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

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

## **I. Introduction**

The EU-Ukraine Visa Dialogue to examine 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 (VLAP)<sup>1</sup> was presented to Ukraine by the Commission on 22 November 2010. The VLAP sets a series of precise benchmarks for Ukraine on four ‘blocks’<sup>2</sup> of relevant issues, with a view to both the adoption of a legislative, policy and institutional framework (phase 1) and its effective and sustainable implementation (phase 2).

The Commission has regularly reported to the European Parliament and the Council on the implementation of the VLAP. The **First Progress Report** on the implementation by Ukraine of the Action Plan on Visa Liberalisation was presented on 16 September 2011<sup>3</sup>.

The **Second Progress Report** on the implementation by Ukraine of the Action Plan on Visa Liberalisation was issued on 9 February 2012<sup>3</sup>. A Senior Officials Meeting took place in April 2012 during which the Second Progress Report was presented and the next steps in the process were discussed.

Ukraine handed in its own third progress report on 22 July this year and provided an update on 11 October, which was the cut-off date for taking new legislative developments into account. Evaluation missions on all four blocks involving nine experts took place in September 2013. A Senior officials meeting with Ukraine was held on 27 September.

This **Commission Report** is the third progress report on the first phase of the VLAP, presenting a comprehensive and consolidated assessment by the Commission of the progress made by Ukraine in meeting the first-phase benchmarks of the VLAP relating to the establishment of the legislative, policy and institutional framework.

Beyond VLAP benchmarks, issues related to the reform of Judiciary and Prosecutor Office are monitored in other dialogue frameworks, such as the informal Judiciary Dialogue launched in February 2013, the Cooperation Committee, the Cooperation Council, Summit as well as in the context of the implementation of the Association Agenda.

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

### **Block 1: Document security, including biometrics**

#### **General assessment**

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<sup>1</sup>Council document SEC (2011) 1076 final.

<sup>2</sup>The four blocks are: (1) document security, including biometrics; (2) irregular migration, including readmission; (3) public order and security; and (4) external relations and fundamental rights.

<sup>3</sup> SW 2012 (10) final.

The basic legislative framework (primary law) is largely in place. Action Plans have been adopted both for the roll-out of International Civil Aviation Authority (ICAO)-compliant biometric passports and for phasing out non-ICAO compliant passports.

The Commission considers that Ukraine largely meets the benchmarks set under Block 1. The use of fingerprints as a mandatory biometric feature for passports is to be further clarified and the necessary by-laws setting up the issuance procedures are still to be adopted.

### Detailed comments

- **Adoption of a legal framework for issuing 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**

A framework law<sup>4</sup> was adopted and entered into force on 20 November 2012 creating a single state demographic registry and establishing a list of the data that will be collected and used in order to issue identity or travel documents using biometric data features. The Law introduces 14 types of biometric identity, travel and residence documents for Ukrainians, foreigners and stateless persons, including the international passport and the internal passport, the latter being the ID card used as the main supporting document to apply for an international passport.

The Law lays down most of the basic rules governing the issuance of ICAO-compliant travel documents (one person one document principle, no extension of validity, data protection rules indicating the purposes for which data are collected, stored and used, etc.). Concerning the biometric features to be captured, the law clearly cites the digitised photo and the signature but mentions fingerprints only as an additional and optional element with no precise reference to which fingers should be collected, nor does it indicate which exceptions are deemed appropriate and what procedures should be followed. A clear indication of which fingerprints are to be collected and stored in the passport is required. Likewise the reference to ICAO recommendations in the law needs to be spelled out in more detail.

Implementing measures on the issuing procedures and additional technical specifications — due to the suspension of those adopted in March 2013 — will need to be adopted. The opportunity could be taken to simplify and streamline the application procedure.

- **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**

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<sup>4</sup> Law of Ukraine No 5492 on the Single State Demographic Registry and the documents confirming citizenship of Ukraine, identity of the person and his/her special status.

An Action Plan for phasing out non-ICAO compliant passports was already adopted in 2011. It lists a set of measures and actions to be performed by 24 November 2015 and further indicates that the phasing-out will be implemented gradually as and when the biometric documents are issued but does not give any timeframe for rolling out these biometric documents.

As for the roll-out of ICAO-compliant biometric passports, a 2013-16 Action Plan was adopted on 11 September 2013, which needs to be assessed once an English translation is made available.

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

The State Migration Service (SMS) within the Ministry of Internal Affairs is the body responsible for managing the register and issuing international passports and other identity documents.

An ethical code was already adopted in 2011, focusing on the integrity of the civil service, asset declarations and rules on whistle-blowers, and another more general code for officers of internal affairs bodies of Ukraine was adopted in 2012<sup>5</sup>. It is to be seen whether updates are necessary, due to the subsequent changes in the overall legal framework on anti-corruption (for further detail see the section on Block 3).

The Anti-Corruption Division was established within the SMS in April 2012 to combat and prevent corruption. An Annual Action Plan on preventing and countering corruption offences is approved by the Head of the SMS.

Although there is no specific training for officials dealing with international passports, several advanced and specialised internal training courses for the SMS officials were developed in cooperation with universities and already held this year (June 2013). The courses consist of a one-week programme, they address anti-corruption and biometrics issues and the lectures are given by the Anti-Corruption Division.

Their content appears comprehensive and contributes to raising civil servants' awareness of corruption and the sanctions incurred.

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<sup>5</sup> Order of the Ministry of Internal Affairs of Ukraine No 155 of 22 February 2012 adopting rules of conduct and professional ethics for officers of internal affairs bodies of Ukraine. This order addresses the issue of conflicts of interest and the prevention of corruption.

The effectiveness of these measures will have to be further assessed once the issuance of biometric documents has started.

## **Block 2: Irregular immigration, including readmission**

### **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. Inter-agency information exchange should be improved via the possibility to exchange information at regional and local levels.

With regard to **migration management**, Ukraine has laid down a comprehensive basis for an efficient migration management system and the relevant legislative framework is in place.

In the area of **asylum**, the legislative basis is there too and largely in line with European and international standards, although some further improvements are necessary, with special regard to widening the definition of subsidiary and temporary protection and the provisions on medical care for asylum seekers. Most of the institutional framework is in place, although more resources should be allocated to the implementation of the legislation.

Detailed comments by policy area

### **Block 2 / topic 1 — Border management**

- **Adoption of all necessary measures for implementing the law enforcement programme on state border development and reconstruction and the development concept for the State Border Guard Service, both for the period up to 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 legislative framework was already in place, with the Law on border control in force since December 2010 along with the amendment of a number of other pieces of legislation and by-laws. In the last two years, only a few minor changes have been made to border-related legislation. One of these, to relevant provisions of the new Criminal Procedure Code, affected the competence of the State Border Guard Service (SBGS), which lost their right to carry out preliminary criminal proceedings, the Prosecutor's Office having procedural control (issuing the task order). In the implementation phase, the precise consequences for the capabilities of

the SGBS as an effective law enforcement agency tackling cross-border crimes will need to be clarified.

The demarcation of state borders started at the Ukraine-Russia border in November 2012 and substantially progressed at the Ukraine-Moldova border (95% of that border, totalling 1 163 km, has been finalised, including 88% of the Transnistrian segment). The Ukraine-Moldova border is to be finalised by the end of 2013. At the border with Belarus work has not yet started, but in June 2013 Ukraine and Belarus signed a protocol on the exchange of ratification notes on the state border agreement concluded by the two countries already in May 1997. This document will hopefully launch the practical work on demarcating the Ukraine-Belarus border. Despite the lack of demarcation a border control mechanism exists and borders are under the control of competent authorities on both sides.

In terms of international cooperation, the SBGS is actively developing its relationships with the authorities of neighbouring countries and other actors in the sphere of international borders. This development work has continued and is currently increasingly geared to serving practical cooperation. There has been good progress especially in the area of joint monitoring of borders based on bilateral agreements with neighbouring countries: an agreement with Hungary has been in force since May 2012, and one with Russia since February 2012. Cooperation with Frontex continued under the new cooperation plan for 2013-15 with a focus on joint operations, risk analysis, exchange of information, training of personnel and technological cooperation.

Inter-agency cooperation is one of the areas that still need attention. First steps have been taken but effective inter-agency cooperation — especially information exchange — is still limited to only the highest level of organisations. It is of the utmost importance to recognise the added value of inter-agency cooperation not only for the SBGS but also for the other authorities involved in the prevention of cross-border crime and to carefully consider, including from the legal point of view, whether unnecessary obstacles still exist. Exchange of information at the inter-agency level is taking place through the Virtual Contact and Analytical Centre, which interconnects specified units of the SBGS, the Ministry of Internal Affairs, the Ministry of Foreign Affairs, the State Migration Service, the State Customs Service, the Security Service and the National Civil Service Agency, with the SBGS playing the coordinating role. The Centre has produced joint analytical reports on the basis of which the leadership of the SBGS and the State Customs Service are taking decisions in the sphere of border protection.

- **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 and sufficient financial and human resources in the area of border management**

Core documents were already in place, a Strategy approved in 2006 and an Action Plan from 2007 up until 2015 with the aim of transforming the SBGS into a modern European-type law enforcement agency. A text on Reforming mobile squads was adopted in July 2012 and Strategies ('Concepts') for maritime guards and aviation in 2011.

Results achieved suggest that in general the aforementioned Concepts are successfully implemented (e.g. the use of conscripts in border control duties has now drawn to an end and all SBGS personnel are under contract and specially trained for their duties). As for aviation, additional aircraft have been purchased and pilots have been trained in line with ICAO standards. As for maritime resources, the projects have been completed (the patrol boat 'Oral' has been deployed) and a new training concept and post-graduation system is being drafted.

An integrated inter-agency information and communication system named 'Arkan' is used for the control of persons, vehicles and goods crossing the state border. It interconnects nine different ministries and agencies, allows information and functional support activities, and enables its users to manage databases and to access each other's and exchange information in a protected and secure way. Although 'Arkan' is already operational, its use is limited as no inter-agency information exchange is possible between local and regional levels.

- **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**

The SGBS Academy has further improved its level of training and training conditions. As regards the institutional structure a specific department has been set up within the SGBS with specific tasks to prevent corruption. In educational terms, the curriculum of the SGBS Academy includes 114 academic hours of legal studies on fighting corruption and the code of conduct of personnel responsible for border management. There is also special training at advanced level for border management personnel.

Other concrete measures are in also in place: there is a Public Reception Office for citizen claims, and a hotline open 24 hours a day. Anti-corruption campaigns are being conducted, including in cooperation with certain NGOs.

As regards customs, the Ministry of Revenue and Duties has also strengthened the Internal Security Department dealing with corruption cases. It has received broader powers to detect and prevent corruption offences in customs sphere. The Customs Anti-corruption strategy includes the objectives to reduce corruption amongst staff through preventive work and shaping negative attitude towards acceptance of bribes. Operation State Border 2013 was initiated in February 2013 to address the problem.

## **Block 2 / topic 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, and measures to fight irregular migration (including return procedures, rights of persons subject to such procedures, detention conditions, efforts to conclude readmission agreements with main countries of origin, inland detection of irregular migrants)**

A framework law on foreigners and stateless persons has already been adopted and has been in force since September 2011. It covers rules of entry, stay and return. Following up on the Commission's previous recommendations, five other subsequent laws were amended to lay down detailed rules on the expulsion procedure, on the documents issued to migrants and on additional competences of the State Border Guard Service in the area of forced return. Additional operational rules were added in the form of by-laws bringing greater clarity to the procedures on legal stay.

Reintegration of readmitted or voluntarily returned Ukrainian citizens is formally part of the Action Plan on integration targeted at both migrants and own citizens. Some specific aspects (the validation of vocational training obtained informally while working abroad) were addressed by bylaw. A more comprehensive approach to labour reintegration was advocated by the President (annual address to the Verkhovna Rada, June 2013), who tasked the Ministry of Social Policy to draft a law and a targeted national programme in this regard. Voluntary return rules were fleshed out in a bylaw in 2012 but further specification of the mechanism would be useful.

Compulsory or forced expulsion of an irregular migrant involves detaining the foreigner in a Migration Custody Centre (MCC) for the period necessary for enforcing the judicial decision on compulsory expulsion, which should not exceed 12 months as stipulated by the relevant provisions of the 2011 Law on the legal status of foreign citizens and stateless persons<sup>6</sup>. No judicial review of the decision on administrative detention in an MCC is provided for, except when coupled with an appeal on the substance of the case, i.e. expulsion<sup>7</sup>; the enforcement authorities are only required to notify the Prosecutor's Office within 24 hours.

With regard to institutional capacity, the State Migration Service (SMS) is the leading agency implementing and coordinating migration policy. It was set up in 2011 and has by now become fully operational with 199 officials at its the central office and 5 133 officials at its regional offices; there are plans to hire an additional 1 500 staff to deal with irregular migration. It is competent for both legal and irregular migration, although as regards the latter (e.g. detention), given its civilian nature it has to involve the law enforcement agencies.

As for readmissions, Ukraine has concluded readmission agreements with the European Union (in force since 1 January 2008). An implementing protocol was signed with Austria; negotiations for similar protocols are in their final stages with the Czech Republic, Poland and Estonia and are ongoing with another 12 Member States. A new agreement with Russia covering accelerated readmission was signed and entered into force in 2013. Negotiations are

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<sup>6</sup> Article 30(3) and (4) of the Law on the legal status of foreign citizens and stateless persons of 2011.

<sup>7</sup> See in particular paragraph 2 of Article 183-5 and Article 256(9) of the Code of Administrative Procedure.



ongoing with a number of other countries (Western Balkan countries, Switzerland and Iceland). The EU-Ukraine Joint Committee for re-admission met in May 2012 and noted that there were no major problems with practical implementation of the Agreement, while discussing a number of technical issues.

- **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 on Migration and Asylum was adopted on 30 May 2011, identifying trends, principles and priorities, together with an Action Plan setting out the activities, timeframe and authorities responsible. An interim Inter-agency Commission is tasked with implementation of the migration policy and a Coordination Council has been created to coordinate the Action Plan activities.

- **Establishment of a mechanism for monitoring migration flows, producing a regularly updated migration profile for Ukraine, with data on both irregular and legal migration, and establishing bodies responsible for collecting and analysing data on migration stocks and flows**

A mechanism for monitoring migration flows is being set up on the basis of a Cabinet of Ministers Resolution from 2012, as a sub-system of Arkan (the integrated inter-agency information system, see above topic 1 on border management). The terms of reference have been produced.

Migration profiles are regularly updated, for the latest one, of 2012 (issued in 2013), the State Migration Service was already in lead with the active assistance of ILO experts.

As far as the risk analysis is concerned, on the basis of a Strategy adopted in 2011 a Methodology to combat irregular immigration through a Contact Analysis Centre is still being established. Currently all the work is being done by the Analytical Unit within the State Migration Service collecting statistical and other data manually, without IT support from the relevant agencies.

### **Block 2 / topic 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, establishing grounds for international protection (including subsidiary forms of protection), procedural rules on examination of applications for international protection, and rights of asylum seekers and refugees**

A framework law from 2011 on refugees and persons in need of subsidiary and temporary protection is in force. It provides a solid legal basis for asylum procedures that is largely in line with European and international standards. However, some aspects still require improvement, given that despite earlier recommendations by the Commission and that of

UNHCR issued in a country report July this year<sup>8</sup>, the Law has not been amended. In particular, the definition of complementary protection and temporary protection should be extended, and necessary medical care — at least emergency medical care — should be given free of charge to asylum seekers. As regards the latter, the SMS has already drawn up a draft. Following recommendations made, action was taken in 2012 to bring other pieces of legislation into line with the framework law, by establishing various rights for persons with temporary and subsidiary protection (education, healthcare, family allowances, social services, etc.).

As regards the asylum procedure, the Law is also in place, although some improvements need to be made, in particular as regards the deadline for appeals, which is currently set at five days, even if according to the Ukrainian authorities it is not applied strictly by the courts. Country of origin information should also be specifically referred to. Issues such as right to interpretation, confidentiality of interviews, providing grounds for rejection and inadmissibility of asylum claims need to be clarified. Finally, detention rules need to be further specified, with special regard to a necessary court authorisation.

As for legal aid, there is a law on free legal aid that is to apply from 2014 onwards, apparently also through ‘legal clinics’ providing lawyers also to foreigners and asylum seekers; the financing is not entirely clear. However, the Law only foresees legal aid to nationals of countries with which Ukraine has signed a bilateral agreement on free legal aid - a provision that de facto excludes many asylum seekers from access to free legal aid.

In policy terms an Action Plan was adopted in July 2012 on the integration of refugees and persons in need of additional protection, which triggers a more coordinated approach across the different authorities, including the Ministry of Social Policy, but important issues such as securing budgetary provisions for its implementation should be addressed.

In institutional terms, the State Migration Service (SMS) is the main government agency competent to take decisions on asylum applicants. With a view to implementation, the number of staff dealing with asylum applicants should be increased and the decision-making process could be streamlined. Relations with civil society and the UNHCR have not improved much.

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

#### **General assessment**

The legislative and policy framework on **preventing and fighting organised crime** has been established. The Law on organised crime has been adopted along with the Strategy (‘State policy’) and the accompanying Action Plan and they are largely in line with European and international standards.

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<sup>8</sup> <http://www.refworld.org/docid/51ee97344.html>

The legislative, policy and institutional framework on preventing and fighting **trafficking in human beings (THB)** is consolidated and largely in line with European and international standards. The Action Plan for 2012-15 provides for a comprehensive approach in addressing THB.

Regarding **anti-corruption policy**, although substantial progress has been achieved in the last two years, further improvements are still necessary to complete the legislative and policy framework.

Regarding **cooperation between law enforcement agencies**, coordination has been generally improved, allowing more effective exchange of information. 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. Ukraine has acceded to all UN and Council of Europe conventions in the area of public order and security and to most of the UN and Council of Europe conventions regarding the fight against terrorism.

Further steps should be taken to achieve progress in relation to concluding agreements with Europol as well as with Eurojust.

The legislative and institutional framework on **data protection** is in line with European standards, although some adjustments are still needed to broaden the competence of the Data Protection Supervisory Authority.

Ukraine has put in place the necessary legislative, policy and institutional framework in the field of **anti-drugs policy** in line with European and international standards.

The legislative framework regarding **judicial cooperation in criminal matters** was further consolidated. Ukraine has already ratified the Second Additional Protocol to the Council of Europe Convention on mutual legal assistance in criminal matters and has inserted appropriate provisions in its new Criminal Procedure Code.

Beyond VLAP benchmark, it is important to note that Ukraine took steps reforming the judiciary as well as the prosecutor office which is closely linked to the constitutional reform.

## Detailed comments

### **Block 3 / topic 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 Law, revised in 2011, on the organisation and legal principles of the fight against organised crime provides the legislative basis for fighting organised crime by laying down a general organisational framework and establishing a system of responsible state authorities, defining their competences and methods of cooperation. In addition to the law, there is a

Strategy (‘Concept’) for state policies on fighting organised crime dating from October 2011, which is fleshed out by an Action Plan adopted in January 2012.

The legal framework on preventing and fighting organised crime was completed through relevant amendments to the Criminal Code and especially through the relevant provisions of the new Criminal Procedure Code which came into force on 19 November 2012. The Criminal Procedure Code contains provisions essential to the fight against organised crime, especially detailed rules on covert investigative measures, whereas the Criminal Code lays down the qualifying criteria for offences to be regarded as organised crime and makes it liable to more severe punishment. The protection of witnesses is further strengthened through the introduction of precautionary measures, although it would be desirable to introduce additional specific provisions on cooperation of former members of criminal groups with the law enforcement authorities by setting up specific programmes for incentivising and rewarding their cooperation. As regards criminal procedures, in order to further enhance the effectiveness of the fight against organised crime it would be advantageous to introduce more advanced types of confiscation (extended confiscation, non-conviction based confiscation, value confiscation and consequently the creation of an independent agency for the management of seized and confiscated assets).

As regards the policy framework, the ‘Concept’ for state policies along with the detailed accompanying Action Plan are carefully implemented, and targets and deadlines are met, with special regard to the analysis of relevant legislation and subsequent amendments and the development of an effective mechanism of cooperation. In addition, an annual systematic analysis of causes and affecting conditions is conducted with the help of a single unified registry of all pre-trial investigations set up within the General Prosecutor’s Office (GPO).

Finally, on the institutional structure, the new Criminal Procedure Code clearly outlines the leading coordinating and supervisory role of the Prosecutor’s Office, stipulating who has the power of decision in the event of conflict. The state authorities specifically created to combat organised crime — inside both the Ministry of Internal Affairs and the Security Service — can further improve the system of state authorities involved in the fight against organised crime.

- **Adoption of a law on trafficking in human beings and 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 combating trafficking in human beings has been in force since October 2011. It lays down the main provisions on the prevention of and fight against trafficking, and on the aid and protection to be given to victims in line with the relevant EU and international standards (Council of Europe Convention). This Law has been supplemented with various legislative instruments in the last two years that substantially improve and consolidate the legal

framework and follow up on almost all the recommendations made in the Commission's Second Progress Report.

To implement the Law, secondary legal acts (Resolutions of the Cabinet of Ministers) were adopted, in May 2012, to introduce standardised recognition procedures for granting the status of victims of trafficking and, in August 2012, on the national mechanism for interaction between agents combating trafficking. The objective of the latter was to avoid overlapping of competences and to set up a comprehensive system.

In terms of the procedural rights of victims, certain new provisions on witness protection in the new Criminal Procedure Code (in force since 19 November 2012) are relevant for victims of trafficking too (in-camera hearing, remote pre-trial investigation and remote court proceedings). Procedural rights could be further strengthened through a system enabling precautionary measures to be taken before the interview with the potential victims and ensuring confidentiality already at that stage. As regards foreign victims, the legislation on the legal status of foreigners should be supplemented to allow them to receive residence permits following the recognition of their status.

An Action Plan was adopted in May 2012 setting out measures until 2015, with specific timeframes, objectives, results and performance indicators. Aid to victims (rehabilitation and social, judicial, medical and psychological assistance) is set to be strengthened through a concrete system of monitoring and better coordination. In the field of prevention, information campaigns and other awareness-raising activities are scheduled with a specific budget allocation. Advanced training programmes for government personnel, including frontline officials, were adopted with a specific budget. Nevertheless, the budget allocation for assistance could be more specific to guarantee sufficient resources both at national and at local level.

In institutional terms, the Ministry of Social Policy is the National Coordinator for prevention appointed since January 2012 and methods of cooperation have been agreed with the NGOs listed in a Memorandum of Cooperation with the All-Ukrainian NGO Coalition against Human Trafficking signed in April 2013. A transparent system of civil society involvement in the provision of social services to victims of trafficking should be established.

As regards combatting human trafficking, the Prosecutor is to coordinate the law enforcement agencies and there has been a separate Department within the Militia with specific competence to investigate since August 2013.

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

Following the adoption in April 2011 of anti-corruption legislation, Ukraine took further legislative initiatives (ie.: legislative packages of May 2013) with a view to addressing some

of the outstanding recommendations made by the Commission and the Group of States against Corruption (GRECO). At the same time, it should be stressed that frequent fragmented legislative changes as opposed to a coherent strategic approach to legislative reforms pose serious risks to legal certainty and can render the implementation of anti-corruption policies more difficult. More efforts need to be made to improve the quality of the legislative process, build a comprehensive strategic approach based on sound impact assessments and raise awareness of ongoing legislative changes.

As regards the criminal law framework, improvements can be noted, such as the further clarification of the scope of corruption offences. Moreover a law was adopted to abolish the articles of the Code of Administrative Offences which were covering offences that trigger criminal liability for active or passive corruption. In 2012, rules of ethical conduct were adopted for all persons authorised to perform functions of central or local government.

With regard to the private sector, progress was made through the introduction of corporate criminal liability for corruption offences committed in the interest or on behalf of legal persons. It is not entirely clear whether and how the new legislation covers corporate liability in the event of lack of supervision or control. The sanctions currently applicable to individuals and legal entities for private sector corruption are not sufficiently dissuasive. A new bill was submitted to parliament with a view to raising the level of penalties, while nevertheless leaving prison sentences for individuals as an alternative for less severe offences.

Monitoring of the national anti-corruption strategy 2011-15 is one of the tasks of the National Anti-Corruption Committee (NAC). The corresponding action plan (state programme), which is coordinated by the Ministry of Justice, would benefit from updating of planned measures in consultation with the civil society and allocation of sufficient budgetary funds. Civil society is represented in the NAC (one fifth of its members). In practice however, the NAC did not meet in the last year and genuine civil society representation in this Committee could have yielded few concrete results, if any. Also, GRECO pointed out that doubts remain as to whether the NAC is actually 'able to carry out a meaningful monitoring function'.

Through the new Criminal Procedure Code which entered into force on 20 November 2012, the prosecutor's supervisory role in criminal procedures was further enhanced. New legislation on the functioning of the prosecution services appears to be under preparation. However, doubts remain as to how far the current institutional setting offers adequate guarantees of independence and efficiency, including with regard to the anti-corruption specialisation of law enforcement and prosecution bodies and their division of tasks and concrete cooperation. GRECO pointed out that its recommendations regarding the guarantees of prosecutors' independence from political interference have not yet been fully implemented, while acknowledging the constitutional and practical challenges that impede the passing of reformed legislation on prosecution services. New amendments to the Criminal Code and the Criminal Procedure Code have been adopted, including provisions on value-based confiscation and third-party confiscation.

In relation to immunities, concerns remain as regards the immunity of MPs from criminal proceedings and arrest, which creates risk of obstruction and politicisation of judicial proceedings. No criminal proceedings (including preliminary investigations, searches, interceptions, covert operations, etc.) can be conducted against an MP without the consent of parliament. This may seriously affect the effectiveness and soundness of criminal proceedings and can in fact lead to a situation where parliament takes the place of the judicial system. Some concerns remain also with regard to the immunity of judges and prosecutors from arrest or detention, not least the decision-making process for lifting immunities, which currently lies with parliament. Draft legislation has been laid before parliament with a view to entrusting the High Council of Justice with the power to lift the immunities of judges and prosecutors.

While Ukraine has an asset disclosure system applicable to public officials, more efforts need to be made to ensure a sound and independent verification mechanism and an effective, proportionate and dissuasive sanctioning system. Dedicated internal control mechanisms have been set up within public institutions and the Ministry of Revenue and Duties has been designated as the institution responsible for verifying asset declarations. However, further steps are needed to ensure that asset declarations are more widely disclosed and accessible electronically. Also, it is not yet clear how the verification work of the Ministry of Revenue and Taxes will be organised, what methodologies and tools will be applied and how its capacity to carry out this new additional task is ensured. Nor will the Authority have the power to apply sanctions itself. It can only refer cases to other authorities or law enforcement bodies. Cooperation between the State Authority on Income and Fees and other administrative and law enforcement bodies for the purpose of verifying asset declarations needs to be clearly defined. As regards the issue of conflicts of interest, while some internal control is envisaged, there is no outside independent verification in place. The sanctioning regime must be strengthened to ensure that in practice dissuasive sanctions and measures can be enforced in due time to remedy the damage that has been or might be caused to the public interest.

In mid-2012 legislative provisions were adopted on a new electronic procurement system. Outstanding issues remain, such as the need to further enhance the transparency of public procurement and streamline the award of public contracts, address concerns regarding the existence of numerous exclusions from the public procurement regime, and clarify the scope of 'procuring entities' to which public procurement rules are applied, in particular when it comes to state-owned companies and enterprises of public interest. A draft law is currently before parliament that aims to increase the transparency of public expenditure, including with regard to state-owned companies.

Ukrainian legislation requires public officials to report corruption and includes general provisions on protection of whistle-blowers. In practice, the protection of whistle-blowers appears to be perceived rather restrictively (i.e. it is limited to criminal investigations). Ukraine has introduced a few general provisions in a number of sectoral regulations to remedy this. More efforts are needed to further widen the scope of protection and create a culture of trust in reporting mechanisms.

Financing of political parties and election campaigns is an area where significant shortcomings remain. Draft legislation is under preparation with a view to addressing the outstanding GRECO recommendations.

In early 2013 GRECO concluded that 11 out of 25 recommendations from the first two joint evaluation rounds had not been implemented satisfactorily. GRECO stressed that the legal framework as regards such fundamental areas as prosecution services, public administration reform and public procurement is 'still not fixed, leading to a lack of legal security and rendering the necessary implementation measures meaningless'.

- **Adoption of a national strategy for preventing and fighting money laundering and financing of terrorism; adoption of a law on the prevention of financing of terrorism**

In the area of money laundering significant legislative improvements have been made in recent years and a good system seems to be in place for ensuring oversight of the overall policy. An annual Action Plan is adopted every year spelling out in detail the National Strategy covering the period up to 2015 (adopted by the Cabinet of Ministers). The Action Plan includes concrete measures and the responsibility for implementing them is clearly allocated to particular institutions. The plan also includes deadlines for the different measures.

In institutional terms, the responsibilities for supervising the particular sectors are shared, with the Financial Intelligence Unit (FIU) having the lead role. The FIU is staffed with highly trained analysts who evaluate daily the reports received from reporting entities. Institutional capacity building programmes have been organised in recent years for the benefit of the FIU and other law enforcement bodies in the field of money laundering.

The outstanding issues regarding the sanctioning of insider trading and market manipulation have also been addressed by legislative amendments that have been adopted; insider trading and market manipulation are sanctioned either under the Code of Administrative Offences or under the Criminal Code. Legal entities found guilty of these offences face financial liability and revocation of the licence on the basis of which they operate on the market.

The areas where further work is necessary concern the need to cover domestic politically exposed persons (PEPs) in the legislation and to clarify the fact that money laundering is a stand-alone crime, despite some relevant case law already pointing in that direction. Money laundering should be seen as going beyond mere association with criminals for the purpose of hiding evidence of the crime in order to achieve better results in tackling large-scale economic crime and depriving criminal groups of illicitly acquired wealth.



- **Adoption of a new National Strategic Programme on drugs and its related action plan; ratifying the Memorandum of Understanding with the EMCDDA**

The relevant legislative, policy, and institutional measures are in place in line with European and international standards.

A Strategy ('Concept') for implementing the state policy on preventing the spread of drug addiction and combating trafficking in drugs, psychotropic substances and precursors for 2011-15, together with an Action Plan to implement it, have already been in place since 2010. There is a Concept for a monitoring system dating from 2011 along with a subsequent Action Plan adopted in July 2012.

Several laws and bylaws have been adopted in order to implement these policy documents.

A new Drugs Strategy until 2020 was approved by Presidential Decree on 28 August 2013. It ensures national security but gives priority to the protection of human rights (simplification of access to legal drugs for medical purposes, general emphasis on medical and legal assistance, enhancing prevention profiles). To this end the analytical monitoring system should enable legal entities to provide medical treatment and to use drug substances in their work. Academics, NGOs and international organisations, including Council of Europe Pompidou Group, were consulted on the draft Strategy.

As regards the institutional framework, the State Service for Drugs Control (SSDC) was established in 2011 as the main body (together with the six regional offices subsequently established) responsible for implementing the anti-drugs policy. The SSDC acts not only as a coordinator but as an initiator of action to fight drug trafficking, reduce drug use, achieve an integrated inter-agency approach, strengthen the rehabilitation of drug addicts and raise awareness. The Law on drugs was amended in March 2013 to clarify the coordination powers of the SSDC and its relations with other stakeholders.

Inter-institutional and inter-agency cooperation and coordination has improved. However, clear budget allocations should be provided for the implementation of the measures and for the operation of the institutional structures, especially the regional offices.

The Memorandum of Understanding between Ukraine (Ministry of Health) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) was concluded in 2010 for a five-year period and has been in force since then without the need for ratification and . It is being implemented on an ongoing basis. The cooperation is effective (e.g. regular exchange of information on new types of drugs, implementation of new protocols in Ukraine concerning infectious diseases resulting from drug use, registration of new drug abuse indicators).

A law enabling Ukraine to join the Council of Europe's Pompidou Group is under consideration by the government. As regards the law enforcement aspects, Ukraine being not only a transit country but a final destination for marijuana, opium and synthetic drugs

(Subutex), the objective of strengthening investigations is pursued by the General Prosecutor's Office, through training of police officers, wider use of undercover agents and the creation of a special division inside the Ministry of Internal Affairs.

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

Ukraine has acceded to all UN and Council of Europe conventions relevant to the above-mentioned areas.

Ukraine has now also acceded to the 2001 Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunitions. It ratified the Protocol in April 2013 and in May 2013 adopted the necessary amendments to the Criminal Code which entered into force on 4 July 2013.

### **Block 3 / topic 2 — Judicial cooperation in criminal matters**

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

The legislative framework in the area of mutual legal assistance is in place and is in line with European standards.

As indicated above (under Block 3/topic 1), Ukraine has carried out a process of reform of its criminal and criminal procedure legislation, resulting in the adoption of a new Criminal Procedure Code (CPC) that has been in force since November 2012. A law on mutual legal assistance was already adopted in June 2011. The new CPC contains specific provisions [on the general principles of international cooperation, provides a legal basis for international legal assistance and lays down appropriate provisions on extradition, takeover of criminal proceedings, recognition and execution of judgments of foreign courts and transfer of sentenced persons.](#)

Regarding the institutional framework, the new CPC confirmed the role of the General Prosecutor's Office (GPO) and of the Ministry of Justice (MoJ) as the central authorities for international legal assistance. Requests for judicial cooperation received during pre-trial investigations are evaluated by the GPO, and those received during court proceedings by the MoJ. Direct contacts between authorities have been allowed, with some exceptions in specific cases where the central authorities retain their competence.

- **Ratification of the Second Protocol to the European Convention on mutual legal assistance**

The Second Additional Protocol to the Council of Europe Convention on mutual legal assistance (MLA) was already ratified and entered into force on 1 January 2012, albeit with

declarations and reservations. The reservations concern service by post (Article 16), cross-border observations (Article 17) and covert investigations (Article 19). The new CPC and other laws such as the 1993 Law on organised crime, as subsequently amended, regulate some of the situations covered by the reservations.

While Ukraine's reservations do not jeopardise the level of international cooperation, it would be desirable for them to be lifted in order to improve the framework on judicial cooperation.

Special provisions in the Second Additional Protocol to the Convention on MLA have also been included in the new CPC: the presence of representatives of foreign authorities during procedural activities, hearing by video or telephone conference, information on crimes, temporary transfer of detained persons to the territory of the requested party, controlled delivery and joint investigation teams.

- **Conclusion of an agreement with Eurojust**

A draft agreement with Eurojust was already arrived at and initialled in December 2011 and a contact point has already been set up within the GPO. However, the next steps towards the signature of the agreement depend upon the results of the ongoing analysis by Eurojust of the amendments to the legislative framework on data protection (see topic 4 on data protection).

### **Block 3 / topic 3 - Law enforcement cooperation**

- **Establishment of an adequate coordination mechanism among relevant national agencies and a common database guaranteeing direct access throughout Ukraine**

The new CPC together with the draft law on the new Public Prosecutor's Office has introduced major changes and thus followed up on the recommendations made in previous Commission reports. Those recommendations advocated revising the competence of the prosecutor's office so that it is immediately informed of all criminal acts and can if necessary classify them as a specific crime (organised crime) and assign the case to the competent agency, and increasing the level of coordination among the law enforcement authorities.

A unified (integrated) register of pre-trial investigations has been created<sup>9</sup> into which the main information on disclosed crimes must be entered immediately (within 24 hours) once a law enforcement body has received information about a crime. Pre-trial investigation can start upon registration. The General Prosecutor's Office (GPO) supervises the management of this register. It is also able in the pre-trial phase to initiate investigative activities, assign cases to the competent agency and take procedural decisions, including coordinating requests for international legal assistance. The CPC also provides for a new investigative unit, called 'the State Bureau of Investigation', to be established. It will be competent in pre-trial investigations into crimes committed by officials holding a particular status, judges and law

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<sup>9</sup> An order issued by the GPO on 17 August 2012 lays down the procedure for storing and keeping data.

enforcement personnel. Lastly, a new judicial position — the investigating judge — was created. This figure has to issue permits for all investigative activities that could limit citizens' rights and freedoms (arrest, house check, interrogation, etc.) and to exercise procedural supervision over investigations. As regards the specific competences of the prosecutor's office in coordinating investigations into crimes committed by organised groups, the GPO supervises investigative activities performed by the special investigative units created within the Ministry of Interior under the Law on organised crime.

For the functioning of the State Bureau of Investigation further acts need to be adopted, for which deadlines are set in the final and transitional provision of the CPC. The law to be adopted on the Public Prosecutor's Office is also essential in this regard.

As regards the establishment of centralised databases containing information on crimes committed by organised groups, separate databases are in operation within the Ministry of Internal Affairs and the Security Service. Other authorities can access them only upon formal request. There is an order issued in 2011 by the Ministry of Internal Affairs and the Secret Service giving out instructions on law enforcement cooperation in the sphere of organised crime. It refers to the methods of cooperation (exchange of information, creation of working groups, joint analysis of the state and structure of the crimes), but it does not contain a specific time-period, which should be added in order to guarantee proper and regular exchange of information and adequate reporting activity.

There is no universal standard for establishing a 'common database': some countries have a single database, others have separate ones. It is, however, important to put in place the tools necessary for proactive consultation of all available databases as referred to above.

- **Conclusion of an operational agreement with Europol with special emphasis on data protection provisions**

The negotiation of an operational agreement with Europol depend upon the latter's assessment of the relevant data protection standards (see under point 4 on data protection). On Europol's side the assessment is ongoing. Two sets of questionnaires have been completed (in October 2011 and June 2012) by Ukraine. Europol will shortly be carrying out a mission to Ukraine which should further clarify the state of play.

### **Block 3 / topic 4 — Data protection**

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

Ukraine had a law on data protection in force since January 2011, but with a range of shortcomings. Neither was there any independent data protection supervisory authority. Two amendments to the Law on data protection were adopted in November 2012 and July 2013 along with amendments to the Law on the Ombudsman in order to entrust him with data protection functions. The amendments to the Data Protection Law and the Law on the Ombudsman are to enter into force as of 1 January 2014.

Substantial progress was made in addressing the shortcomings identified and the legislative framework is now broadly in line with European standards, including the EU *acquis*.

The amendments to the Data Protection Law introduced the essential exception of data processing for artistic and journalistic purposes, which is not limited to professional journalism only. The rights of the data subject and the definition of data controller were clarified and the registration system, which was criticised for being bureaucratic, was replaced by a system of notification of sensitive processing. However the following is still to be ensured; the definition of consent of the personal data subject should be reinstated in the Law and the notifications should be required ahead of the processing of sensitive data and not afterwards, as currently stipulated. Specific attention should be paid to ensuring the right balance between freedom of expression and the right to privacy. To this end an appropriate interpretation of restricted access to personal data will also be crucial to avoid adversely affecting access to public information.

Regarding the institutional framework, an independent data protection supervisory authority was created by entrusting this task to the Ombudsperson, whose independence is guaranteed by the terms of his appointment and dismissal and a separate budget. The powers of the Ombudsperson are well defined in the Law (to inform, receive complaints, investigate, report violations to the court, monitor new practices, establish categories of data processing which have to be notified, adopt recommendations, etc.). Her competence will, however, need to be extended to the private sector. The Data Protection Service in place since 2011 will be abolished. A Joint order of the Ombudsperson and the Minister of Justice was adopted in September this year containing an Action Plan indicating the necessary measures for the administrative transfer of competences to the Ombudsperson. It remains to be seen how the necessary human and financial resources will be ensured and how the Ombudsman's capacity will be increased to cope with his new task. Further implementing acts are still to be adopted before the end of this year. A new draft law extending the powers of the Ombudsperson to the private sector and containing the notion of consent of the personal data subject is currently in interservice consultation.

- **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 has already ratified both 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 flows, which entered into force in the country as from 1 January 2011.

## Block 4: External relations and fundamental rights

### General assessment

Ukraine made progress in Block 4 on **external relations and fundamental rights**. In particular, it addressed the issue of non-discriminatory issuance of identity documents for refugees and stateless persons, adequately extending their period of validity. It adopted a Law on preventing and fighting discrimination. It also adopted a Strategy and an Action Plan on the social inclusion of the Roma minority. It simplified the residence registration and de-registration procedures.

The **anti-discrimination** legislation adopted in September 2012 represents a step in the right direction, but it is still not comprehensive. In particular, legal certainty is still insufficient as regards the scope of the law in particular on the prohibition of discrimination on the grounds of gender identity and sexual orientation, with special regard to access to employment and vocational training. Also, in the absence of the reversal of the burden of proof and given the lack of clarity regarding the compensation mechanisms, the rights of victims are not adequately protected.

While documents (Strategy and Action Plan) have been adopted on the inclusion of the **Roma minority** providing a specific policy framework and triggering some mainstreaming in this regard, they have several shortcomings.

The residence **registration** and de-registration procedures, albeit improved, may still present difficulties for vulnerable groups.

### Detailed comments

#### Block 4 / topic 1 - Freedom of movement within Ukraine

- **Revision of the legal and regulatory framework on registration and de-registration procedures for Ukrainian citizens and legal stay for foreigners or stateless persons with a view to avoiding unjustified restrictions on or obligations relating to their freedom of movement within Ukraine, with special reference to the conditions for legal stay without residence registration and the measures taken for failure to register, and the liability of tenants**

The Law on amendments to certain laws of Ukraine, concerning registration of the residence and place of residence of persons in Ukraine, entered into force on 5 August 2012.

Under the new legal framework, the residence registration system was put under the jurisdiction of the State Migration Service (SMS), an Agency of the Ministry of Internal Affairs created in December 2010 (Decree No 1085/2010 of the President of Ukraine dated 9 December 2010; Decree No 405/2011 of the President of Ukraine dated 6 April 2011) to take responsibility for a broad range of issues relating to migration and asylum policy and the registration of individuals.

The new legal framework introduced some improvements aimed at making the procedure less burdensome, more expeditious and more efficient. In contrast with the old regulation, registration is now carried out on the day the individual submits the relevant notice to the SMS office. In other words, de-registration from the former place of residence and registration in the new place of residence now takes place simultaneously, on the same day. The registration procedure can be carried out not only in person, but also by a legal representative. The possibility for registration was broadened also to cases where the person resides in a specialised social institution (nursing homes, boarding schools, rehabilitation centres, etc.) and not only in privately owned apartments and private houses.

As a condition for registration, the requirement to possess legal title to a housing unit or land or an agreement with a landlord remains in force. Cancellation of residence registration may be carried out on the basis of an individual application, a death certificate, a court order on deprivation of ownership or use of a dwelling, but also at the request of the owner of the residence where a lease agreement has expired. This may pose difficulties in obtaining or keeping registration for persons belonging to vulnerable categories such as refugees or Roma members living in informal settlements, thus creating the need for some corrective action in this regard. The possibility for homeless persons to register through social care centres may not address the needs of these groups sufficiently.

According to the Law on freedom of movement<sup>10</sup>, registration of the person's place of residence or the absence thereof cannot be the basis for exercising the rights and freedoms enshrined in the Constitution and laws of Ukraine and international treaties binding it, or a ground for restricting them. However, in practice confirmation of registration is usually a requirement for obtaining access to medical care, enrolling children at school and obtaining pensions or social benefits, and individuals may face problems with access to these fundamental social rights when they are away from their registered place of residence. Therefore this practice should be reviewed in the implementation phase.

In general, the Law on freedom of movement and related legal regulations grant foreigners rights and responsibilities on an equal footing with Ukrainian nationals (with some exceptions), provided that the foreign or stateless person has a legal status in Ukraine in

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<sup>10</sup> Law 1382-IV of December 2003 on freedom of movement and free choice of the place of residence in Ukraine.

conformity with the migration and asylum legislation. Foreigners who reside in Ukraine are legally required to register their place of residence within 10 days of arrival at the new place of residence, a time limit commonly interpreted as commencing from the issuance of the legal permit by competent authorities.

#### **Block 4 / topic 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 Ukrainian authorities followed up on the recommendation made in the Second Progress Report not to unreasonably limit the period of validity of permanent residence documents for stateless persons, refugees' internal documents and travel documents. Amendments to the legislation were made in 2012 to make the refugee certificate valid for five years and ensure that the refugee's travel document (Refugee Convention Travel Document) is issued for the period of validity of the refugee certificate, provided that the certificate is issued for not less than five years (Article 34(5)). These provisions are now in full conformity with those of the 2011 Refugee Law. Necessary adjustments should be made as regards the status of complementary protection and in order to prevent difficulties in fully enjoying broader rights associated with complementary protection status.

#### **Block 4/ topic 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**

In September 2012, Ukraine adopted the Law on preventing and combating discrimination, a framework law that should provide the necessary instruments for ensuring effective protection against discrimination. Even though adoption of the Law represents progress, it does not meet all the European and international requirements. In particular, it does not provide sufficient legal certainty as regards the prohibition on discrimination on the grounds of gender identity and sexual orientation. Neither has the Law contributed to enhancing the protection of victims' rights as the reversal of the burden of proof was not introduced. Furthermore certain forms of discrimination are lacking definitions, in particular segregation, victimisation and multiple discriminations. These issues should be addressed in a way that provides irrefutable legal certainty. Moreover, issues of scope (ie.: whether it extends to the private sector, whether all aspects of labour rights including vocational training and participation on organisation of workers are covered) and the provisions on reasonable accommodation for



disabled persons are to be clarified. In March 2013 the government tabled before parliament amendments to the Law, which among other things includes a prohibition of discrimination on the basis of sexual orientation in employment and addressed the issue of the burden of proof. However, the proposal was not put to a vote during the spring or autumn parliamentary sessions.

Although the Ombudsman was appointed as the institution with responsibilities for implementing anti-discrimination law, she has no legal powers to deal with incidents of discrimination arising between individuals or between individuals and legal entities. Ukraine has announced that a legislative amendment will empower the Ombudsman to deal with cases of discrimination between citizens and/or citizens and corporate entities or private legal entities. This amendment is still to be adopted.

Regarding anti-discrimination, the Commission will also follow closely any further developments on the pending draft laws 0711 (subsequently 0945) as well as 0290, taking into account the concerns raised by the Venice Commission in its opinion<sup>11</sup>.

- **Actively following the specific recommendations of UN bodies, the 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 adopted the Law on the principles of state language policy in June 2012.

In order to follow-up on earlier recommendations of the Commission made in its last Progress report, a Strategy and an Action Plan on the inclusion of the Roma minority were adopted by Ukraine in April and September 2013 respectively. While both documents were discussed with the local civil society, they were not subject to consultation with OSCE and Council of Europe prior to their adoption, and key recommendations made by the civil society were not included in the approved text. In order to pursue a genuine policy in this regard, a more developed baseline scenario is needed with a quantified problem definition (e.g. estimates of those Roma without documents and estimates of Roma children not in education). In addition, the measures and the timeline should be spelled out in further detail and adequate resources will need to be secured and the genuine involvement of civil society in the implementation process needs to be ensured. In order to ensure an adequate follow-up of these policy documents, a strong coordination body and monitoring mechanism will need to be established in the implementation phase. Currently, the unit in charge of Roma policy is part of the Ministry of Culture, while many key issues in the area of social policy and human rights protection are in the competence of other ministerial departments.

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<sup>11</sup> See Opinion 707/2012 issued by Council of Europe Venice Commission on 18 June 2013.

Ukraine has ratified the Optional Protocol to the Convention on the rights of persons with disabilities of 13 December 2006, which entered in force for Ukraine on 4 February 2010. Ukraine has adopted a series of legislative measures regarding the accessibility of public places and services.

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

Ukraine is a party to most of the UN and the Council of Europe texts on the protection of human rights and the fight against discrimination.

Further efforts need to be devoted to improving legislation in the area of anti-discrimination and bringing existing legislation into line with the provisions of ratified treaties and international conventions, as described in more detail above.

- **Specifying the 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 Ukrainian citizens irrespective of the grounds, order and date of their acquisition of citizenship. From this standpoint, the Law is in line with the Council of Europe Convention on nationality, which entered into force in 2000. Ukraine signed in 2006, but has not yet ratified, the Council of Europe Convention on the avoidance of statelessness in relation to State succession.

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

In line with the established methodology, the Commission has continuously assessed and regularly reported (First Report, September 2011; Second Report, February 2012) on the fulfilment by Ukraine of the Action Plan on Visa Liberalisation (VLAP) benchmarks, on the basis of the information and the texts of adopted legislation provided by Ukraine, together with assessment missions on the ground carried out by Commission and EEAS staff accompanied by Member State experts.

Over and above this intensive reporting process for the VLAP, the Commission has also continued to monitor the progress made by Ukraine in relevant areas of the VLAP in the

framework of the EU-Ukraine Joint Visa Facilitation Committee, the EU-Ukraine Readmission Committee and EU-Ukraine Joint Sub-Committee No 3. In each of these committees the state of dialogue and cooperation between the EU and Ukraine is considered advanced.

The EU-Ukraine Visa Dialogue has continued to be an important and effective tool for advancing reforms in the justice and home affairs area and beyond. The assessment found that Ukraine has made **substantial progress in all four blocks of the VLAP** and in particular since the end of 2012, speeding up its implementation and adopting a number of substantial legislative packages in order to tackle the identified gaps. However, there are still some important first phase requirements to be met. As regards **document security**, the use of fingerprints as a mandatory biometric feature for passports needs to be further clarified in the law. In the field of **asylum**, certain adjustments need to be made with particular regard to temporary and subsidiary protection and emergency medical care for asylum seekers. In the field of **anti-corruption**, legislation needs to be further strengthened, particularly with regard providing for dissuasive sanctions for private sector, ensuring impartial checks on asset declarations, strengthening public procurement rules and laying down appropriate rules on immunity. Lastly, the legislative framework on **anti-discrimination** needs to be further strengthened to provide adequate legal protection against discrimination in line with European and international standards. Further information is expected on the envisaged steps to finalise the legislative and institutional data protection framework.

The Commission will continue to work in close contact with the Ukrainian authorities to swiftly address the outstanding issues identified above with a view to communicating to the European Parliament and to the Council when all measures required by the first phase of VLAP have been adopted.