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Ukraine Towards Visa-free Regime (Nº 3)

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One of the main reasons for the European Union to maintain a visa requirement for citizens of third countries is to control the inflow of foreigners into the EU. Before visa liberalisation – i.e. the lifting of the visa requirement – is possible, a third country, so in this case Ukraine, has to modernise its migration management system in two aspects: the first is aimed at improving the situation of immigrants from other third countries on its territory so that it does not become for them a transfer country to the EU, by introducing asylum procedures and fighting trafficking in human beings. The second aims at improving the control the irregular migration of its citizens to the EU, by introducing biometric passports, modern border management etc¹.

Since 2010 Ukraine has implemented reforms on a systemic basis to fulfil the EU's criteria for visa liberalisation. It is assessed regularly by the European Commission and significant progress has been observed. On the other hand, since Ukraine was invaded by Russia in early 2014, a new potential migration challenge has emerged due to the growing number of internally displaced persons (IDPs), mainly from Donbas but also from Crimea, as well as the worsening economic situation.

A reform process initiated in 2010 has been implemented on the basis of a detailed list of reforms (included in the Visa Liberalisation Action Plan, VLAP), offered by the EU to a third country as a part of the visa liberalisation dialogue. A visa-free regime with the Republic of Moldova, introduced on 28th April 2014 and the first based on the new procedures, has been working smoothly ever since and has not provoked a significant immigration of Moldovan citizens to the EU. Ukraine has been undergoing a similar programme of reforms to Moldova in the area of migration management since receiving the VLAP in November 2010.

The first type of activities were generally performed, starting in 2011, once Ukraine had created a legal framework for immigration policy and fighting organised crime in this area². Although there are some shortcomings in both the adopted legislation and its implementation, it can be stated that in general the EU's criteria have been met by Ukraine³. Kiev

¹ At the same time, the EU has tools to protect itself from illegal migrants – visa-free regime is only for those who have an ICAO-compliant biometric passport (which meets the standards of the International Civil Aviation Organization) and the Visa Information System (VIS), operating at every Border Crossing Point (BCP) on the external border, provides every border guard officer with basically the same information, as the consul at the Member State's consulate.

² It includes: the Strategy on Migration and Asylum, new law “On the Legal Status of Foreigners and Stateless Persons”, the law “On Refugees and Persons in Need of Subsidiary and Temporary Protection” and the law “On combating trafficking in human beings”.

³ <http://monitoring.visa-free-europe.eu/ukraine>



also has a regularly updated migration profile, a document describing in detail the migration flows in and out of the country⁴.

Regarding the second type of reforms, biometric passports have been issued since January 2015 which fulfil the *sine qua non* condition of visa liberalisation. The document is considered ICAO-compliant and is recognised by the EU Member States. As for border management, the country adopted a modern law entitled “On Border Control” in 2010, which was later amended. It also successfully runs a Local Border Traffic procedure with Poland, Slovakia and Hungary.

Nevertheless, the most important aspect from the EU’s point of view is the Readmission Agreement with the EU, already in force since 2008, which allows the authorities of EU Member States to directly readmit third country nationals who have entered the Union illegally from Ukraine, passing the responsibility for taking care of them back to Kiev. Ukraine has signed implementing protocols of the Agreement with several EU Member States and is negotiating with further Member States. Apart from that, it has bilateral Readmission Agreements with 17 Member States⁵, which were signed prior to the EU-Ukraine Readmission Agreement.

The main challenge regarding visa liberalisation comes from Russian-backed separatism. Following the outbreak of war in eastern Ukraine, Kiev introduced a border-type regime on the ceasefire line with the separatist region of Donbas, providing migration control. However, the growing number of IDPs is a great challenge for Ukraine and therefore, in order to avoid a massive inflow of asylum seekers, the Ukrainian authorities require assistance from the EU, both financial and organisational. Nevertheless, recent Frontex data on cross-border movement⁶, showing the impact of the ongoing war in Donbas on immigration from Ukraine, seems concerning. Ukrainians are refused entry to the EU approximately 4,000 times per quarter out of around 30,000 third country nationals (15%). Comparing the fourth quarter of 2014 to the third quarter, however, we can observe a 12% decrease in the number of refusals of entry issued to Ukrainians. A main reason for refusal is the lack of, or insufficient, justification for the purpose of visit to the EU (the obligation to prove the purpose of visit still remains in force even after the waiving of the visa requirement). The number of detected illegal stays of Ukrainian citizens reached almost 17,000 in 2014 out of a total of nearly 442,000 citizens from 3rd countries, only making up about 4%. However, if we compare Q4 of 2014 to Q4 of 2013, a rise of 63% is observed in the case of Ukraine. In terms of asylum applications, a dramatic increase was observed comparing Q4 of 2014 to Q4 of 2013, but following should be noted: (1) the increase is significant because there were hardly any applications before the war in the Donbas region, (2) the increase is purely caused by war and the increasing number of internally-displaced persons attempting to leave the country after failing to receive proper care in Ukraine, (3) in general numbers it remains insignificant for the EU – 12,000 Ukrainian asylum seekers in 2014 only made up just over 2% of the total 552,000 asylum applications. Furthermore, the majority of applications by Ukrainians are turned down due to possibility of receiving assistance within their country. It should also be acknowledged that Ukraine is the number one nationality when it comes to voluntary returns, with 8,122 people returning in 2014 and a 22% increase when comparing Q4 2014 to Q3 2014.

As the information set out above may raise concerns, it should be underlined that according to European Commission data, irregular migration and violations of visa or asylum procedures are a marginal problem when compared to the 1,352,000 Schengen visas issued by EU Member States to Ukrainians in 2014. Of this number, 52.4% were multiple entry visas (MEV), what means that, if we include the MEVs issued in previous years, the number of visits by Ukrainians to the EU is much higher⁷.

As was noted by the authors of “Forecasting Migration Between the EU, V4 and Eastern Europe. Impact of Visa Liberalisation”, not only does visa liberalisation have no direct impact on long-term migration, but also the experience of the post-communist countries in Eastern Europe (e.g. Poland and the Baltic States) as well as the Western Balkans shows that there is no noticeable increase in first-time residents permits or immigration flows to the EU following the introduction of a visa waiver⁸.

4 http://lg.dmsu.gov.ua/images/files/English_Migration_%20profile_%202013.pdf

5 They shall remain in force for two years after EU-Ukraine Readmission Agreement enters into force (according to par. 17.2 and 20.3 of the EU-Ukraine Readmission Agreement).

6 http://frontex.europa.eu/assets/Publications/Risk_Analysis/Fran_Q4_2014.pdf

7 http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/docs/2014_global_schengen_visa_stats_compilation_consultes_-_final_en.xlsx

8 Marta Jaroszewicz, Magdalena Lesinska (ed.), *Forecasting Migration Between the EU, V4 and Eastern Europe. Impact of Visa Abolition*, Centre for Eastern Studies, Warsaw 2014, p. 10–13, the described tendency should not be confused with economic-based asylum seekers, which are a problem in the case of Serbia.

Ukraine and Moldova, which already has a visa-free regime with the EU, share not only similar experience in terms of history and the issue of separatism, but also when it comes to the process of visa liberalisation. Not forgetting that both countries are incomparable in terms of territory and population, it should be acknowledged that the EU's new process of visa liberalisation in the case of Moldova has proved its effectiveness in preventing a sharp increase in migration to the EU. Taking into consideration the arguments mentioned above and the marginal scale of irregularities comparing both countries to other third countries, as well as the overall number of *bona fide* travellers from Ukraine, it can be stated that after visa liberalisation Ukraine will not become a migration threat to the EU, nor will it be a source of a significant number of asylum seekers.

