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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**Fifth Progress Report on the Implementation by Ukraine of the Action Plan on Visa
Liberalisation**

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I. INTRODUCTION

The European Union launched a visa liberalisation dialogue with Ukraine in 2010. On 22 November 2010, the European Commission presented the Ukrainian Government with an action plan on visa liberalisation (VLAP). This set out the benchmarks that Ukraine has to meet before Ukrainian nationals holding biometric passports can enter the Schengen zone for short stays without the need for a visa.

Following the Commission's fourth report (27 May 2014)¹ and its Council endorsement (23 June 2014), Ukraine is officially in the second phase of the action plan when the state of implementation of the legislative and policy framework is to be assessed. In line with the methodology outlined in the VLAP, the Commission organised on-site evaluations involving experts from Member States.

From September 2014 to March 2015, the Commission led evaluation missions on all four blocks of the VLAP, with the assistance of experts from Member States, the European External Action Service and the EU Delegation to Ukraine.

This is the first progress report on the implementation of the second phase of the VLAP by Ukraine. It addresses how effectively and sustainably the implementation of the first phase benchmarks has been addressed by the Ukrainian government. The report is accompanied by a Commission Staff Working Document,² which elaborates on the developments described in the report. In annex of the Staff Working Document, as required by the VLAP methodology, the Commission provides factual analysis and statistics based information regarding the expected migratory and security impacts of the future visa liberalisation. The data and information available give prospective main trends in migration and security areas, showing that EU is an attractive destination for migrants from Ukraine and that there are security challenges to be monitored.

2. ASSESSMENT OF MEASURES UNDER THE FOUR BLOCKS OF THE ACTION PLAN ON VISA LIBERALISATION

2.1. Block 1: Document security, including biometrics

A significant step was taken as of 12 January 2015 with the issuance of biometric ordinary passports that comply with requirements of the International Civil Aviation Organisation. There have been very substantial improvements and significant progress has been made regarding the high level of integrity and security of the application, personalisation and distribution process for international passports. The same goes for domestic passports and other breeder documents. Prompt and systematic reporting to the Interpol database on lost and stolen passports has started and this benchmark can be considered as being met.

The document security benchmark is deemed to be almost achieved. It is recommended that the Ukrainian authorities:

¹ COM(2014) 336 final.

² COM(2015) 104 final.

- Ensure that the border checkpoints are equipped to carry out second-line controls using fingerprints.
- Concerning the application process and establishing the identity of the applicant, the connection of the former State Migration Service database to the operational part of the Unified State Demographic Register for the issuance of biometric passports should be implemented as soon as possible. There should be an automatic link with the relevant database in order to check the situation of the applicant in relation to criminal records.
- Implement measures effectively to address possible side effects of name changing.

2.2. Block 2: Integrated border management, migration management, and asylum

2.2.1 Integrated border management

The Ukrainian authorities currently face a huge human and financial challenge because its resources are being redirected to the security of the eastern borders. In this context, it is important to ensure effective control of the administrative line to Crimea/Sevastopol and the contact line in eastern Ukraine. With the exception of the eastern borders, border management is in general at a good level of implementation.³

The integrated border management benchmark is deemed to almost achieved. It is recommended that the Ukrainian authorities:

- Ensure access to Interpol databases at border crossing points.
- Improve the efficiency of border control by implementing joint patrols for border surveillance and by developing cooperation in border checks at crossing points of borders shared with neighbouring countries.
- Implement the integrated border management strategies and action plans, including the improvement of inter-agency cooperation, the exchange of data between law enforcement agencies, and the roll-out of the risk analysis methodology developed and decided by the central level.

2.2.2 Migration management

Legislation is in place. However, the situation in eastern Ukraine and budget constraints have an impact on the implementation of migration policy in practice. The interaction and cooperation between the State Migration Service, State Border Guards and labour agencies functions well. In accordance with the Regulation of the Cabinet of Ministers of Ukraine of 5 April 2014, the staff of the State Migration Service was reduced. As a consequence of the reorganisation, a unit for combating irregular migration was established. Inland detection of irregular migrants is still not sufficiently implemented owing to the lack of staff in the State Migration Service. Ukraine has signed readmission agreements with the Russian Federation, Georgia, Uzbekistan, Turkmenistan, Republic of Moldova, and other countries. In total, 17 readmission agreements had been concluded as of September 2014.

³ While taking into account the specific situation at parts of the border, an assessment of the situation at the eastern borders has not been carried out.

The migration management benchmark is deemed to be almost achieved. It is recommended that the Ukrainian authorities:

- Adopt the law on external labour migration as soon as possible; this will regulate reintegration issues on the legislative level. The new scheme on responsibilities, competent authorities, measures and tasks should be prepared immediately after adoption.
- Increase the capacity of the State Migration Service in inland detection procedures.
- Strengthen language training for staff of the State Migration Service.
- Complete the 2014 migration profiles and establish the ‘contact analytical centre’ and the database for monitoring migration processes.

2.2.3 Asylum

Asylum legislation has improved, but there is still a need for amendments to existing legislation and its implementation in order to achieve the benchmarks. The conditions in reception centres are good, but certain aspects should be improved. Efforts have been made regarding the integration of beneficiaries of international protection, but access to employment and the level of social assistance could be improved. There is good cooperation between the central and regional levels of the State Migration Service, but there is some room for simplification of the asylum procedure and for achieving greater efficiency at regional levels.

The asylum benchmark is deemed to be partially achieved, but with good prospect for further progress. It is recommended that the Ukrainian authorities:

- Continue providing primary legal aid to persons applying for international protection and prepare for the implementation of the provision of free secondary legal assistance, starting as soon as possible, at the latest on 1 January 2017.
- Establish the ‘refugee’ subsystem of the foreigners’ database and increase the efficiency of the use of country of origin information. This should be done by reinstating the country of origin unit or assigning officials to establish and manage an up-to-date and objective country of origin database.
- Clarify the legal grounds of detention of people seeking international protection and ensure the prioritisation of their cases.
- Establish rules on the status, rights and obligations of those foreigners who cannot be returned, but who are not entitled to international protection.
- Provide the necessary funds for sustainable improvement of temporary accommodation centres for people seeking international protection and for beneficiaries of international protection. In particular, the temporary accommodation centre in Yahotyn (Kyiv Oblast) should be opened and works should continue to refurbish the reception centre in Odessa. The amount provided for food is too low - UAH 12 (less than EUR 1) per person, per day - and should be increased.
- Improve the training of staff working in the reception centres, including language training, and training for judges.

2.3. Block 3: Public order and security

2.3.1. Preventing and fighting organised crime, terrorism and corruption

2.3.1.1. Preventing and fighting organised crime

Ukraine has begun a complex reform of the Ministry of Interior, which has restructured the work of agencies responsible for preventing and fighting organised crime. In February 2015, parliament adopted a law on the reform of the interior bodies. Accordingly, GUBOZ, the main department for combating organised crime, has been abolished. In the reform process, along with the Ministry of Information, the Security Service retained the operational and pre-trial investigative powers to fight organised crime. The reform provides for the establishment of an additional body in the fight against organised crime — the State Bureau of Investigation.

Based on the above findings, **the benchmark is deemed to be only partially achieved but with good prospects for further progress.** It is recommended that the Ukrainian authorities:

- Ensure an overall vision and direction of the reform process, and consolidate existing action plans into a single, well-structured action plan that enables progress to be tracked.
- Establish a criminal justice approach for both law enforcement and prosecution forces so as to determine priorities and to distribute resources according to priorities.
- Take steps to reform the investigative process so as to establish a clear chain of responsibilities for the various steps of the investigation and prosecution process.
- Drastically reduce the pre-trial investigative powers currently held by the Security Service for intelligence and counter-intelligence.
- Ensure the specialisation of judges and prosecution for organised crime cases.
- Ensure the effectiveness of a specialised ‘witness protection unit’ according to international standards.

2.3.1.2. Trafficking in human beings

The current legal framework is broad and provides opportunities to respond to the challenges presented by human trafficking at local, national and international levels. The framework has resulted in the identification of victims, and the prosecution and conviction of perpetrators. However, the number of victims officially identified has decreased and this runs counter to international assessments of a thriving sex industry in Ukraine. More training and awareness programmes for all sectors are routinely undertaken and delivered Ukraine.

The trafficking in human beings benchmark is deemed to be partially achieved with good prospects for further progress. It is recommended that the Ukrainian authorities:

- Assess reasons for the decrease in victims identified related to sex trafficking and consider a more proactive approach towards the sex industry.
- Monitor potential emerging trends in relation to human trafficking, especially in the context of the conflict (internal trafficking, trafficking of children).
- Strengthen the identification process, including the identification of foreign victims, by monitoring and reviewing the high level of refusals.

- Continue to provide systematic training for officials on their role and responsibilities in relation to the identification process.
- Ensure transparent financing for actions related to combating human trafficking, especially the provision of assistance of victims.
- Implement a system of monitoring and evaluation for the existing action plan and for the plan from 2016 and beyond. This should include a clear role for non-governmental organisations, and sufficient funds for their effective participation.
- The status of NGOs under the national referral mechanism should be formalised and mechanisms established that would ensure their access to state funding.

2.3.1.3. Preventing and fighting corruption

The progress made so far on anti-corruption policies was notably at legislative level and on some preparatory steps for a new institutional setting. In October 2014, an anti-corruption package, including a national strategy for 2014-17, was adopted, setting the foundations for a new institutional framework for prevention policies. Certain shortcomings in the law on the National Anti-Corruption Bureau were addressed in February 2015, including safeguards for staff salaries and a framework for a specialised anti-corruption prosecution office. The recruitment of the Bureau's leadership, following an open competition managed by an independent commission, was finalised on 16 April 2015, when the President appointed the Bureau's director. The central register of companies is being completed with data on beneficial ownership. Progress was made in reducing exemptions in public procurement. However, there is little prioritisation and coherence in the implementation, leading to a fragmentary approach for what is already an overwhelming process. Besides, the Commission will continue to monitor the putting in place of anti-corruption safeguards for privatisations, state-owned/controlled companies as well as large public procurement; the adoption of legislation reflecting the GRECO recommendations on party and electoral campaign funding and the follow up of the Venice Commission's recommendations and a realistic frame as regards the 'cleaning-up' exercise of the ranks of judges and prosecutors envisaged by the Ukrainian authorities.

The anti-corruption benchmark is deemed to be only partially achieved. It is recommended that the Ukrainian authorities:

- Ensure a high-level, anti-corruption coordination mechanism to implement the anti-corruption strategy and ensure a consistent approach at political level.
- Establish an operational and independent National Anti-Corruption Bureau, a specialised anti-corruption prosecution office and a National Agency for Prevention of Corruption, with clear guidelines for inter-agency cooperation.
- Put in place procedures to ensure: the timely publication of all current asset declarations; effective verification of assets and conflicts of interest of public officials; full operability and accuracy of central electronic databases, including on asset declarations and beneficial ownership; and a unified web portal disclosing public expenditure.
- Establish a national Asset Recovery Office and an effective inter-agency coordination to establish an asset recovery record.
- Pursue the immunity reforms related to judges and Members of Parliament.

2.3.1.4. Money laundering and financing of terrorism

The legislative and policy framework for preventing and fighting money laundering and the financing of terrorism is in place, in line with European and international standards. On 14 October 2014, the Ukrainian Parliament adopted the law on prevention and counteraction to legalisation (money laundering) of the proceeds from crime or terrorism financing, as well as financing of the proliferation of weapons of mass destruction, which came into effect on 7 February 2015. The law brings Ukraine a major step closer to compliance with the new 2012 money laundering recommendations of the Financial Action Task Force, and even with the fourth EU directive on money laundering.

The money laundering benchmark is deemed to be almost achieved. It is recommended that the Ukrainian authorities:

- Ensure that the National Bank of Ukraine continues to take measures against banks that do not disclose ultimate beneficial ownership.
- Ensure effective client identification with regard to a variety of services offered by legal entities or agents (e.g. ‘webmoney’ services).
- Establish a specialised unit focusing on the coordination of investigations into money laundering and terrorism financing.
- An introduction of a coordinated training plan could support the quality of the investigations.

2.3.1.5. Drugs

The National Anti-Drug Strategy and its related action plan is being further implemented through the second action plan for the period 2015-20. On 25 March 2015, regulations on the Ministry of Health and on the State Medical Drug Service were approved by resolution of the government. These regulations confirmed the abolition of the State Service and the transfer of drug policy functions to the Ministry of Health. The implementation of the Memorandum of Understanding with the European Monitoring Centre for Drugs and Drug Addiction has been in force since 2010 and is fully implemented.

Based on the above findings, **the anti-drug benchmark is deemed to be almost achieved.** It is recommended that the Ukrainian authorities:

- Refine the action plan in order to include deadlines for milestones and prepare an impact assessment of planned actions.
- Consider consolidating provisions regulating drugs issues in a single legal instrument, for instance a Drugs Code.
- Ensure sufficient measures aimed at detection and impounding of proceeds of criminal activity.

2.3.2. Judicial cooperation in criminal matters

Ukraine has a legal framework that fully covers the relevant areas of cooperation such as mutual assistance, extradition, transfer of sentenced people, transfer of criminal proceedings

and recognition and enforcement of foreign criminal judgments. Ukraine is a party to 73 international treaties in the sphere of judicial cooperation in criminal matters, 50 of which are bilateral and 23 multilateral. The signature of a draft Agreement on Cooperation with Eurojust has been on hold pending amendments to the data protection legislation of Ukraine. The necessary provisions entered into force in 2014 thus unblocking further procedures. The signature of the agreement should follow in the near future.

Based on the above findings and pending the signature of the Eurojust agreement, the **benchmark on judicial cooperation in criminal matters is deemed to be achieved.**

2.3.3. Law enforcement cooperation

Cooperation between the different law enforcement agencies is subject to complex reforms. A priority is the recently launched reform of the patrol police, necessary in order to regain the citizens' trust and reduce the perception of corruption. Ukrainian law enforcement agencies cooperate with Interpol in the exchange of information. The operational agreement with Europol, which will allow for the exchange of operational information, was signed on 19 March 2015.

The law enforcement cooperation benchmark is **deemed to be almost achieved.** It is recommended that the Ukrainian authorities:

- Improve inter-agency cooperation through the establishment of a platform capable of interconnecting existing law enforcement systems throughout the country.
- Accelerate the procedure already undertaken for the conclusion of the Europol operational agreement by complying with the requirements of Europol's Secure Information Exchange Network Application.
- Consider developing a national classified threat assessment report along the lines of Europol's Serious and Organised Crime Threat Assessment structure and methodology.

2.3.4. Data protection

Ukraine is satisfactorily implementing the law on the protection of personal data and is ensuring efficient functioning of the independent data supervisory authority. The Data Protection Department has been established within the Ombudsman's office, and is to be further reinforced to fully assume its responsibilities.

The protection of personal data benchmark is deemed to be almost achieved. It is recommended that the Ukrainian authorities:

- Further strengthen the Data Protection Department.

2.4. Block 4: External relations and fundamental rights

Despite the substantial external and internal challenges that the country is facing, Ukraine has made progress in the effective implementation of requirements relating to external relations and fundamental rights.

2.4.1 Freedom of movement within Ukraine

The Ukrainian authorities demonstrated progress in ensuring that the free movement within Ukraine of Ukrainian citizens and legally staying foreigners or stateless people is not subject to unjustified restrictions. The authorities are implementing the legal framework concerning freedom of movement and have taken steps to extend its provisions by making them applicable to citizens residing in territories not under the effective control of Ukrainian authorities. Information on the registration requirements of foreigners is provided publically and is available online.

The freedom of movement benchmark is deemed to be almost achieved. It is recommended that the Ukrainian authorities:

- Ensure that HIV/AIDS status should not be a justification to restrict freedom of movement or choice of residence when applying for an immigration permit.
- Ensure that measures adopted in relation to movement into and from territories not under effective control of Ukrainian authorities are based on clear legal criteria and do not put inadequate administrative burden on citizens.

2.4.2 Conditions and procedures for the issuance of travel and identity documents

The Ukrainian authorities demonstrated progress in ensuring that all Ukrainian citizens have effective access to identity and travel documents. The legal framework regulating access to travel and identity documents for all Ukrainian citizens is being implemented.

The benchmark is deemed as achieved.

2.4.3 Citizens' rights, including protection of minorities

As regards anti-discrimination, the equality body led by the Parliamentary Commissioner for Human Rights has been set up. In close cooperation with civil society, it manages and proactively monitors implementation of the law on preventing and combating discrimination, including through the 2014-17 strategy on preventing and combating discrimination in Ukraine. Case law has emerged in this field. The anti-discrimination law needs to be clarified on some aspects. However, the resources given to the equality body do not reflect its increased role and legal powers. Policies on anti-discrimination and awareness-raising campaigns are mostly undertaken by non-governmental organisations, often funded by international organisations. Ukraine implements at a reasonable level the legal framework on the protection of people belonging to national minorities.

The benchmark is deemed to be partially achieved with good prospects for further progress. It is recommended that the Ukrainian authorities:

- Ensure through secondary legislation or case law that the anti-discrimination law (derogations, sanctions, compensation, scope, etc.) will be interpreted and implemented in line with international and European standards.

- Support the policies on anti-discrimination by allocating sufficient budgetary and human resources to ensure their sustainable implementation; provide the equality body with adequate budgetary and human resources.
- Amend the Labour Code to explicitly prohibit discrimination on the grounds of sexual orientation.
- Intensify awareness-raising campaigns on anti-discrimination.
- Adopt a government strategy on prevention and fight against discrimination.
- Provide to law enforcement officials, prosecutors and judges a more systematic and permanent approach to training on anti-discrimination legislation and policies, including through strengthened links with international organisations.
- Maintain a permanent and effective dialogue between people belonging to national minorities and other stakeholders, in order to address possible fears generated by the conflict in eastern Ukraine, by the economic crisis and by perceived signs of rising nationalism.

3. OVERALL ASSESSMENT AND NEXT STEPS

The Commission has assessed Ukraine's implementation of the second phase benchmarks of the action plan on visa liberalisation, in line with the established methodology. The EU has continued to monitor the progress made by Ukraine in VLAP-relevant areas in the framework of the EU-Ukraine Joint Visa Facilitation Committee, the EU-Ukraine Readmission Committee, EU-Ukraine Joint Sub-Committee on Justice, Freedom and Security, and in the human rights dialogue. In each of these fora, the state of dialogue and cooperation between the EU and Ukraine is considered very advanced.

Given the exceptional circumstances and the internal and external challenges it faces, the progress achieved by Ukraine under the four blocks of the VLAP has been noteworthy. The significant efforts made by the Ukrainian authorities in making implementation of the VLAP a national priority led to a commendable legislative framework and a commitment to institutional settings. However, a comprehensive push, directed from the highest level, needs to continue to ensure that the priorities are acknowledged at all levels for an effective implementation of reforms.

In view of the considerable progress made in recent months, the Commission is ready to shorten the period until the next report, provided that continued quick progress is made based on the benchmarks and the state of play as further described in the present report and the Staff Working Document.

Nevertheless, more sustained efforts in line with the recommendations included in the present report are still required. It is also essential to continue organising targeted information campaigns aiming to clarify the rights and obligations of visa-free travel, and on the rules regulating access to the EU labour market.

Fulfilling the actions required in this report would allow Ukraine to complete its implementation of all the VLAP's second-phase benchmarks. The Commission will continue to monitor and to do its utmost to support Ukraine in the implementation of the VLAP and will report on progress report by the end of 2015.