

Oleksandr Sushko  
Europe without Barriers  
Institute for Euro-Atlantic Cooperation  
Kyiv  
Ukraine

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## **Ukraine**

### **In-depth research**

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## **THE EU-UKRAINE RELATIONS, AND THE VISA LIBERALISATION PROCESS**

*The visa liberalisation process is one of the key elements of current EU-Ukraine relation, being a top priority for Ukraine (along with Association agreement talks). This process stipulates a substantial leverage on the side of the EU providing it with the instrument to stimulate important reforms in Ukraine aiming to secure the Union's eastern frontiers, making overall neighbourhood safer, engaging such a big neighbour as Ukraine in a consistent and comprehensive cooperation in the area of justice, liberty and security.*

*This process is a one of highest priority for Ukrainian society suffering from the phenomena named "The Fortress of Europe" preventing (or at least seriously constraining) people from travels abroad in the Western direction. The experience of the CEE countries proved an importance of free travel to the West which contributed significantly to the rise of public demands in favour of modernisation and Europeanization of their countries.*

The EU is seeking an increasingly closer relationship with Ukraine, going beyond cooperation paradigm, towards gradual economic integration and deepening of political cooperation (through political association). Ukraine declared European integration and the EU membership as its strategic goal, however the EU have not provided the formal prospect of membership yet. Since 2011 the progress of EU-Ukraine relations is under the risk due to erosion of rule of law in Ukraine indicated by politically motivated criminal charges against opposition leaders.

The first EU-Ukraine contractual relations were set by the *Partnership and Cooperation Agreement (PCA)* signed in 1994, enforced in 1998.

Ukraine was supposed to be a priority partner within the European Neighborhood Policy (ENP) launched in 2003. Since the very beginning of the Eastern Partnership (EaP) policy (2009) Ukraine has been one of the key partners and the pilot project in the number of principal areas of the EaP.

A joint *EU-Ukraine Action Plan* was endorsed by the European Council on 21 February 2005. It was provided, according to the European Commission, a comprehensive and ambitious framework for joint of work with Ukraine in all key areas of reform. On June 16, 2009, a new practical instrument was adopted: the *EU-Ukraine Association Agenda*.

On the 5<sup>th</sup> of March, 2007 the parties launched negotiations on the new enhanced contractual relations to replace existing PCA (which was designed for 10-years period). On 22 July 2008, the EU Council announced that the new framework will be entitled *Association Agreement*.

Talks on a *deep and comprehensive free trade area (DCFTA)* between Ukraine and the European Union which supposed to be an integral part of Association Agreement started on 18 February 2008. The both parties expect to finalize talks on the Association Agreement (including DCFTA) in 2011, In October 2011 DCFTA talks were finalised as parties achieved a compromise over all disputed issues. Ukraine became the first EaP country to finish successfully DCFTA talks with the EU. At the same time, new political obstacles connected to “selective justice” in Ukraine arose and became crucial, questioning the entire process of Association talks.

**Political ambiguity.** On March, 1, 2010, newly elected President Victor Yanukovich made his first foreign visit to Brussels where he visited the EU institutions and met with the EU leaders: Jose Manuel Barroso (the European Commission), Herman Van Rompuy (the EU Council) and Jerzy Buzek (the European Parliament). Annually (in 2010 and 2011) the Cabinet of Ministers approves the Priority Action Plans for Ukraine’s EU integration. At the same time, last visit of Yanukovich to Brussels scheduled for October 20, 2011 was cancelled due to political reasons, mentioned above.

On the planning level, the Cabinet is generally responsive to the EU recommendations. The bulk of the Action Plan, approved on May 19, 2010 was based upon the Fule Matrix, i.e. the paper presented in Kyiv by the EU Commissioner Stefan Fule on April 22, 2010.

The 14th EU-Ukraine Summit took place in Brussels on 22 November, 2010. The European Union was represented by Mr Herman Van Rompuy, President of the European Council and Mr Jose Manuel Barroso, President of the European Commission. Ukraine was represented by President Viktor Yanukovich.

According to joint release, the leaders recalled that EU-Ukraine relations are based on common values and a common history and that the EU has acknowledged Ukraine's European aspirations and welcomed its European choice.

At the same time, certain deterioration of Ukraine's democracy record in the year 2010 determined growing concerns by the EU institutions. Anxiety for the fate of Ukrainian democracy was vocally voiced by the MPs of the European Parliament. In the Resolution dated 25 November 2010, it is said that "following the presidential elections held in January 2010, there are increasingly worrying signs of a lessening of respect for democracy and pluralism... as well as increased and politically motivated activity by the Ukrainian Security Service (SBU) and the misuse of administrative and judicial resources for political purposes".

The next EU-Ukraine summit has been scheduled for December 19, 2011, which AA initialling as a key part on agenda; however now (as of early November) its perspectives are moving to ever-growing uncertainty.

*Ukraine delivers moderate progress in implementing EU-Ukraine Association Agenda.* According to the independent assessment supported by the International Renaissance Foundation (Open Society Network) and developed by the consortium of three non-governmental think-tanks in October 2011, among 78 priorities of Association Agenda defined for the year 2011, 20 envisaged essential progress, 2 of them were fully implemented, 70 are in the process of implementation and with regards the rest 6 implementation has not been launched. The most obvious progress has been achieved in the issues of trade, economy and visa liberalisation.

Ukraine's record of democracy, human rights and rule of law is obviously controversial.

For example, reforms of the Constitution suffered from lack of transparency and inclusiveness. The Constitution was changed by September 30, 2010 by Constitution Court ruling; presidential model which existed during the period 1996-2004 was re-established. According to Vencie Commission conclusions: "It is clear that a change of the political system of a country based on a ruling of a Constitutional Court does not enjoy the

legitimacy which only the regular constitutional procedure for constitutional amendment, and preceding open and inclusive public debate can bring”.

*Administrative reform*, according to experts, *must be assessed rather negatively*, since it does not settle existing problems and in some cases creates new ones. Adopted measures are in fact aimed at centralization of the power vertical and enhancement of the President’s competences.

*The law “On access to public information” which entered into force in May 2011, can be seen as a significant positive step.* Adoption of this procedural law was one of the EU requirements, set to encourage transparency of the activities of public authorities. In order to ensure efficient application of this law there is a need to develop additional regulatory acts (see also *Fundamental Rights and External Relations* chapter).

In May 2011 the Rada adopted a new law “*On Civil Society Organisations*” in the first reading. If finally approved, this law is supposed to make substantial improvement of the legal environment for the civil society and NGOs.

Public administration’s measures to ensure efficiency of the *election system* at parliamentary and local elections do not fully correspond to principles of the OSCE and Council of Europe, and sometimes even create conditions for violating election rights.

Ukraine’s law “*On Judicial Order and the Status of the Judges*” (2010) increased threats to the independence of the judges. First, it established too short deadlines for examination of cases, and the judges risk to be dismissed if they fail to meet them. The new law does not establish any competition-based principles of promotion of the judges, and does not define any criteria of appointing the judges of the higher levels.

The authorities have not shown any proper enthusiasm in the field of the *criminal procedure reform*. The justice system (especially in criminal and administrative cases) has become controlled and administrated by public authorities and used by it as an instrument to ban peaceful assemblies, to organize criminal persecutions of the opposition or other persons posing political menace to the new administration. Since in October 2011 Yulia Tymoshenko, former prime-minister and the leader of opposition was sentenced to prison for 7-year term, concerns regarding “selective justice” in Ukraine became a core obstacle to further progress of EU-Ukraine relations.

Some progress has been made in 2010 in the field of *administrative permissions*. Abolishment of 22 types of licensed economic activities and implementation of a system of electronic state registration of economic operators has been the most important results in the field.

In the field of the *fight against corruption* the time of entry into force of Ukraine’s anti-corruption laws was delayed twice in 2010, then the legislation adopted in 2009 was abolished at all. Finally, the new anti-corruption law, submitted by the president, was approved on May 12, 2011 (see further details in *Public Order and Security* chapter).

The *pace of adoption and implementation of the technical regulations* remains far from optimal. The process of renewing standards has been slowed down due to lack of budget funds, as well as delays in the adoption of a National standardization plan for 2010, adopted only on August 16<sup>th</sup>, 2010.

In the field of a reform of *the national system of sanitary and phytosanitary control* efficiency of bringing standards and practices closer to the EU remained low in 2010.

In the *energy field*, the Ukraine's official accession to the Treaty establishing the Energy Community of the European Union and South-East Europe has been the most important achievement. Ukraine's accession to the EU's internal energy market will give a start to Ukraine's sectoral integration into the EU, one of the elements of the future Association Agreement. At the same time, if the reform pace remains as low, as it is now, Ukraine will not be able to use bulk of benefits open within the Energy Community.

Ukraine's biggest achievement in the energy co-operation with the EU in 2010 consists in *adoption of the law "On foundations of functioning of the natural gas market"*. The law provides legal foundations for reforming the Ukrainian gas market, based upon relevant EU directives. It sets up Ukraine's concrete commitments to ensure non-discriminated access of companies and consumers to different segments of the gas market, which will create conditions for competition in the sector.

Adoption of Ukraine's *public procurement law* in 2010 was a positive step to improve state regulation of the field and its approximation to the European standards. However, in six months after the adoption of the law Ukraine brought a number of amendments having a negative impact on the law's efficiency and limiting the scope of goods and services to which the law is applied. This provoked sharp criticism from the EU side, and even suspension of the EU's budget support program. The newest changes were introduced in May 2011, improved some elements but were also criticised for narrowing transparency.

In the *environmental field*, low level of implementation of the Framework convention on climate change and Kyoto protocol is related to Ukraine's lack of political will to fight against climate change. Lack of proper control in the field is also a negative factor.

**Visa Facilitation Agreement (VFA)** which is in force since the 1<sup>st</sup> of January 2008, set a number arrangements for the citizens of Ukraine aimed to limit consular fee to Euro 35 (instead of Euro 60 standard fee) and to authorize:

- a) better access to long-term multiple entry visas for the certain categories of people (close relatives of the EU residents, officials, business people, journalists, participants of cultural, educational and scientific exchanges, drivers, sportsmen etc);

b) wider issuance of free of charge visas;

v) limitation of documents required to prove the purpose of visit for certain categories of applicants.

Generally VFA proved to be a step in right direction but insufficient one. Certain shortcomings were indicated in the comprehensive study published by the *Europe without Barriers* in 2009, namely:

- Significant complication of visa procedures and visa requirements in “New Schengen” States after their accession to the Schengen zone (longer lines, stronger requirements, more extensive procedure, more refusals)

A lot of applicants note paid extra fees to the outsourcing intermediaries (Visa centres or External service providers) which do not have a clear status. As a result, the entire visa procedure fees sometimes exceed 60 Euro instead of maximum of 35 Euro as defined in the VFA (Since April 2010 the EU Visa Code formalised the role of external service providers, however their role in VFA countries should be defined separately).

- Before the Schengen zone enlargement Ukrainian visitors to the CEE states didn't pay a visa fee. Now in the most of cases (about 70%) applicants of those states had to pay 35 Euro fee at least, about 30% only obtained visas free of charge.

- Validity of multiple entry visas in most cases did not exceed 1-3 months. Only 13-15% of multiple entry visas were valid for a period over 6 months. In 2010 situation just slightly improved.

- The survey did not define the decrease in the number of the documents required from the applicants by the Consulates. This fact questions the quality of implementation of Article 4 of the Agreement which stipulates an exhaustive list of documents for confirmation of the purpose of visit for certain categories of citizens.

Data presented allowed EWB experts to come to the conclusion, that VFA became the first step in the right direction but it has not managed to compensate all negative outcomes of significant migration changes in Eastern Europe over the last 8 years – primarily introduction of visa regime by new EU Member States and their accession to the Schengen Zone.

The major problems revealed are following:

- Complicated procedures which takes a lot of time and efforts
- Big number of documents required
- Long distances to consulates
- Neighbouring countries in the East (CIS) are essentially easier available which determine obvious travel disproportion not in favour of the EU

In May 2009 Ukrainian MFA (in the frames of the Joint Visa Committee) submitted the proposals to adopt an amendment to VFA, for example, to

extend the list of categories of people, authorized to get better access to long-term and multiple-entry visas and clarify terms for the visas with long term of validity. In April 2011 the Commission obtained mandate to push negotiation on this matter ahead. Last round of talks on this matter were held in early November 2011 in Brussels.

**Visa dialogue** between the EU and Ukraine was launched in October 2008, according to the EU-Ukraine Paris Summit decision of September 9, 2008. Since that four rounds of negotiation took place (last one in May 2011). In October-November 2009 the EU experts conducted the first field study attending Ukraine's facilities and infrastructure dealing with border protection, migration management and document's security.

Ukraine *unilaterally abolished visa requirements for the EU citizens since May 2005 being the first of EaP countries to do such a step*. This unilateral policy remains rather unpopular within the society, which hoped to receive a reciprocal response from the EU.

In April 2010 it was announced by the Commission that the EU-Ukraine visa dialogue is supposed to proceed from exploratory to *the operational phase* under certain conditions to be fulfilled.

In June 2010 Ukraine received from the EU the questionnaire aimed to assess Ukraine's legislation and specific policies in related areas. In August the responses to that questionnaire were delivered to the EU.

On October 25, 2010 the EU Council of Foreign Ministers adopted a decision that stipulates "*With regard to Ukraine, the EU-Ukraine visa dialogue... should now enter a fully operational phase on the basis of an action plan setting out all technical conditions to be met by Ukraine before the possible establishment of a visa-free travel regime*"

On November 22, 2010, at the EU-Ukraine Summit **Action Plan on Visa Liberalisation (VLAP)** was presented to Ukraine (the first one out of 6 EaP partner countries), structured in a way which Roadmaps given in 2008 to the Western Balkan countries were designed.

Initially VLAP was issued as a limited access document, not being officially published, which was criticized by NGOs. In September 2011 the EU finally overcome the procedural obstacles and VLAP was officially published on the websites.

Upon instruction of the President of Ukraine the Cabinet of Ministers of Ukraine by its Resolution of 7 February 2011 # 77 established the **Coordinating Centre for implementation of the EU-Ukraine Action Plan on Visa Liberalisation**. The Coordinating Centre is a permanently functioning body under the Government of Ukraine, the main task of which is to consolidate efforts and coordinate activities of the central executive authorities within the framework of implementation of the EU - Ukraine Action Plan on visa liberalisation.

The structure of the Centre is made by the ministers for Foreign Affairs, Justice, Internal Affairs, Finance, Health, Education and Science, Youth and Sport, as well as the heads of the State Border Guard Service, the State Migration Service, the State Service for Personal Data Protection, the State Customs Service, the State Service for Financial Monitoring, the State Service for Special Communication and Protection of Information, the State Service for Medicine and Drugs Control, the Security Service.

On May 19, 2010 Parliamentary hearings under the auspices of the Committee for European integration were conducted on the topic “Legal component of the progress towards visa free regime with the EU”, with active participation of civil society actors.

**National (Implementation) Plan for the Action Plan on Visa Liberalisation** was developed and approved. Ministry of Justice performed a coordination role in this process. NGO representatives (EWB) were invited to contribute to this work at the initial stage. Implementation Plan, which is nearly 50-pages document identifying concrete actions, terms and responsible bodies. The Cabinet completed its work in February; then the document has been submitted to the President’s office.

Finally, on April 22, 2011 President approved the document which is currently available from the web-site<sup>1</sup>.

The first Commission VLAP Progress Report on Ukraine was issued in September 2011<sup>2</sup>, reflecting both achievements and shortcomings of the process of the 1<sup>st</sup> phase of VLAP implementation.

The second Progress Report is scheduled for December 2011. In October the EU expert groups on the Blocks 2, 3 and 4 of VLAP visited Ukraine, assessing newly adopted and drafted legislation in the respective areas. Ukrainian side hopes to receive in the second Progress Report a positive assessment in order to proceed to the 2<sup>nd</sup> (implementation) phase of VLAP in the 1<sup>st</sup> half of 2012.

Ukraine’s top officials consistently declare their will to implement APVL as soon as possible. In particular, in November 2010 President Yanukovich announced that Ukraine will do its best to fulfil major part of it in the first half of 2011. Other governmental officials tried to set informal deadline at the end of 2011 or summer 2012 (due to approaching EURO-2012 football championship to be held in Ukraine and Poland). However such a deadline-setting looks rather counterproductive, as it inevitably puts the government in a position of the one who will need to find an explanation why this (unrealistic) terms are not fulfilled instead on concentrating on practical

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<sup>1</sup> National Plan for the Action Plan on Visa Liberalisation <http://novisa.com.ua/analitic/ykazom-prezideta-ykraini-494/2011-zatverdgeno-nacionalnii-plan-z-vikonannya-planu-dii-schodo-liberalizacii-evropeiskim-souzom-vizovogo-regimy-dlya-ykraini/en>

<sup>2</sup> First progress report of the implementation by the Ukraine of the Action Plan on Visa Liberalisation [http://ec.europa.eu/home-affairs/news/intro/docs/20110920/UA%20VLAP%201st%20Progress%20Report%20SEC%202011%201076\\_F\\_EN\\_DOCUMENT\\_TRAVAIL\\_SERVICE.pdf](http://ec.europa.eu/home-affairs/news/intro/docs/20110920/UA%20VLAP%201st%20Progress%20Report%20SEC%202011%201076_F_EN_DOCUMENT_TRAVAIL_SERVICE.pdf)

actions mobilising all available resources without producing overexpectations within the society.

The data analysis provided below proves that *Ukraine started to implement practical measures in the core areas of visa liberalisation process, however not sufficient yet*. A lot should be done more in terms of domestic reforms to prove nation's legitimate ambitions to get visa-free travel with the EU.

## DOCUMENTS' SECURITY

**Legislation.** Ukrainian government and parliament made some essential efforts in drafting a *Law on the Documents identifying person and certifying the citizenship of Ukraine*. However, the law adopted finally by Verkhovna Rada on 23<sup>rd</sup> of September contained provisions reflecting particular business interests of potential ID producers, establishing too much extensive list of documents, violating the rights of certain categories of people, refugees in particular. The law was strongly criticized and finally vetoed by the President on 21<sup>st</sup> of October, 2011. As an outcome, as of early November 2011 Ukraine doesn't have legislation sufficient to start issuance of biometric IDs.

Prime Minister Mykola Azarov promised to develop a new draft law in identity documents as soon as possible, as this area remains to be least successful part of the entire process of VLAP implementation by Ukraine. Currently the new draft law is under elaboration in the government (Ministry of Justice).

On June 14, 2011 Ukrainian government adopted an Ethical Code for officials involved in ID-issuance procedures<sup>3</sup>. The document generally fits the European requirements to this kind of legal norms.

There is a lack of sufficient legislation ensuring proper control over personalization and the storage of documents. There issues are determined by the Cabinet of Minister's regulations which do not fully observe the EU standards on the integrity and security of the personalization, storage of documents and their delivery.

The Law on national register of citizens was elaborated but not adopted yet. There is a lack of consensus in the government and among the experts regarding that law.

Ukraine has not been issuing **biometric passports** yet. Regulation, determining the sample of biometric passport has not been adopted yet. The government promises to issue it within one month after the law on

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<sup>3</sup> Legislation of Ukraine <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0784-11>

Documents identifying person and certifying the citizenship of Ukraine enters into force.

Ukrainian consortium EDAPS, according to its numerous public declaration has a technical capacity to produce biometric passports of sufficient quality. Their biometric passport specimen was certified in full accordance of the ICAO standards (for 2<sup>nd</sup> generation of machine-readable biometric passports). The consortium, which recently won a tender to produce Interpol-related ID's, is vocally lobbying for introduction of biometric passports hoping to win a contract for their production.

However, there were some concerns regarding transparency and reliability of EDAPS consortium (as of unclear ownership, overpricing, interconnections with the Ministry of Interior etc) expressed in the media. EDAPS, on its turn, openly challenges those governmental bodies (first of all, MFA and Ministry of Justice) for the policies which can be interpreted as an attempt to let alternative producers to enter the market.

In March 2011 the Cabinet of Ministers delivered 120 UAH million (11 Euro mln) to purchase equipment necessary to launch biometric passports manufacturing.

### ***Passport of the citizen of Ukraine for travel abroad***

There are **three types** of passport which are in parallel use in Ukraine now.

**Polycarbonate page passports.** Since June 2007 Ukraine issues ICAO-compliant (not biometric) machine-readable passports containing sufficient quality polycarbonate page with personal data (blue colour passports). This standard of passport is of relatively high technical quality. Technical features ensuring protection from fraud are on the sufficient level. No case of the technical fraud (such as falsification of the name or photo) has been reported by the border services of Ukraine and the EU Member States. Term of validity of these passports is 10 years.

This type of passport is being manufactured exclusively at the facilities Kyiv-based consortium EDAPS established in 2004 by the 7 subjects-founders including Ministry of Interior's Centre for personalization. 6 other founders are commercial companies. The contract between the Ministry of Interior and EDAPC consortium sets rules for collection and submission of personal data, production and transfer of passports. Technical devices capable to collect personal data (digital photo, and the electronic signature) have been set in the regional (oblast) and local (rajon) premises of the Ministry of Interior special departments ("OVIRs"). Then the data collected has to be transferred to the EDAPS main manufacturing facility for passport production. Then passports have to be returned to OVIRs and delivered to the owners. There is an option also for any citizen to order and receive passport immediately at the EDAPS facilities in Kyiv regardless of their place of permanent residence.

At the same time, large number of the **two old passports types** are still in use in Ukraine.

**Passports with the attached photo.** The oldest type of passport, introduced in 1994, contains attached photo and machine-readable line (red colour passports). This type of passport is not ICAO compliant as of today. However lots of them are still in use, as the massive issuance of them was stopped in 2007 only.

Moreover, latest passports of this type were issued in July-August 2010 upon the request of Ukrainian Foreign Ministry which delivered them for the Ukrainian citizens permanently living abroad. This happens due to the absence of relevant technical capacities in Ukrainian diplomatic missions abroad to collect a data necessary to produce latest modern type of passport (blue color cover with the polycarbonate page). Overall 50 thousand of passports of this type were issued in 2010 which obviously contradicted to the government's promises to stop issuance of these passports, big number of which was reported to be misused and fraud in the past.

The problem government continuously faces is the lack of sufficient technical devices (capable to collect and transmit digital data) at the diplomatic missions abroad. As an outcome, the situation requiring the issuance of the old-type passport for the Ukrainians living abroad may persist in the immediate future.

The problem also comes with the period of validity of the passports of this type. The latest issued passports of this type will expire in August 2020 (10-years term of validity). Upon the issuance the government promised to the owners that the passport will be valid within the entire period indicated. However, according to the APVL, all non-ICAO compliant passports should be withdrawn within the limited time. The government faces challenge to elaborate a schedule of this type of passport removal and inform their owners that they will be obliged to obtain new type of passports.

**Passport with the integrated photo** (red colour passport). This sample introduced in 2000 looks like the previous one. At the same time in contains integrated digital photo instead of the attached one in the previous version.

The introduction of this type was rather slow process: up to the 2007 this type was practically available only for capital city of Kyiv residents and in some other biggest cities. In the most of the other places passports with the attached photo was the only available standard up to 2007. The issuance of passport of this (second) type was stopped in 2007 due to the introduction of the polycarbonate page passports. Last issued passports of this type are supposed to be valid until 2017 due to their 10-years term of validity.

As the existence of three types of passports is not compatible with the visa liberalisation requirements, the government needs to elaborate a schedule for phasing out of the documents which don't meet ICAO standards, first of all, those of 1994 sample with the attached photo.

## ***Breeder Documents***

**“Domestic Passport”**. Since independence (1991) Ukraine introduced a national ID on the basis of the old Soviet ID technical standard. This so called **“domestic passport”** (a dark blue colour book) is still in use, the government continues its issuance to all citizens of 16 and above years old. Large number of them has been filled manually.

“Domestic passport” is a main ID indicating the person’s citizenship, age, place of birth and residence etc. It contains attached photos, the first of them is to be corresponding the time of passport’s issuance, the second is to be added at age of 25, and the third one – at the age of 45. The document has no time limit of validity.

“Domestic passport” is a main prerequisite for other documents issuance, including the passport for travels abroad. Document of this type is an example of the soviet legacy; its replacement is an urgent need. However, until recently there were no signals from the government to prove its understanding of this challenge. In February 2010 Minister of Interior for the first time said in media that the government considers replacement of “domestic passports” by the European-type ID-cards.

In the frames of the *Law on the Documents identifying person and certifying the citizenship of Ukraine* which was adopted by Rada in September 2011, it was a prescription to stop issuance of “domestic passports” since the 1<sup>st</sup> of January, 2012 and replace it with the plastic-made ID-card with electronic chip containing biometric data. However the law, due to its shortcomings, was vetoed by the President. Therefore, no final decision on this matter has been adopted yet.

**Children travel document** in Ukraine has a 3-year period of validity. Its technical standard is low as it contains an attached photo. As an outcome, Malta decided not to recognize it, so Ukrainian children may have problems with travel to the EU, at least to some Member States. It is needed to be reformed in lines with new passport standards (ICAO-compliant).

There is an option in Ukraine to have child’s photo attached to the one of the parents’ passport. The name of such children is written manually by the official. This kind of regulation may also create a problem (for instance Portugal doesn’t accept it).

Abovementioned draft *Law on the Documents identifying person and certifying the citizenship of Ukraine* prescribed to remove Children travel document from the list of identity documents and replace it with Passport (issued for 4 years instead of 10-year term for adults). Most probably, this norm will be preserved in a new draft law being elaborated by the government.

Ukrainian **birth certificates** are designed according to the government's regulation No 1025 adopted on November 10, 2010. However generally it has no big differences from the initial Ukrainian sample introduced in 1992. This document serves as prerequisite to obtain Children travel document and, at the 16-years age, the citizenship and the national ID (domestic passport). This document is a colored sheet of paper with minor features of protection.

There are **seven** different types of **driver licenses** in Ukraine valid simultaneously, including those issued by soviet authorities before Ukraine's independence (1991). There is still certain number of driver licences in use older than 20-years. All of them have unlimited period of validity, therefore there is no obvious need for drivers to replace the old ones.

Currently Ukraine issues two different types of driver's licenses: domestic one and the international one. Current domestic license introduced by the Cabinet's regulation in January 2010 is a plastic-made card, corresponding to the European standards.

Since March 11, 2011 the Cabinet for the first time introduced the limit of validity of the domestic driver's license, but this limit (50 years) is far from European average (10 years). There was an initial proposal to limit its validity to 10 years, as in the most of European countries, however failed.

Ukraine's International driver's license is a passport-type book with the 3-years term of validity with the information in Ukrainian, English, Russian, French, German and Spanish languages. International license cannot be used domestically.

Certainly the government faces a task to set proper validity limit for driver licences and start replacement of the outdated driver licences.

**Therefore, in the area of document's security Ukraine is making very limited progress, but the overall area is still constrained by the lack of transparency, competition between different state bodies and unaccountable corporate business interests (i.e. scandals in passport and ID's issuance system).**

**The most of IDs being in use in Ukraine are those of outdated technical standards.**

**The first attempt to adopt the law regulating ID issuance in Ukraine failed in October 2011 due to insufficient quality of the law developed.**

**Governmental approach, delivered through the National Plan for the Action Plan on Visa Liberalisation, adopted on April 22, 2011, demonstrates growing understanding of the changes to be done in this field.**

## ILLEGAL MIGRATION

**In the year 2011 Ukraine achieved essential progress providing new elements of legislation for national migration policy and establishing relevant institutions.**

Before VLAP, **Legal regulations on migration** were designed on the basis of Constitution of Ukraine, “Law on citizenship” (2001), “Law on legal status of foreigners and stateless persons” (2001), “Law on refugees” (2001), “Law on immigration” (2001), “Law on national minorities”, “Law on the right to freedom of movement and freedom to choose the place of residence in Ukraine”, Rules of foreigners entry to Ukraine, their exit from Ukraine and transit through its territory.

Migration legislation drafts (including the basic concept) were during the long time debated in the government and in the Parliament. Ministry of Justice has published in October 2010 the draft of National Migration Policy Concept on its web-side for public debate.

Public discussion on the Draft Decree of the President of Ukraine "*On the National Migration Policy Concept*" brought government closer to organic institutional needs, as the draft involved the idea of "improving governance of migration processes in accordance with international standards of human rights", though it did not identify specific institutional solutions.

Finally the Decree of the President of Ukraine "*On the National Migration Policy Concept*"<sup>4</sup> was adopted on May 30, 2011, providing grounds for further legislative changes in the area of migration policy.

Adoption of the law "*On refugees and persons requiring additional protection*" on July 8, 2001, became the most important step ahead.<sup>5</sup> This law, developed in cooperation with domestic and international NGOs, ensured sufficient level of legal protection of refugees, established for the first time in Ukraine a procedure for asylum seeking.

On September 22, 2011, the new version of the law "*On the legal status of foreigners and stateless persons*" was adopted, replacing the previous one which didn't fit current European requirements on the legal protection of the foreign citizens and stateless persons in Ukraine.

The changes to the Administrative Justice Code (*Law of Ukraine on amendments to the Code of Administrative Justice of Ukraine on the peculiarities of the proceedings in cases of expulsion of foreigners and stateless persons*) , establishing sufficient terms of procedure for expelling

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<sup>4</sup> Decree of the President of Ukraine "On Approval of the National Migration Policy Concept". - <http://www.dmsu.gov.ua/uk/pro-gmsu/pravova-informaciya/zagalni-polozhenna/ukaz-prezidenta-ukrani-pro-koncepciju-derzhavnoji-migracijnoji-politiki-.html>

<sup>5</sup> Legislation of Ukraine <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3671-17>

illegally staying foreigners and stateless persons from Ukraine were adopted on September 22.

### **Institutional setup**

During the year 2011 Ukraine's institutional arrangement of **migration policy** has been substantially changed in order to meet European requirements and standards.

At the end of 2010 the overall structure of institutions was disintegrated as three institutions were dealing directly with migration control: The State Border Service; State Department of Citizenship, Immigration and Registration of Physical Persons within the Ministry of Interior and State Committee on Nationalities and Religions.

Legal migration management in Ukraine was carried out by: The Ministry of Labor and Social Policy, (economic migration issue and social aspects of migration); The State Committee on Nationalities and Religions; The Ministry of the Internal Affairs; The Ministry of Health; The Ministry of Foreign Affairs (consular functions); The Ministry of Justice (legislative initiatives).

Attempts to ensure migration policy via proper institutional framework in Ukraine have a long history. Previous attempt to set State Migration Service (SMS) dated in June 2009, when SMS was established by the Regulation of the Cabinet of Ministers "State Migration Service of Ukraine". However, on February 10, 2010 the Constitutional Court ruled that certain provisions of the Regulation are unconstitutional.<sup>6</sup> As a result of such actions SMS establishment was actually blocked, its existence was ensured neither by sufficient professional staff, nor by financial support.

Current migration policy institutional arrangement has been launched on December 9, 2010, when the Decree of President #1085/2010 was issued named "*On Optimisation of Central Executive Bodies System*". According to this decree State Migration Service was re-established, while Ministry of Interior coordinates its activity<sup>7</sup>.

On April 6, 2011, president signed a Degree "Issues of the State Migration Service". The document determines the status, functions and spheres of SMS activity as a specific governmental body.

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<sup>6</sup> # 6-рп/2010, Feb.17,2010, Decision of the Constitutional Court of Ukraine in the case under constitutional appeal of the President of Ukraine on the compliance of the Constitution of Ukraine (constitutionality) with some provisions of the resolutions of the Cabinet of Ministers of Ukraine - "State Migration Service of Ukraine", "Some Aspects of the State Migration Service Activity", "Making Amendments or Declaring Invalid some of the Acts of the Cabinet of Ministers of Ukraine", Resolution of the Cabinet of Ministers of Ukraine "Physical Persons Registration System Transition from Paper to Electronic Hardware".

<sup>7</sup> Decree of President #1085/2010 "On Optimisation of Central Executive Bodies System"  
<http://www.president.gov.ua/documents/12584.html>

As of the November 2011, the institutional setup of SMS has been complete, its capacity building is underway, the overall trend looks to be rather positive.

The newly established institutional arrangement is supposed to solve problems of:

1. Control over illegal immigration and ensuring of the right for asylum;
2. Control over illegal migration as a coordinated inter-institutional control over entry, residence of foreigners and stateless persons in Ukraine and their timely expulsion;
3. Establishing appropriate information exchange mechanism between the State Migration Service, Ministry of Foreign Affairs, the Ministry of Internal Affairs and the Administration of State Border Service on persons that have obtained visas to enter Ukraine, arrived and registered at the checkpoints at the state border of Ukraine in accordance with established procedures, as well as on persons that are prohibited from entering Ukraine.

Ukraine is not a part of Mobility Partnership project with the EU.

**State Border Service** of Ukraine (SBS) is the border guard of Ukraine. It is an independent agency, the head of which is subordinated to the President of Ukraine. The State Border Guard Service of Ukraine is a national successor of the Soviet Union Border Troops. It was first organized in 1991 as the "Ukrainian Border Troops", which was later changed for the Ukraine's State Committee for State Border Guarding. The latter was renamed to the current name in March, 2003.

Within the last decade some steps have been done in order to transform SBS into the European-type civil border protection unit.

However SBS remains underreformed. Some substantial features of the former military structure have been preserved. Internal relations and the governance system within the SBS is still regulated by the Military Statutes, however personnel since 2006 has been recruited on the professional basis only.

Ultimate demilitarization and other relevant reforms have been prescribed by the adopted documents aimed to introduce Integrated Border Management (IBM) into Ukrainian practice. The overall process was launched by the Presidential Decree dated June 19th, 2006 on the Concept of Developing State Border Service of Ukraine for the period up to 2015. It stipulates the aim of «creating modern integrated system of state border protection».

The laws of Ukraine «On State Border Service of Ukraine» and «On Changes to Specific Legal Acts of Ukraine due to the Approval of the Law of Ukraine «On State Border System of Ukraine» approved on April 3rd, 2003 comprised an important step ahead, but not sufficient one.

Therefore, the legislature on border issues requires further development according to the IBM concept and Schengen Border Code.

On October 27, 2010 the Cabinet of Ministers adopted a Strategy for Integrated Border Management according to the EU standards for the period 2011-2015.

On January 5, 2011, Action Plan to implement a Strategy for Integrated Border Management was adopted by the Cabinet.

**Border demarcation.** On May 18, Ukraine and Russia signed an Agreement on demarcation of the land border. Issue of the sea border in the Kerch Strait remains unresolved. Ukraine and Moldova are getting closer to finalization of demarcation of the state border (including Transnistrian segment). Belarus parliament ratified the Agreement on the State Border with Ukraine in April 2010 (after 13 years of blockage by President Lukashenko) which opened the path to its demarcation.

Ukraine and Russia started demarcation of the land border in autumn 2011, this process is supposed to take several years due to the length of the border (almost 2000 km)

After the 2009 UN Hague court solution on the sea delimitation and exclusive economic zones division with Romania in the Black Sea, Ukraine has no border disputes or irregularities with any EU Member States.

**Readmission agreement.** Agreement on Readmission between EU and Ukraine entered into force with regard Ukrainian nationals since January 1, 2008 and with regards third countries' nationals since January 1, 2010. From that time the EU reported on a "satisfactory level" of the Readmission agreement implementation by Ukraine, in particular, it was indicated in the introductory part of the APVL. The EU-Ukraine Joint Readmission Committee has met four times, most recently in May 2011.

**Making better use of Comprehensive Institution Building.** Within the Eastern Partnership, EU offers Ukraine, as well as other partners, to take advantage of Comprehensive Institution Building Programme (CIB) to strengthen the reforms which may be helpful in strengthening migration management capacity.

Application of the CIB in migration policy area can be deployed in two phases:

The first one is *the approval and implementation of new legislative framework for migration policy*. At this point the CIB should be applied within the existent framework in order to train personnel, learn the best practices of migration management, migration control and for the confidence building between Ukraine and the EU, implementation of new legislation and appropriate enforcement, fighting against corruption in migration policy (particularly, regarding refugee status, issuance of identification documents).

The biggest challenge of this stage is primarily an institutional incompatibility, lack of clear equivalents between the Ukrainian system of migration policy and relevant bodies of the EU Member States.

The second phase *is the introduction of new migration policy standards through the institutions reformed*. At this stage the CIB should aim at integration of Ukraine's migration policy in the relevant EU policies by establishment of a multi-level system of cooperation of relevant bodies, their operational interoperability, establishing trust and horizontal communication, information exchange, regular joint efforts to fight against illegal migration, trafficking and other criminal activities, accompanying migration phenomena.

Taking into account that the CIB is a part of the Eastern Partnership policy, it will be important at this stage to ensure productive cooperation not only at the bilateral (the EU-Ukraine), but also at the multilateral (the EU - Ukraine - other partner countries) level.

## **Migration Potential of Ukraine**

Action Plan on Visa Liberalisation stipulates that the transfer from the first to the second phase of APVL will be accompanied with the *comprehensive assessment of migration potential of Ukraine and relevant risks* which could rise due to the forthcoming visa liberalisation. Data provided below may serve a background research indicating basic determinations and readiness of the target audience for migration abroad.

According to the monitoring results of social changes in Ukrainian society annually conducted by the Sociology Institute of Academy of Sciences of Ukraine since 1992, in 2000s almost every fifth Ukrainian was a potential migrant and was eager to leave its place of residence (19,3% in 2000, 21,1% in 2004, 20,1% in 2006 and 19,6% in 2010). At the same time in 2010 11,2% of those wanting to leave chose another locality in Ukraine and only 7,9% of Ukrainians intended to leave the territory of former USSR. In 2000 the number of those wishing to leave their place of residence was larger: 14,4% expressed their wish to resettle within Ukraine and 9,6% - outside the territory of former USSR. The number of potential migrants indecisive about their place of destination was the largest: in 2000 it equaled to 17,0%, and in 2010 – to 18,3%. The main reasons that could provoke the intention of Ukrainians to leave their places of residence included harmful ecology conditions and the desire to find a new job (in 2000 15,4% and 18,0% respectively and in 2010 16,7% and 19,9%). Other reasons are mentioned less often. As a rule since the beginning of 2000 Ukrainians preferred to look for new employment. Almost half of the residents see the environmental conditions in their place of residence as harmful or extremely harmful (59,2% in 2002 , 46,4% in 2006 , 41,1% in 2010).

Migration potential of Ukrainian youth deserves special attention. According to the survey conducted by Democratic Initiatives Foundation and

“Ukrainian Sociology Service” company among young people in Ukraine in December 2009 and January 2010 only 13,8% of young people aged 18-34 intended to leave their country forever. Much more often Ukrainian youth was determined to stay temporary abroad: 29,9% of young Ukrainians intended to leave for other countries for a certain period of time. However, more than half of Ukrainian young people did not express the inclination to emigration (51,5%). It should be mentioned that similar survey concerning potential migration intention of the youth held in 2003 showed that the share choosing the home land was basically the same – 50,9%.

*How long do potential migrants intend to stay abroad?* Young Ukrainians planned an average trip to foreign countries for 3-4 years. As a rule, young people do not plan to stay for more than 5 years outside their native country. The shares of those intending to stay in foreign countries for different period are about the same: for one year – 22,1%, 2 years – 23,8%, 3 years – 22,1% and finally 5 years – 21,3%. In 2003 the period for eventual stay abroad was much shorter for potential migrants. Ukrainians defined the longest period for staying abroad as lasting 2 years (9,3%).

Only 6,0% of young Ukrainians intended to stay abroad for 5 years. Thus, over the last 7 years the duration of staying abroad for Ukrainian youth has significantly increased in their migration intentions.

*Why do young people intend to go abroad?* Young Ukrainians mention labor migration as the main reason for traveling abroad (65,1%). 2,2 times less often Ukrainian youth intends to realize its touristic interests (30,1%) and only 5,5% of them plan to study outside their country. In comparison with 2003 the number of young Ukrainians wishing to work abroad has increased by 2,9 (from 22,4% to 65,1%).

Potential migrants make the choice of the country for realizing different interests depending on their preferences, availability of information and development of migration networks. Thus for young Ukrainians Russia (19,0%), Great Britain (12,2%), Germany (11,7%), the USA (11,2%), Italy (10,2%) are priority countries. In 2003 Germany (14,1%) and the USA (12,3%) were the most desirable countries for young Ukrainians. Only 5,8% of potential migrants mentioned Russia at that time. Therefore the geography of destination countries has considerably changed.

*What encourages young Ukrainian people to constantly search for better life outside their own country?* Most often young people name three reasons influencing their migration choice: economic, financial and socio-cultural. Very seldom they point out to political or national grounds.

Primarily financial reasons influence migration directions of Ukrainian youth: they believe that they will be able to earn more abroad. 51,5% of young people adhere to such position. 48,5% of Ukrainian youth note the impact of economic reasons (lack of financing in the industry they are working in, lack of perspective for Ukrainian economy in general). Less often they mention social and cultural reasons (better living conditions, higher cultural level,

etc.). 39,7% of young citizens mention such factors influencing their migration directions and plans. Another 23,5% of this age group mention the opportunities for professional/career growth and another 17,6% of young Ukrainians point to the family reasons (their relatives live abroad) in their migration choice. It should be mentioned that in 2003 young people in Ukraine were almost indifferent answering the questions about the factors influencing the formation of their migration plans: financial reasons were noted by only 8,3% of the surveyed; 6,4% mentioned economic reasons; 4,4% - social and cultural reasons; 2,3% - motivated their desire to leave the country by the lack of perspectives for career or professional growth.

**The analysis provided above indicates that Ukraine achieved evident progress in the area of migration policy legislation. Currently the institutional capacity building (primarily of the State Migration Service) is a key task of the government. The capacity to implement newly adopted legislation on migration management will be the main challenge for the future.**

**Coordination of migration policy should be ensured by the high governmental level in order to overcome administrative resistance, which will arise because of the inevitable redistribution of power and resources.**

## **PUBLIC ORDER AND SECURITY**

During 2011 Ukraine achieved some progress within this block, but still faces a variety of problems indicated in numerous studies on corruption, organized crime, human trafficking, smuggling and drug transportation etc. Obvious lack of confidence between law enforcement bodies of Ukraine and those of the EU Member States is an important additional element contributing negatively to overall picture. During recent period Ukraine has done some steps ahead in terms of adopting legislation, signing international agreements and developing other regulations, all this steps need to be properly implemented.

Ministry of Interior is still underreformed, being an example of Soviet legacy of law enforcement institution. It is a centralized agency headed by a Minister of Interior, who is not only a formal member of Ukraine's Cabinet of Ministers, but also the actual commander of the country's police.

Among the technical criteria, here is obvious lack of integral database available guaranteeing direct access in the entire territory of Ukraine for all relevant bodies dealing with public security and adequate coordination mechanism between them.

Ministry of Interior has 30 departments and three agencies that are subordinated to it. Minister has up to eight deputies (other than his first deputy) that head the main departments of the ministry.

In March 2010 new Minister Anatoly Mohylyov decided to abandon the Ministry's Department for human rights protection. This step was strongly criticized by the human rights activists, however Minister ignored them.

The phenomenon of *Internal Troops* which still exists in Ukraine proves deeply rooted soviet legacy within the Ministry of Interior. This is a paramilitary unit, designed in accordance with military rules, responsible for the domestic security. This kind of "troops" exists only in totalitarian and unreformed post-totalitarian states.

According to Amnesty International torture and ill-treatment by the police is widespread in Ukraine. Several police officers have been arrested for allegedly torturing detainees. According to head of the trade union of attested employees of law enforcement agencies Anatolii Onyschuk, sociologic research shows that 3.9% of the Ukrainian policemen trust the state, while 67.7% distrusted the state.

All law enforcement and security bodies are fully dependent on President, who (due to doubtful constitutional changes of October 2010) can fire Ministers, Prosecutor General, Security Service chief without even consultations with the Parliament (appointments need parliamentary approval, except Security Service chief).

According to Kharkiv Human Rights Group research, **racism** and xenophobic crimes were for a long time not typical for Ukrainian society. One of the first prominent cases involving xenophobia in Ukraine dates from July 2001 when a Rwandan refugee was beaten to death near his home in Vinnytsa, this eliciting an official statement of concern from the UN High Commissioner for Refugees (UNHCR). This case coincided with a general increase in crimes of racial or religious enmity which became a noticeable problem in post-industrial Europe due to unresolved issues involving migration and ethnic-cultural policy.

The level of **isolationism and xenophobia** In Ukraine is growing, accompanied by an increase in the number of publications with xenophobic overtones. Sociological research also shows a reduction since independence of more than 3.5 times in the percentage of people who are open-minded and tolerant of ethnic diversity. Some studies suggest that in 2003 virtually half the population had isolationist views and the number of people with xenophobic attitudes had more than quadrupled.

At the same time the US State Department assessed the level of xenophobia in Ukraine as no higher than in other post-totalitarian countries. Although cases of xenophobia with respect to Russians, Jews, Crimean Tatars, Roma and immigrants from the Caucuses, Asia and Africa were reasonably common, US observers considered the situation in Ukraine to be less dangerous than in Russia, Romania, Poland, Hungary or Slovakia. This was

possibly due to the fact that the majority of cases did not involve violation, being confined to verbal insults, anti-Semitic graffiti and fairly rarely, acts of vandalism at cemeteries<sup>8</sup>.

According to the Amnesty International 2011 Annual report Ukraine continued to **violate the right to asylum** by failing to provide adequate and fair asylum procedures and by refoulement, or forcibly returning asylum seekers and refugees to countries where they faced the risk of serious human rights violations. During the year Amnesty International raised four cases of refoulement with the Ukrainian government.

On 25 August, 2010, changes to a Cabinet of Ministers Regulation setting new entry conditions for foreigners and stateless persons to Ukraine's territory came into force. This required nationals of listed (mostly the poorest ones) countries and stateless people to carry at least 12,620 Ukrainian hryvna (about €1,000). If applied to asylum-seekers this regulation may violate their rights.

There were continued reports of **torture and other ill-treatment** by law enforcement officials and of the authorities' failure to carry out effective and independent investigations into such allegations. Between January and October 2011, 13 human rights NGOs belonging to the Ukrainian Helsinki Human Rights Union received 165 complaints about torture and other ill-treatment, of which 100 related to police actions. Ukraine ratified the Optional Protocol to the UN Convention against Torture in 2006, but had still not set up a national mechanism for monitoring places of detention in accordance with its obligations under the Protocol.

**Corruption** remains pervasive in Ukrainian society. Transparency International's (TI) 2009 Corruption Perception Index ranks Ukraine 146 out of 180 countries, with 180 being the most corrupt. TI's 2009 Global Corruption Barometer named public officials and civil servants as the most affected by corruption, and that "fewer than 1 in 10 respondents considered government anticorruption efforts to be effective." In its latest Compliance Report on Ukraine, adopted in May 2009, the Group of States Against Corruption (GRECO) concluded that Ukraine did not sufficiently implement the recommendations made in previous evaluation reports<sup>9</sup>.

In June, 2009, Parliament passed a package of laws expanding the list of entities involved in corrupt activities, establishing anticorruption measures in the civil service, introducing checks on employment procedures for the civil service, banning the acceptance of gifts while carrying out official duties, requiring officials and their close relatives to publicly declare their assets, and

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<sup>8</sup> Oleh Martynenko. Racism and xenophobia in Ukraine: new challenges in human rights protection <http://www.khpg.org/index.php?id=1212543971>

<sup>9</sup> Ukraine in *Nations in Transit 2010*, Freedom House, New York, by Oleksandr Sushko and Olena Prystayko, p.567-568.

introducing anticorruption expertise. However, the implementation of the laws was postponed first time from January 1 to April 1, 2010, then second time until January 2011. Finally, the entire 2009 anti-corruption package was abandoned by the Parliament in January 2011, due to the submission of the new anti-corruption law by the President of Ukraine.

**Legislative progress.** During 2011 certain progress was achieved in providing legal basis for anti-corruption, counter-crime and counter-trafficking policy.

The new anti-corruption law (which provides softer anti-corruption approach than the previous ones) was adopted in the second reading on April 7, 2011, and with final changes, on May 12, and then entered into force in July.

National Anti-Corruption Strategy for the period 2011-2015 was adopted by the Decree of President on October 21, 2011<sup>10</sup>.

On September 20, 2011 the *Law on Counter Trafficking in Human Beings* was adopted, entered into force in October. (see below).

The government reports on expected finalization of the National Target Programme on Counter Trafficking in Human Beings for the period up to 2015 which should be finally approved by the law in January 2012.

**Policy limitations.** New leadership of Ukraine launched a vocal campaign against corruption. Immediately after his inauguration President Victor Yanukovich with the Presidential Decree of February 26, 2010, set up the National Anticorruption Committee. Numerous cases against public persons accused in corruption appeared in the second half of 2010- in 2011. However the most of top-level persons under charges were former officials, representing the opposition camp or former leaders' entourage.

Arrest of former interior minister Yuriy Lutsenko and former Prime Minister Yulia Tymoshenko are rather examples of a selective judiciary. Investigation of the former top officials now in opposition on corruption charges contrasted with the lack of investigations of the current power holders. Therefore, this criminal prosecution is considered to be politically motivated, which doesn't lead to eliminate the corruption but to settle accounts with the former rivals.

Existence of conflicts of interests bordering on political corruption in the top echelons of power, along with anticorruption rhetoric of the authorities, brings to nought attempts to defeat corruption, and fed disbelief of society in the authorities' ability and willingness to do that. Another delay of adoption of the anticorruption package only added to that disbelief. The example of top state officials corrupts lower officials all over the country, creating a vicious system and involving the widest strata of the population in corrupt acts.

There is an existent obligation of Ukraine (due to CoE Anti-corruption Convention #0011 (Article 6) ratification) to establish an independent

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<sup>10</sup> Decree of the President of Ukraine #1001/2011, 21.10.2011 <http://www.president.gov.ua/documents/14092.html>

administrative body responsible for anti-corruption policy. Such body such was not set yet. As a temporary measure, Presidential Degree “On the priority measures to fulfil the provision of the Law on countering corruption” was adopted on October 5, 2011. This regulation determines the Ministry of Justice as a body temporarily responsible for coordination of anti-corruption policy.

The sector of **public procurements** remains rather non-transparent and corrupt. Yet in the fall of 2008, the Constitutional Court of Ukraine noted that MPs were to pass the relevant law. In early February, 2010, the Constitutional Court in a letter reminded MPs that they continued to ignore it. In response, Speaker Volodymyr Lytvyn accused the Court of interference in the legislators’ work.

On February 11, 2010, the Verkhovna Rada adopted the law on state procurements by votes of the ruling coalition and part of the opposition. According to expert assessments, the bill contained a number of corrupt norms, the main of them dealing with review of tender complaints. Complaints were supposed to be dealt with by a commission made up of 14 persons: half representing agencies, half – independent experts to be approved by the Verkhovna Rada committees. Involvement of national MPs was especially controversial, since their role in regulation of state procurements runs contrary to the Constitution, as a breach of the principle of division of powers. In mid-March, President Yanukovich vetoed the bill down. The law was then adopted on 1 June 2010. The new law was recognised to be substantially better, in line with the EU and World Bank recommendations.

Then the initial legal regulation was eroded by inappropriate changes and amendments. In particular, on 11 January, 2011 the Verkhovna Rada added energy products as well as water supply and drainage services to the list of goods and services the government can purchase bypassing the tendering process.

As a result, the European Union has officially informed Ukraine about its decision to suspend the disbursement of aid for public authorities in Ukraine after the Ukrainian parliament adopted changes to procedures governing the state’s purchase of goods and services. At stake is a total of \$159 million in grant money to improve Ukraine’s transportation infrastructure and introduce energy-saving technologies, among other items.

According to the critical media comments, “Ukraine’s failure to improve the notoriously opaque state procurement system, along with the EU’s retaliation by freezing the assistance, represents a financial and political blow to President Viktor Yanukovich. The development also raises questions about Yanukovich’s commitment to adopting democratic reforms that are needed to

more closely integrate Ukraine with the EU, a goal he repeatedly says remains a priority”<sup>11</sup>.

The newest changes to public procurement law were introduced in May 2011, removed some shortcomings and improved some elements mentioned above, but were also criticised for narrowing transparency.

On September 21, 2010 Verkhovna Rada ratified The Council of Europe **Convention on Action against Trafficking in Human Beings** which was adopted by the Council of Europe on 16 May 2005.

On September 20, 2011 the *Law on Counter Trafficking in Human Beings* was adopted, entered into force in October. This law was welcomed by IOM, La Strada and other NGOs dealing with counter-trafficking. The law prescribes defining governmental focal points responsible for coordination of policy on countering trafficking in human beings.

In December 2009 Ministry of Interior signed an “Agreement on Strategic Cooperation” with Europol (Framework agreement). Operational agreement is not in place yet, its signing was previously restrained by the absence of data protection legislation in Ukraine.

Negotiations on the operational agreements with Europol as well as with Eurojust are supposed to be completed up to the end of 2011. In autumn 2011 the EU experts assessed the functioning of newly established data protection system in Ukraine, which is the prerequisite for signing operational agreement with Europol and Eurojust.

On August 31, 2010 Ministry of Interior of Ukraine signed a cooperation agreement with the Interior Ministry of Germany.

Ukraine ratified a UN Convention against Trans-National Organized Crime in 2004, together with additional protocols a) against trade in human beings, b) against illegal transportation of migrants.

The Concept of national policy against organised crime was adopted by the decree of President on October 22, 2011.

On September 13, 2010 Cabinet of Ministers adopted a Concept of anti-drag policy and fighting against illegal circulation of drugs and psychotropic substances for 2011-2015.

Substantive progress was achieved in 2011 by Ukraine in its relations with FATF on the counter-money laundering. On October 27 2011 FATF plenary held in Paris decided to remove Ukraine from the “black list” of the states which have strategic shortcomings within the counter-laundering system and terrorism financing. That happened due to the legislative changes adopted and entered into force in May 2011 (in particular, on the of insider’s trade)

**Data protection** system has been mostly formed during 2011. Adoption on the 6<sup>th</sup> of July, 2010 of the Law on Personal Data Protection was the most

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<sup>11</sup> Kyiv Post, February 25, 2011. <http://www.kyivpost.com/news/nation/detail/98287/>

important prerequisite for this. The same day CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and Additional protocol to that Convention regarding supervisory authorities and transborder data flows (ETS No. 181) were ratified by the Verkhovna Rada.

According to the Law on Personal Data Protection, entered into force since January 1, 2010, a data protection body was established. President's Decree, adopted on December 9, 2010, set it as *State Service for Data Protection*. Minister of Justice was authorized to have oversight over it.

Data protection law adopted hadn't passed through sufficient international screening or assessment (as Venice Commission). Human rights activists expressed some concerns regarding possible misuse of that law by possible limitation of collection and publishing of some personal information which would be of high importance for the society (such as corruption cases, ownership etc). Chapter of data protection body does not stipulate clearly its independence.

In June 2011 the new law was adopted introducing changes to existing legislation stipulating punishments for violation of data protection law.

Institutional setup of State Service for Data Protection is mostly complete. Up to the end of October 2011 more than 900 databases of personal data were registered along with the procedures prescribed by the law. In November a group of experts from Europol and Eurojust visited Ukraine in order to assess Ukrainian data protection body conformity level with European standards in the light of future signing of operational agreements with Europol and Eurojust.

## EXTERNAL RELATIONS AND FUNDAMENTAL RIGHTS

**Human and minority rights in Ukraine are basically protected, however some substantial shortcomings are consistently indicated**, including rights of detained and imprisoned people.

The governments is rather open for dialogue with Council of Europe, OSCE and International organizations dealing with human rights and liberties (such as Reporters without Borders) however their recommendations are often ignored.

Presidential elections of January-February 2010 were recognized as free and fair. However local elections of 31 October 2011 indicated serious shortcomings including use of administrative resource, non-balanced formation of electoral commissions at all levels, pressure provided on opposition candidates, manipulation with ballots etc. If not changed, erosion

of democratic process may seriously undermine international credibility of the government and pose in question all actual ambitions, including visa liberalisation process.

Ukraine's media sector was considered mostly free, but during recent months media monitors indicated negative trends due to misbalanced coverage of government's activity (in favour of government) by the most of nation-wide TV channels. Pressure (through courts) was indicated aimed to withdraw licenses of those TV channels providing critical information on governmental policies (TVI, 5<sup>th</sup> Channel).

Government has adopted a Concept of Public TV, however media experts delivered concerns that under existing provisions Public TV, if introduced, may be used as another voice of ruling authorities.

In January 2011, the sufficient quality Law on access to public information was finally adopted by the Parliament and signed by the President. This law stipulates substantial progress in terms of transparency of decision-making at all administrative levels, setting relevant procedures and obligations on behalf of the central government and local administration to submit information requested by media, NGOs and citizens.

Constitution of Ukraine (Article 24) provides a **non-discriminatory principle**, determining that "there cannot be any privileges by the matter of race, colour of skin, political, religious and other convictions, ethnic and social background, property, place of residence, also by language and other features".

At the same time Ukraine doesn't have an operational **comprehensive anti-discriminatory law**. Numerous provisions, including those in the Constitution don't ensure non-discriminatory practices due to the lack of mechanisms.

In the beginning of 2011 a group of NGOs supported by the International Renaissance Foundation (Open Society Network) launched a project to assist the government and the parliament to elaborate sufficient anti-discriminatory legislation on the basis of European norms.

In the second half of 2011 certain progress was indicated as the Ministry of Justice elaborated the *National Strategy for Anti-Discrimination*. The draft of Strategy was put on the website and widely discussed. In November the draft was assessed by the EU experts who provided their recommendations for Strategy's finalization.

## **CONCLUSIONS AND RECOMMENDATIONS**

Ukraine is at the beginning of APVL implementation. Upon the receiving of the APVL government introduced the Task Force under the leadership of the deputy prime minister and elaborated an Implementation Plan for the

Action Plan on Visa Liberalisation (which is not enforced by the Decree of President yet (as of March 30, 2011).

The Implementation Plan by its content and measures mostly fulfils the tasks set by APVL. If implemented properly, it will cover the absolute majority of the criteria reached by the Western Balkans countries to achieve full visa liberalisation with the EU.

The major risks of implementation are the following: **lack of budget funds** (not all the measures required are covered by the state budget-2011 expenses planned); and the **lack of political will** (especially on the fight against corruption, and law enforcement reforms)

Some provisions of the APVL should be further clarified by the EU, such as the requirement to “specify conditions and circumstances for the acquisition of Ukrainian citizenship” (Block 4).

Our **prognosis** foresees that up to the first half of 2012 Ukraine will be able to complete the 1<sup>st</sup> phase of APVL implementation (*legislation and policy planning*) and then proceed to the 2<sup>nd</sup> phase (*implementation*) which will take longer time than the 1<sup>st</sup> phase.

### **Particular Recommendations for Ukraine requiring further advocacy:**

- Finalize elaboration and adoption of the Law on identity documents taking into account the shortcomings of the previous law vetoed by the President in October 2011.
- Launch issuance of biometric passports and domestic ID-cards on the basis of transparent personalisation procedures, and appropriate public procurement tender.
- Improve asylum policy on the basis of newly adopted legislation, adopt necessary by-laws to implement the Law “On refugees and persons requiring special protection”;
- Observe the rights of asylum seekers according to European regulations and recommendations of UN Refugee Agency. Establishing and maintaining the Center for temporary residence of asylum seekers (which is not a detention center for illegal immigrants).
- Implement the mechanism of appeal hearings after the approval of the decision on providing asylum in the institution of original jurisdiction. Organizing trainings for the staff who works in the sphere of asylums and refugees.
- Undertake efforts to ensure proper institutional capacity of the State Migration Service with the relevant competence on

assessment of migration flows and elaboration of the integral migration policy;

- Continue implementing a Strategy for Integrated Border Management, stressing the need for workable horizontal links of the agencies involved in border protection;
- Continue technological development of a integrated database of State Border Service (SBS), providing online communication between central SBS office and all border crossing points as well as with the Ministry of Interior relevant departments and newly established State Migration Service
- Train SBS staff in accordance with European operational standards, in particular Schengen Border Guards Handbook.
- Enhance cooperation in terms of FRONTEX, as well as bilateral cooperation with border services of neighboring countries, performing activities with relevant services of neighboring EU Member States in order to increase mutual trust.
- Pursue finalizing border demarcation with all the neighbours;
- Consider conclusion of Mobility Partnership agreement with the EU.
- Implement fully the Council of Europe Convention on Action against Trafficking in Human Beings, including establishing the agency or coordinator dealing with counter-trafficking.
- Build a confidence and productive cooperation in the counter-trafficking area between the government and relevant NGOs (La-Strada, etc);
- Finalise relevant talks and sign operational agreements with Eurojust and Europol;
- Promote closer cooperation and confidence building with the EU MS law enforcement bodies and Europol;
- Adopt sufficient anti-corruption legislation in accordance with GRECO recommendations
- Introduce of changes into Criminal and Criminal and Procedural Code, Code on Administrative Offences. Establishing responsibility for breaking EU laws, in particular migration legislation.
- Adopt state programs and plans supported by appropriate funding, that will attest sincere efforts of the state to fight organized crime.
- Change the methodology of evaluation of successful anti-corruption activities – not according to the number of cases but according to the share of cases which were presented in court and court decisions which entered into force. Steady positive dynamics according to these parameters should be reached.

- Continue the process of signing and ratification of European and international Conventions relating to mutual legal assistance and extradition.
- Strengthen requirements for persons acquiring Ukrainian citizenship according to mainstream European regulations. For example, regulating (significant limitation) the practice of providing Ukrainian citizenship to persons who are permanently residing outside Ukraine. It primarily concerns the residents of Transnistrian region in the Republic of Moldova.