includes the development and harmonization of the legislation in the field of transport and cross-border regime; coordination of measures for the operation and interaction of different modes of transportation; increase

transportation security and cargo safety; and the introduction of new technologies promoting transportation of cargoes and acceleration of their delivery.

31. A milestone for the facilitation of cross border movements is the Memorandum of Understanding (MoU) on Facilitation of Road Transport of Goods in the BSEC Region, signed in Kyiv, on 6 March 2002. The MoU was an important step towards harmonization of institutional aspects of road transport of goods in the Black Sea region. The aim of this MoU is to enhance co-operation among the Governments of the BSEC Member States towards the harmonization of certain key-elements concerning international road transport of goods in the region, in line with internationally accepted agreements, as well as related rules and standards, inter alia by simplifying and harmonizing procedures, formalities and documentation. Therefore, the MoU identifies the following priority areas:

- Progressive liberalisation of International Road Transport of Goods
- Accession to international agreements – harmonization of maximum permissible weights and dimensions, transportation of dangerous goods and social regulations
- Charging policies – information system on charges related to Road transport
- Facilitation of visa procedures for professional drivers

32. The representatives of the business communities and of the road transport in the BSEC Member States have raised persistently the issue of the simplification of visa procedures for professional drivers. This issue is quoted as one of the basic competitive disadvantages which affect not only transport operators but also the national economies as a whole. The usual practice is that most BSEC Member States apply visa requirements towards each other's nationals. Nevertheless, some BSEC Member States have already existing visa facilitation measures for the professional lorry drivers in the form of bilateral agreements. On the other hand, there is a great lack of harmonization of practical procedures imposed. Thus, procedures and required documents vary from country to country.

33. In line with the stipulations of the MoU and in order to address the above visa related problems, an Ad Hoc Expert Group on a Draft Agreement on Simplification of Visa Procedures for Professional Lorry Drivers Nationals of the BSEC Member States was established. The draft Agreement on Visa Facilitation for the professional drivers engaged in international road transport of goods has been elaborated and envisages setting up National Lists of Professional Drivers. The Consolidated lists will be communicated to the Ministries of Foreign Affairs and then conveyed to the national authorities competent for visa issuance. However, significant problems did emerge during the elaboration of the draft Agreement as visa regime in BSEC Member States displays great variations. Several countries have shown a

preference on bilateral rather than multilateral agreements on visa simplification as the example of the Romanian side indicates. Romania along with other EU candidate countries reiterated its readiness to simplify by administrative measures the necessary procedures for granting visas for certain categories of citizens of the BSEC Member States. It however indicated that it will conclude bilateral agreements in order to establish mutual facilitation for these categories, in accordance with EU requirements.

34. Another Ad hoc Expert Group on the Agreement on Mutual Recognition of Diploma/Certificates and other Evidence of Formal Qualification for Road Haulage Operator and Road Passenger Transport Operator has been established. Freedom of establishment in the BSEC Member States means that real persons and/or undertakings citizens of and/or registered in a BSEC Member State have the right to enter the occupation in another BSEC Member State subject to the national rules and regulations of the latter as well as the rules for admission to the occupation, namely the good repute, financial standing and professional competence. As negotiations regarding the above mentioned Agreement are still in process, the limitations of the international obligations of certain countries have already been indicated. As Greece therefore stated the issue of Mutual Recognition of Diploma/Certificates and other Evidence of Formal Qualification for Road Haulage Operator and Road Passenger Transport Operators cannot be negotiated by Greece unilaterally beyond the EU.

IV. A general framework of facilitation of cross-border movements

35. The countries of the BSEC region shall endeavour to facilitate international movement of persons and goods across borders while maintaining effective controls, thus ensuring smooth flow of international trade as observance of national and international rules in force. To this end, they need to define pragmatic short and medium - term solutions to facilitate cross border movement of goods and people. This would nevertheless, require extensive assistance in order to be able to implement efficient systems.

36. It should be underlined the importance of proper implementation of multilateral Agreements in the fields of customs cooperation, placing particular emphasis on Conventions adopted in the framework of the World Customs Organization (such as the Istanbul Convention, the Kyoto Convention, etc.), the UN/Economic Commission of Europe (such as the TIR Convention, the Convention on harmonisation of frontier controls of Goods, etc.) as well as their bilateral agreements on Mutual Assistance in Customs matters.

37. The PABSEC Member Countries shall proceed to mutual arrangements so as to facilitate cross - border movements by means of:

- a) upgrading infrastructure at border crossing points to meet actual needs. The upgrading of customs facilities and border stations should cover both the physical, institutional and electronic infrastructure.

- b) simplifying and standardising documents and procedures required at border crossing points. An important project would be to identify the inconsistencies in the border procedures applied by BSEC countries. These could concern the documents used, the control processes, the legal basis for the various documents in use, and the overall effectiveness of the controls applied.
- c) introducing new technologies and communications, such as electronic data processing, data exchange and risk analysis methods in order to perform effective controls. There is therefore, a need to assess the potential benefits of introducing and integrating computerisation into the customs and border crossing facilities, on an extended basis. This would provide a comprehensive system for handling manifests and customs declarations, accounting procedures, warehousing and import and export licences in the whole region. It would also generate reliable trade statistics, raise government revenue and allow the monitoring of a number of different functions to assess the efficiency of the domestic services.
- d) strengthening formal cooperation between the different national and international authorities at the border stations. Joint pilot projects could be initiated to this respect.
- e) improving national infrastructure (railways, roads, ports) and its interconnection with regional and international networks.
- f) assessing the significance of the current cost of credit across the countries, as an impediment to the development of trade and investigate the potential contribution of micro-credit facilities in the region.
- g) reviewing transit fees and tariffs. Transit fees of various types are imposed by some BSEC countries and there is some justification for imposing a cost related user charge on transit traffic. However, the issue of transit fees is very contentious. For example, TRACECA rail transit tariffs do not correspond to cost-based tariffication or commercialisation of the TRACECA corridor. Port fees are reported to be high as well as maritime shipping rates. There is a need for rational, transparent fee and tariff scales.
- h) harmonising the legal basis for transit transportation. BSEC Member states need to approximate their standards as much as possible (including weights, dimensions, safety, environmental, and operating regulations) for road vehicles and to introduce modern technical standards conforming with those of the EU, for road vehicle characteristics and operations.
- i) facilitating the obtention of visas of BSEC nationals particularly for those categories of people that engage in economic activities (e.g. businessmen, professional drivers, etc.) while observing the national laws particular on security and public health and the international obligations of each country.

V. Conclusions

38. The growth of the ability and need to transport large quantities of goods or numbers of people over distances requires coordination of policies and cross-border procedures among the BSEC Member States. At the same time, freer circulation of people and goods must be supported by enhanced police and judicial cooperation and border management.

39. BSEC as a regional economic organisation has great potential in dismantling barriers that have traditionally resulted in obstruction of and in high transactions cost in cross-border flows of goods and factors. BSEC's initiatives are in support of policy and institutional reforms by countries participating in a regional effort to promote cross-border economic activity in the Black Sea.

40. Three types of benefits are often cited in facilitation of cross border movement of goods: *lower transactions costs* due to the removal of barriers to cross-border movement of persons, goods and production factors; *efficiency gains* from repositioning of firms away from small national markets to production for the larger regional and world markets; and *long run welfare gains* which depend on: lowering external protection, improving the quality of infrastructure, and allowing market signals to work in determining plant location.

41. At the same time, free movement of persons to the greatest possible extent throughout Europe as a whole is essential to the Black Sea Economic Cooperation process. The historical and geographical links among the Black Sea peoples argue strongly against erecting barriers which cut through societies and interrupt trading patterns and activities. As to concerns relating to public order and security, those can be properly addressed with enhanced and closer cooperation and the application of the rule of law.

42. The closer unity between Black Sea states as envisaged in the BSEC process to serve the economic development and welfare of the people of the region will be best served through facilitating the cross-border movement of goods and people.