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## THE LEGAL FRAMEWORK GOVERNING THE STATE BORDERS BETWEEN THE REPUBLIC OF LATVIA AND THE REPUBLIC OF BELARUS

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**Abstract.** The theme of the research is topical in the face of today's challenges of combating illegal immigration, counter-terrorism and international crime, and maintaining national sovereignty and territorial integrity in the context of hybrid war and other aggressive activities. The legal framework of the state border of Latvia and Belarus is being researched in terms of national border security and internal security of two neighbouring countries. The research methods include legal analysis method to study the legal framework of both neighbouring countries in the area of border and border area regimes in Latvia and Belarus, the historical method of studying the development of legal regulation in the 20<sup>th</sup> and 21<sup>st</sup> century and the empirical method of reviewing legal practice and scientific knowledge in the field of research.

**Keywords:** border regime, state border, border treaty, inviolability and inalterability of the state border.

### INTRODUCTION

Since October 2017, Rezekne Technology Academy is implementing the European Regional Development Fund Postdoctoral Research Support Project “EU External Border Security, Latvian Internal Security” No.1.1.2 / VIAA / 1/16/127. Project executor is postdoctoral researcher Dr. iur. Arturs Gaveika. The cooperation partner of the project is the State Border Guard College.

The state border between Latvia and Belarus is described in border treaty (hereinafter - Latvian - Belarusian Border Treaty, 1994) concluded in 1994 between Latvia and Belarus, at the intersection of borders between Latvia, Belarus, Russia (“Friendship Kurgan”) is basically in line with the border determined in 1920 Peace Treaty Article 3 which, in turn, accounts for about 30% of the 1920 border between Latvia and Russia. Article 3 of the Peace Treaty with the Latvian-Belarusian Border Treaty has lost its force since neither Latvia nor Belarus has ever touched upon the issue that Belarus could be bound by Article 3 of the 1920 Latvia-Russia Peace Treaty in the part that affecting the borders of both countries on the basis of the succession of Belarusian law, i.e. there is a mutual silence agreement that countries do not consider Belarus

to be the successor of the rights of the Russian Federation and the USSR to Part 3 of the Latvia-Russia 1920 Peace treaty. The Latvian - Belarusian Border Treaty did not change the territory of Latvia, nor did the Latvian - Belarusian Border Treaty be disputed, so its further analysis is not necessary (MK Atbildes raksts LR Satversmes tiesai lietā Nr.2007-10-0102, p 3.6.3.) Although some Belarusian historians believe that the former Daugavpils, Rezekne and Ludza counties used to live in the former times by Belarusians (Институт белоруской истории и культуры, 2019).

The author agrees with prof. D.A.Lēber's point of view (Lēbers, 2005) that the unilateral amendment of the status of the border has no basis in international law, as noted in several works of law scientists and even in the international conference on borders held in Moscow in 1994 (Островский, Постнов, 1994) Borders created in violation of international law are not protected by the principle of inviolability of borders (Conference on Security and Cooperation in Europe: Final Act, 1 August 1975). The representative of the Soviet Belarus, commenting (United Nations Conference on Succession of States in Respect of Treaties, Analytical Compilation of Comments by Governments. U.N. Doc. A/Conf. 80/5, 1977) on Article 11 of the Vienna Convention on the Succession of National Laws on International Treaties of 1978, which contained provisions on the boundaries established by the treaty (Vienna Convention on Succession of States in respect of Treaties, 1978), stated that these rules are “applicable in cases where the succession of national law has arisen under international law, thus excluding cases of aggression or occupation”.

Prof. D.A.Leber points out that Russian scientists have also stated that states have committed themselves to refusing to recognize unlawful territorial changes and that this follows from the principle of inalterability of borders. Thus, in order to answer the question of which of the two borders is protected as inalterable, the meaning of the principle of *uti possidetis* (as you possess) confirms the inalterability of borders. Essentially, the *uti possidetis* is the forerunner of the principle of inalterability of modern borders, and it emerged as a means to safeguard stability in Latin America in the 19<sup>th</sup> century and early 20<sup>th</sup> century decolonization process in Africa (Lēbers, 2005).

At least two principles of national border security are derivable from the above analysis: **inviolability of the state border and inalterability of the state border**. In the State Border Law (2009) and other national regulatory framework, none of the principles is specifically regulated, although the term “state border inviolability” is used in the purpose of the State Border Law (2009).

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State border security plays an important role in building a space of peace and good neighbourly relations around the country. Therefore, in addition to the principles of inviolability and immutability of the state border, principles such as ensuring national and international security should be included in the regulatory framework; respect for national sovereignty, territorial integrity and equality; solving state border issues and border incidents by peace; guaranteeing human rights and freedoms; mutually beneficial and multilateral international co-operation in ensuring national border security.

The State Border Law (2009) of Latvia and the **Law on the State Border of the Republic of Belarus** both similarly define the meaning of the state border since also the Belarusian law on defines the state border as the line and the vertical surface coinciding with this line, which determines the territories of the Republic of Belarus (land, water, subterranean and air space). The law does not regulate any of these types of territory separately. The land regime in Belarus is governed by the Belarus Land Code, the water area (includes inland waters - lakes, rivers and other bodies of water, part of the border and other water bodies of Belarus) - Water Code (Article 100), subterranean depths extending from the surface of the earth to Land Centre (to technically accessible depth), and their regime - Earth Sub code (Article 1), Airspace and its regime - Air Code (Article 1), in which Belarus determines its airspace as an airspace above the state areas, including the troposphere, the stratosphere, and the part of the space above (Рачковский, et. al., 2010). The upper boundary of the airspace, as claimed by Belarusian law scholars, is not defined in either the national regulatory framework or international practice, which the author disagrees with and is analyzed in the chapter above.

By the state border and its legal regime, the whole Latvian-Belarusian border can be divided into two parts. The first part is the border of the former USSR with Poland. Since Belarus regained its state sovereignty, the border between Belarus and Poland is still regulated by the border treaty of August 16, 1945 between the USSR and the Polish People's Republic, while the state border regime is governed by the agreement between the Soviet Union and the Government of the Polish People's Republic on Soviet Poles on February 15, 1961 national border regime, cooperation and mutual assistance in border issues, which could be considered one of the most striking examples of national border inalterability, irrespective of the socio-political system in each country and the absence of a country like the USSR. The second part of the state border is the administrative border of the former Belarusian SSR with the Soviet republics of the USSR, but now with sovereign states: Latvia, Lithuania, Ukraine and (Рачковский, et. al., 2010), which, with the formation of the Commonwealth of Independent

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States in December 1991 and the collapse of the USSR, fully regained independence, although foreign troops were still in the territories (Bojārs, 2004). Belarus completed the determination of state border with Lithuania in 2008, but with Latvia in 2009 (Рачковский, et. al., 2010).

Belarus, on the other hand, started the process of defining the state borders with the Declaration of Belarusian SSR AP “On the State Sovereignty of the Republic of Belarus” of July 27, 1990 (Постановление Верховного Совета Республики Беларусь, 1993). Belarusian law scholars have to be agreed with that the formation of the state border legal framework is based on the constitution and constitutional norms, which in Belarus basically correspond to the values of modern law science and which should also be taken into account from the point of view of legal experience, creation of international and constitutional law: Belarus has full power in its territory; it is independent in the implementation of internal policies and foreign policy; it upholds its independence, territorial integrity, constitutional system, ensures legality and legal order (Конституция Республики Беларусь, 1994); The territory of Belarus is a space of people's existence, self-determination, sovereignty and prosperity (Залеский, Соболевский, 2003); its territory is united and unbreakable; Belarus in foreign policy is guided by the equality of states, the use of force and threats, the inalterability of the state border, peaceful settlement of disputes, non-interference in the internal affairs of other countries and other generally recognized principles and norms of international law (Конституция Республики Беларусь, 1994). To conclude, the above principles are mostly inherited from the Decalogue of Helsinki, or "Declarations on the Principles for Member States to Relationships", which are analyzed by Prof J.Bojārs, pointing out the extremely positive historical consequences of these principles (Bojārs, 2006).

The first Belarusian normative act regulating the activities of the Border Guard and other state administration institutions on issues of state border control was the Law “On the State Border of the Republic of Belarus” of 4 November 1992 (expired in 2008). It was followed by MP Decree No. 599 of 5 November, approving the laws on the determination of the Belarusian state border (Рачковский, et. al., 2010), while the powers of determination of the state border were assigned to the State Border Guard Committee, the Ministry of Foreign Affairs, MP for the Land Resources, Geodesy and Cartography Committee and the State Border Delimitation and Demarcation Commission (Постановление Совета Министров Республики Беларусь, 1993). In 2018, many amendments and additions to the Belarusian regulatory enactments in the field of further strengthening of border security were initiated, aiming at the simplification of border procedures and regimes on the one hand, for example, to promote

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tourism and to improve the efficiency of institutions involved in border procedures, to update the regulatory framework and to clarify terminology (В законодательство по вопросам пограничной безопасности предлагается внести изменения, 2018).

The Latvian-Belarusian Border Treaty signed in Minsk on February 21, 1994 stipulated that the border line between Latvia and Belarus would go along the administrative border of Latvia and Belarus, which at the time of signing the agreement coincides with the Latvian state border, as it was on June 16, 1940 until Latvia was included in the USSR (Халиманович, 2002), which was previously the Polish border of Latvia in accordance with the peace treaty of 18 March 1921 between the USSR, Poland and Ukraine (Тихомиров, 2019), until September 20-22, 1939, when the Red Army occupied the territory of Poland near the borders of Latvia (Jēkabsons, 2003).

The Latvian-Belarusian Border Treaty does not include the definition of the state border. An integral part of the Latvian - Belarusian Border Treaty is the delimitation map on scale 1: 50,000 (Latvijas Ģeotelpiskās informācijas aģentūra, 2008), but on completion of the demarcation, a demarcation map of 1: 10,000 (Latvian - Belarusian Border Treaty, 1994). The peculiarity of the Latvian - Belarusian Border Treaty is that it was decided to be guided by its position in determining the border in 1940. June 16 The Baltic States were incorporated into the USSR (LR ĀM, 2019) in early August 1940. In fact, the state border between Latvia and the Russian SSR was recognized after the demarcation of 1923 at the state border station from the present intersection (Agreement between the Government of the Republic of Latvia, the Government of the Republic of Belarus and the Government of the Russian Federation on the Determination of the intersection of borders of State Borders of the Republic of Latvia, the Republic of Belarus and the Russian Federation, 2010) of the state border of Belarus, Latvia and Russia to the river Daugava (Zapadnaja Dvina) and beyond to the intersection (Agreement between the Government of the Republic of Latvia, the Government of the Republic of Belarus and the Government of the Republic of Lithuania on the Determination of the intersection of borders of State Borders of the Republic of Latvia, the Republic of Belarus and the Republic of Lithuania, 1998) of the Belarusian-Latvian-Lithuanian border, which includes part of the former Polish border (Didrihsone, Zvirgzdiņš, 2008) as it existed until June 17, 1940 from the village of Shafranov on the present side of Belarus (Peace treaty between Latvia and Russia, 1920).

According to the border treaty, a 10 m wide zone (5 m on both sides of the border line of the country or the water level of rivers and other reservoirs) is defined along the state border,

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the meaning and purpose of which is not specified. In May 1994, Latvia, for its part, along the border of the Belarusian state, also set a 5 m wide boundary band from the border line (Par Latvijas Republikas un Baltkrievijas Republikas valsts robežas joslas noteikšanu, 1994). In addition, the state border regime was restricted only by the prohibition of economic activity in this band, and it was introduced only in 2001, defining a 12 metres state border zone (Noteikumi par Latvijas Republikas valsts robežas joslu, pierobežas joslu un pierobežu, kā arī pierobežas, pierobežas joslas un valsts robežas joslas norādījuma zīmju un informatīvo norāžu paraugiem un to uzstādīšanas kārtību, 2001), counting from the border line, the content of which regime did not change until 2010. By contrast, Belarus, with the exception of the Border Line for the maintenance of structures and communications, also provides for a lane that is directly along the national border and intended for demarcation of the state border and installation of border marks (О Государственной границе Республики Беларусь, 2008), and may have a width of 3, 5, 8 metres (Рачковский, et. al., 2010), or different depending on terrain and peculiarities of possible structures.

The first composition of the Latvian-Belarusian border demarcation commission from the Latvian side was established in 1995 (Par Latvijas Republikas pārstāvju norīkošanu Jauktās Latvijas un Baltkrievijas demarkācijas komisijas sastāvu, 1995) and in Belarus (Teikmanis, 2005) - approved in 1997 (Об образовании Белорусской части Смешанной комиссии по демаркации государственной границы между Республикой Беларусь и Латвийской Республикой, 1997). The demarcation of the state border was launched in June 1997, two years after the entry into force of the Latvia-Belarus Border Treaty and lasted more than ten years. EC financial support, which enabled Latvia to complete the demarcation of the state border by July 1, 2007, played a key role. Belarus, for financial reasons, could not start the demarcation for a long time. However thanks to the EU support TACIS (*Technical Assistance for the Commonwealth of Independent States*) programme (TACIS, 2008) according to the contract of October 25, 2005 (Контракт, 2005), Belarus started demarcation work from November 2005 and completed them in early October 2006 (Приложение „Наука и военная безопасность” к журналу „Армия”, 2006). The role of the Ministry of Foreign Affairs and the Latvian Geospatial Information Agency played a decisive role in demarcation work from Latvia, which provided the geodetic coordinates of boundary marks within the framework of demarcation works and their representation on maps (Ģeotelpiskās informācijas likums, 2009). During demarcation works, 417 border signs have been installed, the border demarcated by 172,912 km, also arranging border infrastructure and approving demarcation documents on February

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18, 2009 (Par Latvijas Republikas un Baltkrievijas Republikas valsts robežas demarkācijas dokumentu apstiprināšanu, 2009). Due to the rather long demarcation process, parallel redemarcation works, such as moving the boundary walls, restoring damaged boundaries, etc. were also required to be completed. Sometimes measurements of the state border had to be done again to be as accurate as modern technologies allow, often in very boggy and unreachable border sections. However, this was a very important work for the EU, which was carried out in close cooperation with the Ministry of the Interior and the Ministry of the Foreign Affairs (Kļaviņa, 2019).

Cooperation between Latvia and Belarus, as well as their law enforcement institutions, is governed by a number of international agreements and agreements. The first agreement on Border Cooperation was concluded in Riga on August 18, 1992, even before the Latvian-Belarusian Border Treaty and was in force until May 19, 1995. In 1993, however, an agreement with an identical name was in force (Latvijas Republikas valdības un Baltkrievijas Republikas valdības vienošanās par sadarbību robežu jautājumos), valid until the entry into force of the Agreement on the State Border Regime of the Republic of Latvia and the Republic of Belarus. On the basis of Article 4 of the Agreement on Cooperation on Border Issues, the **border plenipotentiary apparatus** (Latvijas Republikas valdības un Baltkrievijas Republikas valdības vienošanās par pilnvaroto robežas pārstāvju darbību, 1995) of both countries was set up by agreement. Issues that cannot be resolved within the framework of the activities of the border guard plenipotentiaries of both neighbouring countries are settled through diplomatic channels. The main tasks of the Border Guard plenipotentiaries both on the Latvian and Belarus side are: to take measures to ensure compliance with the state border regime, implementation of international agreements and agreements; to prevent and regulate border incidents (Залесский, Соболевский, 2003); to promote the development and development of business-friendly and friendly relations with neighbouring border guard agencies; to address the borderline issues in a spirit of cooperation and mutual assistance. When analyzing the border incidents that have been the subject of unilateral or bilateral investigations, it should be noted that the most common border incidents are illegal crossing of the state border of persons, vehicles and cargo, which can be divided into two main groups: illegal crossing of state border by negligence, intentional illegal crossing of state border, most often goods illegal transboundary movement across national borders. The State Border Law (2009) does not include the definition of a border incident, although it is used in relation to the competence of the MFA in cases where these border incidents are not resolved by border guards. However, in the content of the competence

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of border guard's plenipotentiaries in the Article 7 of the State Border Law (2009) **“Plenipotentiary Border Representatives of the Republic of Latvia”** the resolution of border incidents is not included, although it should be considered as the main function of the Border Guard plenipotentiaries apparatus.

Based on the European Framework Convention on Cross-border Co-operation of Territorial Communities or Regulatory Bodies, an important agreement between neighbouring countries to improve future co-operation is the Framework for Cross-Border Co-operation (Eiropas pamatkonvencija par teritoriālo kopienu vai pārvaldes institūciju pārrobežu sadarbību, 1980), which defined the concept of **“cross-border co-operation”** and identified 13 areas of co-operation, many of which relate to the border guard authorities of both countries competence (Vienošanās starp Latvijas Republikas valdību un Baltkrievijas Republikas valdību par pārrobežu sadarbības pamatprincipiem, 1998). One of the most significant cooperation agreements between Latvia and the EU Member State and the third country on the example of Latvia and Belarus is the Agreement on **Co-operation in the Fight against Organized Crime, Illicit Traffic in Narcotic Drugs, Psychotropic Substances and Precursors, Terrorism and Other Criminal Offenses** in which the Member States of the Treaty to Combat Illegal Immigration exchange information with each other on: facts about attempts to cross the state border or attempts to do so; on documents permitting crossing the state border, facts of counterfeiting; on the open routes of illegal migration; on organizing illegal migration (Latvijas Republikas valdības un Baltkrievijas Republikas valdības līgums par sadarbību cīņā pret organizēto noziedzību, narkotisko vielu, psihotropo vielu un prekursoru nelegālu apriti, terorismu un citiem noziedzīgiem nodarījumiem, 2007).

The Government of Latvia and the Government of Belarus, having regard to the necessity to organize border crossing of persons, vehicles, cargoes and belongings, concluded in 1993 an agreement **on border crossing points**, whereby national governments agreed to establish border crossing points on the Latvian-Belarusian border (Latvijas Republikas valdības un Baltkrievijas Republikas valdības vienošanās par robežas caurlaides punktiem, 1993). It should also be noted that this agreement was not very successful in terms of legal wording and regulation of border crossing, as the neighbouring countries agreed on border crossing points, without determining their status, which will be border crossing points and which will be border crossing points for local traffic. In 2007, the aforementioned agreement was amended by changing the status of the border crossing point **“Piedruja - Druja”** to the border crossing point for local traffic, as well as opening the following additional border crossing points for local



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traffic: Vorzova - Ļipovka; Kaplava - Pļusi; Meikšāni - Gavriļino, referred to as border crossing points for local border traffic in Latvian normative regulations, but daily are called as border crossing points and differ from international border crossing points with border crossing intensity as well as the fact that the customs functions are performed by the state Border Guard (Latvijas Republikas valdības un Baltkrievijas Republikas valdības protokols par grozījumiem 1993.gada 18.augusta Latvijas Republikas valdības un Baltkrievijas Republikas valdības vienošanās par robežas caurlaides punktiem, 2007).

The agreement on **the facilitation of cross-border travel between residents of the border regions of Latvia and Belarus** (Latvijas Republikas valdības un Baltkrievijas Republikas valdības Vienošanās par Latvijas Republikas un Baltkrievijas Republikas pierobežas teritoriju iedzīvotāju savstarpējo braucienu vienkāršošanu, 2010) continued the development of cooperation between neighbouring countries in the area of border crossing, which was initiated by the 1994 Agreement on simplified border crossing for border residents and the 2008 Agreement on Mutual Travel of Citizens (Latvijas Republikas valdības un Baltkrievijas Republikas valdības vienošanās par pilsoņu savstarpējiem braucieniem, 2008). The agreement on a **simplified procedure for issuing visas to border residents** is essential for the legal arrangement of border crossing (Latvijas Republikas valdības un Baltkrievijas Republikas valdības vienošanās par vienkāršotu vīzu izsniegšanas kārtību pierobežas iedzīvotājiem, 2002). The agreement provides for residence in the border area of the second state due to participation in cultural, sporting and other events, real estate property in the border area, visits to relatives, serious illness or death of relatives, attendance of relatives burial sites, provision of medical or other assistance, rituals and local traditions, and in other cases where border residents need to be in the border area of the second country. The said agreement and other agreements in the area of border crossing of persons facilitate the legally regulated and controlled migration process, where the involvement of liaison officers to work in Latvian embassies is important, accelerating the process of movement of people, because visas are issued in a simplified procedure; contributes to overall security and preventive protection against illegal migration.

Considering the importance of co-operation in the prevention of disasters, natural disasters, other emergencies and their consequences in raising the level of welfare and security of the population of neighbouring countries, an **agreement on co-operation in the prevention of disasters, natural disasters, other emergencies** (Latvijas Republikas valdības un Baltkrievijas Republikas valdības vienošanās par sadarbību katastrofu, dabas stihiju, citu

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ārkārtēju situāciju novēršanā, kā arī to seku likvidēšanā, 2003) was concluded in 2003; the elimination of the consequences of the arrangements for cooperation and the competence of the institutions in this area.

Practice shows that international co-operation at the level of the Latvian Border Guard and Belarusian “zastavas” (Division; Border guarding point) is actively developing (Strategy of the State Border Guard activities 2017.-2019). Better co-operation is predominantly between top-level leaders, but closer cooperation is needed at all levels, ranging from heads of institutions to border guards and chiefs of border control points, and this cooperation should be legally regulated in the cooperation plans, the powers and competences of the officials concerned.

It is necessary to develop response capabilities, to reduce the time needed to get to any illegal border crossing point in order to organize mutual action quickly and efficiently in any offense. Already now, Latvia and Belarus are transit countries for illegal migration, and the migratory pressure is not diminishing with the increase in the flow of persons.

## CONCLUSIONS

Belarus shall not be regarded as a successor to the Russian Federation and the USSR in respect of Article 3 of the Peace treaty between Latvia and Russia signed in 1920. The Latvian-Belarusian Border Treaty was not disputed hence further analysis in the context of the national territory is not necessary.

State Border between Latvia and the Russian SSR was recognized after the demarcation results of 1923 (has not changed to the present day) and the state border stretches from the present border intersection between Belarus, Latvia and Russia (Friendship Kurgan) along the border river's entry in the river Daugava (Zapadnaja Dvina) and from further to the intersection of the Belarusian-Latvian-Lithuanian border, which in turn includes a part of the former Polish border which was until 17 June 1940 from the village of Shafranov on the Belarusian side.

An unilateral amendment of the state border status has no basis in international law. National borders created in violation of international law are not protected by the principle of inviolability of borders, as follows from the meaning of Article 11 of the 1974 Vienna Convention on the Transfer of States to International Treaties.

At least two principles of state border security must be defined: inviolability of the state border and inalterability of the state border.

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The State Border Law (2009) and other national regulatory frameworks do not define any of the principles, although the term “state border inviolability” is used in the law. In its turn, the principle of inalterability of the state border, which is structurally derived from the concept of sovereignty, determines both the integrity and sovereignty of the state territory in their mutual legal relationship. The principle of inalterability of the state border includes three essential elements: recognition of the state border on the basis of international law; abandoning any claim to other territories both in the present and in the future; abandoning any threats to the state border of other countries by using force and other threats.

In the context of national security system state border security plays an important role in creating a space of peace and good neighbourly relations around the country. The principles of state border security should be applicable to any state administration institution, any legal or natural person and should be included in the State Border Law (2009) Article 8 “State Border Security”.

Cooperation between law enforcement institutions of Latvia and Belarus in the field of border control is generally developed. It covers both conceptual and general cooperation as well as cooperation in specific directions, areas and forms. Better co-operation is predominantly among top-level leaders, but closer cooperation is needed at all levels, in particular at the level of the management of Border Surveillance Units and Border Crossing Points and Border Guards, specifically regulating and extending the powers and competences of officials from these departments.

Latvia’s accession to the EU and joining the Schengen area provide additional opportunities to develop and improve cooperation between Latvian and Belarusian border control institutions. The conclusion of a bilateral treaty on state border regimes will bring additional benefits both in terms of cooperation and in the alignment and consolidation of bilateral regulatory frameworks, as well as in bringing Belarus closer to EU law and democratic traditions of free movement of persons.

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