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**JOINT STAFF WORKING DOCUMENT**

**Second progress report on the implementation by Ukraine of the Action Plan on Visa  
Liberalisation**

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### Second progress report on the implementation by Ukraine of the Action Plan on Visa Liberalisation

*This document is a Commission and European External Action Service Staff Working Document for information purposes. It does not represent an official position of the Commission and European External Action Service on this issue, nor does it anticipate such a position.*

#### I. Background

The EU-Ukraine Visa Dialogue examining the conditions for visa-free travel for citizens of Ukraine to the EU was launched on 29 October 2008. The Action Plan on Visa Liberalisation (hereafter VLAP) was presented to Ukraine at the EU-Ukraine Summit on 22 November 2010. In line with the methodology of the VLAP, the Commission has to report regularly to the European Parliament and to the Council on the implementation of the VLAP. The First Progress Report on the implementation by Ukraine of the Action Plan on Visa Liberalisation (hereafter First Progress Report) was presented on 16 September 2011 (see SEC (2011) 1076 final).

A Senior Officials Meeting took place on 7 October 2011, during which the First Progress Report was presented and the next steps in the process were discussed. Evaluation missions on Blocks 2, 3 and 4 of the VLAP were organised in the second half of October and beginning of November 2011 involving experts from EU Member States accompanied by officials of the Commission services and the EEAS. The cut off date for submission of the legislative framework to be covered by assessment missions was 15 October 2011. Draft legislation submitted by then was also considered. The purpose of the expert missions was to assess the legislative, policy and institutional framework under the first phase benchmarks of the VLAP and its compliance with the European and international standards. The expert reports were finalised by the end of November and beginning of December 2011.

Ukraine provided its second progress report on implementation of the VLAP on 16 November 2011 and the accompanying legislative framework translated into English was submitted on 30 November 2011.

As mentioned in the First Progress Report, the EU-Ukraine Visa Facilitation and Readmission Joint Committees met back to back on 5 May 2011. The Commission services took note of the overall satisfactory implementation of the EU-Ukraine Readmission and Visa Facilitation Agreements. Both sides exchanged experiences concerning the implementation of the Readmission Agreement. However, certain issues, including the situation of third-country nationals readmitted to Ukraine under the agreement, remain subject to further examination. As regards implementation of the EU-Ukraine Visa Facilitation Agreement, the Commission services have regularly raised at the meetings of the Joint Committee the issue of fraud regarding supporting documents. Ukraine has declared its willingness to cooperate with Member States in this regard.

## II. Assessment of measures under the four blocks of the Action Plan on Visa Liberalisation

### Block 1: Document security, including biometrics

#### General assessment

Limited progress was achieved in the area of document security. The legal framework for the issuing of machine-readable biometric international passports, in full compliance with the highest International Civil Aviation Authority (ICAO) standards regarding secure identity management, has not been completed. The Action Plan and the Programme for the complete roll-out of ICAO-compliant biometric passports and the complete phasing out of non-ICAO-compliant passports have still to be adopted. An important first step has already been taken, as noted in the First Progress Report, regarding breeder documents, with the adoption of the Regulation on the State Registration Service of Ukraine.

#### Detailed comments

- **Adoption of a legal framework for the issuing of machine readable biometric international passports in full compliance with the highest ICAO standards on the basis of secure identity management (civil registry and breeder documents) and taking into account adequate protection of personal data**

The Law 'On Documents Identifying a Person and Confirming Citizenship of Ukraine' introducing documents with an electronic chip containing biometric data has not been signed by the President of Ukraine and needs to be considered further by the Ukrainian Parliament.

The 'Regulation on the State Registration Service of Ukraine' was approved on 6 April 2011. It describes the tasks of this body and of its Director, in particular the management of civil registration regarding breeder documents. The State Registration Service of Ukraine is under the responsibility of the Ministry of Justice.

- **Adoption of an Action Plan containing a timeframe for the complete roll-out of ICAO-compliant biometric international passports, including at Ukrainian consulates abroad, and the complete phasing out of non-ICAO compliant passports**

The Action Plan containing a timeframe for the complete roll-out of ICAO-compliant biometric international passports has been prepared. It will only be submitted to the Government for approval after adoption of the above mentioned law. The Ukrainian authorities reported that a separate Programme for the complete phasing out of non-ICAO-compliant passports was approved on 20 September 2011.

- **Establishment of training programmes and adoption of ethical codes on anti-corruption targeting the officials of any public authority that deals with international passports, as well as domestic passports and other breeder documents**

The Ukrainian report contains information on past and current training measures for staff on preventing and fighting corruption. The Ukrainian authorities should address the planning of the relevant training programmes. Clear figures should be provided specifically with regard to the public officials who deal with international passports, domestic passports and other breeder documents in more detail.

A specific ethical code ('Code of conduct for employees authorised to produce and issue documents identifying a person') was approved on 24 June 2011. This is a positive step forward. The Ethical Code focuses on the integrity of the civil service, declaration of assets and rules on whistle blowing. It remains to be clarified how it articulates with the Framework Law on corruption (see below under Block 3), mainly regarding the issues of conflict of interest, incompatibilities, accepting gifts, the reporting of irregularities, the obligation to do so, the protection of whistleblowers and sanctions in the event of breaches.

**Further information is required on:**

- the timetable for the adoption (i) of the 'Law on Documents Identifying a Person and Confirming Citizenship of Ukraine', (ii) of the Action Plan containing a timeframe for the complete roll-out of ICAO-compliant biometric international passports, including at Ukrainian consulates abroad;
- the separate Programme for the complete phasing out of non-ICAO-compliant passports which was approved on 20 September 2011;
- specific anti-corruption measures targeting officials who deal with international passports, domestic passports and other breeder documents;
- the planning of relevant training programmes as well as statistics on and updated numbers of employees trained, focusing on public officials who deal with international passports, domestic passports and other breeder documents.

<b>Block 2: Irregular immigration, including readmission</b>
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**General assessment**

In the area of border management, all the necessary laws are in place along with the institutional framework, including provision of training and ethical codes to fight corruption. More efforts are needed to strengthen inter-agency cooperation in the area of border management.

With regard to migration management, Ukraine has in a very short time adopted the legislative framework and established an institutional framework for migration management and for the implementation of migration policy, providing a good basis for an effective migration management policy. However, it is necessary to take additional actions (adoption of additional rules, by-laws and regulations). There are some gaps in the development of the comprehensive National Migration Management Strategy. It should bring more consistency to the individual efforts made by various agencies and is important for the comprehensive policy approach towards migration management.

In the area of asylum, there is a solid legislative basis, mostly in line with the European and international standards. However, some important provisions require modification, and there is a need to align the provisions in other related laws with the new legislation, and to adopt appropriate by-laws.

## Detailed comments by policy area

### 1. Border management

- **Adoption of all necessary measures for the implementation of the law-enforcement programme on State Border Development and Reconstruction for the period till 2015 and the State Border Guard Service of Ukraine development concept for the period up to the year 2015, including a legal framework for inter-agency cooperation between the Border Guard Service, law enforcement agencies and other agencies involved in border management and allowing the Border Guard Service to participate in the detection and investigation of cross-border crime in coordination with all competent law enforcement authorities**

The 'Law on Border Control' adopted on 5 November 2009 was amended on 2 December 2010. This law largely meets the European and international standards. It contains a set of provisions underlying a secure management of state borders, including on border checks at air and land borders (including rail), checks of pleasure boats, cruise ships and yachts, and cooperation; it also contains provisions on fighting corruption at border crossing points. During the first half of 2011 the Government of Ukraine approved additional regulations in order to ensure proper implementation of this Law.

A number of other pieces of legislation have been adopted, in order to adapt the legislation relating to state border security to European standards, as well as to align it with the Council of Europe Convention on Action against Trafficking in Human Beings. Amendments were made to several laws: the Air Code, the Code on Commercial Maritime Navigation, the Law 'On railway transport', the Law 'On responsibility for Air Transportation of Passengers through the State Border without Documents Required for the Entry to Ukraine', the Law 'On Automotive Transport' and Law 'On Border Control'. All the amendments are aimed at clarifying the existing legislation and are in line with European legislation where relevant.

Appropriate provisions on liability of carriers in the course of international passenger traffic are in place.

The sanctions on foreigners and stateless persons have been clarified with regard to the legal consequences in cases of a) violation of the rules on stay in and transiting through the territory of Ukraine, b) illegal border crossing or attempts of such crossing, c) violation of the procedure on the provision of accommodation, means of transport and assistance in provision of other services. The criminal responsibility for illegal smuggling of persons has been laid out in line with the relevant European norms.

With regard to border management, special attention should be paid to the transformation of the State Border Guard Service (SBGS) into a modern law-enforcement authority. The main plan according to which this transformation is being conducted is the Concept of Development of the State Border Guard Service of Ukraine until 2015, approved in June 2006 and the Development Programme of the State Border Service of Ukraine until 2015, adopted in August 2007. The role of SBGS in the field of crime prevention and investigation of cross border crimes is currently rather limited, relating only to certain specific cases of cross border crime. In order to further develop its role in that regard, the SBGS should be allowed to participate in the detection and investigation of cross-border crime in coordination with all competent law enforcement authorities.

In terms of inter-agency cooperation, provisions are in place for cooperation between SBGS and the State Customs Service on the exchange of statistical and analytical information with the purpose of countering trafficking. The exchange of information takes place mainly through the Virtual Contact and Analytical Centre (VCAC) and expert meetings are held when needed. The framework for cooperation with other agencies related to border management is still under development.

Ukraine signed a working arrangement with FRONTEX in June 2007. Protocols on cooperation between law enforcement bodies with the border services of neighbouring countries have been signed to enable the exchange of statistical and analytical information in order to combat organised crime activities within border areas. Current legislation and agreements make appropriate provision for inter-agency and international cooperation. The key role of such cooperation is stressed in the Integrated Border Management Strategy ('IBM Concept'). Ukraine is fully committed to and actively involved in the activities in the framework of the EU Border Assistance Mission (EUBAM).

- **Adoption of a National Integrated Border Management Strategy and an Action Plan for its effective implementation, containing a timeframe and specific objectives for the further development of legislation, organisation, infrastructure, equipment, as well as sufficient financial and human resources in the area of border management**

The Integrated Border Management Strategy ('Concept') and the accompanying Action Plan for implementing the 'Concept' were approved by the Government on 27 October 2010 and 5 January 2011, respectively. The 'Concept' includes key elements of IBM and lists aims, objectives, as well as existing and potential problems, together with ways and means for addressing them. The Action Plan describes the actions that are necessary for the implementation of the 'Concept', the time-frame and the leading authorities responsible for their implementation. Both the 'Concept' and the Action Plan demonstrate a strong commitment to improving the security of state borders and continuing to develop the Border Guard Service on its way to become a modern law enforcement authority. The goals specified in the 'Concept' have been carefully selected to support the general 2007 Development Programme. Some of them, such as improving the legal framework and developing international cooperation, are already ongoing. On the other hand, issues such as improvement of cooperation mechanisms to fight trans-border crime need to be given more attention. Enhancing the capacity of crime prevention and powers to investigate cross border crimes has not been included in the IBM Concept, and therefore should be added in its next phase/revision.

- **Establishment of training programmes and adoption of ethical codes on anti-corruption specifically targeting border guards, customs and any other officials involved in border management**

Since 2010 the process of training, retraining and improving the qualifications of personnel has been supplemented by a system of distance trainings as well as training of trainers within the professional staff training system. In the framework of staff training due attention has been given to academic subjects that allow for a better understanding of legal procedures. The number of employees of SBGS who have received training on anti-corruption increases every year. The number of hours included in core curricula of the different levels of training courses can be regarded as sufficient.

Significant steps have been taken to establish a framework for fighting corruption within the SBGS through appropriate legislation, administrative orders and internal control system. The 'Code of Ethics of the Personnel of the State Border Guard Service', laying down the general rules of conduct for personnel and defining moral and ethical principles for professional activities, was adopted in April 2008. In addition, a practical code of conduct to avoid corruption and providing internal ethical standards ('Code of Conduct of personnel responsible for border management') was approved on 24 June 2011. A telephone service has been set up for registering citizens' complaints and processing of applications and anticorruption campaigns have been launched. A number of measures have been taken with regard to the adoption of specific ethical codes and training in anti-corruption of persons working in Customs Service. Several activities have also been launched in the framework of the EUBAM.

As regards cooperation with the corresponding bodies of border guard services of neighbouring countries to fight corruption among the border guard staff the Protocol on cooperation of internal security units of SBGS and Border Guard Service of Poland was signed. Similar draft protocols with the border guard services of Slovakia, Romania, Belarus and Russia are being drawn up.

## **2. Migration management**

- **Adoption of a legal framework for migration policy providing for an effective institutional structure for migration management, rules for entry and stay of foreigners, measures for the reintegration of Ukrainian citizens (returning voluntarily or under the EU-Ukraine readmission agreement), monitoring of migration flows, the fight against illegal migration (including return procedures, rights of persons being subject thereto, detention conditions, efforts to conclude readmission agreements with main countries of origin, inland detection of irregular migrants)**

The Law on the 'Legal Status of Foreigners and Stateless Persons' was adopted on 22 September 2011. The law defines the grounds of stay for foreigners, entry into Ukraine, visas related issues, entry bans, the return of foreigners, registration of foreigners on entry to Ukraine, prolongation of stay, voluntary return, compulsory return and expulsion. However, it does not codify all the issues related to entry, stay and rights of foreigners.

Conditions governing entry and stay are also regulated by Resolution No. 1074 from 1995 on the rules governing entry of aliens and stateless persons into Ukraine, on their exit from Ukraine, and on their transit passage through its territory. Conditions and procedures on permanent residence are regulated in the Law on Immigration of 2001. However, there is no provision in these rules allowing a foreigner to upgrade his status to that of a permanent resident after a given number of years of residence in Ukraine. Relevant by-laws should be adopted/amended in line with the new Law, defining procedures for issuing residence permits and visas, the format of the residence permit, rules for transit through Ukraine, procedures to confirm sufficient funds for stay, procedures for enforcing entry bans, etc).

General rules on entry and stay (such as the length of legal stay for foreigners without visa obligation) should be defined in the 'Law on legal status of foreigners and stateless persons'.

Amendments of the Code of Administrative Legal Procedures provide adequate guarantees for the protection of rights of foreigners in cases of expulsion in line with the European

standards. These provisions include obligatory presence of a foreigner during the court process on his/her expulsion and immediate consideration of the case, which are the most important positive changes in the expulsion procedure.

The Action Plan on Integration of Migrants in Ukraine and Reintegration of Ukrainian Migrants until 2015 was approved on 15 June 2011. Most of the activities set out in the Action Plan are planned for 2011 and 2012 (only two activities are planned for the period after 2012). The main body implementing the Action Plan is the Ministry of Social Affairs. The activities in the Action Plan, if implemented, will provide a good basis for the integration of foreigners into Ukrainian society. On the other hand, the Action Plan contains only three activities that are directed towards the reintegration of returning Ukrainian citizens. Activities provided for in the Action Plan do not satisfactorily cover the needs of this group of people, such as reintegration into the labour market, and further efforts from Ukraine are necessary in that respect. More concrete actions need to be taken by the responsible authorities. Based on the results of a currently ongoing assessment, the Ukrainian authorities intend to draw up a more detailed plan of activities for reintegration of their citizens.

With regard to institutional reform, the State Migration Service (SMS) of Ukraine was established by a Presidential decree of 9 December 2010. The regulation defining its basic tasks, functions and organisation was adopted on 8 April 2011. The State Migration Service is gradually taking up its functions and building up its resources, including the establishment of territorial bodies at regional level. However, the division of responsibilities with regard to receiving applications for and issuing residence permits is unclear.

Based on the 2008 Readmission Agreement with the EU, Ukraine is currently working on nine implementing protocols. Ukraine currently has seventeen bilateral Readmission Agreements in place, including with main countries of origin such as Vietnam, Turkmenistan, Georgia, Russia, the Republic of Moldova and Uzbekistan. This number also includes some agreements with EU Member States, signed prior to the entry into force of the Readmission Agreement with the EU. Ukraine has approached a number of other States, including Belarus and Azerbaijan as well some countries of origin (Afghanistan, China and India), with a request to negotiate readmission agreements.

- **Adoption of a National Migration Management Strategy for effective implementation of the legal framework for migration policy and an Action Plan, containing a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources**

The Strategy ('Concept') of the State Migration Policy of Ukraine, adopted on 30 May 2011, defines trends, strategic goals, principles and priorities of the authorities in the field of migration. It provides a good framework for developing migration policy but should be further expanded into a fully-fledged strategy, in order to ensure that migration policy, is developed collectively by the various relevant agencies and that their activities are coordinated and deliver satisfactory results.

The 'Concept' is accompanied by the Action Plan for the implementation of the State Migration Policy, which was also adopted on 30 May 2011. It contains activities, and indicates a time-frame and the authorities responsible for their implementation. Although the Action Plan establishes an interdepartmental commission, it does not regulate its work and tasks. In addition, the responsible/leading agency for the realisation of each activity should be named (as well as other agencies involved in the implementation), with performance

indicators and the human, financial and other resources required for the implementation. This will enable effective monitoring of the implementation of the Action Plan.

- **Establishment of a mechanism for monitoring migration flows, defining a regularly updated migration profile for Ukraine, with data both on illegal and legal migration, and establishing bodies responsible for the collection and analysis of data on migration stocks and flows**

The development of the unified national database for migration management combining different databases (currently for border control, issuing visas, residence permits, etc.) is ongoing. Although several options regarding financing, platform, etc. have been explored, the development of the so called Migration Flow Management System-MFMS is still at the conceptual stage.

The development of a national database for migration management will help to regularly update the migration profile that has been prepared as part of the EU-funded project implementing the Prague Declaration on Building Migration Partnerships. A mechanism should be established ensuring that it is regularly updated and used in developing migration policy and in related policies, such as policies on economic development, employment, education and social policy.

The Methodology of risk analysis to combat illegal immigration approved in June 2011 is a good model for bringing together all of the relevant authorities to exchange statistical data. In order to acquire more comprehensive analytical products, each agency should develop internal rules on the model of risk analysis. Further assessment is needed with regard to the functioning of the Contact Analysis Centre, since some fields do not seem to be covered (e.g. tasks (according to the Methodology the only task is to prepare proposals on countering illegal migration) staff, financing etc.).

### **3. Asylum policy**

- **Adoption of legislation in the area of asylum in line with international standards (1951 Geneva Convention with New York Protocol) and EU standards, providing grounds for international protection (including subsidiary forms of protection), procedural rules for examination of applications for international protection, as well as the rights of asylum seekers and refugees**

The 'Law On Refugees and Persons in Need of Subsidiary and Temporary Protection' adopted on 8 July 2011 and the 'Law of Ukraine on Legal Status of Foreigners and Stateless Persons' adopted on 22 September 2011, to a significant extent, gives a solid legal basis for the appropriate asylum procedure in Ukraine. However, some of the provisions which are not in line with the European and international standards require immediate evaluation by the Ukrainian authorities in order to prevent adverse effects that are likely to result from their implementation. In particular, the definition of complementary protection should be extended, as it is narrower than the definition laid down by European standards. There is also a need to align the law with European standards on procedural guarantees in the case of withdrawal of refugee status. Furthermore, deadlines for submitting appeals (five days) are too short and might prevent the effective use of the right to appeal. According to the law, temporary protection can only be granted to those who arrived from countries bordering Ukraine, which seems too limited by comparison with European standards.

Furthermore, although the SMS is formally mandated to take decisions on granting asylum, it is not entirely clear and there seem to be other institutions involved, including the Public Prosecutor, which are allowed to review the decisions of the SMS and even to withdraw the refugee status. The 'Law on Refugees' makes no reference to the use of precise and up-to date information on the general situation in countries of origin, which is not in line with the European and international standards.

There are also some difficulties with the legal provisions on medical care. Currently asylum seekers are treated in the same way as foreigners who are legally resident, and are therefore not entitled to free medical care. The SMS is aware of the problem and plans to amend the relevant provisions.

Ukraine should also align other legislation relating, in particular, to the reception conditions and rights of asylum seekers and refugees with the new laws mentioned above and to adopt the relevant by-laws and instructions needed for the implementation of some of their provisions. Due to several reorganisations and lack of trained staff within the State institutions dealing with asylum requests, there have been significant delays in processing asylum applications.

As mentioned above, the SMS is mandated to take decisions on asylum applications. The Directorate for Refugees has a staff of twenty-one people which is a rather limited number, given the wide range of tasks that they need to deal with. The number of staff should be further increased.

### **Block 3: Public order and security**

#### **General assessment**

Ukraine has made some further progress in adopting the required legislative framework in the area of public order and security.

The legislative framework on combating organised crime is in place. Regarding the policy framework, the Strategy was adopted in October 2011 whereas the accompanying Action Plan is not yet in place. The Action Plan should include a realistic timeframe, clearly identified responsible actors, a budget, human resources, performance indicators and a monitoring process including all relevant stakeholders.

The legislative framework on combating trafficking in human beings was recently put in place with the adoption of the framework law in September 2011. It needs to be urgently accompanied by the relevant Action Plan which should include a realistic timeframe, clearly identified responsible actors, a budget, human resources, performance indicators and a monitoring process covering all relevant stakeholders.

Limited progress was made in the fight against corruption. A first step has been taken with the adoption of the law on the principles of preventing and combating corruption and the law on amendments to several legislative acts concerning liability for corruption offences, in force since July 2011. However, overall, the legislation adopted remains incomplete and in some respects ambiguous, and still fails to fully comply with the requirements of the relevant Council of Europe and UN instruments. There are still important GRECO recommendations from the joint first and second evaluation rounds which have not been followed up.

Significant additional legislation needs to be adopted in order to have a comprehensive legislative framework in place. Regarding the policy framework, a National Anti-Corruption Strategy was adopted in October 2011. However it contains rather general directions for further action and does not tackle some of the key outstanding issues. The corresponding Action Plan is still missing. It should contain specific objectives, detailed actions and concrete results to be delivered, as well as a detailed timetable for implementation, straightforward responsibilities for each action, measurable performance indicators, an effective and objective evaluation mechanism in place and sufficient budget and human resources secured. The necessary institutional framework on the prevention and repression of corruption, monitoring of implementation of anti-corruption policies, law enforcement and prosecution should be put in place as a matter of urgency, while taking account of all requirements relating to independence and capacity, particularly in the light of the OECD and GRECO recommendations, and ensuring a clear division of tasks between institutions.

Important progress was achieved with regard to combating money laundering and the financing of terrorism. The legislative and policy framework is largely consolidated and is increasingly compliant with international standards, which was recently recognised by the Financial Action Task Force.

Regarding law enforcement cooperation, although there are several mechanisms and databases in place, the level of coordination should be substantially increased. Exchange of information is of key importance and it needs to be significantly improved.

As already mentioned in the First Progress Report, Ukraine has acceded to all but one of the UN and Council of Europe conventions that are relevant to the area of public order and security. As regards the remaining instrument that has not been ratified, namely the 2011 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, the Ukrainian authorities have begun preparatory evaluation work. Ukraine has also acceded to the vast majority of UN and Council of Europe conventions on the fight against terrorism.

Although additional contacts took place, further steps have still to be taken in order to conclude agreements with Europol and Eurojust, and in this respect the required data protection standards, including the effective implementation of Council of Europe Convention 108 and its Additional Protocol, have to be ensured.

Regarding data protection, the ratification of Council of Europe Convention 108 and its Additional Protocol and the adoption of Ukraine's first-ever 'Data Protection Law' is a significant first step. Nevertheless, major additional efforts are necessary to improve the legislative framework (data protection supervisory authority) in the area of data protection. The institutional framework has been put in place and began operations in July 2011. However, ensuring the complete independence of the data protection supervisory authority remains of particular importance. Moreover, its human resources need to be strengthened further.

Regarding judicial cooperation in criminal matters, Ukraine ratified the main international conventions in the field of judicial co-operation in criminal matters, including the 2nd Additional Protocol to the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters, albeit with some reservations.

Efforts have been made to build up a balanced anti-drug policy from both the legislative and institutional standpoints. The policy framework has been established and generally and is

compliant with European and international standards. Nevertheless it needs additional strengthening and consolidation.

It is important to note that the assessment of the legislative framework under this block requires a complex evaluation of the wider and more comprehensive legislative and institutional context, bearing in mind *inter alia* the relevant provisions of the Criminal Code and Criminal Procedure Code as well as ongoing reforms of their provisions. Therefore, Ukraine should provide relevant information on all the ongoing legislative and institutional reforms relevant for the area of public order and security in its future reports, including Constitutional reform and reform of the judiciary.

## **Detailed comments by policy area**

### **1. Preventing and fighting organised crime, terrorism and corruption**

- **Adoption of a comprehensive strategy to fight organised crime, together with an action plan containing a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources**

The existing legislative framework ('Law on the organisational and legislative framework for fighting organised crime' adopted on 30 June 1993 and subsequently amended, most recently in 2011) was supplemented by the Strategy ('Concept') on fighting organised crime which was adopted on 21 October 2011. The accompanying Action Plan is under preparation. It is of key importance that the Action Plan includes a realistic timeframe, clearly identified responsible actors and a budget, human resources. It is very important to include performance indicators in addition to the final objective that should be reached. Lastly a monitoring process needs to be designed. Such a monitoring process should include all relevant stakeholders, such as the various competent authorities as well as the non-governmental sector.

The 'Law on the organisational and legislative framework for fighting organised crime' has to be placed in a wider legislative and institutional context, bearing in mind *inter alia* the relevant provisions of the Criminal Code and Criminal Procedural Code. The Law lays down a general organisational framework and establishes a system of state authorities responsible for fighting organised crime and their cooperation and defines the competencies and the obligations of these authorities.

The Law is broadly in line with international standards. However there are several aspects that need to be clarified with a view to improving the current legal framework, such as developing specific legislation on confiscation of criminal assets and establishing an asset recovery agency and an agency with specific powers for managing confiscated assets, introducing provisions on the protection of witnesses or "collaborators" as well as putting measures in place to ensure their protection.

Regarding the institutional structures, according to this Law, the General Prosecutor plays a coordinating and supervisory role of law enforcement bodies in combating organised crime. It appears that a recent reshuffling allowed for an improvement in the coordination of the various law enforcement agencies in the area of organised crime. According to a Ministry of Interior Decree from 10 June 2011 it seems that instructions were issued for the purpose of providing effective cooperation of law enforcement agencies in combating organised crime (see also below under law enforcement cooperation).

### **Further information is required on:**

- the timetable of the adoption of the Action Plan containing a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources.
- **Adoption of a law on trafficking in human beings, adoption of an action plan to effectively implement the State Programme for Combating Trafficking in human beings, containing a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources**

The 'Law on combating trafficking in human beings' was adopted on 20 September 2011. It comprises three main pillars: prevention, prosecution and protection. It is based on a number of principles, such as respect for fundamental rights, non-discrimination, confidentiality of information and cooperation between responsible authorities. It also provides for a National Coordinator to be designated by the Government. It specifies the competences of the Government, central executive authorities and state administrations. It includes provisions on protection of and assistance to victims of trafficking. It also introduces a mechanism to monitor its implementation. The law provides for the establishment of a national mechanism for cooperation between all players involved in anti-trafficking actions, and sets out the basic principles of this mechanism, such as exchange of information, joint programmes, joint initiatives and exchange of best practices. The law also establishes rules on international cooperation.

No National Coordinator has yet been nominated and this function is currently being performed by an interim coordinator.

Another important aspect of the law is the establishment of basic rules for granting the status of victims of trafficking (the procedure is established by the Government) and the list of rights of victims of trafficking.

This legislative framework is complemented by the relevant provisions of the Criminal Code, namely Article 149 which introduces the crime of trafficking in human beings.

This is an important step forward in adapting the legislative framework to European and international standards. Nevertheless there are several outstanding issues that should be addressed as a matter of urgency.

Regarding the institutional issues, the following matters should be reconsidered and reviewed:

- the high degree of centralisation of the process of recognition of the status of victim of trafficking (reserved to the office of the future National Coordinator) and the lack of a clear competence in this area for the Regional offices (it is not clear to which extent service providers and non-governmental organisations are involved in this process);
- the lack of clear provisions on the role of authorities other than public authorities (NGOs, private sector) in the overall anti-trafficking policy;
- the risk of overlapping of competence of the various State authorities involved, given the absence of a functioning national mechanism for cooperation;
- the lack of a formal National Referral Mechanism. It is not clear whether and to what extent the National Mechanism for Cooperation between all relevant players stakeholders will fulfil this role in the meantime, and further clarifications in this regard are necessary;

- it appears that provisions on prevention do not cover training for front line officials who are likely to come into contact with victims of trafficking. These provisions cover awareness raising and information campaigns directed at potential victims of trafficking. More information would be welcome about the extent to which training is provided for officials (police, border guards, judges, prosecutors, labour inspectors, health care practitioners, social care representatives etc) as part of a broad prevention strategy.

Regarding the victims of trafficking, the following matters should be reconsidered:

- the absence of a clear indication of budget allocation for support and reintegration of victims of trafficking and for their possibility of a full access to the state social security system. Until now these activities have been carried out mainly by the International Organization for Migration (IOM) and specialised NGOs and they depend on contributions from international donors;
- a compensation fund deriving from assets seized from convicted traffickers could be considered, for the purpose of providing services and care to victims of trafficking and for supporting mechanisms for the proactive identification and referral of victims of trafficking;
- the lack of clear provisions on the role of NGOs in the overall anti-trafficking policy, and on cooperation between public authorities, private sector and NGOs;
- the lack of a provision on precautionary measures before interviews with the potential victims of trafficking;
- inadequate protection for victims and witnesses before, during and after trials;
- the lack of specialised assistance to vulnerable victims, especially children.

The Action Plan ('National Programme') on combating trafficking in human beings up to 2015 is under preparation. It should contain a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources.

The 'Law amending certain legislative acts on the responsibility of carriers providing international passenger transportation to strengthen the responsibility of carriers' was adopted by Parliament on 2 December 2010 and entered into force on 6 April 2011 (see also above under Block 2). It contains measures that are relevant to fighting trafficking in human beings, in line with the Council of Europe Convention on trafficking in human beings. These measures are a step forward in fighting trafficking in human beings. However, the lack of a clear obligation for the carriers to submit the information acquired to the authorities and, in particular, to the Border Guard Service Control should be addressed in order to strengthen the relevant provisions of this law.

**Further information is required on:**

- the timetable of the adoption of the Action Plan containing a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources.

- **Adoption of legislation on preventing and fighting corruption and establishment of a single and independent anti-corruption agency; strengthening of coordination and information exchange between authorities responsible for the fight against corruption**

The 'Law on the principles of preventing and combating corruption' entered into force on 1 July 2011, except for Articles 11 (special check of persons seeking appointment to government and local self-government positions) and 12 (financial control), which entered into force on 1 January 2012. The aim of the new law was to define a number of principles and rules to be followed in the prevention of and fight against corruption. It determines the categories of natural persons to be held liable for corruption offences and regulates the types of liability for corrupt behaviour, it defines in general terms the conflict of interest and corrupt behaviour, it comprises some general provisions on the authorities and entities involved in the prevention of and fight against corruption, it sets a number of restrictions for public officials, it introduces a special check on applicants to public positions, and it introduces an obligation for the public officials to submit asset declarations. It also contains some provisions on administrative measures in cases where an official is charged with corruption offences, compensation for damages, transparency of public interest information and reporting of suspicions of corruption.

As part of the same package, the 'Law on amendments to several legislative acts concerning liability for corruption offences' entered into force on 1 July 2011, introducing new provisions on the criminalisation of bribery and trading in influence and extending its scope to include foreign officials and officials of international organisations.

The recently adopted legislation represents only a first step towards setting up an adequate, coherent and comprehensive anti-corruption legal framework. In spite of some welcome new provisions, the new legislation still falls short of meeting the requirements of the European and international legal instruments in a satisfactory manner. Significant loopholes remain and urgent measures must be taken in order to further address these shortcomings. The new anti-corruption legislation need to be considered in a wider legislative context, also taking account of other relevant provisions of the Criminal Code, Criminal Procedural Code, Code of Administrative Offences, law on civil servants, law on normative legal acts, laws relevant for funding of political parties and electoral campaigns, etc.

The reports issued by the Council of Europe's Group of States against Corruption (GRECO) within the framework of the third evaluation round concluded that the current legislation is still not aligned with the requirements of the Council of Europe Criminal Law Convention on Corruption, or with the Council of Europe Recommendations on financing of political parties and electoral campaigns<sup>1</sup>. According to GRECO, despite some important improvements brought about by the legislative measures taken in 2011, Ukraine has failed to fully align its legislation with the Council of Europe standards, which therefore requires a more comprehensive revision of the legal framework to remove any existing ambiguities or loopholes in the current legislation. The conclusions regarding the legal and institutional framework on the financing of political parties and electoral campaigns are also very clear: the current system falls short of the Council of Europe standards.

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<sup>1</sup>[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2011\)1\\_Ukraine\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2011)1_Ukraine_One_EN.pdf)  
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2011\)1\\_Ukraine\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2011)1_Ukraine_Two_EN.pdf)

Therefore, the recently adopted legislation is only a starting point. Significant legislative gaps remain to be addressed and key issues to be further clarified, and further action should be taken as follows:

1. introduce clear provisions, including adequate independence and efficiency guarantees, regarding the anti-corruption specialisation of law enforcement and prosecution bodies and their division of tasks. Clarify the coordination between the prosecution service and the agencies conducting criminal investigations in corruption cases, and in particular the distribution of tasks among the special divisions of the Ministry of the Interior, those of the Security Service, the Military Law Enforcement Service and the tax police.
2. establish an independent oversight (agency) to coordinate the monitoring of the implementation of anti-corruption policies and the development of new policies;
3. further revise the framework on the criminalisation of corruption, in line with GRECO recommendations, notably as regards: scope (*rationae personae*) of criminalisation of bribery in the private sector; scope of the definition of 'bribe' that needs to also cover non-material advantages; criminalisation of all elements of active and passive bribery and trading in influence in the public and private sectors to broaden the scope of completed criminal offences; broadening of the scope of corruption offences to cover instances of third party advantages; level and coherence of criminal sanctions; limit/eliminate the risk of abuse of the special defence of effective regret; extra-territorial jurisdictional powers;
4. further clarify the distinction between the parallel criminal and administrative liability systems for corruption offences and ensure that all corruption offences, irrespective of their severity, are treated as crimes;
5. regulate the liability of legal persons for corruption offences;
6. introduce clear provisions on effective mechanisms for prevention, monitoring and verification of conflicts of interests and incompatibilities, including guarantees for independence and efficiency of the body/entity responsible for monitoring and verification, sufficient capacity and dissuasive and effective sanctioning systems;
7. complement the existing legal framework with additional clear provisions on effective mechanisms for disclosure, verification and supervision of public official's assets and for dealing with potential cases of unjustified wealth, including guarantees for independence and efficiency of the body/entity responsible for monitoring and supervision, sufficient capacity, dissuasive and effective sanctioning systems;
8. further strengthen and clarify the existing provisions on immunities and the mechanisms for lifting immunities and remove any unjustified obstacles to criminal investigations in corruption cases, in line with GRECO and OECD recommendations;
9. ensure an adequate legal framework for the financing of political parties and electoral campaigns, with clear provisions on transparency and supervision, as well as an effective, dissuasive and proportionate sanctioning system, in line with GRECO recommendations;

10. further strengthen the mechanism for supervision of public procurement rules and clarify the criteria based on which exceptions to the regular public procurement rules are granted;
11. strengthen the framework for seizure, confiscation and asset recovery, including on matters such as value-based confiscation, third party confiscation and management of seized assets, and ensure full compliance with Council of Europe standards, as well as with the requirements of the UN Convention against Corruption;
12. ensure clear and comprehensive rules on the administrative and decision-making process, and a clear framework for integrity and ethical rules applicable to public officials, as requested by GRECO in the Addenda to the Compliance Report of the Joint First and Second Evaluation Rounds;
13. complete the legal framework on reporting suspicions of corruption, by introducing clear rules on the protection of whistleblowers.

The National Anti-Corruption Strategy covering the period 2011-2015 was adopted on 21 October 2011. The Strategy is a rather general document, which sets out a number of areas for further action. It is not clear whether any consultation with stakeholders has taken place. It is also not clear what were the criteria on the basis of which the directions for future action were chosen and what are the specific targets envisaged for the end of the implementation period. Key issues such as the establishment of an independent anti-corruption body, specialisation and clearer distribution of tasks among law enforcement agencies, verification of asset declarations and conflict of interests, were not covered. The Strategy does not elaborate sufficiently on the estimated budget needed and on how the necessary human and financial resources would be secured. Also, there are very few references to the monitoring and evaluation mechanisms, and no precise indication of the methodology to be followed.

Moreover, the Action Plan ('State Programme') to accompany the Strategy is still not finalised. It should provide the basis for the effective implementation of the Strategy and it should contain specific objectives, clearly defined activities, a precise timetable, clearly defined responsibilities for each activity, measurable performance indicators, an effective and independent evaluation mechanism following a clear-cut working methodology and sufficient human and financial resources.

An independent anti-corruption agency has not yet been established. The national authorities are at the stage of examining a range of different possibilities for its set-up (either a structure dealing exclusively with prevention activities or a structure dealing with both prevention and law enforcement). An advisory body has been created for this purpose. It appears that, according to a Decree of 5 October 2011 of the President of Ukraine, a law is being drafted on the establishment of an anti-corruption agency, while the Minister of Justice is designated *ad interim* to perform the prevention function. This situation is clearly unsatisfactory. A considerable time has passed since GRECO and OECD made their recommendations in this regard and yet no concrete follow-up has been ensured. Ukraine should put the institutional framework in place as a matter of urgency, through establishing an independent oversight with the responsibility of coordinating and supervising the implementation of anti-corruption strategies/action plans and the development of new ones, as well as ensuring the independence and specialisation of the prosecution and law enforcement services, as recommended by GRECO and OECD. Concerning the specialised law enforcement body, it is

particularly important to ensure an objective appointment, promotion and disciplinary system (including for the leading positions), as well as full autonomy of the operational activities.

Ukraine will also have to carefully consider the institutional setting for the authorities/bodies that will be tasked with carrying out the supervision of conflicts of interest, incompatibilities and assets of public officials. These will have to be provided with sufficient powers and all necessary guarantees of independence and efficiency, including as regards the appointment and accountability mechanisms, as well as the necessary human and financial resources. Regarding the coordination and exchange of information between the entities in charge of preventing and fighting corruption, it appears that meetings are taking place on a regular basis and that there are some databases in place. However, it remains to be clarified how the distribution of tasks and the coordination among the agencies/entities tasked to investigate corruption cases are being ensured in practice. Also, it remains to be clarified how the databases of these institutions are interlinked, what kind of data can be exchanged and with what speed.

**Further information is required on:**

- the timetable and vision for setting up the anti-corruption institutional structure; additional information on the entities that are in charge of preventing and fighting corruption and clarification of the division of competences between them.
- the timetable for the adoption of the Action Plan (State Programme) on preventing and fighting corruption.
- the mechanisms in place for coordination and information exchange between authorities responsible for the fight against corruption.
- **Adoption of a national strategy for the prevention and fighting of money laundering and the financing of terrorism; adoption of a law on the prevention of financing of terrorism**

A 'Law on Preventing and Counteracting of the Legalisation (Laundering) of the Proceeds of Crime as well as Terrorist Financing', replacing the 2003 'Law on prevention and counteracting of the legalisation (laundering) of proceeds from crime' entered into force on 21 August 2010. It extended the list of reporting entities and introduced clear obligations for them, a new risk management approach was put in place, the procedure on suspension of financial transactions was changed, procedures on international cooperation as well as procedures on assets recovery were introduced and the powers of the Financial Investigation Unit (FIU) were defined.

Three additional laws were adopted with a view to complying with the Financial Action Task Force (FATF) Action Plan. The 'Law on amendments to certain legislative acts of Ukraine on prevention and counteraction to legalisation (laundering) of proceeds from crime (regarding criminalisation of manipulation on the stock exchange)' entered into force on 19 May 2011. It refers to the issue of the manipulation of stock markets and introduces the relevant definitions in the law. The 'Law on amendments to certain legislative acts on seizure of assets related to terrorism financing and financial operations stopped in accordance with the decision taken on the basis of Resolutions of the UN Security Council and establishing a procedure for access to such assets' entered into force on 19 May 2011. It refers to the fight against terrorism financed by the FIU which draws up a "black list" on the basis of convictions at national

level, and at international level, of international list accepted by Ukraine and of international sanctions accepted by Ukraine. The 'Law on amendments to some legislative acts of Ukraine on insider information' entered into force on 25 May 2011. It introduces administrative and criminal liability for intentional illicit disclosure, dissemination and access to inside information, as well as providing recommendations concerning the use of such information on acquisition or disposal of securities or derivative financial instruments, and conducting transactions (performing deeds) using inside information for one's own account or for the account of others aimed at acquisition or disposal of securities or derivative financial instruments to which inside information relates (including liability and sanctions against legal persons).

Both the Strategy for preventing and combating money laundering and the financing of terrorism up to 2015 and the accompanying Action Plan for 2011 were approved on 9 March 2010. The objective of the Strategy is to determine the legislative, organisational and international actions to ensure the stable and effective functioning of the National Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) system. The main aims of the Strategy are to enhance attractiveness of investment, to ensure transparency and to increase public awareness of AML/CTF measures, in order to improve the mechanism or regulation and supervision over the reporting entities.

The Action Plan for 2011 is mainly aimed at ensuring the implementation of the AML/CTF policy, so as to improve the legislation, strengthen interagency cooperation and maintain the practical implementation of the AML/CTF law provisions. No information was provided on when the next Action Plan covering the period starting from 2012 will be approved.

The legal and policy framework for preventing and combating money laundering and the financing of terrorism is in place and broadly compliant with international standards which was acknowledged by FATF. At the FATF plenary meeting on 27 October 2011 it was decided that Ukraine should be removed from the list of states that have shortcomings with regard to counteracting money laundering and financing terrorism<sup>2</sup>. Although some minor deficiencies were identified, Ukraine has implemented the FATF Action Plan.

In addition to these positive actions carried out recently, Ukrainian authorities should address certain legislative gaps: the new Criminal Procedure Code should clearly and in accordance with international standards define the freezing of proceeds of crime and confiscation. Changes should be made to the legislation on procedures for the submission of information by the stock exchange on transactions if there is a suspicion that insider information is being used in these transactions.

Regarding the institutional framework, the Financial Intelligence Unit (FIU) was established in 2002, when these functions were being performed by the State Department for Financial Operations within the Ministry of Finance. In 2005 it became a separate body, entitled State Committee for Financial Monitoring. In December 2010 it was renamed the State Service for Financial Monitoring. Many other institutions are also involved in the AML/CTF system, both at administrative and law enforcement level.

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<sup>2</sup> "The FATF welcomes Ukraine's significant progress in improving its AML/CFT regime and notes that Ukraine has largely met its commitments in its Action Plan regarding the strategic deficiencies that the FATF had identified in February 2010. Ukraine is therefore no longer subject to FATF's monitoring process under its on-going global AML/CFT compliance process. Ukraine will work with MONEYVAL as it continues to address the full range of AML/CFT issues identified in its Mutual Evaluation Report, and further strengthen its AML/CFT regime".

**Further information is required on:**

- the timetable on the adoption of the next Action Plan covering the period starting from 2012.
- **Adoption of a new National Strategic Programme on drugs and its related action plan; ratifying the Memorandum of Understanding with EMCDDA**

Efforts have been made to build up a balanced anti-drug policy and means for its implementation, both from the legislative and institutional points of view. Both the policy and institutional framework are generally compliant with European and international standards. However, providing adequate budgetary support is an issue that needs to be dealt with. Also, some of the recent interventions in the field of law enforcement (growing pressure from law enforcement agencies for substitution treatment programmes to provide confidential personal information, including the HIV status of patients) appear to have somewhat undermined the progress that had been made through the Opioid Substitution Programmes.

The Ukrainian Government has approved the National Strategic Programme for the prevention of the spread of drug abuse, fight against illegal circulation of drugs, psychotropic substances and precursors for 2011-2015 on 13 September 2010. The Action Plan for its implementation (covering both drugs demand and drugs supply reduction) was approved on 22 November 2010. The Programme and the Action Plan are aimed at setting out the priorities and modalities of implementation of the national anti-drug policy. The policy framework is generally compliant with European and international standards.

The National Service for Drugs Control was established in April 2011, with the aim of being the central institution within the system, focused on coordinating the actions of the various institutions involved in anti-drugs activities.

Following the signature of the Memorandum of Understanding between the Ministry of Health of Ukraine and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) in January 2010, cooperation with the agency has improved. Ukrainian officials regularly participate in the activities of the EMCDDA. Moreover, the Ukrainian Medical and Monitoring Centre on Drugs and Alcohol of the Ministry of Health of Ukraine (UMMCDA) was appointed as the Ukrainian centre for the collection and analysis of comprehensive data on drug and alcohol consumption in Ukraine and was recognized by the EMCDDA as the official partner for the exchange of information concerning drugs.

The proper functioning of the Regional Offices of the National Service requires regular allocation of the necessary funding. Practical implementation of the planned measures largely depends on the availability of a sufficient budget. However, the financial allocations for the measures depend on the ministries and other state authorities, which may influence the extent and the dynamics of implementation.

Despite the efforts made to adopt an integrated inter-institutional approach, coordination still needs to be improved, in particular with regard to the various law enforcement agencies. Further steps need to be taken towards establishing common mechanisms and procedures.

- **Adoption of relevant UN and Council of Europe conventions in the areas listed above and the fight against terrorism**

Ukraine has acceded to all UN and Council of Europe conventions relevant for the above-mentioned areas, with the exception of the 2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime. Concerning the latter, the Ukrainian authorities informed that a joint commission has been set up in order to study the necessary steps to be taken in order to accede to the Convention. One of the steps is drawing up an inventory of the firearms. Regarding the fight against terrorism, the vast majority of UN and Council of Europe conventions have been ratified and have entered into force in Ukraine.

## **2. Judicial co-operation in criminal matters**

- **Adoption of a legal framework on mutual legal assistance**

Ukraine ratified the main international Conventions in the field of judicial co-operation in criminal matters.

- **Ratification of the 2<sup>nd</sup> Protocol to the European Convention on mutual legal assistance**

Ukraine ratified the 2nd Additional Protocol to the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters on 1 June 2011. It entered into force for Ukraine on 1 January 2012.

On 16 June 2011 Ukraine adopted a Law implementing this Convention, namely the Law 'On amending certain legislative acts of Ukraine with ratification of the second additional protocol to the European Convention on mutual assistance in criminal matters'. This law amended specific provisions of the Criminal and of the Criminal Procedure Codes, including a chapter in the Criminal Procedure Code setting the basis, structures and procedures for international legal assistance, providing for new forms of cooperation as telephone and video conferences and joint investigative teams (JITs) and allowing foreign authorities to be present, under certain conditions, during the investigations.

However, in depositing the instrument of ratification, Ukraine expressed many reservations with regard to some areas of judicial cooperation (such as channels of communications, spontaneous information, transferred detained persons, service by post, cross border observation, covert investigations), which might limit full cooperation with Council of Europe countries. Although such reservations do not appear to jeopardise the level of cooperation, it would be advisable to lift these reservations, particularly in the area of cross border observation.

Constitutional reform and reform of the judiciary, insofar as they are related to mutual trust as a key aspect of judicial cooperation in criminal matters, and which are under discussion in Ukraine, should be developed in line with Council of Europe standards.

- **Conclusion of an agreement with Eurojust**

Eurojust established a contact point in Ukraine. Contacts aimed at starting negotiations of an Agreement on cooperation between Ukraine and Eurojust have been established since 2005, and, following the adoption of new legislation on data protection, negotiations were resumed in 2010 and progressed in 2011. Further improvement of the Ukrainian legal framework on

data protection for the purposes of judicial cooperation in criminal matters is needed in order to conclude the draft agreement with Eurojust (see also below under 4. Data protection).

### **3. Law enforcement co-operation**

- **Establishment of an adequate coordination mechanism between relevant national agencies and a common database guaranteeing direct access in the entire territory of Ukraine**

The main law enforcement agencies are established within the Ministry of the Interior (the Militia and Tax Militia), the Security Service, the State Border Guard Service, the Customs services, the Military Justice services and the Prosecutor Offices.

The competent authorities for the purposes of investigating organised crime are the Ministry of the Interior and the Security Service. The 'Law of Ukraine on Organizational and Legal Principles of the Fight Against Organized Crime' (see above) also contains provisions for coordinating the activities of the agencies involved in this sector.

This law establishes special units with a dedicated budget within the Security Service and Ministry of the Interior and the use of special means: undercover agents and other special investigative measures.

Regarding the mechanisms for coordination between agencies, the Constitution, the Law of Ukraine 'On Prosecutor Office' and the Criminal Procedural Code, assigned to the General Prosecutor, who heads the Prosecutor Office, and to Prosecutors, the role of coordinating law enforcement agencies in the fight against crime. In order to coordinate activities and to avoid overlaps during investigations, the Prosecutor Office arranges “coordinating meetings and working groups” with representatives of law enforcement agencies, requests statistical data and other relevant information and takes decision by issuing orders. The Prosecutor also resolves conflicts of competence between investigators.

In order to ensure an adequate mechanism for coordination between all agencies, the role and the competences of the Prosecutor Office should be revised. In this perspective, during all investigative phases (inquiry and pre-trial), the Prosecutor Office should be informed immediately of all criminal facts in order to qualify them as specific crimes as foreseen by the Criminal Code and to assign the cases to the competent agency according to the competences laid down in the Criminal Procedure Code.

Regarding the exchange of information, the above mentioned Law on organised crime indicates that, in order to ensure efficiency in the fight against organised crime, the special units of the Ministry of the Interior and the Security Service are entitled to collect and store information on events and facts related to crimes committed by organised groups. To this end, plans to establish centralised databases were drawn up in the main department of the above mentioned agencies. This database has not yet been set up.

According to information provided by the Ukrainian authorities, it appears that there is currently a centralised database in the Ministry of the Interior to which the Security Service has the right of access. In 2009 a Resolution issued by the Office of the President stipulated that all agencies should have direct access to the centralised database, although it did not earmark the financial resources necessary for implementation.

In addition, in July 2011 the Ministry of the Interior, in cooperation with the Security Service and with the participation of the General Prosecutor's Office, issued a 'Joint instruction on cooperation of law enforcement bodies in the fight against organised crime'. These instructions regulate the search operations for documentation of criminal activities of organised criminal groups.

Furthermore there is a database system called "Hart-1" which contains information on border control related to the State Border Guard Service. It was set up to fight organised crime, combating illegal migration, investigation and related issues (the rules on entry, exit, stay of foreigners and stateless persons).

On 4 January 2011a 'Regulation on exchange of public statistical information and analytical information on the fight against the illegal circulation of drugs, psychotropic substances, analogues, precursors, weapon, ammunition, and explosive substances via the territory of Ukraine' was adopted by Joint Order of the State Customs Service and the State Border Guard Service. Information exchange is done via the Virtual Contact and Analysis Centre (the Analytical Centre). Information is exchanged by the relevant services on a monthly basis and meetings are normally held every trimester.

As far as international coordination among agencies is concerned, there are liaison officers who perform their work on the basis of bilateral agreements between Ukraine and third countries.

Despite all these systems, the level of coordination and information exchange among all agencies is not sufficient. The role of the Prosecutor Office should be enhanced in order to guarantee an adequate level of coordination among agencies.

The exchange of information should be increased and should foresee *inter alia* a continuous flow of information and a common format for information to be exchanged (data model) as well as specific channels for exchanging information. The actual exchange of information is currently limited to the departments of the Ministry of the Interior and Security Service, which are the only ones having direct access.

Given that there is no universal standard on the establishment of a "common database", some countries having one, others having separate databases, it is nevertheless important to put in place the tools necessary for proactive consultation of all available databases.

**Further information is required on:**

- the existing databases, their structure and functioning as well as information on possibilities to cross check information with other existing databases.
- establishment of a common database guaranteeing direct access to relevant officers and/or the measures taken to establish the tools necessary to ensure proactive consultation of all available databases by the relevant entities.
- **Conclusion of an operational cooperation agreement with Europol with special emphasis on data protection provisions**

Ukraine officially informed Europol of its readiness to start negotiations in order to conclude an operational cooperation Agreement at the end of 2010. The conclusion of an operational agreement with Europol is conditional upon assessment by Europol of the relevant data protection standards (see also below under 4. Data protection). A meeting between the

Ukrainian authorities and Europol was held on 12 April 2011, during which Europol explained the different stages and requirements for the drafting of a data protection report, which is a major step in the establishment of an operational cooperation agreement. At a meeting held on 5 September 2011, Europol was informed that two important preconditions for launching the process of concluding an operational agreement had been fulfilled (i.e. a data protection law was adopted and a national data protection supervisory authority started its work in June 2011). Consequently, on 26 September 2011, Ukraine was provided with the data protection questionnaire, which was filled in and returned in mid-October 2011. It is undergoing initial scrutiny by Europol.

#### **4. Data protection**

- **Adoption of adequate legislation on the protection of personal data and establishment of an independent data protection supervisory authority**

Some progress has been made towards establishing an adequate legislative framework and towards the consolidation of the legislative framework on data protection. Ukraine's first 'Law on personal data protection', adopted in June 2010, entered into force on 1 January 2011. The law aims at aligning with European standards in the area of data protection. In addition, a "Law on amendments to certain legislative acts of Ukraine on violation of legislation on personal data protection" was adopted on 2 June 2011 and introduces administrative (in some cases criminal) sanctions for the violation of data protection legislation. This law was due to enter into force on 1 January 2012.

Nevertheless, major additional efforts are necessary in order to improve Ukraine's legislative framework in the area of data protection. In particular, the scope of the data protection law, its definitions, the enforcement of data subject's rights, the powers and independence of the supervisory authority and the rules on the transfer of personal data to third countries need to be clarified and strengthened. Achieving an adequate level of data protection is a precondition for the conclusion of operational agreements with Eurojust and Europol (see above under 2. Judicial cooperation in criminal matters and 3. Law enforcement cooperation).

The State Service of Ukraine on Protection of Personal Data (data protection supervisory authority) was established by Decree of the President of Ukraine on 9 December 2010. A further Presidential Decree was adopted on 6 April 2011, which sets out the tasks and functioning of the State Service of Ukraine on Protection of Personal Data. The Service began its operations in July 2011, but is still in the process of recruiting staff. The complete independence of the newly-established data protection supervisory authority remains of particular importance.

- **Ratification of relevant international conventions, such as the Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data and its 2001 Protocol**

Ukraine ratified the 1981 Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data and its 2001 Additional Protocol regarding supervisory authorities and transborder data flow. The ratification of both instruments entered into force on 1 January 2011. This is a significant first step and the effective transposition of these instruments into domestic law is now a matter of particular importance.

### **Further information, relevant for the whole Block 3, is also required on:**

- the institutional structures in the areas covered by Block 3 (eg Ministry of the Interior, law enforcement agencies, Prosecutor Office) as well as information on ongoing reforms and additional information and clarifications on the division of competences between them.
- the relevant provisions of the Criminal Code and Criminal Procedural Code for the areas covered by Block 3 as well as information on relevant amendments to their provisions.
- timing of the adoption of the relevant Action Plans for the areas covered by Block 3 and indication on the timeframe that they will cover; in this context it would be useful to reflect on the effectiveness of adopting Action Plans on a yearly basis given the time needed and the procedures for their approval.

## **Block 4: External relations and fundamental rights**

### **General assessment**

Ukraine made some progress in the area of external relations and fundamental rights. It drafted and adopted several important amendments to its legislation aimed at removing unjustified obstacles to freedom of movement within Ukraine. Further legislative work is required in order to insert effective provisions on human rights and fundamental freedoms into the national legislation. The legal framework also requires revision to ensure respect for the right to fair, impartial and transparent legal proceedings.

The ratification by Ukraine of most of the relevant international conventions, and enshrining their values as principles in the Constitution, is not sufficient in itself. Effective implementation of those principles requires the adoption of special legislation, as well as the harmonisation of existing legislation with the provisions of treaties and international conventions ratified. However, the effective implementation of the benchmarks should be achieved through primary legislation. Secondary legislation should be confined to further implementing the law. In this context, one outstanding problem is that Ukraine has not yet adopted comprehensive anti-discrimination legislation in order to ensure effective protection against all forms of discrimination, which is one of the main issues to be addressed under block 4.

### **Detailed comments**

#### **1. Freedom of movement within Ukraine**

- **Revision of the legal and regulatory framework on registration and de-registration procedures for Ukrainian citizens and legally staying foreigners or stateless persons with a view to avoiding unjustified restrictions or obligations to their freedom of movement within Ukraine in particular with respect to the conditions for legal stay without residence registration and the measures taken in case of failing to register as well as on the liability of tenants**

The Government has carried out an assessment of the legal and regulatory framework on registration and de-registration procedures for Ukrainian citizens and legally residing foreigners or stateless persons, with a view to avoiding unjustified restrictions or obligations relating to their freedom of movement within Ukraine.

On this basis, Ukraine amended (i) the Rules for processing and issuing invitations to foreigners and stateless persons on obtaining visa documents for entry and transit across the territory of Ukraine (Council of Ministers Regulation No 657 of June 2011, entered into force in September 2011); (ii) the Code of Administrative Justice on setting the procedure for amending and supplementing the appeal or cassation and its withdrawal (law No. 3719-VI of September 2011); (iii) the Code of Administrative Justice on the proceedings in cases of expulsion of foreigners and stateless persons (law No. 3796-VI of September 2011).

In addition, in October 2011 a draft Law 'on amendments to certain laws of Ukraine on registration in Ukraine of place of stay and place of residence of natural persons' was registered with the Parliament and was awaiting approval.

The amendments to the 'Rules for processing and issuing invitations to foreigners and stateless persons on obtaining visa documents for entry to Ukraine' contribute to improving the process of obtaining visas for foreigners and stateless persons for entry in Ukraine. The amendments meet international standards in the field of human rights and fundamental freedoms.

The amendments to the 'Code of Administrative Justice of Ukraine on setting the procedure of amending and supplementing the appeal or cassation and its withdrawal' introduce further clarifying provisions, especially on the right of the parties to amend, complete the appeal or cassation, or to withdraw these actions.

The amendments to the 'Code of Administrative Justice of Ukraine on peculiarities of proceedings in cases of expulsion of foreigners and stateless persons' comply partly with the requirements of ensuring a fair trial laid down in Article 6 of the Convention on Human Rights and Fundamental Freedoms. By means of these amendments, Ukraine ensures that all persons have the right to have their expulsion case judged fairly, publicly, within a reasonable term, and by an independent, impartial court established under the law. Also, through the compulsory presence of the parties to the hearings taking place in the Court, the conditions of exercising any person's right to defence is partly ensured. The procedure for resolving challenges and the appeal against the decision of the court of first instance are provided for. However, the law does not provide a guarantee in ensuring the rights of foreigners or stateless persons to:

- information, in the shortest time, in a language he /she understands and in detail regarding the nature and rationale of the expulsion decision;
- to have adequate time and facilities to prepare his/her defence;
- to be assisted by a lawyer of his/her choice and if he/she cannot afford a lawyer, to be assisted free of charge by a lawyer *ex officio*, when the interests of justice so require;
- to be assisted free of charge by an interpreter, if he/she does not understand or speak the language used in the hearing.

The 'Law of Ukraine on Freedom of Movement and Free Choice of Place of Residence in Ukraine' 1382-IV of December 2003 provides a minimum legal framework to ensure freedom of movement for migrants, and grants them those rights and responsibilities on an equal footing with Ukrainian nationals (with some exceptions). The Law is expected to ensure migrants effective access to travel and identity documentation without discrimination. At the same time, the laws still needs to be further amended in order to achieve full compliance with human rights standards.

The draft 'Law on Introduction of Amendments to the Certain Laws of Ukraine on registration of place of residence and place of stay of individuals in Ukraine' registered with Parliament in October 2011 aims to further amend the 'Law on Freedom of Movement and Free Choice of Place of Residence in Ukraine' 1382-IV of December 2003 and the 'Law on Basis of Social Protection of Homeless Persons and Homeless Children' of 2005.

## **2. Conditions and procedures for the issue of identity documents**

- **Revision of the legal and regulatory framework so as to ensure effective access to travel and identity documentation without discrimination, and in particular as regards vulnerable groups**

The draft "Law of Ukraine on Documents Identifying a Person and Confirming Citizenship of Ukraine" (see above under Block 1) was adopted by Parliament in September 2011, but was vetoed by the President and returned to the Parliament for reconsideration in October 2011. One of the reasons stated for its vetoing was to ensure respect for the principles of human rights and fundamental freedoms enshrined in the Constitution of Ukraine and in international treaties ratified by Ukraine.

The draft 'Law on Documents Identifying a Person and Confirming Citizenship of Ukraine', in the form adopted by Parliament in September 2011, reduces the period of the permanent residence document for stateless persons from an unlimited period to one year. It introduces discriminatory provisions that will disadvantage and marginalise refugees and stateless persons in Ukraine, and contains provisions which diverge from European and international standards. It also reduces the period of validity of the refugees's internal document and travel document to six months and puts them in a position where they are unable to obtain foreign visas, thereby limiting their freedom of movement. This provision is contrary to Article 10 (11) of the 2011 'Law on Refugees' (see above under Block 2), according to which the refugee certificate is valid for 5 years.

In August 2011, the Ministry of the Interior approved 'Rules on processing and issuance of temporary residence permits'. The Rules are in line with the international standards in the field of human rights and fundamental freedoms. As regards the appeal and cassation procedures, conclusions under point 1 above apply *mutatis mutandis*.

## **3. Citizens' rights including protection of minorities**

- **Adoption of comprehensive anti-discrimination legislation, as recommended by UN and Council of Europe monitoring bodies, to ensure effective protection against discrimination**

There is still no comprehensive anti-discrimination legislation, as recommended by the monitoring bodies of the UN and Council of Europe, to ensure effective protection against discrimination. Ukraine has drafted a Strategy on anti-discrimination (to be complemented by an Action Plan), aimed at ensuring proper implementation of the constitutional and national legislation provisions and also of the obligations of Ukraine under the international treaties to which it is a party. The draft Strategy has still to be submitted to the President for consideration.

The draft Strategy on combating discrimination represents an expression of Ukraine's intention to establish the legal and institutional framework for the effective implementation of the principles of equality and non-discrimination. However, a national strategy, being a soft law instrument, is not sufficient to combat discrimination effectively. Therefore, the final purpose of the strategy must be the adoption and implementation of comprehensive legislation to prevent and combat discrimination. The principle of equal opportunities should constitute a feature of Ukraine's legislative and social culture. The regulation of these values must be ensured through primary legislation. The secondary legislation should respect, and not undermine the legal instruments and remedies available to the State and to the citizens in cases of discrimination.

As far as content is concerned, the draft Strategy should be revised in order to specify all the elements which must be reflected in the final legislation. It should clearly reflect the fact that the elaboration of legislation will start from the premise that the principle of equality before the law is expressed by the obligations of the State to refrain from unjustified differentiated treatment in adopting and enforcing the law, to prohibit and sanction discrimination and to design efficient legal remedies for the victims of discrimination. The Strategy must also include the prevention aspect.

The comprehensive legislation should cover minimum international standards on legal instruments and remedies in order to ensure effective implementation of the principle of equality and non-discrimination, the provision of judicial and administrative procedures to the victims of discrimination in order to obtain effective remedy, the establishment of a specialised institution to promote equality of treatment and sanction all forms of discrimination (remaining mindful of the fact that all public and private entities have obligations in this field), as well as aspects related to prevention of discrimination. The law should apply to all persons, as regards both the public and private sectors, including public bodies.

Harmonisation of primary and secondary legislation with the principle of equality of rights and non-discrimination, harmonisation and updating of legislation governing the protection of minorities (e.g. national minorities), protection of persons with disabilities, status of the refugees, amendments to the Criminal Code regarding hate crimes, introduction of an aggravating circumstance when a crime is perpetrated with a discriminatory motivation are also important requirements to be fulfilled under this benchmark.

- **Actively pursue the specific recommendations of UN bodies, OSCE/ODIHR, the Council of Europe/ECRI and international human rights organisations in implementing anti-discrimination policies, protecting minorities and combating hate crimes**

Ukraine ratified the Framework Convention for the Protection of National Minorities in May 1998 and the European Charter for Regional or Minority Languages in January 2006. It also adopted a Law 'on the protection of national minorities' in June 1992. In line with the recommendations made by the European Commission Against Racism and Intolerance (3<sup>rd</sup> report on Ukraine adopted on 29 June 2007) and by the Council of Europe Committee of Ministers on the application of the European Charter for Regional or Minority Languages by Ukraine (CM/RecChL (2010)<sup>3</sup> Ukraine should update its national legislation in the field of

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<sup>3</sup> <https://wcd.coe.int/ViewDoc.jsp?id=1648993&Site=COE>

protection of persons belonging to national minorities, particularly as regards access to culture, education in the mother tongue, use of the mother tongue etc., as well as to strengthen the legislative framework on solving issues related to social adaptation and integration of formerly deported citizens on the territory of the Autonomous Republic of Crimea.

Ukraine should update its legislation on the protection of persons with disabilities, in accordance with the Optional Protocol to the Convention on the Rights of Persons with Disabilities concluded in New York on 13 December 2006, which entered into force for Ukraine on 4 February 2010.

Ukraine should adopt a strategy on the protection and integration of persons belonging to the Roma population. The Communication of the European Commission “A EU framework for national strategies to integrate Roma until 2020” (COM(2011) 173 final<sup>4</sup>) could provide useful guidance in this respect.

The Law 'on preventing and combating domestic violence' of November 2001 should be further improved, together with the adoption of certain provisions in the field of labour relations to confer protection to pregnant women and during maternity.

- **Ratification of relevant UN and Council of Europe instruments in the fight against discrimination**

Ukraine is a party to the majority of international documents of the UN and the Council of Europe on the protection of human rights and fighting discrimination.

Further efforts need to be devoted to the adoption of special legislation in the area of anti-discrimination and the harmonization of existing legislation with the provisions of ratified treaties and international conventions require further efforts.

- **Specify conditions and circumstances for the acquisition of Ukrainian citizenship.**

The conditions and circumstances for the acquisition of Ukrainian citizenship are determined by the 'Law on citizenship of Ukraine' adopted on 18 January 2001. Ukraine has adopted the principle of single citizenship.

The law promotes the principle of equality before the law of citizens of Ukraine irrespective of the grounds, order and date of their acquisition of the citizenship of Ukraine. From this perspective, the law is in line with the Council of Europe Convention on Nationality, which entered into force in 2000.

**Further information is required on:**

- the timetable for the adoption of a comprehensive anti-discrimination legislation and for the adoption of the Anti-Discrimination Strategy and accompanying Action Plan.
- the timetable for the adoption of a Strategy and accompanying Action Plan on the protection and integration of persons belonging to the Roma population.

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<sup>4</sup> [http://ec.europa.eu/justice/policies/discrimination/docs/com\\_2011\\_173\\_en.pdf](http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf)

### **III. Overall assessment and next steps**

As indicated in the First Progress Report, the VLAP is an important tool for advancing reforms in the Justice and Home Affairs area and beyond. This Second Progress Report reflects the state of play until November 2011. Once Ukraine has provided the additional information and clarifications requested, including on the necessary measures identified in this Second Progress Report, as well as the outstanding legislative and policy framework, the Commission services and EEAS will present an updated report. Moreover, in accordance with the methodology of the VLAP, they will also present "a wider assessment of possible migratory and security impacts of future visa liberalisation for Ukrainian citizens travelling to the EU". Building upon the conclusions of the updated report and of the "assessment of possible migratory and security impacts", a decision will be taken whether to initiate the assessment of the second set of benchmarks, in accordance with the VLAP methodology.