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**COMMISSION STAFF WORKING DOCUMENT**  
*Accompanying the document*

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

**Fifth Progress Report on Ukraine's implementation of the action plan on visa  
liberalisation**

{COM(2015) 200 final}

## 1. INTRODUCTION

The Commission Staff Working Document (CSWD) accompanies the Fifth Progress Report on the implementation by Ukraine of the Visa Liberalisation Action Plan (VLAP).<sup>1</sup>

Together with the Report, the CSWD builds on the information and the assessment provided in the Fourth Progress Report on the implementation by Ukraine of the VLAP<sup>2</sup> and, in accordance with the methodology outlined in the VLAP, it provides a detailed analysis of the most relevant developments relating to the implementation of the so-called second phase VLAP benchmarks concerning the effective and sustainable implementation of relevant measures). Furthermore, annex of the CSWD includes an assessment of possible migratory and security impacts on the European Union (EU) of the future visa liberalisation for Ukraine. The factual information included in Part I of the CSWD is based on the assessment missions led by the European Commission services assisted by experts from EU Member States to Ukraine between 24 September 2014 and 27 March 2015, and updated information received by the Commission from the Ukrainian authorities.

Annex of the CSWD—the Assessment of Migratory and Security Impacts—is primarily based on the inputs provided by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex); the European Union’s law enforcement agency – Europol; the European Asylum Support Office (EASO); the European University Institute – Migration Policy Centre, the European Delegation in Kiev as well as other available sources, including Eurostat data.

The CSWP follows the VLAP structure. Under the sections corresponding to individual VLAP blocks, The CSWD lists all the benchmarks from the second phase and it describes the state of their implementations, in particular focussing on the developments that took place after the publication of the fourth Progress Report, that is, 27 May 2014.

## 2. ASSESSMENT OF THE IMPLEMENTATION OF THE VLAP

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

- **Gradual roll-out of biometric international passports in compliance with ICAO standards, including at Ukrainian consulates abroad, and phase-out of non-ICAO compliant passports;**

On 12 January 2015 Ukraine started the production of a new type of ordinary passport. This new model includes an e-passport and a non-biometric passport. The e-passport contains a contactless chip that stores the photo, two fingerprints and the signature of the holder. According to the technical analysis, the security features of this new model of passport comply with the ICAO recommendations. Ukraine is member of ICAO PKD and the Ukrainian certificates can be downloaded in order to read and to authenticate the chip.

By 16 February 2015, 610 working stations for the collection of the applications have been deployed in 25 territorial directorates of the State Migration Service (SMS) which correspond to the regional level (oblast) and in 209 territorial units of the SMS corresponding to the

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<sup>1</sup> COM (2015) 200 final.

<sup>2</sup> COM (2014) 336 final.

district level. The complete rollout in order to ensure the coverage of all the territory is planned for the end of 2017.

Since 1 January until 2 April 2015, 512 077 passport applications have been introduced including 186 471 for biometric passports and 325 606 for non-biometric. 79 198 biometric and 89 479 non-biometric passports have been released to applicants. 68 major border crossing points are equipped with passport readers for biometric travel documents which is 43% of their total number (157).

The overall application procedure and the verification of the identity of the applicant remain based on the production of the internal passport the security of which remains a matter of concern. An inter-agency working group was established with a view of integrating existing databases of the law-enforcement agencies and strengthening current verification procedures. On 25 March 2015 the Cabinet of Ministers of Ukraine approved the technical description of the specimen as well as procedures for issuance of passports of citizen of Ukraine in the form of a biometric ID card. The issuance of diplomatic and service passports should start by the end of April 2015.

➤ **High level of integrity and security of the application, personalisation and distribution process for international passports, as well as domestic passports and other breeder documents;**

The personalisation centre of the passports is located in the state enterprise Polygraph Combine "Ukraina" premises. The moving of this centre from the previous EDAPS premises did not result in any reduction of the overall security. The security measures in force in the premises and the access to the different areas ensure a high level of security. Together with permanent video monitoring, the access control is secured using fingerprints in order to open the doors and authorise access to the different areas. Likewise the activity in the different areas is monitored.

The blank documents being produced in the same compound reduce the risk of theft during transportation. A special courier service ensures the secure shipment of the personalised passports to the place of delivery. Quality control according to ISO 18745 Test methods for machine-readable travel documents (MRTD) and associated readers is implemented.

An amendment to the Regulation on Integrated Information Search system of Internal Affairs of Ukraine will be introduced making compulsory the record in the Search Information system of the Ministry of Internal Affairs of the information related to a change of name. The information on changes to the first name, the second name or the middle name will be introduced with the additional mark "aka". This information will be available 24/7 in the interagency information system for the control of persons crossing the state border. The State Migration Service has instructed its territorial divisions to implement the procedure for invalidating the passport(s) of the citizen of Ukraine for travel abroad after changing the internal passport further to a name change. This procedure is to be applied independently of an application for a new passport.

The information on the passports of Ukraine for traveling abroad invalidated further to a name change will be automatically transferred to the State Border Guard Service in order to prevent any misuse of an invalidated document.

The issuance of diplomatic and service passports should start by the end of April 2015.

- **Prompt and systematic reporting to Interpol/LASP data base on lost and stolen passports; Regular exchange of passport specimens and cooperation on document security with the EU.**

According to the information received from the Ukrainian authorities the uploading of lost and stolen passports in the Interpol database has started.

## **2.2. Block 2: Integrated Border Management, Migration Management, and Asylum**

### **2.2.1. INTEGRATED BORDER MANAGEMENT**

- **Effective implementation of the Law on Border Control of November 2009 through adequate border checks and border surveillance, procedures and operational effectiveness, situational picture at national, regional and local level, including implementation of risk analysis, intelligence and data-flow management as well as direct access and consultation of relevant national and international databases.**

At Russian border only one common border mark has been installed. Nevertheless, both border sections are marked with information signs on the Ukrainian side to show the border line. Marking of the border with Russia is challenging at the moment and in the foreseeable future.

The State Border Guard Service (SBGS) is the authority responsible for the implementation of the border security legislation. There are three different types of Border Guard Units subordinated to directorates; units responsible for border checks, units responsible for border surveillance and units responsible for both border check and surveillance responsibilities.

The State Targeted Law Enforcement Programme "Development and Reconstruction of the State Border" for the period until 2015 aimed at transforming SBGS into a modern European type law enforcement agency. The conflict in eastern Ukraine has caused some delays in this process and SBGS has been forced to make rearrangements in directing human and financial resources towards the areas of conflict.

Within the security area adjacent to the territory not under effective control of Ukrainian authorities, the main objective of the SBGS is the exercise of control over crossings at 6 entry and exit checkpoints in designated road corridors by persons, vehicles and goods.

Besides the designated road corridors, security measures are also carried out at control stations. Measures are being taken to close down the areas of movement of goods and products outside the 6 crossings from the territory not under effective control of Ukrainian authorities by strengthening the technical components, including the use of mobile and portable thermal imaging systems.

In order to implement the provisions of the Law of Ukraine "On Border Control" the Cabinet of Ministers of Ukraine approved "The procedure for verification of sufficient financial provisions for foreigners and stateless persons entering into Ukraine, staying on the territory of Ukraine, travelling by means of transport on the territory of Ukraine and leaving Ukraine, and definition of contribution rate" (№884, 04.12.2013). This procedure sets up a mechanism of determination of sufficient financial support of the foreigners and stateless persons for entry to Ukraine, stay in the territory of Ukraine, transit through the territory of Ukraine and travel abroad and the volume of such support. Regulated by this regulation, foreigners and

stateless persons wishing to enter to Ukraine, stay on the territory of Ukraine, transit through the territory of Ukraine, unless otherwise provided by the laws, should demonstrate that they have up to twenty times the minimum cost of living for one person, which is established in Ukraine on the day of their entry to Ukraine. In 1 September 2014 the sum was of 1176 Hryvnias ( $\approx$  90 Dollar USA) per month.

The risk analysis system is used to produce periodical strategic analysis products as well as tailored analysis products leading to recommendations and operational actions. While a large part of the analytical resources is currently directed to the analysis of the situation at the eastern borders of Ukraine, it is important to notice that the system has been able to quickly adapt its functions according to new emerging threats. This indicates that risk analysis is an integral part of SBGS activities and that the risk analysis system is able to implement tasks given from the central level. There is a common risk analysis methodology developed and instructed by the central level. However, based on the analytical products its implementation could still be improved.

The regulation on crossing the line of contact in the Lugansk and Donetsk regions is regulated by Order No. 27 of 22.01.2015 on the Approval of the Temporary Procedure of Control of Movement of People, Vehicles and Cargo to/from Donetsk and Lugansk regions. Accordingly, citizens of Ukraine have the right to enter and leave the "anti-terrorist operation (ATO) zone" through the block-posts and control points upon presenting Ukrainian passports and passes which are issued by ATO Coordination Centre (CC) or ATO Coordination Group (CG), at the determined places. Further, foreigners and stateless persons can cross this line with their passport documents and passes. As of 1 March 2015, all holders of Russian passports need to cross the border only at designated International BCPs presenting valid international passport (unlike the past when internal passport was sufficient).

The Law "On Ensuring Rights and Freedoms of Citizens and Legal Regime on the Temporarily Occupied Territory of Ukraine" provides a legal regime for the temporarily occupied territory (Crimea). This includes provisions relating to crossing the administrative line with the temporarily occupied territory. Article 10 of the Law guarantees the right of Ukrainian citizens to free and unimpeded access into the temporarily occupied territory and out of it through the control points of entry and exit upon presentation of a document confirming a person's identity and citizenship of Ukraine. The entry of foreigners and stateless persons into the temporarily occupied territory and exit is allowed only by special permission through entry and exit control points.

- **Provision of adequate infrastructure, technical equipment, IT technologies, financial and human resources in accordance with the IBM Strategy to be adopted, and effective implementation of training programmes and anticorruption measures;**

The technical equipment for border control, including border checks and surveillance is in place. In particular the equipment used by patrols meets modern law-enforcement standards. However, in view of the situation at the Eastern borders, which requires a rapid reaction to threats, the current equipment is not satisfactory. The IT systems fulfil the user requirements. The IT systems are developed based on the need to collect, store, exchange and provide information for border management. The exchange of data between SBGS and other national law enforcement agencies is one of the gaps in inter-agency cooperation.

When considering the question of financial and human resources, the situation at the Eastern borders has a significant influence on priorities not only for this year but also for future years. Nevertheless, the Integrated Border Management Strategy and its Action Plan have now faced delays and many of the actions based on the Strategy have been cancelled.

Anti-corruption measures in SBGS consist of a six-level system, including the implementation of legislation, work with personnel, public affairs, internal security measures, financial control and international cooperation. Several concrete measures have taken place in the implementation of anti-corruption policy in SBGS. In 2014, 537 persons in SBGS have been inspected (not necessarily based on suspicion) and among others three border guards have been fired. Under financial control 16 investigations have been carried out in 2014.

The Code of Conduct of the State Border Service of Ukraine has been developed and approved by the Government of Ukraine in order to strengthen anti-corruption measures and increase responsibilities among the officers. Since 2011, an 8-hour programme of a specialised short-term course for training personnel of public authorities, whose functional responsibilities include performing of border management, has been implemented. The programme covers issues of anti-corruption behaviour ethics.

- **Improvement of inter-agency cooperation (including exchange of data between the Border Guard Service and law enforcement agencies) and international cooperation, including implementation of working arrangement with FRONTEX to a high level of effectiveness.**

The international cooperation in training is well established. Especially working arrangements with FRONTEX and the Mission of the European Union Border Assistance to Ukraine and Moldova (EUBAM), as well as training of experts together with external actors are satisfactory. The active cooperation with FRONTEX has continued within the project "Eastern borders - Risk Analysis Network» (EB-RAN), including: regular monthly exchange of statistical information between the countries - members of the network as well as preparation of the annual "Eastern borders - Risk Analysis" and other analytic documents and participation of SBGS experts in the development of FRONTEX annual risk profiles to identify victims of trafficking took place. According to the implementation of the Cooperation Plan with Frontex in 2013 - 2015 the representatives of Ukraine has so far participated in joint operations at land borders (Jupiter 2013, Focal Points Land 2013 and 2014 in (Hungary and Romania) and joint operations at air borders: Flexi Force (Finland and Netherlands), Focal Points Air 2013 (Madrid, Spain and Borispol International Airport), Alexis 2014 (Warsaw 2014), Focal Points Air for intermediate managers (Lisbon 2014) and Operational Heads of Airports Conference (2013, 2014) as well as joint operations at sea borders (Hermes and Minerva).

### **2.2.2. Migration management**

- **Continued effective implementation of the EU-Ukraine readmission agreement and measures for the reintegration of Ukrainian citizens (returning voluntarily or readmitted);**

As of September 2014, 17 bilateral agreements on readmission were concluded by Ukraine. The Readmission agreement with the EU entered into force on 1 January 2008). Negotiation

procedures (draft readmission agreements) are in place with Kazakhstan, Armenia, Belarus, Kyrgyzstan, Tajikistan, Azerbaijan, Afghanistan and Pakistan. On 13 January 2015, the Implementing Protocol with Estonia was signed. A dialogue on readmission on for texts for implementing protocols with 11 EU countries (Benelux, Portugal, Cyprus, Poland, Slovakia, Hungary, Romania, Malta and Italy) are ongoing. The texts of the Agreement and the Implementation Protocol with Switzerland and Serbia are under discussion.

According to the bilateral agreement between Ukraine and Moldova the citizens of contracting parties can travel without visa form one country to another. Passports issued by the Transnistria authorities are not recognised by Ukraine and therefore the regime from the agreement is not applicable to those persons.

The Action Plan (Resolution No. 653) includes among other provisions on integration of refugees also a few provisions on reintegration of Ukrainian citizens back to the country. The reintegration of Ukrainian nationals is not yet regulated by the law. Therefore the draft Law of Ukraine "On external labour migration" was elaborated by the Ministry of Social Policy of Ukraine in December 2014 and the draft is currently in the inter-agency consultation procedure. The Law will include also the provisions on the reintegration issues for Ukrainians returned to the country and will define the main responsible authority for reintegration issues, Ministry of Social Policy, with its central and regional services responsible for the implementation of the reintegration measures.

There were 91 announced returns (and positive replies) of nationals to Ukraine in 2014, with 30 readmission carried out.

- **Effective implementation of legal framework for migration management, including provision of administrative structures with adequate human resources with clear and relevant competences for all aspects of migration management, as well as effective cooperation between relevant agencies;**

According to the legislation, the migration tasks are divided between the relevant authorities and ministries. The main counterparts are Ministry of the Interior with the Police, State Border Guard and State Migration Service, Ministry for Social Policy, Ministry for Education, Ministry for Justice and Ministry for foreign affairs. Concept of the state migration policy of Ukraine: in 2011 the Coordination council (commission) was established where all relevant agencies should be represented. Coordination council should be the main national body for coordination and cooperation in the field of migration policy.

The State Migration Service (SMS) is the main authority within the Ministry of the Interior responsible for migration and asylum issues in Ukraine. In accordance with the Regulation of the Cabinet of Ministers of Ukraine of 5 April 2014 No. 85 "Certain Issues of the Approval of the Maximum Number of Workers of the Central Apparatus and Territorial Bodies of Central Executive Bodies, Other Public Authorities," the maximum number of the central apparatus of the SMS was reduced by 13 staff positions to 186 positions and that of territorial bodies by 520 staff positions to 4613 positions.

The Law "On the legal status of foreigners and stateless persons", which entered into force n 25 December 2011 regulates the legal entry and residence in the country. It determines the grounds to stay in the country within the scope of a temporary stay, temporary residence and permanent residence. Temporary stay is granted depending on the type of visa and depending

on the period of stay. Application should be lodged with the State Migration Service. Temporary residence may be granted for the reasons of study, work or family reunification reasons and is issued in the form of a certificate. The procedures of issuing the permits are conducted in the regional State Migration Service. Certificates are issued by the regional SMS and are valid for one year (and for students during the period of their studying).

The procedures for temporary residence permit last on average 10 days, while the procedures for granting permanent residence permit on average 7 days. The certificate is issued on the basis of the permit for permanent residence and the procedure takes in average 3 months, in special and exceptional cases up to 1 year. The regional State Migration Service does not have any special database and the cases are stored in paper form, only the documents issued to foreigners beginning from February 2013 are electronically stored. In the procedure of granting the permanent residence permits to foreigner and stateless persons, the office does not have any access for verifying the data being held by other bodies on individual case, they communicate in written form with the Police, State Border Guard Service and Intelligence Agency and Interpol.

In 2014 the State Migration Service issued: 18.000 permanent residence permits; 15.000 temporary residence permits; 8.000 extensions of residence permit and 9.000 extensions of temporary stays.

Funding of the SMS can cover the ordinary tasks, but it is not possible to cover any additional costs, maintenance, equipment, business trips abroad, etc. Due to the lack of financial resources there have not been any foreign language trainings for officials.

➤ **Migration profile established and regularly updated and effective analysis of data on migration stocks and flows**

The Migration Profile for 2013 was published on 5 March 2015 on the official web-site of the SMS. Updating Ukraine's Migration Profile for 2014 is ongoing and shall be completed by the end of April 2015. The State Migration Service has not established the central migration database for monitoring the migration processes (MSMP). The estimation of the cost for the system was about 28 Mio EUR. Legislation is under preparation to create the Contact Analytical Center in order to strengthen the inter-agency cooperation and exchange of data. The Centre should cover not only aspects of irregular migrations, but should also provide methods and networks to enhance the efficiency of the State Migration Service.

➤ **Consistent implementation of an effective methodology on inland detection of irregular migration, risk analysis (including the reporting of relevant agencies and analysis on each administrative level e.g. local, central), and investigation of cases of organised facilitated irregular migration, including effective cooperation between relevant agencies;**

Some concerns are raised about the operational capacity of the State Migration Service. The capacity of the State Migration Service to detect irregular migrants seems to be problematic due to the lack of staff and its purely civilian authority. The Ministry of the Interior and State Border Guard Service have the operational capacity, while SMS only verifies operational information and checks the conditions and enforces the measures if necessary. However, the law enforcement agency cannot verify the documents and conditions of the and needs to include the State Migration Service for the further procedure. The Ukrainian authorities try to



compensate this situation with efforts oriented to the organisation of ad-hoc operative measures and nationwide actions of detecting the irregular migrants.

- **Provision of adequate infrastructure (including detention centres) and strengthening of responsible bodies to ensure effective expulsion of illegally residing and/or transiting third country nationals from Ukrainian territory.**

In 2014 a special Unit in charge for fighting irregular migration was created in the structure of the Department of Foreigners and Stateless Persons. In the regional departments of the State Migration Service specialised units for migration control were created to combat irregular migration.

In the field of irregular migration, the State Migration Service reported the following statistics for 2014:

- 17031 persons were subject to administrative procedure, including 13. 851 foreign citizens. The fines imposed in 2014 for violation of migration legislation amount to 7.1 mln UAH;
- 3135 irregular migrants were detected and decisions on expulsion were taken against;
- 2384 foreigners violated migration legislation;
- 98 foreigners were returned;
- 55 foreigners were placed in the centres for temporary stay of foreigners;
- 512 foreigners were forbidden entry to Ukraine for 3 years.

There are two Temporary Accommodation Centres for irregular migrants located in the Chernihyv, with the capacity of 208 persons and Valin, with the capacity of 156 persons regions. Another centre in the Mykolaiv is under the construction, with the capacity for about 100 persons. The Centres are equipped with furniture, IT, medical equipment and medicines, kitchen equipment, office supplies, industrial machines, thus ensuring adequate accommodation conditions for irregular migrants. Women and children are accommodated separately from men. Also, the accommodation for families is assured. Access to outside activities is assured.

Foreigners are accommodated in the centres on the base of Rulings on the forced expulsion issued by the Court. A person can leave the centre only if the international protection is recognised or the time limit of 1 year has expired.

The personnel in the centres belong to the State Migration Service and are civil servants. Guards are civilians, without weapons and have no additional (use of force) powers. The responsibly of the guards cover a wide spectrum of the activities in the centre, such as fulfilling the schedule, implementing the house rules, providing escorts, preventing conflicts, contacts with the accommodated persons, etc. In case of emergency or massive conflicts the local police forces are called.

### **2.2.3. Asylum policy**

- **Effective implementation of asylum legislation, including provision of adequate infrastructure (including reception centres) and strengthening of responsible bodies, in particular in the area of asylum procedures, reception of asylum seekers and protection of their rights (including documentation of asylum seekers**

**and refugees in order to ensure effective access to their rights), as well as integration of refugees.**

According to the Law of Ukraine “On the Free Legal Aid” persons applying for recognition as refugee or as person in need of subsidiary protection are entitled for free primary legal assistance, i.e. provision of legal information, consultations on legal aspects of submitting applications, requests, claims and other legal documents. Article 13 of the Law of Ukraine “On legal aid” provides for the right of citizens to receive free secondary legal aid which includes such legal services as a defence against charges; representation of interests in courts, other state bodies, local government bodies, before other persons; drawing up of documents of procedural nature, however the implementation of the provision of free secondary legal assistance, which includes representation in administrative and judicial proceedings and was envisaged for 1 January 2015, has been postponed to 1 January 2017.

Two centres for temporary accommodation of refugees function in Ukraine, one in Odessa, with a capacity of 200 persons, and the other one in the Transcarpathian Region, with a capacity of 130 persons, which accommodate the most vulnerable asylum seekers and refugees (families with many children, single mothers, etc.). In 2013 with a view of improving accommodation conditions and with the support of the Regional UNHCR Office for Belarus, Moldova and Ukraine and EU financial assistance both sets of premises have undergone renovation. The centre in Odessa has been partially renovated and the first part of the renovation was completed in 2013. The renovated parts provide adequate living conditions, the dormitories are provided with new furniture, and the sanitary facilities are renovated. Currently non-governmental organisations provide sanitary items and school stationery for those accommodated at temporary accommodation centres. The persons seeking international protection who are not accommodated at the temporary reception centres do not receive social assistance and their residence registration seems to be problematic. Moreover, according to testimonies, the persons seeking international protection who attempt to cross the Western borders of Ukraine illegally, lose their access to reception conditions. This needs to be clarified by the Ukrainian authorities. According to the Ukrainian authorities, the renovation of the centre in Yagotyn (Kyiv Region) with a foreseen capacity of 353 persons, including unaccompanied minors will be completed in 2015.

A Cabinet of Ministers Decree in March 2014 (No. 121) envisaged free medical care for persons seeking international protection in Ukraine. In practice, emergency healthcare is provided, however free access to healthcare outside the scope of primary healthcare seems to be problematic (also due to lack of interpreters). Often UNHCR and NGOs provide the necessary funds. Medical staff in the temporary accommodation centre in Odessa is only available at working hours and on call duty in the weekends. According to the explanations plans are to recruit two additional doctors and a nurse.

The State Migration Service does not produce reports on the country of origin information (COI) and there is no specific unit or officials specialised in collecting and providing COI to case workers. Officials processing applications have access to publicly available sources (UNHCR Refworld, US State Department reports, Amnesty International, Human Rights Watch, etc.).

Though a system has been established to enable the issuance of identity and travel documents at the central level, the “Refugees” subsystem providing access in every branch of the SMS

has not been established yet. According to the statements, SMS established the special software, but its actual implementation is subject to funding.

Asylum applications are received by the regional offices of the State Migration Service. The regional office decides on the evaluation of the documents necessary to recognise a person as a refugee or a beneficiary of supplementary/complementary/subsidiary protection within 15 days. In the course of the asylum procedure, the documents are analysed, interviews are conducted, and examination of information (on the country of origin, from the security authority, etc.) is performed, within a deadline of 60 days (which can be extended by 1 month). The regional office makes the recommended conclusion on the application and submits it to the central office of the State Migration Service (which has 30 days – with a possible extension by 60 days – to deliver the final decision as for the application). The procedure from the application by an asylum seeker to the final decision of the SMS requires seven signatures from the officials of the State Migration Service. The decision is taken by the first deputy head of the State Migration Service.

The decisions contain a concise reference to the legislation applied but do not provide detailed information on remedies (the concrete deadline of submitting the application for judicial review, moreover the specific court competent to review the administrative decision are not indicated). Remedy against the decision could be filed with the State Migration Service or directly with the Administrative court. Both institutions are obliged to consider the application for review. Against the decision of the administrative court, appeals can be lodged to the Appellate court and to Supreme administrative court. The person seeking international protection may stay in the territory of the Ukraine until the final decision, though the short validity of the residence document may result in “gaps” between expiry and the renewal of the residence authorisation.

Persons seeking international protection are exempted from labour market tests. The work permits are to be issued in 15 days. Persons seeking international protection may be employed on the premises of the temporary accommodation centres. In the framework of a project, a bakery is operating in the temporary accommodation centre in the Transcarpathian region employing persons seeking international protection. Despite the above-mentioned provisions, the number of asylum-seekers employed with an employment permit is low (20 applicants for international protection received services from employment offices in 2014). Moreover, the validity of work permits is aligned to the residence document issued to persons seeking international protection (the residence document is valid for 2 months which can be extended) which is too short to provide access to actual employment in practice.

A positive development concerning vulnerable asylum-seekers is the adoption of a Joint Order of the Ministry of Healthcare, Ministry of Education and Science and the Ministry of Social Policy on age assessment procedures. According to the statements, the age assessment procedure should involve medical and psychological assessment. The training to implement psychological assessment is ongoing.

In practice, the lack of knowledge of foreign languages by State Migration Service officials, social workers and the lack of interpreters seems to be a problem that hinders asylum procedures and the access of persons seeking international protection to the rights they are entitled under legislation.

In 2012 the territorial bodies of the State Migration Service of Ukraine examined 1573 applications of foreigners and stateless persons for the status of refugee or person in need of subsidiary protection. In 2012, 152 persons were granted international protection in Ukraine: 63 persons were recognised as refugees and 89 persons as persons in need of subsidiary protection. The majority of applicants originated from Afghanistan, Somali and Syria. In 2013 applications of 1093 persons were examined by the SMS out of which 95 were granted the status of refugee and 141 were recognised as persons in need of subsidiary protection. The majority of them originate from Afghanistan and Syria. 110 persons submitted their applications for the status of refugee or person in need of subsidiary protection to officers of the State Border Guard Service of Ukraine, out of which 106 asylum seekers submitted applications in person and 4 applications were received from legal representatives of unaccompanied minors. 17 minors were included into the procedure for the status of refugee or person in need of subsidiary protection initiated by their parents. Out of all applications processed by the SBGS 9 (8%) were for the status of person in need of subsidiary protection. 30 persons submitted their applications to the SBGS when crossing the State border illegally. The other 80 persons introduced the relevant applications while staying at centres for temporary accommodation of foreigners.

In 2014 applications of 1.173 persons were processed by the SMS out of which 105 were granted the status of refugee and 222 were recognised as persons in need of subsidiary protection. The majority of applicants originated from Afghanistan (275) and Syria (267).

A positive development in the field of asylum procedures is that the rate of recognition of applications of international protection has increased to 35% (compared to 25% in 2013), in particular, 85% of Syrian applicants were granted protection in Ukraine. Most refugees are from Afghanistan, while the majority of beneficiaries of subsidiary protection are Syrians.

### **2.3. Block 3: Public Order and Security**

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

- **Implementation of the Strategy and Action Plan to fight against organised crime including effective coordination between the relevant authorities;**

The need for a systemic reform of the internal affairs bodies took concrete forms with the reorganisation of the units responsible for organised crime. The Action Plan for implementation of the state policy in the fight against organised crime was adopted by the Cabinet of Ministers of Ukraine (Decree #53 as of January 25, 2012). It will expire by the end of 2017. According to Article 5.2 of the Law of Ukraine "On the organisational and legal framework to combat organised crime" the public bodies, created to combat organised crime include: special units for combating organised crime of the Ministry of Internal Affairs of Ukraine and special units to combat corruption and organised crime of the Security Service (SBU) of Ukraine. In accordance with Article 5.3 of the Law, other public bodies, responsible for fighting organised crime include: the Prosecutor's Offices; the bodies of the State Fiscal Service, the State Border Guard Service and agencies of State Financial Control; the penitentiary Institutions; the Intelligence Agency of the Ministry of Defence and the Foreign Intelligence Service.

Before the reform process started in February 2015, GUBOZ was the main department for combating organised crime and was responsible for implementing the Action Plan. On 2

February 2015 Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the reform of the Interior bodies" (Draft Law №1550 of 22.12.2014). The above mentioned Act amends, in particular, the Law of Ukraine "On the organisational and legal framework to combat organised crime" and the Law of Ukraine "On Operational Activities" and abolishes GUBOZ as a special unit to combat organised crime. The employees of GUBOZ will be re-employed into specialised departments of the MoI, which will retain their investigative functions to tackle organised crime in accordance with their respective specialisations (e.g. drugs, THB, cybercrime, etc.) and in accordance with paragraph 1 of the article 261 of the CPC.

In the framework of reforms, the Security Service (SBU) will retain the operational and pre-trial investigative responsibility to fight also organised crime.

A draft law "On the State Bureau of Investigation"(SBI) is under preparation, which foresees the establishment of a new body. According to the Criminal Procedure Code (CPC), article 216.4: "Investigators from units of the State Bureau of Investigations (SBI) of Ukraine shall engage in pre-trial investigation of the crimes committed by officials holding a particularly responsible status pursuant to Part One of Article 9 of the Law of Ukraine "On civil service" and the persons whose positions refer to categories 1-3, judges and law enforcement personnel. The State Bureau of Investigation shall be established within 5 years after the CPC has entered into force, i.e. by 20 November 2017.

The "Law on the Protection of Individuals Involved in Criminal Proceedings of 1994", which was amended in 2003 entails provisions on witness protection. However, the law does not clearly address important issues related to the "Justice Collaborators" protection's program. According to the Ukrainian witness protection law protective measures can be granted via a number of measures, including surveillance, replacement of ID documents, change of appearance; relocation, etc. Special investigative measures can be implemented upon the authorisation of the investigating judge as per the provisions stipulated in the article 206 of the CPC. In practice, further efforts should be undertaken in order to ensure the effective implementation of a specialised Witness Protection Unit according to international standards. According to article 7 of the Law of Ukraine "On militia" there is a judicial police within the MoI. It was created for maintaining order in court, stop the disrespect to the court, protection of court premises and authorities of the court system, perform functions on state protection of judges, court staff and trial participants. In 2015, special units of the judicial police performed 130 resolutions on ensuring safety measures concerning participants in criminal proceedings, which ensured the protection of 195 persons.

Overall, while the reform process of the Ministry of Interior is ongoing, key elements such as a clear jurisdiction and avoidance of overlapping functions in fighting organised crime should be ensured. The modernisation efforts are a welcome step to avoid duplication of effort, recover financial resources, reduce corruption opportunities and improve motivation of concerned staff. The challenge of the overall reform of the internal affairs bodies is to ensure a clear and coherent vision of the reform.

- **Implementation of the State Programme for Combating Trafficking in human beings, including effective coordination between state agencies and effective protection of victims of trafficking including children;**

The Government has worked with key stakeholders in the implementation of the National Action plan. The National Action Plan 2013-2015 provides a comprehensive approach to prevent and combat THB, with relevant goals and objectives. The Ministry for Social Policy has submitted the draft action plan (2016 – 2020) to the Cabinet of Ministers of Ukraine. The State Programme on Combating the Trafficking in Human Beings will be implemented, and commence in 2016, after its adoption.

The State Program against Trafficking in Human Beings was adopted by the Cabinet of Ministers Decree of 21 March 2012. It concludes in 2015. The Ministry for Social Policy has submitted the draft action plan (2016- 2020) to the Cabinet of Ministers of Ukraine. The State Programme will be implemented, and commence in 2016, after its adoption. The bodies responsible for the implementation of the 2013-2015 programme include the Ministries of Social Policy, Internal Affairs, Foreign Affairs, and Education and Science, Youth and sport, Culture, Justice, State Statistics Service, State Committee for Television and Radio Broadcasting, Economic Development and Trade, Infrastructure, General Prosecutors Office, State Border Guards Administration; the State Security Service, the National Agency for the State Service, NGOs and International Organisations. The international organisations and NGOs have expressed the need for greater coordination. Concern was expressed that many of the regions did not have targeted programmes, with specific budgets allocated.

The Ministry of Social Policy has the responsibility for overall coordination of Combating Trafficking in Human Beings, through a dedicated Coordinator and Unit. Specialised police units to combat human trafficking have also been established throughout the country.

There has been considerable activity in the area of prevention. A number of campaigns have been conducted to alert the public to the dangers of human trafficking. Considerable work has also been done, training and attempting to build the capacity of specialists and experts. Again it would be useful to evaluate the impact of this training on identification and provision of assistance.

Training has been conducted with social workers, law enforcement agencies, and consular officials and media professionals, to consider best practices of THB (over 250 specialists and over 6000 experts at the regional level and 3464 public servants nationally).

The Ministry of Social Policy of Ukraine in cooperation with the International Organisation for Migration in Ukraine, the Ministry of Education and Science of Ukraine and the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine organised the regional information campaign “Your Safe Way to the Dream” in the framework of the project “Prevention of Trafficking in Human Beings through Social Work and Community Mobilisation.” It took place on July - August 2014 in Odessa, Lviv, Ivano-Frankivsk and Dnipropetrovsk Region in order to increase the public awareness of the risks of falling into a situation of trafficking in human beings and to prevent the various forms of trafficking in human beings. This campaign was aimed at young people, women and men aged 16-35 years, unemployed persons and potential migrants which have searched a better life or work abroad and who often become the victims of trafficking in human beings.

IOM’s reported an increase in local identification due to capacity building and training, at the local level (i.e. in Mykolayiv 75% of VoT identified by the NGO applied for official status; in Odessa – 46%; in Zakarpattia – 93%, in 2013). However, the level of identification remains very low, so the programme could benefit from systematic evaluation to consider impact, and

specifically what is making a difference. This could inform future delivery and increase impact.

In the implementation phase, a mechanism of assistance to victims of trafficking was piloted in cooperation with OSCE in Donetsk and Chernivtsi in 2012. The pilot took place in 2009-2011. Following that, IOM and OSCE have been working to build capacity based on the availability of resources (13 regions are covered by OSCE, and 10 by IOM). Of the total of 25 regions in Ukraine, two are regions not covered by National Referral Mechanism (NRM) capacity building interventions, Poltava and Cherkasy.

Since the adoption of the NRM-related regulations in 2012, 159 applications for VoT status (48 in 2014) were submitted by local state administrations to the Ministry of Social Policy. All of these applications were reviewed by the MSP, which resulted in 84 granted VoT statuses (27 in 2014) and 75 rejections (21 in 2014), which constitutes 47% of the total number of applications (43% in 2014). Since 2010, there has been a significant decrease in the number of Ukrainian victims of trafficking identified. The Government reported 84 trafficked victims in 2014, compared to 187 in 2012, (294 in 2011 and 277 in 2010). In 2014, a total of 38 victims were men, 32 were women and 14 children. In 2014, 41 cases involved exploitation for force labour, 18 for sexual exploitation, 16 for begging, six cases for mixed exploitation, three cases for the removal of organs and two cases involving the sale of a child. The countries of destination identified by the authorities included 33 cases to the Russian Federation, 32 cases to Turkey, six cases to Poland, five cases to Moldova and two cases to Azerbaijan, two cases to Israel, one case to Serbia, one case to Greece and one case to Germany.

Despite considerable progress in counter trafficking activities, there are a number of concerns regarding the process that should be considered. The decrease in, and number of, registered victims is a concern. There is a need for the Government to increase its efforts in the identification of victims of trafficking. The current anti-trafficking system focuses on Ukraine as a country of origin. Only a few foreign victims of trafficking have been formally identified. In addition only a few victims of internal trafficking have been identified, despite the potential risk with the high level of displaced persons. The number of child victims identified is also very low. Additionally, there is a concern that the numbers of identified victims for sexual exploitation has decreased over the past five years, and the reasons for this would need to be explored further.

- **Implementation of legislation on preventing and fighting corruption, ensuring the efficient functioning of the independent anti-corruption agency; development of ethical codes and training on anti-corruption, especially targeting public officials involved in law enforcement and the judiciary;**

In October 2014 an anti-corruption package, including a national strategy (2014-2017) was adopted. This package set the foundations for two new specialised anti-corruption institutions: one tasked with investigation of high-level corruption (the National Anti-Corruption Bureau) and one on prevention (the National Agency for Prevention of Corruption). The new legislation also set the basis for an enhanced asset disclosure and conflict-of-interest verification system. Amendments to the law on the National Anti-Corruption Bureau were adopted by Parliament in February 2015 to address certain shortcomings, including safeguards for staff salaries and a framework for a specialised anti-corruption prosecution office accompanied by a number of independence safeguards, including selection of

leadership and recruitment of staff through merit-based competitions. A state programme to operationalise the anti-corruption strategy was adopted by the government in early April 2015. The programme would benefit from a more operational approach that should also ensure clear prioritisation, budgetary assessment and indication of further needs. Both the strategy and the action plan have been drafted in cooperation with civil society. Indeed, civil society appears to play a decisive role in the reform processes, as one of its key drivers, with an active involvement in numerous anti-corruption relevant areas.

Budget for 2015 was allocated for both the National Anti-Corruption Bureau and the National Agency for Prevention of Corruption. The recruitment process for the leadership of the Bureau, carried out through an open competition managed by an independent selection commission, was finalised in mid-April 2015 and the director of the Bureau appointed.

The law on access to information was adopted in 2011 in Ukraine, but practice is still modest. In order to avoid making access to information dependent on the good will of various entities, Ukraine has opted for pro-active publication of information in several key areas with financial implications. A new law was adopted on transparency in using public funds. The law provides for online publication of Treasury transactions of public institutions in an open-data format. Some progress was made in reducing exemptions in public procurement through 2014 legal amendments. A unified web portal disclosing public expenditure, as highlighted in the anti-corruption state programme, should also be set up as a matter of priority.

There is a new framework in place regarding registries/databases on immovable property and land, as well as legislation requiring the central register of companies to include data on beneficial ownership. Initially the companies will be required to voluntarily provide such information by the end of May 2015, while later on, if information provided is proven wrong or incomplete, sanctions may be imposed (approximately 200 euro fine). No secondary legislation was adopted to facilitate the completion of the beneficial owner data. A legal obligation was introduced for public officials to disclose beneficial ownership information in their asset declarations. It would be recommendable to ensure that the data on beneficial ownership is reliable, user-friendly, easily accessible and up-to-date, including a proper enforcement mechanism to verify accuracy of information and sanction non-compliance.

In spite of the political commitments at high level which led to a commendable legislative framework and an engagement for an institutional remake, the anti-corruption reform process appears to be still stuck in the transition from planning to acting. There is little prioritisation and coherence in the implementation of the anti-corruption strategy; the lack of an effective coordination leads to a rather fragmentary approach for what is already an overwhelming implementation process. There is limited acknowledgment and/or understanding of the overall reform vision within the various bureaucratic levels of the public institutions tasked with anti-corruption policies. Ukraine may consider putting into motion an effective high-level coordination mechanism, to also include civil society and to ensure clear leadership in the implementation of the anti-corruption strategy, as well as setting clear feasible priorities to be widely understood and accepted by all relevant institutions involved in the implementation.

Tangible results in the implementation of anti-corruption reforms are therefore yet to follow. With regard to the upcoming new institutional setting, the real test of its effectiveness will only come when the National Anti-Corruption Bureau, the specialised anti-corruption prosecution office and the National Agency for Prevention of Corruption become operational, with all independence safeguards proven by practice.



In relation to the National Anti-Corruption Bureau, it is key to ensure a timely, merit-based, competitive, transparent and independent recruitment process of its staff. The same is valid for the setting up, including recruitment of leadership, of the specialised anti-corruption prosecution office which should be pursued as a matter of top priority, as an indispensable element of a performant and independent institutional setting for combating high-level corruption. It also key to further ensure the necessary resources and equipment for these institutions and put in place without delay detailed intensive training programme for their staff. Clear operational guidelines are also needed for the cooperation between these two institutions, as well as for their cooperation and division of competences with other relevant agencies (e.g. police, SBU, upcoming State Investigative Bureau). Currently such division of competences appears not to be sufficiently clear. Additional consideration should be also to further safeguards related to the procedure for dismissal of the director of the National Anti-Corruption Bureau in relation to which a number of concerns remain.

The reforms of the judiciary and of the prosecution services have a two-fold key importance for anti-corruption policies: (i) prevention and combating corruption within the judiciary and the prosecution service; (ii) capacity of the prosecution and of the judiciary to effectively prosecute and adjudicate corruption cases, including at high-level. Ambitious plans for these reforms have been envisaged. The 'cleaning-up' practices have been in the centre of public controversy and at times criticised, including by the Venice Commission, for lack of clear objective criteria, transparency and sufficient safeguards. While the declared objectives of the 'cleaning up' reforms are commendable, more thought must be put into the way these are going to be implemented and the risks attached that need to be addressed in order to avoid failure or aggravating effects. All these reform processes must be implemented in full transparency and follow clear, objective, merit-based and publicly available criteria.

The entry into force of key provisions of the new law on public prosecution, foreseen for 25 April 2015 was delayed until 15 July 2014. The law eliminates the general supervision functions, introduces new modern rules on human resources management and provides for the creation of self-governing bodies.

In relation to investigations into high-level corruption cases, as well as prosecution and adjudication thereof, it is widely acknowledged that the public expectations in this regard are very high. It is of utmost importance to ensure a high quality of non-partisan investigations, followed by a fair judicial process, with full observance of the defendants' rights.

With regard to asset recovery, a deputy Prosecutor General was put in charge of leading inter-agency work on asset recovery reform. While various pieces of legislation were adopted in this area, little court practice exists so far to allow for a proper evaluation of their efficiency. Ukraine should designate a national Asset Recovery Office, and put in place an effective coordination framework of asset recovery reforms and an effective inter-agency cooperation to be able to establish a track-record of effective asset recovery.

In relation to prevention of corruption, a number of bylaws necessary for the kick-off the setting up of the National Agency for Prevention of Corruption were adopted in March 2015. The Agency will be in charge of the design and implementation of anti-corruption programs, as well as the control of assets declarations and conflict of interest for public officials. It is therefore of key importance to ensure a smooth selection and appointment process of the members of the National Agency for Prevention of Corruption, their supporting staff and the

Public Council oversight, with observance of functional independence safeguards and effective training programmes.

Accessing assets disclosure declarations of public officials and civil servants has always been a great challenge for civil society and media. The obligation to publish these statements online for the most senior official is very rarely implemented and access to information depends on the good will of the head of the respective institutions. Ukraine intends to develop a process of online submission of declarations of assets by public officials. It is recommended that the existing declarations of assets of public officials are published online as soon as possible. As a second step, the electronic asset declarations system is expected to be put in place. The verification mechanisms must enjoy effective independence safeguards and a system of deterrent sanctions should be put in place for unjustified wealth and conflicts of interests.

Ukraine has embarked on a reform process of state-owned/controlled companies and is also facing a number of actions that challenge prior privatisations which may lead to re-nationalisation and re-privatisation processes in strategic sectors such as energy. These areas are exposed to high corruption risks where effective oversights and anti-corruption safeguards will be key to ensuring that these processes are corruption-free, objective, fair and best serving the public interest.

In the area of political party and electoral campaign funding, legislation addressing the GRECO recommendations remains to be adopted.

The issue of immunities remained unchanged in Ukraine since the last VLAP report. It is recommendable for the procedures for lifting the immunity of judges to be reviewed to ensure the limits of a functional immunity and leave the decision to a professional body, ideally composed solely of judges, following clear objective procedures. It is also recommendable to complete the constitutional amendment procedures with regard to immunity of MPs.

- **Implementation of the Strategy and Action Plan for the prevention of money-laundering and financing of terrorism, implementation of the law on the prevention of financing of terrorism, implementation of relevant legislation on confiscation of assets of criminals (including the provisions addressing cross-border aspects);**

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” (AML), which came into effect on 7 February 2015. The new AML Act provides:

- a clear definition on money laundering and financing of terrorism, assets, money, and non-property rights property, client identification, financing of proliferation and a large definition of Politically Exposed Person (PEP’s).
- introduces a larger list of Designated Non-Financial Businesses and Profession reporting to the FIU (members of payment systems; stock market; real estate sector; precious stones and precious metals business; lotteries, gambling games and (virtual) casinos; notaries, lawyers and companies providing legal services; auditors and audit companies; etc.)

- Liability of legal persons is regulated in the AML Act 2, 1 and 24, 2 and translated in other laws such as Criminal Code Ukraine Art. 209, Art. 285.5.
- Introduces a risk assessment approach Art 1,1-44 and the measures which primary financial monitoring entities take to create and ensure the functioning of the risk management system, which provides, among other things, determining (detecting), assessing (measuring), monitoring, and controlling risks to mitigate them;
- Fiscal fraud is seen as a possible predicate offence for money laundering, however according to the authorities, fiscal information is only available since 1999, hence older fiscal fraud cannot be prosecuted because it can be explained as 'old saving money from the family'.
- Ultimate Beneficial Owner identification (UBO) obligation is introduced in the AML Act Ukraine 2014 with the Art 1, 10° & 21° and the complete identification is expected from any individual who may exercise (directly or through other persons) influence on management or economic activity of a legal entity.
- A larger and clear definition of PEP's (AML Act, Art 1, 14, 20, Art 6, 5-2) has been introduced and it is needed and is needed to tackle possible corruption.

While the AML Act brings Ukraine a major step closer to be compliant with the (new 2012) Financial Action Task Force on money laundering (FATF) recommendations and even also with the 4th EU directive on money laundering that focuses on ultimate beneficial ownership, there are several shortcoming that should be taken into account. According to the Independent Association of the Banks of Ukraine, 30 % of the Ukrainian banks did not disclose their ownership to the National Bank of Ukraine (NBU). A deadline was given until June 2015. As mainly banks and financial institutions do report to the FIU, the use of cash to move proceeds of crime is a risk in a country where some people do not trust the banks and there is a black exchange market. Hence US dollars and EURO are circulating in big amounts. Further, despite the new AML act cash is still used in big amounts in the real estate sector.

The FIU did receive in 2014 more than 1 million transactions reports. This high number of reports is in relation to the reporting system. Transactions equal to or more than 150.000 UAH must be reported to the FIU under the conditions described in the AML Act Ukraine 2014.

More than 95 % of the reports (or 1.251.311) are coming from banks; there are no reports from auditors and audit companies; there are no reports from lawyers and companies providing legal services; there are no reports from cash payments of goods; there are no reports from casino's/gambling industry (except lotteries); there were 29 reports coming from notaries.

The reporting entities are taking initiatives in this regard. In 2014 the Ministry of Justice performed 1.485 inspections that resulted in discovering 825 subjects of violations on AML legislation. The suspicious transaction reports did result in 2014 in more than 200.000 reports and 1.940 cases of which 476 were submitted to law enforcement agencies: Ministry of Interior (Police) 180 cases, 1 on financing of terrorism; Security Services: 106 cases, 11 on financing of terrorism; State Fiscal Administration, 102 cases; Prosecutor-General Office, 88 cases. The Financial Intelligence Unit (FIU) received information/STR's regarding: 8,9 million UAH in 2012; 10,38,9 million UAH in 2013; and in 2014: 1018,3 million. In 2014, 27.400.000 UAH has been confiscated. The confiscated money (and sentenced as money laundering before court) seems low if compared at the initially 3.042, 82 million UAH frozen

in 2014 by FIU: LEA: 2493,83 million UAH; State Fiscal Service: 36.48 million UAH, Ministry Interior Affairs: 453.02 million UAH; Security Services: 59,49 million UAH.

The Criminal Code does not seem to provide a strong legal instrument to tackle money laundering and encourage a higher confiscation rate since a predicate offense must still be proven. In the ongoing reform of the Ministry of Interior it is recommended that a specialised financial prosecutors unit tasked only with anti- money laundering and terrorism financing investigations should be set up.

In 2014 the FIU of Ukraine had 458 outgoing requests and 251 incoming request (based on Memorandum of Understanding signed with over 130 FIU's).

- **Implementation of the national anti-drug strategy and action plan, ensuring adequate working of the Inter-Agency Coordination Council on Combating Drug Abuse, making the information on drug seizures and persons involved accessible at border crossing points, and further developing cooperation and information exchange with relevant international bodies in the drug field; establishing cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA);**

The National Anti-Drug Strategy adopted in 2013, has been partially implemented through the Action Plan (2012-2015) and it is being further implemented through the second Action Plan (2015-2020). Following a resolution of the Government the AP for the 2015 to implement the strategy until 2020 was approved. The MoH has set up a separate legal entity and fulfilled the commitment to decriminalise possession of small/medium doses. On 18 March 2015 a Resolution containing provisions defining population access to medicine containing drugs (oncological) has been endorsed so as to reduce corruption opportunities.

Tangible results have been achieved, such as the establishment of the Monitoring Centre and the establishment of the Medical Centre for re-socialisation of drug/alcohol addicts.

By the Decree of the Cabinet of Ministers of Ukraine from 10 September 2014 *On the Optimisation of the System of Central Bodies of the Executive Power the State Service of Ukraine on Drugs Control* the latter has been merged with the State Service on Pharmaceuticals of Ukraine and its functions shall be transferred to the Ministry of Health of Ukraine. As of October 2014 the State policy on drugs control is implemented by the Ministry of Healthcare of Ukraine (MoH), the Ministry of the Interior and by the State Service of Ukraine on Drugs Control (SSDC).

The MoH with its institutional structure has full capacity to manage the re-socialisation of addicts and to monitor abuse of drugs/alcohol other than contributing effectively to prevention. The institutional structure, subordinate to one of the Deputy Minister of Health, for these functions includes: the Department of Medical Care, the Scientific & Research Institute Social and Psychiatric and drug abuse and the Monitoring and Medical Centre on Drugs and Alcohol (UMMCDA).

During 2014, 9.938 criminal offenses under Art. 307 of the Criminal Code were registered in the Single Register of pre-trial investigations. From this number there were 43.366 drug-related crimes in 2014, of which 23% (9.938) concerned the sales of drugs. Out of 13.195 criminal offenses under Art. 307 of the Criminal Code, pre-trial investigations have been

completed in 10.036 cases (76%). In 2014 6.930 criminal proceedings were brought to court (52.5% of the total number of criminal offenses).

Measures have been taken to improve effectiveness of search and operational activities of the State Border Guard Service of Ukraine. In 46 kg of drugs (90% herbal) and 140 kg of psychotropic substances and precursors were detected. Since 2011, annual reports are regularly submitted from the Monitoring and Medical Centre on Drugs and Alcohol (UMMCDA) to the European Monitoring Centre for Drugs and Drugs Addictions (EMCDDA).

- **Sound implementation of relevant UN and Council of Europe Conventions, as well as GRECO recommendations in the above mentioned areas;**

The implementation of this benchmark has been evaluated in the other sections of this report.

- **Provision of sufficient financial and human resources, including adequate training programmes, to ensure effective implementation of all the measures mentioned above;**

The implementation of this benchmark has been evaluated in the other sections of this report.

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

- **Implementation of international conventions concerning judicial cooperation in criminal matters (in particular Council of Europe Conventions);**

Ukraine possesses a legal framework which covers fully the relevant areas of co-operation such as mutual assistance, extradition, transfer of sentenced people, transfer of criminal proceedings and recognition and enforcement of foreign criminal judgments. This framework is based on international and domestic legal instruments and is well supported by operational arrangements. Although some legal instruments are still missing, such as the United Nations Convention against Transnational Organised Crime, the overall framework is sufficient to face the needs of co-operation in criminal matters.

Ukraine shares the competences between the Public Prosecutor's Office and the Ministry of Justice as the central authorities responsible for channelling incoming and outgoing requests for international co-operation. In Ukraine, this appears to be functional and ensures a consistent and predictable approach to international co-operation related issues. Both authorities have data bases where incoming and outgoing requests are recorded and which allow for monitoring their timely execution. In accordance with the applicable law the incoming requests for mutual legal assistance shall be executed within one month from the day the executing services have received them. However this timeframe may be extended if the actions which have to be taken are complex and/or of large scale. On the other hand urgent requests are taken as a priority.

- **High level of effectiveness of judicial co-operation in criminal matters of judges and prosecutors with the EU Member States.**

Ukraine appears to have made good use of its legal framework by granting and requesting international legal co-operation in several cases, some of them related to EU Member States.

Ukraine thus appears to be a stable part of the international legal co-operation network. This is due also to the deployment of sufficient human resources at central level. The response to the foreign requests for co-operation seems to be satisfactory also because of the continuous training of judges and prosecutors.

According to the collected data for incoming requests processed by the Prosecutor's Office, the overall number of such requests in 2014 (11 months) was 865; 763 were requests for mutual legal assistance, 52 for transfer of proceedings and 50 for extradition; out of the 763 requests for mutual legal assistance, 359 came from EU Member States; out of the 52 requests for transfer of proceedings, 38 came from EU Member States; out of the 50 requests for extradition, 7 came from EU Member States a total of 404 requests of international co-operation were made by 23 Member States, viz. by Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

According to the collected data for incoming requests processed by the Ministry of Justice,

- the overall number of such requests in 2014 (11 months) was 710;
- out of these 710, 563 were requests for mutual legal assistance, 27 for extradition, 5 for transfer of criminal proceedings, 9 for recognition and execution of foreign courts judgements and 106 for transfer of sentenced persons;
- out of these 563 requests for mutual legal assistance, 349 came from EU Member States;
- out of these 27 requests for extradition, 3 came from EU Member States;
- out of these 5 requests of transfer of criminal proceedings, none came from EU Member States;
- out of these 9 requests for recognition and execution of foreign court judgements, 4 came from EU Member States;
- out of 106 requests for transfer of sentenced persons, 12 came from EU Member States;
- a total of 367 requests for international co-operation were made by 23 Member States, viz. Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Spain, Slovenia, Slovakia, the Netherlands, Sweden and the United Kingdom.

So far, Ukraine received more requests for co-operation than vice versa. In the future this trend may change. It is likely that the two-way flow of requests to EU Member States will increase, also because the conflict situation in certain areas of Ukraine can be expected to trigger various kinds of trafficking.

### **2.4.3. LAW ENFORCEMENT COOPERATION**

- **High level of operational and special investigative capacity of law enforcement services and its consistent and efficient use to tackle cross-border crime;**

The current Ukrainian priority appears to be on reforming the patrol police to improve perception of safety and most important to regain citizen's trust, and to reduce the wide spread corruption phenomena. According to the order of the Ministry of Internal Affairs of 18 November 2014 "On the organisation in Khmelnytsky the experiment" the experiment of combining patrol service of Khmelnytsky City Department of Internal Affairs of Ukraine in Khmelnytsky region and road patrol service of department of the State Automobile Inspectorate of the city service in Khmelnytsky region into a single patrol service for joint duty to protect public order and the prevention of offenses ended on 28 January 2015. The

evaluation of the project mentioned is ongoing. The assessment of the project will pave the way for further reform of the system of bodies of internal affairs of Ukraine, including continuing the reform of the road guard and patrol service of Directorate of the Ministry of Internal Affairs of Ukraine in Kyiv.

The overall police reform will contribute to improving the investigation process and structures serving to effectively tackle and disrupt organised criminal groups (OCGs) however, currently the ineffectiveness of investigation of law enforcement services remains a concern.

The effective investigations are negatively affected by several factors such as: the widespread phenomena of corruption practice among the law enforcement services: unclear competence to counteract organised crime in relation to the definition provided by the paragraphs 3 and 4 of article 28 of the Criminal Code; overlaying competences shared by the Prosecutor and the investigator as per the defined overlapping competences listed in the articles 36, 38 and 39 of the CPC; overlaps in terms of mandates for the lack of clarities provided by the article 216 of the CPC and by the law On the organisational and legal framework to combat organised crime; the continuous and rapid amendments of numerous and principal legal instruments serving to fight organised crime and the lack of interconnected IT systems serving the purposes of investigation.

- **High level of effectiveness of law enforcement co-operation among relevant national agencies - especially border guards, police, customs officers -, as well as cooperation with the judicial authorities;**

The interagency cooperation and cooperation is considered to be satisfactory but still subject to important improvements, which would contribute to the effectiveness of the investigations. According to the Law on the General Prosecutor (PPO Law) coordinative and cooperating functions are assigned to the Prosecutor's Office. A Joint Order has been signed by the heads of the law enforcement agencies and was updated on January 2013 so as to be aligned with articles 36-41 of the CPC.

Analytical reports aiming at specifying encountered problems and solutions t are in place. For instance, in case a report highlights a specific crime in a particular area of Ukraine, research is conducted, solutions are proposed by tasking the different law enforcement agencies to undertake simultaneous and coordinated targeted actions and measures to either reduce or resolve the highlighted problem. These reports are usually issued once or twice a year by the Prosecutor's Office upon the information gathered from all law enforcement agencies. Joint analytical reports are also issued.

The possibility exists also to establish temporary ad-hoc Multiagency Task-Forces. However, due to the lack of an IT system, the information exchange among agencies is still taking place via written requests exchanged mostly via couriers with a huge negative impact on both human and financial resources as well as on the speediness and confidentiality of the information exchange serving to boost investigations.

With the exception of the SBGS headquarters, the SBGS is not interconnected at the BCPs to the ICPO I-24/7 system. The SBGS Headquarter and the SBGS based in the airports have been granted direct access to the Ministry of Interior sub-systems, whereas, the territorial units of the Border Guard Service have indirect access to most of the sub-systems administrated by the MoI via the Border Guard Headquarters. However, most of the Border Crossing Points are still not interconnected to the MoI sub-systems. In the interagency IT

system (granting access only to some set of data – for instance on wanted persons), searchable by most of law enforcement agencies, including BCPs, the information is made available with 24 hours delay. Hence, if a Wanted Red Notice is issued, it will be available to the Border Crossing Points with a one day delay.

The budget allocated to Law Enforcement Agencies and SBU for the 2014 and the 2015 shows that both agencies are financially independent. Nevertheless, the budget should be increased in order to tackle long term investigations against well-established organised criminal groups.

- **Strengthened regional law enforcement co-operation and bilateral and multilateral operational cooperation agreements, including by sharing on time relevant information with competent law enforcement authorities of EU Member States.**

According to the provisions in article 571 of the CPC regarding the establishment and activities of joint investigative groups, Ukraine can actively participate in Joint Investigative Teams (JITs) with the condition that the criminal offence has been committed in the territories of several countries. The legal provision makes reference only to pre-trial investigation and not to investigative actions that may be needed before the case is registered (operational investigative phase). This means that if the international JIT is established for confirming element of crimes (operational investigative phase) Ukraine faces some legal constraints impeding them to actively participate in JITs.

The decision to set-up the JIT is taken by the General Prosecutor, upon a request of the investigator or of the public prosecutor and of foreign competent authorities. As stipulated in the paragraph 3 of the article 571 of the CPC, only the Ministry of Interior can coordinate the required activities to be conducted by the International Joint Investigative Team.

In terms of international law enforcement agencies, Ukraine is active and well prepared to either seek or provide cooperation. Particularly intensive international cooperation is recorded with the neighbouring countries. The Ministry of Interior (MoI) has signed bilateral and multilateral MoUs with 46 countries as well as with several international organisations, including Interpol, Europol (strategic) and OLAF. International law enforcement cooperation is also foreseen based on the principle of reciprocity as stipulated in the law on international treaties of Ukraine.

Ukraine is cooperating with Europol on the basis of a strategic agreement signed on December 2009, which, came into force on November 2010 upon the adoption of the “Law on ratification of agreement on strategic cooperation between Ukraine and Europol”, subsequently signed by the President of Ukraine. In 2011 a Europol Cooperation Unit (ECU) was established within the Ministry of Interior as part of NCB-Interpol of Ukraine. The Memorandum of Understanding was signed by the Europol Director on 19 March 2015. The SIENA secure communication channel is being worked out on the base of a bilateral MoU signed on the 11 March 2011. As soon as the SIENA secure communication channel is established and the Ukrainian report on data protection is approved by Europol, the operational agreement can be signed and came into force via a law ratifying the agreement.



#### 2.3.4. Data protection

- **Implementation of the law on the protection of personal data and ensuring efficient functioning of the independent data supervisory authority also through the allocation of the necessary financial and human resources.**

Data protection in Ukraine is moving forward in giving effect to a law that is closely aligned with European norms. Before the Ombudsman assumed responsibility for oversight of the data protection law on 1 January 2014, responsibility lay with the State data protection service, which was linked to the Ministry of Justice. As a branch of Government, the State service did not meet the essential requirement, enshrined in international standards, for the data protection supervisory authority to be independent. Placing responsibility for data protection supervision with the Ombudsman meets that requirement. Statutory changes have been made to ensure that the Ombudsman is able to exercise all the functions of a data protection supervisory authority found in European norms.

The Ombudsman has many data protection functions: providing advice to data controllers and data subjects; dealing with complaints; carrying out inspections; bringing cases involving breaches of the law to court; providing training and awareness raising activities; drawing up by-laws; preparing codes of practice and other guidance; keeping informed of international best practice; keeping the primary legislation under review; managing the notification system. The Ombudsman has the power to order data controllers to change their practice if she finds the controllers to be in breach of the data protection law. The Ombudsman has no power to impose a penalty herself, but may take court action for an administrative offence in respect of failure to comply with her orders. There is no criminal liability. The court has the power to impose fines. The fines are imposed not on the data controllers as legal persons, but on the individual members of staff who are judged to have been at a fault. There are different scales of fine for different types of violation, ranging from 1,700 UAH – 3,400UAH for the simplest violations up to 5,100 UAH – 8,500UAH for repeat violations. The Ombudsman currently has 8 data protection cases before the courts.

The fact that there is no power to impose a penalty on legal persons is a weakness. However, private sector representatives have stated that the fact that liability lies with individuals helps motivate their staff to comply with the data protection law.

In 2014, the DPA received just over 600 written complaints from individuals claiming that their rights under the data protection law had been breached. For a country with a population of over 40 million people, the figure of 600 seems low, suggesting that individuals' awareness of their rights and how to enforce them is also low. That can perhaps be explained at least to some extent by the fact that a data protection law in Ukraine is still a comparatively new concept, and that the present arrangements for independent oversight by the Ombudsman have been in force only since 1 January 2014.

The DPA also dealt with 928 written "appeals" (which include the 600 or so complaints mentioned above) and over 3,000 telephone enquiries; they carried out 53 on-site inspections, which led to 8 cases being taken to court; they prepared written advice to a number of Government Ministries on adapting their internal rules to meet data protection requirements; they participated in 29 training sessions for a range of public and private bodies. Moreover, they managed the data controller notification system.

Regarding the implementation of the law on the protection of personal data in the public sector, the focus appears to be on protecting databases with little recognition of the fact that data protection applies to all of any organisation's work. The need to understand and comply with data protection law is not limited to those who have access to or otherwise work with databases which contain personal data. The explanations of the arrangements for safeguarding the personal data that are held in the agencies' databases suggested that those arrangements offer good security. In particular in the case of the more detailed presentations from the Ministry of the Interior and the State Migration Service, there was an emphasis on the security (both technical and physical) of the systems used to support the databases and on the procedural arrangements for access to the databases and for logging the transactions performed. Many of the representatives of public bodies also stressed that their employees who have access to the databases are required to give a written undertaking not to disclose the personal data to which they have access. However, some are clearly aware of the wider scope of data protection, such as the Ministry of the Interior which claims to process their personal data according to the standards set by the Council of Europe Recommendation on Regulating the Use of Personal Data in the Police Sector.

Private sector representatives showed a better understanding of the wide-ranging nature of data protection requirements than their public sector counterparts. They explained that, as profit-making bodies, they needed to keep closely informed about and respond quickly and appropriately to developments that were likely to affect their business activities. They stressed that they worked closely with the data protection supervisory authority.

The Ombudsman's total budget, covering all her functions including data protection, for 2015 had been set at 21.7 million UAH an increase from 20.8 UAH the previous year. Of this, 800,000 UAH had been allocated to the Data Protection Department. However, according to an update from the Ukrainian authorities, the budget of the Ombudsman's Secretariat was recently increased by 7 million UAH earmarked for three departments of the Secretariat: Data Protection Department, Unit for non-discrimination and Unit for access to public information. The overall budget of the Secretariat for 2015 should therefore be 28 678 300 UAH.

At present the Data Protection Department consists of 10 people. As a result of the budget increase, the Ukrainian authorities have announced a competition for the recruitment of 10 more officials starting in April 2015. By the end of 2015 another competition should be held in order to meet the target of employing 25 staff.

In addition to the staff who works full-time on data protection, the Department is able to draw on support from other parts of the Ombudsman's office. For example, the Department employs no IT specialist. However, when technical expertise is needed, for example when on-site inspections of data controllers are carried out, the Department is assisted by the Ombudsman's IT specialists.

Giving responsibility for oversight of the data protection law to the Ombudsman meets the necessary requirement that there should be an independent supervisory authority. A possible concern about placing this responsibility within an organisation that has a number of other functions is that the structural arrangements might be such as to dilute the focus on data protection. However, that does not seem to be the case. The Data Protection Department that has been established within the Ombudsman's office has no duties other than in respect of data protection, and it pursues those duties with vigour, commitment and good understanding

of a complex topic, however, at present is understaffed, especially given the fact that the Ombudsman has many data protection functions: providing advice to data controllers and data subjects; dealing with complaints; carrying out inspections; bringing cases involving breaches of the law to court; providing training and awareness raising activities; drawing up subordinate legislation; preparing codes of practice and other guidance; keeping informed of international best practice; keeping the primary legislation under review; managing the notification system. In the context of its new responsibilities and following the announcements of the Ukrainian authorities the Data Protection Department will be further reinforced ..

Awareness of data protection in Ukraine remains very low. In 2014, the DPA gave 29 “lectures” for a range of audiences: civil servants and local self-government officials; human resource management units; education employees; medical employees, law-enforcement bodies; advocates; and private businesses. For the future, a programme of training activities is planned in the context of the EU/Council of Europe programme for Strengthening Information Society in Ukraine.

## **2.4 Block 4: External Relations and Fundamental Rights**

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

- **Ensuring that freedom of movement within Ukraine of Ukrainian citizens and legally staying foreigners or stateless persons is not subject to unjustified restrictions, including measures of a discriminatory nature, based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.**
- **Providing accessible information on registration requirements to foreigners wishing to reside in Ukraine, and ensure equal and transparent implementation of respective legislation.**

The primary legislation on internal freedom of movement is the ‘Law of Ukraine on Freedom of Movement and Free Choice of Place of Residence in Ukraine’ of December 2003 (as amended in 2012). The Ukrainian authorities implement this legal framework and have taken steps to extend its provisions to citizens residing in territories not under effective control of Ukrainian authorities.

In reaction to the illegal annexation of Crimea and the conflict in eastern Ukraine, the Law "On Ensuring Rights and Freedoms of Citizens and Legal Regime on the Temporarily Occupied Territory of Ukraine", was adopted on 15 April and amended on 6 May 2014 to provide a legal framework for Crimea/Sevastopol, including the protection of the rights and freedoms of citizens of Ukraine residing there. The law includes provisions referring to the crossing of the administrative line. It also guarantees the right of Ukrainian citizens to free and unimpeded access to the territory through the control points of entry and exit upon presentation of a document confirming a person's identity and citizenship of Ukraine. Entry and exit of foreigners and stateless persons to the territory are allowed only by special permission through the control points of entry and exit. Concerning the parts of Donetsk and Lugansk oblast not under effective control of Ukrainian authorities, the State Security Service of Ukraine issued on 22 January 2015 order Nr 27 "on the adoption of a temporary procedure

to control the transfer of people, vehicles and cargos" to regulate the access to and exit from these areas. In praxis, it has been reported that citizens risked their life to exit the area.

In response to the new issue of Internally Displaced Persons (IDPs), a legal framework has been put in place by the Law of Ukraine "On ensuring of rights and freedoms of internally displaced persons", adopted on 20 October 2014. According to the law, the de facto place of residence of IDPs is indicated in the IDP document on the basis of their statement, alternatively they can indicate the address of local social services office, without providing any additional documents. It was, however, reported that this provision is not implemented consistently in all regions. For example, some IDPs were requested to provide official residence registration to prove that they come from the conflict area.

The Law "On the Legal Status of Foreign Citizens and Stateless Persons" of 2011 provides a legal structure to ensure the principle of equality of treatment, expanded grounds for permanent and temporary residence of foreign citizens and stateless persons on the territory of Ukraine and for the issuing of residence permits for this purpose. It also introduces provisions for family reunification. The Ukrainian authorities have shown commitment to implementing the legal framework. In practice, there is nevertheless a requirement, when applying for an immigration permit, to submit a medical certificate certifying that a person does not suffer from addiction or have a contagious disease including HIV/AIDS. According to International Guidelines on HIV/AIDS and Human Rights, there is no public health rationale for restricting liberty of movement or choice of residence on the grounds of HIV status.

The Ukrainian authorities provide publically information on the registration requirements to foreigners wishing to reside in Ukraine, which is available on the internet as well.

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

- **Full, effective access to travel and identity documents for all Ukrainian citizens including women, children, people with disabilities, people belonging to minorities and other vulnerable groups.**

The Ukrainian authorities implement the current legal framework as amended by the Law "On Unified State Demographic Register and documents that confirm citizenship of Ukraine" adopted on 20 November 2012 which establishes a legal basis of the issuance of identity and travel documents. Ukraine's State Migration Service reports that the system for issuing identity documents is fully funded and that there are no issues with delay. The costs for the issue of identity documents allows for discounts for disabled and other vulnerable people.

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

- **Effective implementation of legislation and policies on anti-discrimination, implementation of relevant UN and Council of Europe instruments.**

The Law on preventing and combating discrimination, adopted in September 2012 (as amended in May 2014) is being implemented by state agencies and judicial bodies and has led to the emergence of a case-law in this area. The Ombudsperson, exercising the functions of an equality body, monitors proactively its implementation, including through the Strategy on Preventing and Combating Discrimination in Ukraine 2015-2017.

The equality institution has been set up. As foreseen in the Law on preventing and combating discrimination, the Parliamentary Commissioner for Human Rights (Ombudsperson) has assumed an important role in the fight against discrimination through its control and monitoring functions in the public and private sphere and may bring cases to the court to provide a legal analysis in the framework of ongoing judicial proceedings. In order to fulfil this role, the Ombudsperson appointed a Representative for the Rights of the Child, Non-Discrimination and Gender Equality. The Representative coordinates the non-discrimination department which has six employees. Another three employees cover the field of gender equality. The institution developed a range of contacts and it cooperates in particularly closely with civil society. In 2014, the institution received 510 complaints. Two thirds of them related to possible discrimination. The Ombudsperson herself initiated 22 proceedings on the basis of public information. Apart from this, the work of the Ombudsperson with regard to promoting and protecting the rights of IDPs as set out in the Law on Right and Freedoms of Internally Displaced Persons, is important, in particular due to the lack of any other monitoring mechanism for the protection of IDPs against discrimination. Any discrimination on the basis of the status of IDPs is legally prohibited.

The Ombudsperson has performed its anti-discrimination duties very dynamically, partly thanks to close cooperation with civil society. However, it lacks adequate budgetary and human resources for ensuring the sustainability of the fulfilment of its legal powers and policies.

Additional legal guarantees are not in place to ensure in the implementation phase that discrimination on the basis of all grounds will be prohibited, that procedural guarantees (i.e.: sanctions and compensation) are sufficiently and effectively ensured, that derogations to "discrimination" and "direct discrimination" are applied in line with the principles of necessity and proportionality in the Ukrainian legal system, that the territorial scope of the law (i.e.: application to legal persons), protection against victimisation and the concept of reasonable accommodation are clarified.

As mentioned in the fourth progress report, the Ukrainian government openly committed to explicitly prohibit in its upcoming reform of the Labour Code discrimination on the grounds of sexual orientation. The Ministry for Social Policy has prepared amendments to the Labour Code for public discussion, but the legislative process has not been carried out yet. Hate crimes against LGBTI are generally not properly qualified and investigated. The Cabinet of ministers/government adopted on 22 October 2014 an order No. 1118 requiring from the staff of Ministry of Interior and police tolerance towards vulnerable groups including LGBTI and special attention to the protection of their rights.

Prevention activities in the field of anti-discrimination are mostly performed through programmes conducted by non-governmental organisations and financed by international donors, which raises the question of their sustainability. Public policies suffer from insufficient resources.

In terms of sanctioning facts of discrimination, there have already been legal complaints, judicial cases and remedies, including with respect to discrimination on the grounds of disabilities, gender or language. The number of complaints is low, possibly due to insufficient knowledge of antidiscrimination legislation by citizens, limited knowledge of the field by the law enforcement representatives as well as discouraging length of the settlement procedures.

With respect to the Roma minority, the Ukrainian authorities have implemented various activities addressing health, education and cultural issues. In cooperation with the Council of Europe, Roma mediators have been trained. 55 social mediators work now in Ukraine. At the same time, the 2013 Strategy on protection and integration of Roma people to Ukrainian society and the Action Plan on the implementation of the Strategy remain without a defined budget, assessment indicators and monitoring mechanism. The coordination of actors responsible for the implementation (ministries, central and local public entities) faces difficulties. Most projects concerning Roma are sponsored by international donors.

#### *Implementation of relevant UN and Council of Europe instruments*

In the field of the protection of persons belonging to national minorities, Ukraine has signed and ratified the Framework Convention for the protection of national minorities and the European Charter for regional or minority languages. The internal legal framework is based on the 1992 Law on national minorities and the 2012 Law on the principles of state language policy.

Available data show that internal legislation and relevant international standards are implemented with the aim to secure the right to maintaining, expressing and developing ethnic identity. In terms of the right to schooling and education in the native language, there is an effective institutional framework. Persons belonging to national minorities are represented in local government as well as in the Ukrainian Parliament. With regard to the access to culture for national minorities, financing is granted within the budgetary/economic possibility to allow preserving, expressing and developing cultural identity. As one of the most ethnically diverse regions, Zakarpattya shows, inter-ethnic relations are carefully addressed through continuous dialogue on the ground.

The problems reported by the representatives of persons belonging to national minorities, especially in education are out on the agenda of public authorities, and progressively settled. Ukraine implements at reasonable level the legal framework on the protection of national minorities, as demonstrated also in Zakarpattya, one of its most ethnically diverse regions.

The Government of Ukraine provided satisfaction payments in the cases Fedorchenko and Lozenko versus Ukraine and Pichkur versus Ukraine. The Ministry of Justice ensured that these rulings are brought to the attention of judges and law enforcement officers.

- **Effective implementation of the Action Plan on fight against discrimination; general awareness raising campaigns against racism, xenophobia, anti-semitism and other forms of discrimination; strengthening the responsible bodies for anti-discrimination policy and combating racism, xenophobia and anti-semitism.**

The Ombudsperson adopted a Strategy on Preventing and Combating Discrimination in Ukraine 2014-2017. She presented in February 2015 an interim report which assesses the implementation of the 2014 Action Plan towards the implementation of this strategy of 17 March 2014. The Action Plan contains measurable benchmarks. For the reported period, the institution reported that six out of the 11 analysed adopted laws comprised provisions contrary to the non-discrimination principles; the Parliament adopted amendments in three cases to eliminate the provisions in question. The equality body also submitted an analysis of 7 draft laws containing discriminatory provisions in order to amend the respective bills. It issued an opinion for a court which was in the course of settling a discrimination case. According to the

existing law, such an opinion is not mandatory. Studies were carried out assessing the access of disabled persons to labour and services; the situation of women living in rural areas and integration, hate crimes and discrimination against migrants. The government has not adopted a strategy to prevent and fight discrimination and an action plan for its implementation.

Antidiscrimination being a new instrument, the society is not much aware of the related legislation, legal instruments available to victims and possible remedies. For the time being, awareness campaigns against racism, xenophobia, anti-semitism and other forms of discrimination are mainly performed by non-governmental organisations (for instance, a campaign on the promotion of rights of LGBTI persons was launched in August 2014 by Ombudsperson together with the Gay Alliance of Ukraine). The Ombudsperson prepared together with the Coalition against Discrimination in Ukraine a concept for anti-discrimination awareness raising campaign for the years 2015-2017. Its implementation has not started yet.

In terms of strengthening the responsible bodies for anti-discrimination policy and combating racism, xenophobia and anti-semitism, the competences of the Ombudsperson were broadened in 2014, as she received legal powers in the field of relations between private entities.

➤ **Provision of specific training to law enforcement officials, prosecutors and judges potentially involved in the prosecution of hate crimes**

Law enforcement officials, prosecutors and judges are prepared and willing to gain the necessary knowledge of the anti-discrimination legislation. The Ombudsperson initiated together with non-governmental organisations a series of training courses for the representatives of law enforcement agencies and prosecutors. The National School of Judges in Ukraine is responsible for lifelong training of judges and candidates for judges. The model programme for training of judges of local courts of general jurisdiction foresees an antidiscrimination component. The observance and case-law on article 14 of the European Convention on Human rights are addressed in a specific training course devoted to this convention.

## ANNEX

### ASSESSMENT OF MIGRATORY AND SECURITY IMPACTS

#### 1. INTRODUCTION

##### 1.1. Background

According to the VLAP methodology, before moving to second phase, the Commission committed to provide an assessment of possible migratory and security impacts of future visa liberalisation for Ukrainian citizens travelling to the EU. Due to the exceptional situation at the Eastern borders, the Commission considered in the 4<sup>th</sup> report on the implementation by Ukraine of the Action Plan from 27 May 2014 that issuing such an assessment at that time would have only a limited value. In the context of Ukraine having entered the second phase of its Visa Liberalisation Action Plan, it is necessary to review recent developments about possible impacts of Ukrainian nationals travelling to the EU Schengen area without visa restrictions. Taking into account the current situation at the Eastern Ukraine border, it has been difficult to obtain reliable data on several areas. However, the Commission continues to monitor and update the available data.

##### 1.2. Methodology

Based on the contributions received, **the present assessment aims to identify the main key trends in the areas of migration, mobility and security in relation to Ukraine and the possible impact for the Schengen area of a visa-free regime.** This assessment has been primarily based on the inputs provided by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX); the European Union's law enforcement agency EUROPOL; the European Asylum Support Office (EASO); the European University Institute – Migration Policy Centre; EU Border Assistance Mission to the Republic of Moldova and Ukraine (EUBAM); and Ukrainian authorities as well as on other available sources, including Eurostat data.

This assessment reflects the state of play as of March 2015 and therefore represents a **preliminary snapshot** of the current migratory and security possible impacts of a visa-free regime with Ukraine. This assessment does not constitute a benchmark of the VLAP.

#### 2. ASSESSMENT OF MIGRATORY IMPACTS

##### 2.1. Regular and irregular migration: trends and possible impacts of a visa-free travel

###### *2.1.1. General overview*

Travel flows and cultural, political, linguistic and economic links with the EU result in large migratory movements between Ukraine and its neighbouring EU Member States (Poland, Romania, Slovakia and Hungary). Other Member States such as Italy and Germany and Czech Republic are also attractive destinations for Ukrainians labour migration.

Around half of all Ukrainian labour migrants opt to work in either the Russian Federation or Belarus. The other half prefer to stay in several EU Member States and to a lesser extent also



in Canada, US, and Turkey. According to FRONTEX, there are migration preferences of Ukrainians by region of origin (western part of Ukraine prefer migrating to Poland and other Member States while central and Eastern part prefer the Russian Federation for cultural and linguistic reasons). Zakarpattia region is the one with the highest share of labour migrants. They prefer to migrate to Czech Republic, Hungary and Slovakia due to language similarities. According to the International Organisation for Migration (IOM), 70% of labour migrants from Ukraine are male and aged between 20 to 49. Men are mainly working in manual labour industries (construction, agriculture) and women tend to be domestic or seasonal agricultural workers.

### **2.1.2. Regular migration facts**

Eurostat data shows that **in 2013 there were roughly 850.000 Ukrainian nationals legally residing in the EU with almost 90% registered in only six Member States: Italy (233.604), Poland (175.656), Germany (109.781), the Czech Republic (107.254), Spain (80.866) and Portugal (41.090).**

Better working conditions when compared to Ukraine or Russian Federation are the main pull factors for Ukrainians going to Poland and Czech Republic. Higher wages, frequent regularisation programmes and numerous diaspora are often mentioned as important factors for going to Italy, Spain or Portugal. Poland has a specific role due to its geographical position and registers many Ukrainians going to Poland for shopping on daytrips. According to FRONTEX, as of 2013, more than 89% of Ukrainians travelled to Poland to shop and stayed there up to one day. Almost 60% travellers come from towns located up to 30 km from the border.

However, there are likely up to **400.000 additional Ukrainians living and working in the EU without legal status.**

Furthermore, with 16% of the population aged under 15 in 2013<sup>3</sup>, Ukraine will have to provide inclusive economic opportunities in the near future to avoid large emigration flows.

As the data in Table 1 suggests, the number of Ukrainian citizens receiving valid residence permits in the EU increased from an average level of 150.000 each year since 2010 to more than 230.000 in 2013. Eurostat data is not yet available for 2014. Poland is the MS offering the highest number of residence permits with 171.769 cases in 2013 (which represent almost 73% of the permits).

**Table 1: First permits by reason, length of validity and citizenship (Ukraine), 2008-2013**

Member State or Associated State	2008	2009	2010	2011	2012	2013
European Union (28 countries)	115,770	87,740	166,940	125,752	160,221	<b>236,691</b>
Belgium	394	647	760	681	599	518
Bulgaria	244	250	249	297	398	476
Czech Republic	19,617	7,945	13,679	5,521	18,152	18,622
Denmark	3,805	3,174	2,604	2,287	2,181	2,341

<sup>3</sup> www.iom.int, Ukraine country profile.

Germany	2,380	3,294	3,288	3,179	4,548	4,838
Estonia	651	595	252	645	403	440
Ireland	459	378	211	211	208	252
Greece	587	798	964	821	742	885
Spain	8,563	5,112	3,847	4,411	3,686	3,637
France	967	1,008	1,067	1,152	1,241	1,413
Croatia	:	:	:	:	:	67
Italy	42,328	39,640	48,249	15,409	8,493	13,996
Cyprus	1,040	983	897	752	611	576
Latvia	1,067	378	267	466	733	678
Lithuania	987	366	222	409	773	873
Luxembourg	:	81	43	60	60	59
Hungary	10,203	2,829	2,681	2,104	1,119	930
Malta	151	63	55	58	78	361
Netherlands	569	505	508	603	632	879
Austria	635	700	832	903	1,053	903
Poland	8,003	8,447	76,485	75,168	104,730	<b>171,769</b>
Portugal	3,795	2,409	2,064	1,789	1,517	1,126
Romania	445	294	257	214	309	254
Slovenia	335	221	209	262	181	175
Slovakia	1,761	1,356	969	686	782	1,040
Finland	945	600	658	813	866	938
Sweden	1,788	1,908	1,348	1,459	1,412	1,192
United Kingdom	4,051	3,759	4,275	5,392	4,714	7,453
Iceland	30	22	11	25	26	27
Liechtenstein	:	:	:	:	:	19
Norway	745	822	687	873	778	787
Switzerland	:	:	:	:	1,133	1,499

Source: Eurostat data last updated 24.02.15, extracted on 25.03.2015

### Visa Applications

It is important to note the evolution of the issuing and refusal rates for short stay visas. DG HOME data based on contributions from the Member States (Table 2 below) shows a **12.6% decrease in visa applications filed by Ukrainian citizens in 2014 as compared with 2013**. 1.35 million C visas have been issued to Ukrainian citizens in 2014 (in 2013 – 1.54 million). The average visa rejection rate for Ukrainian Short term visa applications in 2013 in Schengen states was 1.7%, while in 2014 the rate of refusals grew to 2.1%.

Countries that received the most visa applications from Ukrainian citizens were Poland (566.976), Greece (145.621), Hungary (118.740), Germany (101.867) and Spain (76.983).

**The share of multiple entry visas issued to Ukrainian nationals during 2014 increased to 51.1% (37.7% in 2013)**. This is likely a direct result of the implementation of the provisions introduced by the upgraded Visa Facilitation Agreement with Ukraine, in force since 1 July 2013, which limited the discretion of Member State consuls when issuing multiple-entry visas for the categories of Ukrainian visa applicants covered by the facilitations. Half of the total Multiple Visa (708.826) has been delivered by Poland in 2014 (368.515) followed by

Hungary (65.665), Greece (52.189), Germany (39.338), Slovakia (35.251) and Lithuania (30.746).

**Table 2: Applications for short-term and Multiple entry visa Schengen in Ukraine, 2013-2014 (countries with Ukrainian consulate)**

Schengen State	C visas applied for 2013	C visas issued 2013	MEVs issued 2013	MEVs issuing rate 2013	C visas not issued 2013	C visa refusal rate 2013	C visas applied for 2014	C visas issued 2014	MEVs issued 2014	MEVs issuing rate 2014	C visas not issued 2014	C visa refusal rate 2014	C visas applied for - change 13-14	C visas issued - change 13-14
Austria	30,633	30,405	8,273	27.2%	224	0.7%	22,510	22,334	8,552	38.3%	173	0.8%	-26.5%	-26.5%
Belgium	9,098	8,435	2,814	33.4%	487	5.4%	8,416	7,521	3,281	43.6%	804	9.6%	-7.5%	-10.8%
Czech Republic	79,343	78,197	14,096	18.0%	949	1.2%	59,607	58,382	17,468	29.9%	1,191	2.0%	-24.9%	-25.3%
Denmark	6,957	6,357	2,251	35.4%	117	1.7%	7,734	7,435	3,516	47.3%	136	1.8%	11.2%	17.0%
Estonia	17,576	15,925	9,146	57.4%	530	3.0%	14,993	14,441	9,558	66.2%	357	2.4%	-14.7%	-9.3%
Finland	16,803	16,470	2,707	16.4%	229	1.4%	13,772	13,126	2,698	20.6%	626	4.5%	-18.0%	-20.3%
France	49,360	48,965	7,264	14.8%	387	0.8%	35,865	35,520	7,285	20.5%	328	0.9%	-27.3%	-27.5%
Germany	112,209	104,800	35,605	34.0%	7,390	6.6%	101,867	96,807	39,338	40.6%	5,009	4.9%	-9.2%	-7.6%
Greece	203,098	201,858	23,109	11.4%	1,214	0.6%	145,621	143,789	52,189	36.3%	4,035	2.8%	-28.3%	-28.8%
Hungary	152,073	150,697	58,930	39.1%	1,376	0.9%	118,740	117,177	62,665	53.5%	1,522	1.3%	-21.9%	-22.2%
Italy	63,609	57,344	10,353	18.1%	859	1.4%	53,626	48,939	14,805	30.3%	832	1.6%	-15.7%	-14.7%
Latvia	11,995	11,576	4,229	36.5%	69	7.2%	11,873	11,039	5,374	48.7%	19	0.2%	-1.0%	-4.6%
Lithuania	30,495	29,546	18,568	62.8%	350	0.2%	38,993	37,349	30,746	82.3%	236	0.6%	27.9%	26.4%
Netherlands	27,063	26,141	12,868	49.2%	831	1.3%	22,303	21,127	14,395	68.1%	956	4.3%	-17.6%	-19.2%
Norway	7,179	7,003	1,666	23.8%	176	11.6%	6,221	5,991	2,441	40.7%	218	3.5%	-13.3%	-14.5%
Poland	538,181	517,725	298,124	57.6%	9,904	0.0%	566,976	556,503	368,515	66.2%	10,219	1.8%	5.4%	7.5%
Portugal	6,528	6,493	1,554	23.9%	35	151.7%	6,008	5,938	2,554	43.0%	70	1.2%	-8.0%	-8.5%
Slovakia	88,144	82,275	64,171	78.0%	711	0.0%	49,466	48,840	35,251	72.2%	739	1.5%	-43.9%	-40.6%
Slovenia	8,707	8,471	7,803	92.1%	213	8.2%	5,956	5,860	5,521	94.2%	96	1.6%	-31.6%	-30.8%
Spain	105,956	104,692	4,447	4.2%	535	0.2%	76,983	75,734	13,179	17.4%	1,024	1.3%	-27.3%	-27.7%
Sweden	9,133	8,736	4,513	51.7%	223	5.9%	9,325	8,142	4,698	57.7%	426	4.6%	2.1%	-6.8%
Switzerland	13,072	12,861	5,873	45.7%	211	1.7%	10,231	9,763	4,797	49.1%	467	4.6%	-21.7%	-24.1%
<b>Total</b>	<b>1,587,212</b>	<b>1,534,972</b>	<b>598,364</b>	<b>37.7%</b>	<b>27,020</b>	<b>1.7%</b>	<b>1,387,086</b>	<b>1,351,757</b>	<b>708,826</b>	<b>51.1%</b>	<b>29,483</b>	<b>2.1%</b>	<b>-12.6%</b>	<b>-11.9%</b>

Source: European Commission, Directorate-General for Migration and Home Affairs.

### 2.1.3. Irregular migration trends

Compared to nationals of Western Balkans prior to visa liberalisation, the would-be labour migrants from Ukraine have fewer incentives to engage in irregular border-crossings. The reason lies in the fact that there are sufficient legal travel channels to enter the EU such as: fully functional local border traffic agreements with neighbouring Member States; simplified rules for short-term employment in some Member States and low single visa rejection rates. FRONTEX reports that illegal border-crossing represent a marginal issue at best (below 150 per year). Consequently it should be considered as negligible given the population size of Ukraine (45 million) and the length of its borders with the EU.

According to Eurostat data, **12,055 Ukrainian nationals had been found to be illegally present in EU member States in 2013. Poland was the EU + Schengen associated countries where most of the Ukrainian illegal stayers were detected (5210 persons)** followed by Hungary, Germany and the Czech Republic with 1370, 1265 and 890 detections respectively. **According to EASO, in 2013, Ukrainians were the 8th most common citizenship of third-country nationals detected illegally staying the EU.** Almost half of them were identified on exit at the external air and land borders, which means that most of these people are voluntarily returning home. Eurostat data shows that more than 9500 Ukrainians found illegally in EU returned to Ukraine in 2014.

The majority of Ukrainian nationals move to the EU by using regular travel channels and aim to work and stay in the EU as regular migrants. However, as some of them are reluctant to return back home, the risk of the abuse of visas exists. Indeed there are a high number of detections of illegal stay of Ukrainian nationals in the EU.

**Table 3: Third country nationals found to be illegally present (annual data for Ukrainians), 2008-2013**

Member State or Associated State	2008	2009	2010	2011	2012	2013
European Union (28 countries)	14,000	11,220	10,875	11,880	12,555	<b>12,055</b>
Belgium	115	150	145	130	165	135
Bulgaria	25	10	10	15	10	5
Czech Republic	1,545	1,500	955	1,125	1,065	890
Denmark	20	10	5	5	0	5
Germany	1,325	1,155	1,070	1,095	1,280	1,265
Estonia	45	15	20	35	35	45
Ireland	30	60	35	15	35	25
Greece	85	150	105	100	75	95
Spain	1,040	1,060	955	840	640	380
France	555	355	290	375	310	340
Croatia	:	:	:	:	:	5
Italy	2,090	1,480	1,460	690	720	570
Cyprus	90	120	120	180	135	120
Latvia	35	15	10	5	5	10
Lithuania	140	130	125	90	70	75
Luxembourg	:	0	5	0	5	0
Hungary	795	1,000	1,605	1,095	1,310	1,370
Malta	10	10	5	20	10	5
Netherlands	100	125	140	105	:	:
Austria	280	220	230	195	185	190
Poland	3,200	2,070	1,885	3,995	4,800	<b>5,210</b>
Portugal	1,320	520	470	425	480	280
Romania	130	105	85	120	75	70
Slovenia	15	5	145	105	20	10
Slovakia	600	410	365	370	335	355
Finland	25	25	25	30	40	35
Sweden	5	135	105	165	105	95
United Kingdom	365	385	510	555	640	480
Iceland	0	0	:	:	:	:
Liechtenstein	0	0	0	0	0	0
Norway	10	10	:	10	45	25
Switzerland	:	75	65	50	60	70

Source: Eurostat data last updated 15.10.14, extracted on 25.03.2015.

### *Refusals of entry at the border*

In 2013, Ukrainians were ranked second after citizens of the Russian Federation in terms of nationality refused entry into the EU and first in 2014<sup>4</sup>.

Considering indicators in Table 4, the number of refused entry of Ukrainian citizens is **17.095 cases in 2013**, the number of Ukrainians refused entry into the EU remained quite stable between 2008 and 2013 at about 17.500 refusals a year.

**In 2013 most of these refusals (70%) occurred at the Polish land border.** Hungary and Romania were the second and third largest countries to issue Ukrainians refusals of entry (2190 and 1000 refusals, respectively).

**Table 4: Ukrainian citizens refused entry at the external borders 2012-2013**

Member State or Associated State	2012	2013
European Union (28 countries)	18,635	<b>17,095</b>
Belgium	25	25
Bulgaria	185	130
Czech Republic	10	10
Denmark	5	0
Germany	135	150
Estonia	35	30
Ireland	30	30
Greece	60	55
Spain	30	15
France	40	35
Croatia	:	220
Italy	60	125
Cyprus	15	20
Latvia	70	65
Lithuania	55	60
Luxembourg	0	0
Hungary	2,985	<b>2,190</b>
Malta	0	0
Netherlands	55	50
Austria	0	5
Poland	12,555	<b>12,060</b>
Portugal	5	5
Romania	1,320	1,000
Slovenia	125	80
Slovakia	530	395
Finland	20	25
Sweden	0	0
United Kingdom	305	295
Iceland		

<sup>4</sup> According to EASO.

Liechtenstein	0	0
Norway	0	0
Switzerland	25	25

Source: Eurostat data last updated 25.11.2014, extracted on 25.03.2015.

**The main reasons for refusal were no valid visa or resident permit. According to FRONTEX, Ukrainian nationals stand out among other nationalities in terms of use of false documents to enter the EU with 981 Ukrainians identified using falsified documents in 2014. Most cases record counterfeit border crossing stamps which are used in passports.**

Ukraine was able to keep western border surveillance at a sufficient level despite of the crisis. For example, even if EUBAM mentions the recurrent lack of capacity building, there is an improvement of operational capacities of Ukrainian borders mentioned by EUBAM in general and particularly concerning the border between Moldova and Ukraine where EUBAM actions take place.

#### *2.1.4. Visa free regime possible impacts*

The main modus operandi used by Ukrainian would-be migrants in the last several years is **to overstay the validity of their visa resulting in illegal stay**. Eurostat data shows roughly that countries with the highest number of detections correspond to the first legally residing countries for Ukrainian national. **Therefore, in the framework of a visa free regime the number of Ukrainians who overstay the legal limits could increase significantly.**

#### *2.1.5. New challenges following the Ukrainian crisis*

As the situation in Eastern Ukraine deteriorated there have been increased movements of people inside of Ukraine. One year after the "Euro Maidan protests" in Ukraine and Russia's annexation of Crimea, Ukraine needs to manage the mass exodus of civilians from the regions outside its control. The number of internally displaced people exceeded **1.1 million as of March 2015**<sup>5</sup>, while over 740.000 fled to neighbouring countries, of which number almost 608.000 were seeking legal status in the Russian Federation, and another 100.000 in Belarus. The total number of internally displaced persons from Eastern Ukraine and Crimea/Sevastopol reached almost **1.2 million as of 30 March 2015**, according to the Ministry of Social policy of Ukraine<sup>6</sup>. For them, emigration to the EU may be the best option in the future if not enough State support with monthly targeted social assistance is provided (in terms of social protection of families and children, legal assistance, education and employment proposals, pension funds warranty, etc.).

## **2.2. Asylum: trends and possible impacts of a visa-free travel**

According to Eurostat data asylum applications from Ukrainian citizens are widely distributed throughout Europe, with highest numbers of applicants registered in Germany (2705) followed by Poland (2275), Italy (2080), France (1415), Sweden (1320), Spain (895), Czech Republic (515), etc. This coincides with the most popular destination countries of Ukrainian labour migrants. With the exception of Poland, EU countries neighbouring Ukraine received

<sup>5</sup> According to UNHCR estimates in operational update report, 7 February – 6 March 2015.

<sup>6</sup> Reported in IOM's Assistance to Internally Displaced Persons in Ukraine - monthly report March 2015.

very few applicants. **The total of asylum applicants in EU and Schengen associated countries is 14.400 in 2014.**

**Table 5: Asylum applicants by citizenship (Ukraine), 2008-2014**

Member State or Associated State	2008	2009	2010	2011	2012	2013	2014
European Union (28 countries)	925	935	830	940	1,095	1,060	14,040
Belgium	65	35	65	75	90	65	570
Bulgaria	0	10	5	0	10	0	40
Czech Republic	320	200	115	150	175	145	515
Denmark	5	5	5	20	15	40	135
Germany	45	85	70	55	135	150	<b>2,705</b>
Estonia	0	0	0	0	0	0	60
Ireland	20	15	5	10	15	10	50
Greece	55	50	50	30	45	20	110
Spain	5	10	5	10	20	15	895
France	75	75	90	100	145	135	<b>1,415</b>
Croatia	:	:	:	:	:	0	10
Italy	15	10	20	20	35	35	<b>2,080</b>
Cyprus	15	25	10	10	5	0	95
Latvia	0	0	0	5	0	0	75
Lithuania	5	0	0	0	5	5	70
Luxembourg	5	0	5	0	0	0	25
Hungary	0	10	10	5	0	5	35
Malta	0	0	0	0	0	0	40
Netherlands	20	20	30	50	30	40	265
Austria	140	120	80	65	80	60	455
Poland	40	35	45	65	70	45	<b>2,275</b>
Portugal	0	5	0	5	5	0	155
Romania	0	10	10	5	0	10	35
Slovenia	0	0	0	5	5	0	15
Slovakia	30	15	20	5	5	15	25
Finland	10	5	10	10	15	5	300
Sweden	55	130	120	190	130	170	<b>1,320</b>
United Kingdom	:	65	55	50	60	75	275
Iceland	0	0	0	0	0	0	15
Liechtenstein	0	5	0	0	10	0	5
Norway	20	25	10	15	30	25	130
Switzerland	30	30	15	25	30	40	210
<b>Total</b>	<b>975</b>	<b>995</b>	<b>855</b>	<b>980</b>	<b>1,165</b>	<b>1,125</b>	<b>14,400</b>

Source: Eurostat data last updated 20.03.15, extracted on 25.03.2015.

EASO indicates that although a number of factors can influence the choice of the destination country, the presence of an established Ukrainian diaspora or previous experience in the destination country due to work or study are significant pull factors. **Therefore the existence of Ukrainian residents seems to explain the geographical distribution of Ukrainian applicants for asylum.**

### 2.2.1. Visa free regime possible impacts

The majority of Ukrainian migrants have so far preferred using legal migration channels other than the asylum procedure (using asylum applications only when in the preferred EU State), and the visa free regime may not change radically this trend. **Nevertheless EASO mentions that Ukrainian overstayers could lodge an application for asylum as a way to legalise their stay after visa validity.**

### 2.2.2. New challenges following the Ukrainian crisis

Ukrainians seeking asylum between 2008 and 2013 in the EU Member states and Schengen Associated countries were about 1000 applicants a year. Based on Eurostat statistical data, the highest number of applications were recorded in 2003 (5100) as well as 2004 (4655) which coincides with times of political change in the country. **With the ongoing crisis, the number of asylum applicants grew substantially.**

Based on FRONTEX indicators and Eurostat data, significant changes in 2014 were recorded among number of asylum applications. Ukrainian nationals increasingly claimed asylum in a large number of the EU Member States and Schengen Associated countries. **There were over 14.400 applications for asylum by Ukrainian nationals compared to only 1125 in 2013. It escalated during the first 10 months of 2014 with a maximum of 2260 applicants in October 2014.**

Although the number of asylum seekers from Ukraine is still regarded as high, a steady decreasing trend of submitted asylum claims has been observed since October 2014 as a result of decreased violence levels following the signing of the Minsk agreements in September 2014. The flow of applicants seemed to stabilise in December 2014 - January 2015 at about 1500 applicants a month. This might be explained by the hopes of peaceful solutions after the ceasefire agreement in September 2014. This decrease can be as well a consequence of the **recognition rate accounting for total 21%** as indicated by EASO and confirmed by Eurostat data's hereafter in Table 6 with a total of 650 positive decisions in EU (up to date the 20<sup>th</sup> of March 2015) in regard of the 2985 applications of 2014 already analysed (and waiting for other pending cases decisions).

**Table 6: First instance decisions on applications by citizenship (Ukraine), 2012-2014 and positive decisions in 2014**

Member State or Associated State	2012	2013	2014	Positive decisions in 2014
European Union (28 countries)	880	855	<b>2,985</b>	<b>650</b>
Belgium	95	50	205	5
Bulgaria	0	5	0	0
Czech Republic	195	160	375	150
Denmark	5	35	10	0
Germany	40	40	60	20
Estonia	0	0	5	0
Ireland	15	10	30	5
Greece	30	30	85	5



Spain	15	15	80	0
France	120	165	255	35
Croatia	0	0	5	0
Italy	15	40	245	165
Cyprus	5	0	0	0
Latvia	0	0	5	0
Lithuania	5	0	30	25
Luxembourg	0	0	0	0
Hungary	0	0	20	5
Malta	0	0	20	20
Netherlands	35	40	160	5
Austria	80	45	:	:
Poland	50	45	655	15
Portugal	5	0	5	5
Romania	0	5	30	15
Slovenia	0	0	10	0
Slovakia	5	10	10	5
Finland	5	15	340	145
Sweden	115	110	180	20
United Kingdom	45	30	170	5
Iceland	0	0	5	5
Liechtenstein	10	5	0	0
Norway	20	30	80	0
Switzerland	10	30	60	0
Total	915	920	3,135	660

Source: Eurostat data last updated 20.03.2015, extracted on 25.03.2015

As the situation in the Eastern Ukraine remains unstable, rapid increases of asylum applications at the common borders cannot be ruled out. Ukrainian citizens and high number of IDPs are facing challenges in terms of proper accommodation, no access to savings and uncertain future.

According to EASO, the evolution of the political and security situation in Ukraine as well as the developments in the conflict areas not under effective control of the Ukrainian authorities in Eastern Ukraine and in Crimea/Sevastopol would appear to be the determinant for the influx of persons in need of asylum in the EU since March 2014. The situation of the IDPs needs to be further monitored.

### **3. ASSESSMENT OF SECURITY IMPACTS**

According to Ukrainian Ministry for Economic Development and Trade, the level of the shadow economy has been between 28% and 39% of Ukraine's GDP over the last 5 years. However, the International Monetary Fund estimates that Ukraine's underground, and non-tax-paying, economy is reaching 50 % of GDP. The shadow economy reflects active illegal economic activities, high level corruption as well as low legal and tax morale of individuals and legal entities.

### 3.1. Organised crime: trends and possible impacts of a visa-free travel

**According to Europol, Ukrainian Organised Crime Groups (OCGs) are active in at least 23 EU Member States:** Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom. **They are also active in countries of the EU neighbourhood** such as Moldova, Norway, Serbia, Switzerland, Russian Federation and Turkey. The increased spread of Ukrainian OCGs in the EU shows a trend toward the **widening international dimension of these OCGs**. Moreover they tend to be structured as small to medium sized semi-independent cells with links to broader networks.

Recent data on OCGs inside Ukraine is limited due to the current political situation which impedes data collection. Nevertheless, according to available resources show that the Donetsk, Crimea and Odessa regions have the highest criminality rates. The Donbas region which includes Donetsk and Luhansk is the historical industrial heart of Ukraine but also the region with the highest level of unemployment and criminality, which has been increasing since the 1990s.

**The current crisis in Ukraine has the potential to increase the links between Ukrainian OCGs and Russian-Speaking OCGs**, like for example **Chechen or Georgian groups**. The potential increase of Russian-speaking groups into Ukraine could not only lead to the formation of powerful partnerships but also to potential power struggles between Ukrainian groups and Eurasian newcomers looking for new business prospects.

Russian speaking OCGs (including Ukrainians) invest mainly in construction, transportation and logistics, real estate, wholesale and retail trade, hotels, bars and restaurants. Their activities in the legal economy are often related to schemes to launder the proceeds of their criminal activities<sup>7</sup>.

Moreover, Ukrainian motorcycle gangs are present in some EU MS and are known to use violence as an integral part of their business strategy. **Outlaw Motor Cycle Gang** members adopt a multi-crime approach. One of the main Russian motorcycle gangs, the Night Wolves, is present in Ukraine through nine groups, including in Crimea. In recent years they have expanded their activities in the Balkans and actively participate in the Ukrainian conflict alongside pro-Russian paramilitary personnel.

**Visa liberalisation for EU may open up new opportunities for Ukrainian (or Ukraine based) OCGs** as they will be able to carry out their activities and investments in a less controlled environment, at least for the visa perspective, with flexibility and adaptability in their methods of activities in new conditions.

**The ongoing conflict will continue to have a significant impact on the capacity of Ukraine to manage its borders, controlling flow of people and goods in and out of the country.**

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<sup>7</sup> Transcrime study "From illegal markets to legitimate businesses: The portfolio of organised crime in Europe" (published in March 2015 and available on DG HOME's website).

### **According to Ukrainian Ministry of foreign affairs data during the first quarter of 2015:**

- over 840.000 people and 293.000 units of vehicles were allowed to pass through entry and exit checkpoints in the security area along the contact line in eastern Ukraine
- 81 persons were denied the crossing of the contact line.
- 93 persons suspected of criminal acts were detained (at entry and exit checkpoints – 73, beyond entry and exit checkpoints – 20).
- 24 units of weapons, 2600 thousand items of ammunition, including 18 hand-held anti-tank grenade launchers, 44 grenades, 0,2 kg of explosive agent, were detected and confiscated.
- Illegal movement through the line of contact of 9600 tons of coal, 282 tons of scrap metal, 800 tons of fuel and lubricants, 28.000 packs of cigarettes, 75.000 litres of alcoholic beverages, 1800 tons of food products, 3100 tons of agricultural products was prevented.

### **3.2. Trafficking in human beings: trends and possible impacts of a visa-free travel**

Ukraine is a country of origin, transit and increasingly a destination for trafficking in men, women and children. Over 120.000 Ukrainians became victims of trafficking in human beings since 1991, which makes Ukraine one of the largest countries of origin of **trafficking in human beings in Europe**.

Even if the Russian Federation remained the top destination country for trafficking from Ukraine, EU is the second largest destination. **Ukraine is a source and transit country for THB victims** coming from other Eastern European countries (Bulgaria, Croatia, Czech Republic, Hungary, Slovakia and Slovenia) toward Western Europe (France, Germany, Italy, the Netherlands) the Baltic States and Russia. Most victims are used for forced labour and sexual exploitation in EU countries. Ukrainian OCGs involved in THB use residency permits or legal businesses owned in EU MS to issue invitation letters for visas. Even though there is not enough reliable information regarding the impact of Ukrainian crisis on THB it can be assumed that OCGs will take it as an opportunity in the lack of regulation and the increased number of vulnerable people.

**The increased freedom of movement through visa-free regime is likely lead to an increase of trafficking of human beings from Ukraine to the EU MS.**

There is also concern that the Ukraine may have additional risks to an increase in the scale of trafficking of human beings due to the high numbers of persons fleeing from the temporary uncontrolled territories. **The displaced population is deemed to be very vulnerable to intermediaries, recruiting victims of trafficking.** IOM conducts regular monitoring through press reviews, and discussions with internally placed persons, and identifies the following trends: kidnapping of women and girls who are then subjected to sexual exploitation and/or forced labour; forced recruitment of men and boys into the militant group for exploitation in armed conflict and forced labour, labour exploitation of detainees by anti-government forces, sex trafficking and an increase in the scale of child begging.

### **3.3. Facilitation of illegal immigration: trends and possible impacts of a visa-free travel**

One characteristic of Ukrainian OCGs involved in the facilitation of irregular migration is the use of stolen, forged and **counterfeit identity documents to facilitate the travel of irregular migrants**. Fraudulent passports and visas are most commonly from Bulgaria, Czech Republic, Germany, Greece, Lithuania, Poland and Slovakia. In some cases Ukrainian nationals with a residence permit or dual nationality in an EU MS have been known to facilitate the travel of migrants by issuing invitation for work. **False visa stickers for EU MS and the Schengen area are produced in Ukraine factories**. Ukrainian OCGs use several types of transport including private cars, taxis, minibuses and trains. The deliberate use of multiple means of transportation across several routes is an effective countermeasure to evade law enforcement controls.

The crisis in Syria has significantly changed the structure and composition of migratory flows in the region, with an increased number of migrants from Afghanistan, Iraq, Iran, Pakistan and Syria. **Regarding Asylum, Ukrainian ministry of foreign affairs data shows that in 2014 the majority of asylum applicants in Ukraine were Afghans (275) and Syrian (267)**. In 2014 applications of 1173 persons were processed by the Ukrainian **State Migration Service** out of which 105 were granted the status of refugee and 222 were recognised as persons in need of subsidiary protection. **Regarding irregular migration, in total in 2014, 3135 irregular migrants were detected, and during the first quarter of 2015, State Migration Service reports that 1420 irregular migrants were detected** (regarding 1159 foreigners decisions were taken on forced expulsion, regarding 51 foreigners decisions were taken on deportation, 28 foreigners were placed to the centers of temporary stay of foreigners, 168 foreigners were restricted entry to Ukraine for 3 years, duration of stay was reduced for 82 foreigners).

**Indeed, the conflict in Ukraine could make this border region more attractive to migrants from Eastern European, central Asian and ex-USSR countries as a transit country**. Indeed, Ukrainian OCGs are actively involved in the smuggling of Syrians into the EU, though there is no evidence of an organised network. In most known cases Syrian nationals were travelling by car through Italy and did not possess identification documents. Destinations were Denmark, Germany and the Netherlands.

**Therefore the increased freedom of movement of Ukrainian OCGs could develop the smuggling of illegal immigration toward Europe.**

### **3.4. Arms and drug trafficking: trends and possible impacts of a visa-free travel**

There is no evidence available to suggest that Ukrainian OCGs are involved in arms trafficking within the EU but the possible proliferation of weapons in Ukraine could feed violent OCGs and be smuggled into EU MS.

Regarding drugs, EUROPOL mentions that Ukraine is an important **hub for drug smuggling for heroin and cannabis**. In the context of a destabilised Ukraine, drug trafficking OCGs could seize the opportunity to use the Northern route from Afghanistan to Western Europe through Iran, Turkey, Ukraine and Romania.

As a result, a visa-free regime may increase the development of the drug flows and reduce the probability of detection especially in case of rail or air travel. OCGs might take advantage of people travelling from Ukraine to the EU by relying on drug couriers.

### **3.5. Excise fraud: trends and possible impacts of a visa-free travel**

Ukraine is a country of origin of the production of **cheap cigarettes** and their export to the EU. **According to EUROPOL Ukraine plays a central role in supplying the EU markets with counterfeit tobacco products.** Smuggling operations are jointly conducted with other OCGs groups in Lithuanian, Poland, Russia, Slovakia and Slovenia. Main modi operandi include transport by car or plane of cigarettes from Ukraine first to central European countries (Austria, Hungary, Poland, Romania) following by western or north European markets (France, Italy, Portugal, Spain, Sweden).

### **3.6. Property crime: trends and possible impacts of a visa-free travel**

Data available suggests that Ukrainian OCGs involved in **motor vehicle crime** are cooperating with Lithuanian, Moldovan and Russian networks, notably in Ukraine's southern border area. Other nationals involved in this crime area include Bulgarians and Belarusians. Ukrainian OCGs are also active in northern European countries for smuggling **large amounts of stolen goods** through central European countries which could be developed in case of visa-free regime agreement.

**The visa free-regime for EU could reinforce this trend of internationalisation of Ukrainian OCGs.**

### **3.7. Financial crime: trends and possible impacts of a visa-free travel**

Ukraine is victim to several types of financial crime. Due to its less robust banking system, Ukraine is a destination for money laundering activities, for which predicate offenses include grand larceny, illegal gambling, abuse of online banking, VAT fraud, etc. Money laundering is carried out by the groups responsible for the predicate offence in an integrated manner. No specialised OCGs providing money laundering services has been detected, but Ukrainian nationals with EU residency permits are also involved in money laundering activities, therefore **the visa free-regime for EU could reinforce this trend.**

### **3.8. Terrorism financing: trends and possible impacts of a visa-free travel**

There is no information available regarding either the presence of terrorism financing activities or foreign terrorist fighters from the EU or abroad in Ukraine, or the transit of foreign terrorist fighters through Ukraine to conflict zones such as Syria and Iraq. The preferred route for foreign terrorist fighters from the EU to reach conflict areas goes through central European countries to Turkey. However, increased law enforcement controls on these routes make a travel more difficult for foreign terrorist fighters.

As a result, alternate routes may come into consideration by OCGs and there is concern that **Ukraine may be used as an indirect route to Middle-Eastern conflict zones.** Some evidence suggests that Ukrainian OCGs are already involved in the smuggling of Syrian citizens in to the EU and it is therefore possible to assume **that the irregular migration channels can be also used to facilitate the movement of foreign terrorist fighters.**

#### **4. MAIN CONCLUSIONS SUMMARY IN CASE OF VISA FREE-REGIME**

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.

##### **4.1. Key possible impacts on migration trends**

- a) Visa liberalisation for Ukraine will reduce the barriers and costs associated with travelling to the EU, which will lead to changes in the type of smuggling services needed, from facilitation of illegal entry to attempting legalisation of stay after overstaying.
- b) Given the current economic situation in Ukraine, EU Member States currently are an attractive option for labour migrants from Ukraine. Likewise, the demand for residency and domestic work will likely increase.
- c) With 16% of the population aged under 15 in 2013, Ukraine will have to provide inclusive economic opportunities in the near future to avoid large emigration flows.
- d) Visa liberalisation could be abused to apply for asylum in EU Member states by Ukrainian nationals as a way to legalise their overstay.
- e) As the situation in the eastern Ukraine remains unstable, EU Member States will remain an option for asylum seekers. Rapid increases of asylum applications at the common borders cannot be ruled out in terms of new important armed conflict.
- f) The challenges of IDPs in a long term perspective may also result in an increased flow of Ukrainians for which emigration to the EU might be the best option in the near future.

##### **4.2. Key possible impacts on security trends**

- a) The increased spread of Ukrainian organised crime in the EU shows a trend toward the internationalisation of Ukrainian OCGs. Visa liberalisation in Ukraine may facilitate criminal activities carried out by Ukrainian OCGs and their partners, especially regarding trafficking in human beings and goods from Ukraine to EU Member States.
- b) Ukraine is a growing platform for drug trafficking (heroin, cannabis) and plays a central role in supplying EU markets with counterfeit tobacco products.
- c) The market for OCGs facilitating the irregular migration of Ukrainian nationals to the EU will probably decrease, compelling OCGs to seek new opportunities. For example for smugglers dealing with irregular migrants from neighbourhood countries in Eastern Europe, Caucasus, Central Asia or Middle-East, providing them with stolen or counterfeit Ukrainian passports.
- d) Ukraine is not able to control parts of its eastern borders due to the ongoing conflict. There are serious concerns regarding the security situation and trafficking of human beings, smuggling of people and goods.
- e) Ukrainian OCGs are already present in several EU Member States, and it is likely that the current destabilisation of eastern Ukraine has the potential to lead the significant growth of Ukrainian and other Russian-speaking OCGs activities in the region, thus posing a considerable threat to the EU.
- f) Based on the Minsk Package of 12 February 2015, Ukraine should re-establish control of the border by the end of 2015. In order to counter security threats, Ukraine aims to

develop border infrastructure at the border with Russia. This will hopefully help to address the above mentioned concerns regarding the security situation and trafficking in human beings, smuggling of people and goods.