



Brussels, 18.12.2015  
SWD(2015) 705 final

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

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

{COM(2015) 905 final}

## 1. INTRODUCTION

This Commission staff working document (CSWD) accompanies the Sixth Progress Report on the Implementation by Ukraine of the Action Plan on Visa Liberalisation (VLAP).<sup>1</sup>

Together with the report, the CSWD builds on the information and the assessment provided in the Fifth Progress Report on the Implementation by Ukraine of the VLAP<sup>2</sup> and, in line with the methodology outlined in the VLAP, provides a detailed analysis of the most relevant developments relating to the implementation of the second-phase VLAP benchmarks for effective and sustainable implementation of relevant measures. The annex to the CSWD includes an updated assessment of the potential migratory and security impacts on the European Union (EU) of future visa liberalisation for Ukraine.

The factual information and assessment included in the CSWD is based on the evaluation missions led by the European Commission, assisted by experts from EU Member States, to Ukraine between 31 August 2015 and 2 October 2015, and updated information received by the Commission from the Ukrainian authorities.

The annex to the CSWD — the Assessment of Migratory and Security Impacts — is primarily based on information provided by EU Agencies and the EU Border Assistance Mission to the Republic of Moldova and Ukraine (EUBAM), and other available sources, including Eurostat data.

The CSWD follows the VLAP structure. In the sections corresponding to VLAP blocks, it lists all the second-phase benchmarks and describes their state of implementation, focusing in particular on developments that took place after the fifth progress report was published on 8 May 2015.

## 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**

The production and issuance of a new type of passport started on 12 January 2015 with the ordinary passport (passport of the citizen of Ukraine for travelling abroad). Since the same conditions and procedures still apply the previous positive assessment is confirmed.

To mid-August 2015, the State Migration Service (SMS) issued 581 000 biometric passports and 800 000 non-biometric passports. The balance between the two has shifted: half of the current applications are for biometric passports. The issuance of the new ordinary passport in the Ukrainian diplomatic representations overseas where the applications can be lodged started in April 2015.

---

<sup>1</sup> COM(2015)905 final.

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

Electronic diplomatic and service passports started to be issued in May 2015. The pattern and security features used are the same as for the ordinary passport but with different colours for the cover (black for the service passport and green for the diplomatic passport).

An important change to the legislative framework for phasing out non-biometric passports is under consideration. A set of amendments to the Law on the Unified State Demographic Registry was approved by the Government on 2 September 2015. These changes make the electronic passport and live capture of fingerprints mandatory except in cases of obvious incapacity or for children under 14 years of age. This removes the current option of obtaining a non-biometric passport. Other amendments in this decision aim to increase the number of authorities assigned to processing front-office passport applications; progressively replacing the existing internal passport with a new electronic ID card and using facial recognition technology together with the fingerprint identification system currently in place.

The new biometric ID cards are being tested and will be issued from 1 January 2016.

- **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 for passports is in the state enterprise Polygraph Combine Ukraina. Since March 2013 the State printer has been certified according to ISO standards 9001, 14001 and 27001 for quality and information security management systems. It produces a wide range of secure documents including passports, ID cards, driving licences and bank cards.

The necessary works have been carried out to house the personalisation and processing machines to produce the biometric ID card, which is planned to be issued from January 2016. This ID card, which will gradually replace the current internal passport, will be an ID-1-format polycarbonate-based document, including a contactless chip. The personalisation equipment will include three sets of machines able to produce 3.5 million cards a year.

The biometric ID card is part of a new strategic approach to identity management and secure document issuance from the Ukrainian authorities. It aims to build a coherent and trustworthy system while increasing the quality of service for Ukrainian citizens and ensuring data protection. The Ukrainian authorities are committed to phasing out the current internal passport within five years.

Amendments to the rules of procedure were adopted on 19 August 2015 to tackle any side-effect of name changes on the issuance of travel and ID documents. Both the internal passport and the passport for travelling abroad are cancelled in the event of a name change. Since the decision on name changes is taken by the Ministry of Justice, it has to send the relevant information electronically to the State Migration Service and the border guard service. The passport issued on the basis of the former name is cancelled. Restrictions on citizens' freedom to change their name and surname have been also introduced. The request can be denied for reasons to do with crime; if the applicant is under investigation or administrative surveillance; if there is a request to enforce foreign law or if the applicant has submitted incorrect or false data. In 2014 2 680 name changes were decided; in the first half of 2015 the number was 9 313.

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

Reporting to Interpol / the LASP database on lost and stolen Ukrainian passports occurs daily. A daily update of the situation is performed and the relevant information is permanently available to the border guard service via a direct link.

## **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**

The period covered by the Integrated Border Management (IBM) Strategy and its Action Plan expires at the end of 2015. The State Border Guard Service (SBGS) has drafted a proposal for the period after 2015. The main objectives are to increase border security in response to current challenges and threats, to improve national integrated border management in line with European standards, to improve systems for recruitment, training and human resources and to ensure openness and transparency. The proposal is divided into two phases, the first up to 2017 and the second up to 2020.

On 17 September and 22 October 2015, meetings of the virtual analytical contact centre discussed the updates to the IBM Concept. As of 6 November 2015 the SBGS was gathering proposals from line ministries and agencies on the draft Concept and its implementing Action plan. The strategy was intended to enter into force on 1 January 2016.

To ensure a comprehensive approach, the Ukrainian President endorsed a “*Road Map on joint operational border management with EU Member States and Moldova*” at the end of 2014. The road map and accompanying Action Plan envisages shared border control, joint border patrolling and operational exchange of data and risk analysis. In line with the road map, Ukraine has taken some steps in the past months, including preparation of the Shared Border Crossing Point Agreement with Slovakia and, on 4 November 2015, and signing an agreement on automated exchange of border crossing data on persons and vehicles across the Moldova-Ukraine border.

- **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**

Recent progress in developing technical equipment and IT systems includes updating the Arkan system, an integrated inter-agency information/telecommunication system for checking people, vehicles and goods crossing the state border. In 2015, parts of the operational system Hart-10 (the SBGS's internal IT system) will be updated. An electronic register of authentic and forged travel documents is in trial use. This new national database is to provide information on travel documents in addition to that from (international and national) sources such as Interpol and Arkan.

- **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**

Intra-agency cooperation is changing. Firstly, the process of reducing the number of authorities working at the border has begun. All current stakeholders will continue to participate in IBM, but control both of people and goods crossing the border will be carried out only by the SBGS and Customs. Secondly, the SBGS and Customs have worked together more through the Virtual Centres. Since the beginning of August 2015, representatives of the SBGS and Customs have provided information for passengers on border crossings and customs procedures. The SBGS also launched a public survey to obtain feedback on the work of SBGS staff.

Very good progress was made in checks on cross-border traffic. Border checks are carried out extensively for every passenger and checks against national databases are carried out. The current situation enables staff to read the open data on a chip and the closed data on Ukrainian passports.

### **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 25 September 2015, Ukraine had 17 bilateral agreements. The readmission agreement with the European Union entered into force on 1 January 2008. Negotiation procedures ('draft readmission agreements') are still ongoing with Kazakhstan, Armenia, Belarus, Kyrgyzstan, Tajikistan, Azerbaijan, Afghanistan and Pakistan. The dialogue on implementing protocols (to the readmission agreements) is continuing with 11 European Union countries (the Benelux countries, Portugal, Cyprus, Poland, Slovakia, Hungary, Romania, Malta and Italy). The texts of the Agreement and the Implementing Protocol with Switzerland and Serbia are also under discussion.

The overall implementation of the readmission agreement is satisfactory in terms of daily follow-up, which is reflected in high acceptance rate of readmission applications by Ukraine (over 90 % for the 2014 (84.2 %) and 80 % for 2015 — up to 31 August 2015) and met deadlines in accordance with Section II of the Agreement between the European Community and Ukraine on readmission of persons (Official Journal L 332, 18/12/2007).

Ukraine participates in the EU Pilot Initiative to Monitor Readmission in Ukraine and Pakistan (Monitor).

- **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**

The Law on External Labour Migration was adopted on 5 November 2015. The law was signed by the President on 21 November. This is a very positive step, as the law will regulate reintegration, including employment opportunities in Ukraine when Ukrainian nationals return after working abroad. The new scheme setting out responsibilities, the competent authorities, measures and tasks should be drafted immediately after adoption.

The State Migration Service (SMS) is the main authority within the Ministry of the Internal Affairs responsible for migration and asylum issues in Ukraine.

Training, including language training, was given to staff working in accommodation centres, case handlers and judges. In cooperation with the Taras Shevchenko National University of Kiev, the State Migration Service has developed a targeted curriculum, 'English for professional communication in the migration processes'. The course is designed to improve the English skills of the State Migration Service.

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

The migration profile for 2014 has been completed and published on the SMS website. On 29 April 2015, the Methodology for Irregular Migration Risk Analysis was approved. With a view to creating a database for monitoring migration processes, the current software is being upgraded and steps are being taken to incorporate the SMS databases. On 29 May 2015, a Contact Analytical Centre for Monitoring Migration Processes was created. On 18 June 2015 the State Migration Service approved its Working Plan for 2015.

The centre will perform various tasks including: establishing the 'Ukraine migration profile', evaluating the risks of migration issues, informing other competent State bodies about migratory issues, etc. The reports produced will be shared with other stakeholders.

- **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**

Currently, the SMS conducts operations to apprehend irregular migrants jointly with the Ministry of Internal Affairs or the Ukrainian Security Service. The SMS has no operational capacity to perform such tasks independently due to its civil status and lack of law enforcement capacity to detect and apprehend irregular migrants inland. However, the SMS cooperates with the Ministry of Internal Affairs and the State Border Guard Service.

The structure of the SMS has also been optimised and several units whose work involves ‘migration control’ have been allocated more staff.

- **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 2015 the structure of the SMS was optimised and staffing of the units responsible for migration control was increased. On 27 May 2015 the Government of Ukraine adopted a resolution envisaging that from 1 January 2016 the number of SMS staff would increase by 500, including officers tasked with fighting illegal migration and inland detections.

There are two Migrant Accommodation Centres for irregular migrants located in Chernihyv (Rozudiv), with a capacity of 208 persons, and Valin (Zhuravichy), with a capacity of 156 persons. And a building in Mykolaiv (Martynivske) has been completed, with a capacity for about 100 persons.

### 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**

Reception of asylum seekers has been reformed: food corresponding to a certain daily amount of required nutritional value per person, independent of cost, is provided in kind in line with the *Council of Ministers Decree on food standards provided at the temporary accommodation centres for persons seeking international protection and for beneficiaries of international protection of 11 March 2015* (CMU Decree, No 144). They are thus no longer linked to financial limits. At the Odessa reception centre, applicants are said to receive three meals a day (adjusted to the religious beliefs of the applicants), receive clothes, have access to proper education, UNHCR, non-governmental organisations (NGOs), and interpreters, and can take part in leisure activities (sports, local activities organised at the centre such as art workshops) or join language courses. There is also a playroom for children (that is filled with games and toys). Special attention is said to be granted to family unity, care for persons with special needs, separate accommodation for single men, women, etc. As regards healthcare, depending on the medical problem, the applicant is referred to a local medical centre or to a bigger facility if a specialist institution/intervention is needed. The centre covers primary healthcare needs.

Registration practices were further consolidated: The ‘refugee’ subsystem of the foreigners’ database was installed. The transfer of existing data to the new subsystem. The State Migration Service has a clear and concrete view of the IT process, and further IT progress is expected to be completed by the end of 2015 or the beginning of 2016.

Reception capacity has not been increased in the reporting period. Ukraine currently has a reception capacity of 100 places available in Odessa and 130 places in the Transcarpathian Region. The opening of a new accommodation centre in Yahotyn, Kyiv Region with around 353 additional places was postponed from this year to 2017. In 2015, UAH 17 303 million has been allocated for this accommodation centre, of which UAH 15 089 million is allocated to setting up the centre. The refurbishment of 100 additional places in the Odessa temporary accommodation centre depends on unblocking the funds earmarked. A rough estimate puts the renovation costs for the accommodation wing at around UAH 12 million. The administrative building would also need to be renovated, costing an extra UAH 10 million.

The detention of asylum seekers in Ukraine is not currently regulated by law. In practice, asylum seekers are detained under certain conditions. The main reason for administrative detention of international protection applicants on Ukrainian territory appears to be to prevent further attempts at irregular border crossing into another country.

Article 30.3 of the Law on the Legal Status of Foreigners and Stateless Persons only regulates the detention of irregular migrants. A draft law on foreigners was sent to Parliament on 21 September 2015 and adopted in first reading on 10 November 2015. It envisages the following amendments concerning the detention of persons subject to return procedures:

- There will be a three-monthly judicial review / court review of forced return cases for migrants in closed facilities (detention centres), to determine the effectiveness of the (State Migration Service's) identification and documentation activities to ensure forced return and to take into account new information that may prevent forced return (Ukraine ratified the European Convention on Human Rights in 1997).
- The maximum detention period for irregular migrants will be extended from 12 months (under the Law on the Legal Status of Foreigners and Stateless Persons, Article 30.4) to 18 months.

These amendments are intended to be inserted into the Administrative Code in a 'new' Article 183(7): 'Peculiarities of proceedings in cases on detention of foreigners and stateless persons who are subject to forced return'. Appeals have suspensive effect (including appeals to the European Court of Human Rights).

Procedural safeguards have been strengthened: 100 regional and local legal aid centres, which are publicly financed (under Articles 15, 16 and 17 of the Law on Free Legal Aid) started work on 1 July 2015, under Order No 331/5 of 10 March 2015. Every region of Ukraine has between three and nine centres. According to the Ukrainian authorities, a budget of some UAH 300 million has been allocated to set up the centres, which have a roster of 5 000 lawyers available according to need. Interpreters are to be paid from the budget for the centres, which requires amendments increasing their budget to cover this. The centres' establishment followed amendments to the Law on Free Legal Aid covering both 'free primary legal aid' (Section II of the law) and 'free secondary legal aid' (Section III). Article 13 defines 'secondary legal aid': defence against prosecution (2.1), representation in the courts, other State agencies, etc. (2.2), and drafting procedural documents (2.3). The Ministry of Justice is responsible for 'free secondary legal aid'. It applies to a broad category of people, including those covered by the 2011 Law on Refugees, including asylum seekers. The legal aid centres already have access to the list of interpreters used by the State Migration Service.



The legal aid centres have so far received few requests relating to asylum. Flyers and information leaflets are being drafted. According to the ‘Ukrainian Administrative Justice Court Code’, the deadline for appealing against first-instance decisions on asylum applications is five days from the date of receipt of the first-instance decision. The asylum seeker must first appeal against the decision in writing, without having to substantiate the appeal or needing representation. They are then invited (by the appeal body) to substantiate the appeal.

Several steps have been taken to improve implementation of asylum law. According to the Ukrainian authorities, country of origin information is available to case handlers on the website of the State Migration Service.

‘Information on advanced training of the State Migration Service employees in 2013-2015’ (State Migration Service, 7 October 2015) indicates the number of State Migration Service employees that have undergone advanced training, including ‘Professional development on foreign languages’. The information sheet ‘Information on number of employees of the State Migration Service of Ukraine, Temporary Accommodation Centres for Refugees and Temporary Accommodation Centres for Foreigners and Stateless Persons who illegally reside in Ukraine who speak and study foreign languages’, State Migration Service, 7 October 2015, indicates the number of employees mastering one or several foreign languages (including English) and to what extent these staff members are spread across the countries.

In 2015 the National School of Judges carried out a series of specialised training courses (in Ukraine) on ‘case adjudication’, and ‘the relationship between the 1951 Refugee Convention and the European Convention on Human Rights and Fundamental Freedoms’.

Since 2012 (‘Statistical information for 2012, 2013, 2014, 6 months of 2015 on protection seekers in Ukraine’, State Migration Service, 7 October 2015) the rate of ‘protection’ (encompassing ‘refugee status’, ‘complementary protection’ and ‘subsidiary protection’ within the meaning of Articles 1 and 5 of the Law on Refugees and Persons in Need of Subsidiary or Temporary Protection in Ukraine) has significantly increased. From roughly 15 % (2011: 241 people given protection as against 1 573 applications) to 70 % (2014: 806 people protected; 1 173 applications). Afghanistan and Syria are the main countries of origin.

As regards rules on the status, rights and obligations of those foreigners who cannot be returned, but who are entitled to international protection, under Article 17.4 of the Law on Legal Status of Foreigners and Stateless Persons, foreigners and stateless persons who have not been forcibly returned from Ukraine before their stay in a closed (detention) facility expires are provided with a ‘temporary residence permit’ because, for some reason, the person could not be removed from the territory (for instance because no substitute passport or ‘*laissez-passer*’ could be issued). The maximum stay at a detention facility is currently 12 months (Article 30.4). The ‘temporary residence permit’ confirms the holder’s personal identity (as declared) and permission to stay in Ukraine. The permit can be renewed and grants a series of rights and obligations: access to healthcare, social services, to register a marriage, etc. After three years, the permit can be made ‘permanent’ if further conditions — governed by the Law on the Legal Status of Foreigners — are met. A ‘Strategy of the State Migration Policy for the period to 2025 (to be approved by the Cabinet of Ministers) includes as ‘Objective 10’: ‘introduce(s) a proper mechanism and programmes for regularisation of irregular migrants’.

## **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 National Security Strategy of Ukraine (Strategy), approved on 26 May 2015 envisages a series of measures to reform the Ministry of Internal Affairs. The Ministry will be transformed into a civilian central body of executive authority that drafts and implements state policy on law enforcement, protection of the state border, migration and civil protection. The strategy provides for most law enforcement functions, except combating crimes against national security, to be transferred from the Security Service to the law enforcement authorities. The National Defence Security Council is drafting an action plan.

The reform of internal affairs bodies is ongoing. The Law on Amendments to certain pieces of Legislation Regarding the Reform of the Bodies of the Interior, of 12 February 2015, was intended to optimise the structure of the Ministry of Internal Affairs. When the GUBOZ was dismantled, the task of fighting organised crime was transferred to the Directorate of Criminal Search. A specialised Department was set up and specialist units were also created in regional offices to investigate crime, including radicalised, organised crime and organised criminal groups formed on ethnic or international lines.

On 2 July 2015, Parliament adopted the Law on the National Police, entered into force on 7 November 2015. The National Police would be subordinated to the Ministry of Internal Affairs and would also carry out some tasks related to combating organised crime and ensuring public order.

Under Article 5.3 of the Law on Organisational and Legal Principles of Combating Organised Crime, the state authorities involved in combating organised crime include the following:

- the internal affairs authorities of Ukraine
- the Security Service of Ukraine (SSU);
- the prosecution authorities of Ukraine;
- the tax authorities, the authorities of the State Border Guard Service of Ukraine, the state financial monitoring authorities;
- the penitentiary authorities and facilities, pre-trial detention facilities;
- the intelligence authority of the Ministry of Defence of Ukraine;
- the Foreign Intelligence Service of Ukraine;
- the National Anti-Corruption Bureau of Ukraine (NABU).

The tasks of the above authorities are primarily detection, investigation, suppression and prevention of offences committed by participants in organised criminal groups, and bringing of perpetrators to justice. Their remits are set out in the Law on Organisational and Legal Principles of Combating Organised Crime, the Law on Operative and Search Activities, the

Law on the Public Prosecutor's Office, the Law on the Police (the Law on National Police, of 7 November 2015), the Law on the Security Service of Ukraine, the Criminal Procedure Code, and other laws.

Jurisdiction over crimes of this type is governed by Article 216 of the Criminal Procedural Code, based on the general criminal jurisdiction of the internal affairs authorities, the Security Service (SSU), the Prosecutor's Office (the State Bureau of Investigations once established), the authorities monitoring compliance with tax legislation, and the National Anti-Corruption Bureau. This jurisdiction in turn is derived from the areas of activity of the relevant law enforcement authorities (combating general crime, crimes against national security, crimes in office, tax crimes, and criminal corruption).

The authorities proposed to limit the functions of the Security Service of Ukraine in drafting amendments to the Criminal Procedure Code in line with the EU's recommendations on Ukraine's implementation of the EU-Ukraine Action Plan on Visa Liberalisation, with a view to clarifying the jurisdiction of pre-trial investigation authorities. On 10 November, Parliament adopted the law, which aims to streamline the chain of responsibilities for the various steps of investigation. The amendments to Article 216, 'Investigative Competence', of the Criminal Procedure Code provide for limiting the SSU's remit to pre-trial investigation of cases in the sphere of national security, defence and terrorism; and strictly delineating the investigative remit of the State Bureau of Investigations (SBI), which was to be set up under the Criminal Procedure Code.

On 12 November 2015, Parliament adopted the law establishing the State Bureau of Investigation. The SBI was to be set up by 20 November 2017 and would be entitled to conduct pre-trial investigation of the following crimes:

1. crimes committed by high-ranking officials under Article 9 of the Law on the Public Service, certain public service officials, judges, prosecutors and officers of law enforcement authorities, except where they fall to the NABU under Section 5 of Article 9;
2. crimes committed by NABU officials and prosecutors in the Specialised Anti-Corruption Prosecutor's Office, unless investigation falls to the NABU's Internal Control Unit under Section 5 of Article 9;
3. crimes under Article 333 of the Criminal Code;
4. crimes against the reputation of State authorities or local government or civil associations, against journalists and the judiciary, except for crimes under Articles 354 (in relation to employees of legal entities under public law), 359, 383, 384, 385, 389, 390, 391, 392, 393, 394, 395, 396 of the Criminal Code;
5. crimes using computers, computer systems and networks, or telecommunication networks;
6. crimes in the sphere of official and professional public service activities, unless they fall to the NABU under Section 5 of Article 9;
7. military crimes, except for crimes under Article 422 of the Criminal Code;
8. crimes against peace, human security and international law;
9. crimes against peace and security of humanity and international order.

Until the SBI was operational, investigations which fell to it would be conducted by the prosecution authorities, internal affairs bodies and the security service.

Ukrainian witness protection law provides for protective measures including surveillance, replacement of identity documents, change of appearance, relocation, etc. Funding of the most sensitive measures to protect judicial witnesses, such as relocation and identity change, should be ensured.

Overall, a unitary vision for fighting organised crime is still work in progress. As the complex reform process — shifting powers from law enforcement agencies to new institutions such as SBI — is ongoing, implementation of the reforms in practice needs to be monitored.

➤ **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**

A new State Programme to Combat Trafficking in Human Beings has been proposed for approval by the Cabinet of Ministers and is scheduled to run from 1 January 2016 until 2020. The programme aims to prevent trafficking in human beings, make prosecution of traffickers more effective, protect the rights of victims and assist them.

The Interdepartmental Council in charge of supervising policy and action against trafficking should be reinforced, taking into account need to improve coordination of anti-trafficking activities by ensuring that the Council and the coordinating councils set up at oblast level work well.

Among other actions, it is planned to improve the procedure for deciding the status of a victim of trafficking (by amending the Law on Combating Trafficking in Human Beings and other regulations) by making the local state administrations and local self-government bodies responsible for this. Further amendments should be envisaged, establishing a recovery and reflection period for those whom the relevant anti-trafficking authorities have reasonable grounds to believe are victims of trafficking.

The process of identifying victims is based on a formal procedure introduced as an integral part of the national anti-trafficking mechanism. A national mechanism to allow the relevant bodies to work together was also set up. However, identification relies on the victims themselves applying for it. Therefore, further important measures should be taken to improve the process of granting ‘victim of trafficking’ status.

Regarding victim identification and monitoring, attention should be paid to internal trafficking, especially given the huge number of internally displaced persons (IDP). The vast majority of this group face severe difficulties in normalizing their life conditions, which makes them highly vulnerable to trafficking. Moreover, only a few foreign victims have been formally identified.

The number of registered victims of trafficking for all forms of exploitation, including the sex industry and labour, is considered low. Although relevant statistics are compiled by several sources (the Ministry of Social Policy, the Ministry of Internal Affairs and the International

Organisation for Migration (IOM) mission to Ukraine), no centralised monitoring system is in place. According to the Ministry of Internal Affairs' statistics, up to September 2015, 93 trafficked victims had been reported: 53 women, 37 men and 3 children. In 2015, 'victim of trafficking' status has been granted to 45 people: 21 women, 22 men, and 2 children.

Various training courses have been given to professionals who come into contact with victims and potential victims of trafficking, but frontline border officials need to be given operational indicators and guidelines to expand their capacity for proactive identification, and to be trained in using such tools. The indicators should be regularly updated, in line with emerging trends in human trafficking, especially in the context of local conflict (internal trafficking, trafficking of children). The indicators are essential to proactive identification of victims and so should reflect the changing nature of trafficking and types of exploitation. Ukrainian authorities should ensure that all professionals likely to come into contact with potential victims of human trafficking are fully aware of the identification procedure and receive regular training that enables them to adopt a proactive attitude and take action to identify victims, particularly among vulnerable groups such as children and IDPs.

Prevention measures have been taken by central authorities, NGOs and international organisations in the last year. Bearing in mind the vulnerability of the rural population to trafficking, and particularly the risk of trafficking and various forms of exploitation that IDPs face, state anti-trafficking actors need to increase their efforts to discourage demand for services 'offered' by potential victims and vulnerable people, in partnership with civil society and the private sector.

NGOs play a vital role in combating trafficking in Ukraine through awareness-raising, training relevant professionals (e.g. police officers, social workers, medical doctors, lawyers, and teachers) and assisting victims of trafficking. Expanding cooperation with civil society on anti-trafficking action should be considered, including involving trade unions and the private sector in planning and implementing national policy.

The International Women's Rights Centre La Strada Ukraine, which has been active in the anti-trafficking field since 1997, conducts research, carries out preventive activities, provides assistance to victims, and prepares reports on the implementation of the national anti-trafficking programme and issues recommendations for improving anti-trafficking policy. La Strada Ukraine operates a toll-free telephone hotline for victims and potential victims of trafficking.

The All-Ukrainian Coalition of NGOs for Combating Trafficking in Human Beings, consisting of 28 NGOs from different parts of the country, carries out awareness-raising activities for the general public and target groups such as school children, students, people in areas in a difficult economic situation, migrant workers, etc. They also provide training on trafficking to different professionals.

The IOM office in Ukraine has been crucial to assisting victims of trafficking. Since 2000, it has provided direct assistance to 11 237 victims, including financial support and legal aid, medical and psychological assistance, counselling, and vocational training. The office also operates a Medical Rehabilitation Centre. It carries out awareness-raising activities with Ukrainian NGOs and other international organisations, and cooperates with law enforcement agencies on improving their capacity to investigate trafficking offences and to cooperate with other countries and developing an effective witness protection system.

Despite progress in counter-trafficking activities, the concerns expressed in the fifth progress report remain. The low number of registered victims is a concern. There is a need for the government to increase its efforts to identify victims of trafficking.

- **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**

The Government approved the State Anti-Corruption Strategy Programme Implementation for 2014-2017 and it was published on the website of the Ministry of Justice.

In September 2015, the President of Ukraine signed a decree approving the composition of the National Council for Anti-Corruption Policy and appointing the head of the Council.

On 14 July 2015, Parliament adopted amendments to several laws aiming at enhancing transparency of ownership, in particular as regards property registers, vehicles, and land plots. Under the law, the public will gain access to information about the owners of registered vehicles and real estate and complete information about the land plots contained in the State Land Cadastre. The law promotes public scrutiny of officials' tax payments and contributes to openness and transparency in central and local government. The law came into effect on 6 October 2015.

On 8 October 2015 Parliament adopted legislation amending some laws against political corruption, introducing direct public funding for political parties and increased transparency of party funding from 2017. The law sets criteria for state funding, and legitimate expenditure. It also sets ceilings on annual contributions to political parties by businesses and individuals.

Tangible results on anti-corruption reforms have yet to follow the setting up of anti-corruption institutions, which are either in the early stages of establishment or, if established, have not yet started to build a track record. In relation to the **National Anti-Corruption Bureau**, good progress was achieved. The director was appointed on 16 April 2015. The Director of the NABU is appointed and dismissed by the President of Ukraine according to the procedure laid down in the NABU Law. Parliament may dismiss the director on grounds expressly provided by the NABU Law. The NABU has entered into a number of agreements with other agencies including the fiscal service and the Security Service (SSU). The NABU is entitled under its statutes to access all the databases of national agencies, which are required to respond to requests for access within three days.

Around 100 detectives have been appointed so far and training started on 7 September 2015. This is already enough staff to start investigations.

There is another aspect of the NABU's work that relates to the broad powers of the Security Service of Ukraine (SSU). In the Law on National Security, corruption is listed among the threats to state security, and so is considered a matter of national security by the SSU. Amendments proposed to Article 216 of the Criminal Procedure Code will delineate the

powers of the different law enforcement agencies, including the SSU, which will have its pre-trial investigation powers reduced.

The NABU cannot be effective in its work without the **specialised anti-corruption prosecution** office. The independence of this prosecution office is key, as the follow-up of NABU's investigative work and decisions on whether to take a case to court fall entirely within its remit. From the outset, however, the selection process gave rise to concerns about the risk of political influence, the lack of clear and objective criteria for the selection committee, unclear requirements and procedures, and overreliance on the discretion of the Prosecutor General, which appears to contradict the office's status under the law, i.e. its independence and operational autonomy from the Prosecutor General.

According to the existing procedures, the Prosecutor General appoints four members of the selection committee, while Parliament appoints seven members. It was originally intended that the four prosecutors to sit on this committee should be chosen by the Prosecutorial Council, but that body will not exist until the reform of public prosecution is complete. The selection committee started work on 21 September 2015; however, the appointments to it, notably those of the Prosecutor General, were met with distrust from the public and civil society in terms of their credibility, integrity and reputation. Currently there are no set eligibility criteria for members of the selection committee. On 6 November 2015, two appointments to the selection committee were withdrawn by the Prosecutor General and the two members replaced, but concerns about the credibility of and trust in the process remained.

On 30 November, the General Prosecutor appointed the head of the specialised anti-corruption office. After the appointment of the head of the specialised anti-corruption prosecution, the recruitment process of the specialised anti-corruption staff must be merit-based, competitive, transparent, integrity-based and independent.

Overall, the shortcomings in the selection process highlighted the need for ensuring the credibility of this institution as well as the removal of political influence on the selection process. As a matter of priority, the independence and credibility of the selection committee should be ensured, and amendments to the legislation drafted to provide by early 2016 effective independence safeguards for the appointment and dismissal of the leadership and the staff of the specialised anti-corruption prosecution office.

The reform of the prosecutor's office has started. The aim is to restructure the prosecution service in order to ensure higher standards of efficiency, results-oriented strategic approaches and high standards of integrity, along with effective prevention and prosecution. To this end, prosecutors will undergo a new testing process to determine their suitability, skills and knowledge for a position. External candidates may also apply. The total number of prosecutors under the reformed office will be considerably reduced. The figure stood at 18 500 in 2013 and has now fallen to 15 000; it will be further reduced to 10 000 by 2017. This is partially enabled by removing the power of general supervision from the prosecutor's office. The reform also aims to address the considerable risks of corruption and challenges within prosecution offices. However, despite the commendable efforts of a number of reform-minded players, there the necessary support and drive from the leadership of the Prosecutor General's Office is still much needed to ensure continued implementation of the reform.

With regard to asset recovery, the Ukrainian government envisaged an agency which would function as both an Asset Recovery Office (ARO) and Asset Management Office (AMO) and

ensure coordination of asset recovery work between all relevant agencies. Ukraine had committed to establishing a national Asset Recovery Office, which would also have the powers and capacity to manage frozen and confiscated assets, and to undertake further improvements of the legislative framework, notably by addressing existing shortcomings which made freezing and confiscating criminal assets cumbersome and ineffective. The setting up of a multidisciplinary, independent agency working as both ARO and AMO is in line with the standards developed in the EU, where many AROs have a multidisciplinary structure. The indicators of effectiveness for AROs used in the peer reviews between the EU Asset Recovery Offices include multidisciplinary, involvement in asset management, links with mutual legal assistance procedures and access to judicial statistics.

On 10 November 2015, Parliament adopted a set of laws aimed at improving the asset recovery framework. In the form proposed by the Government the draft laws aimed to set up an Asset Recovery Office which would also cover management of frozen and confiscated assets, and they included substantive and procedural provisions on the freezing and confiscation process. The drafts aimed at improving Ukraine's track record on asset recovery as an important component of anti-corruption policies. There are particular concerns about amendments that seem to have limited the Agency's functions of active management of the seized assets that would allow increasing the economic value of assets during freezing. Adequately managing any kind of frozen property necessarily implies activities that go beyond the mere storage of assets to impede any potential loss of value. The provisions on asset management submitted by the Ukrainian Government were more specific on issues pertaining to management of assets. In the newly adopted law, the purpose of the asset management function appears to have been limited from "based on principles of efficiency, preservation and appreciation of the value" to "controlling the preservation of the value". This may for instance discourage in practice the seizure of assets. In order to preserve the value of assets, specific expertise and a more active management of the assets would be required. If these powers are not granted, it might prove very difficult for prosecutors and judges to freeze businesses. The provision in the law may also prevent the implementation of best practices, such as the assignment of the management of assets to its employees, which continue the managing until confiscation without losing their job.

The amendments could also render cumbersome the freezing and confiscation of assets transferred to third parties, which is a very common practice used by offenders, together with amendments which removed the management of frozen/seized and confiscated assets from the proposed Asset Recovery Office. Further, the freezing regime against third parties of the Criminal Procedure Code falls short of providing judicial remedies and safeguards to guarantee the preservation of fundamental rights (right to property, right to a fair trial). The special confiscation regime against third parties should also cover the assets directly acquired by a third party following a criminal offense for which special confiscation applies.

Several provisions fall short of the confiscation Directive (2014/42/EU) at the very least the provisions enabling confiscation in case of illness or absconding of the suspect or accused persons, the provisions on extended confiscation, the safeguards and the provisions on effective confiscation and execution.

In relation to **preventing corruption**, the **National Agency for Prevention of Corruption (NAPC)** will be in charge of designing and implementing anti-corruption programmes, and checking on asset declarations and conflicts of interest for public officials. The Law on Corruption Prevention defines the new agency as a central executive authority with a special



status under the Government. After a selection process which was re-run due to allegations of manipulation, a new selection committee has been appointed. The five members of the Selection Board are expected to be appointed in December 2015. The selection and appointment process for members of the Agency and their support staff should include safeguards of their professional independence.

As regards checks on asset declarations and conflicts of interest for holders of public office and managers of state owned/controlled companies, no progress has been made since the last VLAP report. These checks are the responsibility of the State Fiscal Service, but in practice they are not being conducted. Once established, the NAPC will take over this task. It is nevertheless imperative to ensure that assets declared before that date and potential conflicts of interest before that date are also subject to scrutiny and followed up.

The web portal for asset declarations is being developed and will be administered by the NAPC. The United Nations Development Programme (UNDP) has announced a tender to select an IT company to develop the software for e-declaration systems. In the first stage the system will include only submission and publication of declarations; the verification module will be added by mid-2016. The verification mechanisms must include effective safeguards of independence and a system of deterrent sanctions should be put in place for unjustified wealth and conflicts of interest.

A draft law amending certain legal acts in the sphere of public procurement, to align them with international standards, and granting additional safeguards to fight corruption, was adopted by Parliament on 15 September 2015. It is intended that full information about contracts will be made public as soon as they are awarded. Parliament adopted laws on prevention and counteraction of political corruption and funding of political parties on 8 October 2015.

The issue of immunity for judges, prosecutors and MPs is unchanged since the last report.

- **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)**

As highlighted in the fifth progress report, the 2014 ‘Law on prevention and counteraction to legalisation (money laundering) of the proceeds from crime or terrorism financing, as well as financing of the proliferation of weapons of mass destruction’, which came into effect on 7 February 2015 brought Ukraine closer to the international standards on combating money laundering and terrorism financing. The new law has been published with a commentary and translated into English with the support of the Organisation for Security and Cooperation in Europe (OSCE). This can be seen as an instrument to facilitate international cooperation.

The non-disclosure of ultimate beneficial ownership by banks to the National Bank was highlighted as an area of concern in March 2015. As of October 2015, 132 out of 135 commercial banks had disclosed their ultimate beneficial ownership, in line with new regulations. Checks on the accuracy of the information provided by 22 banks are ongoing. The relevant information is regularly published on the official National Bank of Ukraine website.

Despite the new law, increasing numbers of suspicious transaction reports are coming into the Financial Intelligence Unit (FIU); it does initially freeze large amounts, but the value of assets then confiscated and the number of court cases ending in confiscation of the proceeds of crime remains low.

On 2 September 2015, a new unit was created in the Department of Supervision in Criminal Proceedings of the Prosecutor General's Office and specialised prosecutors were appointed at regional level. The unit is tasked with coordinating investigations in cases of money laundering and terrorism financing.

As new technologies are evolving fast, it is important to stay up-to-date (a) to prevent new instruments from being used/abused for money laundering, and (b) to include new technologies in national law/regulation. All online services (not registered as banks or financial institutions) that do not have client identification or monitor the origin of the money must be seen as a risk. Client identification is not only needed to prevent money laundering but to prevent corruption. The National Bank of Ukraine is making efforts to try to regulate payment systems that are not offered by banks. It maintains a register of payments systems, settlement systems, participants in these systems and payment infrastructure service providers and it regulates payment systems set up by banks and non-banking institutions. It also cooperates with law enforcement authorities to ensure that payment systems that are not in the NBU Register comply with the legislation.

Since March 2015, the Government has introduced 35 new anti-money laundering regulations. These cover:

- aspects of the Unified Information System for preventing and counteracting the legalisation (laundering) of illegally derived income, financing terrorism, and financing proliferation of weapons of mass destruction (Resolution of the Cabinet of Ministers, 14.05.2015 No 299);
- the procedure for the submission of undertakings, businesses institutions and organisations that are not the subjects of primary financial monitoring information at the request of the State Financial Monitoring Service of Ukraine (Resolution of the Cabinet of Ministers, 17.06.2015 No 411);
- the procedure for determining States (territories) that do not fulfil or improperly fulfil recommendations of international, inter-governmental organisations operating in the sphere of preventing and counteracting the legalisation (laundering) of illegally derived income, financing terrorism, and financing proliferation of weapons of mass destruction (Resolution of the Cabinet of Ministers, 17.07.2015 No 510);
- regulations on the State Financial Monitoring Service (Resolution of the Cabinet of Ministers, 29.07.2015 No 537);
- some aspects of the organisation of financial monitoring (Resolution of the Cabinet of Ministers, 05.08.2015 No 552);

- regulations on the organisation and coordination of retraining and professional development of specialists in financial monitoring (Resolution of the Cabinet of Ministers, 19.08.2015 No 610);
- the procedure for granting state agencies, state registrars permission to request initial financial monitoring of entity customer information (Resolution of the Cabinet of Ministers, 08.09.2015 No 693);
- the issue of organisation national risk assessment legalisation (laundering) of proceeds from crime and terrorist financing (Resolution of the Cabinet of Ministers, 16.09.2015 No 717);
- the procedure for granting state agencies and local governments, state registrar information on financial transactions and their participants to the State Financial Monitoring Service (Resolution of the Cabinet of Ministers, 16.09.2015 No 708).

The FIU received more than 1 million transaction reports in 2014. Transactions of UAH 150 000 or more must be reported to the FIU in accordance with the 2014 anti-money laundering law. The figures and trend are unchanged in 2015. Banks (and financial institutions in a broader sense) are the largest group reporting to the FIU. It remains a challenge to motivate other reporting entities to report any suspicion of money laundering.

- **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**

The Cabinet of Ministers approved Action Plan for 2015 for the implementation Strategy of Drug Policy to 2020 on 25 March 2015. Work has begun on a draft action plan for the next period. The line ministries considered consolidating provisions regulating drugs issues in a single legal instrument, for instance a Drugs Code, and believe that Ukraine's legislation on drugs is harmonised and provides a coherent state policy. In particular, state policy is shaped by:

- the Law on Drugs, Psychotropic Substances and Precursors;
- the Law on Measures to Counteract Illicit Circulation of Drugs, Psychotropic Substances and Precursors, and their Abuse
- Article 44 of the Code on Administrative Misdemeanours
- Articles 305-321 of the Criminal Code;
- the strategy on state drug policy for the period to 2020.

The Ministry of Health cooperates with other drug policy institutions which implement state policy on drugs control by means of regular exchanges of information on drug situation in the country, improvements in data collection methods concerning the emergence of new psychoactive substances, and preparation of joint reports on narcotic drugs, psychotropic

substances and precursors, on counteracting illicit trafficking, and on trends and developments in this field for international institutions.

In the first seven months of 2015, police reported 16 500 criminal offences in the narcotics sphere. Further efforts should be made to tackle the low level of seizures.

Since 2011, annual reports have been submitted by the Monitoring and Medical Centre on Drugs and Alcohol (UMMCDA) to the European Monitoring Centre for Drugs and Drug Addictions.

### **2.3.2. Judicial cooperation in criminal matters**

- **Implementation of international conventions concerning judicial cooperation in criminal matters (in particular Council of Europe Conventions);**
- **High level of effectiveness of judicial cooperation in criminal matters of judges and prosecutors with the EU Member States.**

The cooperation agreement between Ukraine and Eurojust is awaiting signature pending the outcome of the consultation of the European Parliament expected in late December 2015.

**The judicial cooperation in criminal matters benchmark was already deemed to have been achieved in the fifth progress report.**

### **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 national security strategy, approved on 26 May 2015 by the President, envisages the transfer of most law enforcement functions, except fighting crimes against national security, from the Security Service of Ukraine to other law enforcement agencies.

As of 7 November 2015 the Ministry of the Internal Affairs was to focus on policymaking on internal affairs and directing the activities of other agencies (the National Police, the National Guard, the State Border Guard Service, the State Migration Service and State Emergency Service). The latter become functionally independent executive bodies.

The Law on the National Police entered into force on 7 November 2015. Accordingly, the police, among others, will work on combating crime, particularly organised crime, and ensuring public safety. The law envisages the optimisation of the National Police, a clear separation of structural units' powers, elimination of duplicate functions, and new departments: patrol police and special purpose police (CORD — the operational and immediate action corps). The new approach to recruitment and career development, which envisages open competition for applicants, a contract and promotions based on the individual achievements of each employee, will make it possible to form professionals and match the best practice of EU countries. The Law establishes a clear framework for the use of force by police and provides a list of special means and the reasons for their application, which meets international standards of policing. The police may use force only on the grounds provided by this law.

In view of the current reform, which envisages the transfer of powers between law enforcement institutions and new ones being established, the effectiveness of law enforcement services still needs to be further pursued.

- **High cooperation among relevant national agencies — especially border guards, police, customs officers, as well as cooperation with the judicial authorities**

Inter-agency cooperation continues to be considered satisfactory but is still subject to important improvements, which would contribute to the effectiveness of investigations.

The main forms of interaction between law enforcement agencies are working meetings; information exchange and joint (coordinated) actions. Cooperation between investigative units is governed by the Criminal Procedure Code. Article 38 (pre-trial investigation) of the Code provides for pre-trial investigation by investigation group. As the prosecution exercises procedure management of a pre-trial investigation in criminal proceedings, including corruption cases, it is possible to create joint investigative teams with its agreement. The SBGS now has access to the Interpol database at border crossing points and this is welcome progress which will contribute to tackling cross-border crime.

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

Ukrainian law enforcement bodies engage in international cooperation through Interpol and Europol channels for the prevention, detection and investigation of criminal offences.

The exchange of information is also carried out through Interpol channels. A Department of the Ministry of Internal Affairs acts as the Ukrainian bureau of Interpol. In addition, there are units of Interpol in all major departments, and there are departments of the Ministry of Internal Affairs in Kiev and the regions. Information is exchanged via a system of query-response. From January to August 2015, 33 609 queries were processed, comprising 14 868 requests from the law enforcement agencies of Ukraine and 18 741 from the law enforcement agencies of foreign countries.

Information is also exchanged through the national contact point for emergency assistance in the investigation of cybercrimes, which is based in the Ministry of Internal Affairs' Department for Combating Cybercrime. Since the beginning of 2015, 62 requests from law enforcement agencies of other countries had been received. Of these, 17 had been worked out, aiming to obtain information on fighting cybercrime and helping other Ministry of Internal Affairs departments to obtain relevant information. 47 requests had been sent, 38 responses had been received.

The procedure for the conclusion of the Europol operational agreement is very advanced. On 4 June 2015 Parliament adopted a law ratifying a Memorandum of Understanding between Ukraine and Europol on establishing a secure communication channel; the law came into

force on 13 July 2015. Currently the Ukrainian Bureau of Interpol is conducting negotiations with Europol to start work on setting up the SIENA secure communication channel.

#### **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**

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

The budget of the Ombudsman's Secretariat was increased by UAH 7 million (25 %), allocated to three areas: the Data Protection Department, the Non-Discrimination Unit and the Unit for Access to Public Information.

Further to the budget increase, the staff of the Data Protection Department was increased to 23. In October 2015, the Department recruited a new staff member and launched a competition in order to fill the remaining vacant posts. In addition to the staff working 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.

### **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 Ministry of Health of Ukraine issued an order (No 329) on 11 June 2015, excluding HIV/AIDS infection from the list of contagious diseases (order No 415 of 19.10.2001), which had served as the basis for refusing immigration permits.

Ukrainian authorities have progressively improved the application of the legal framework for the access to and from the territories not under government control (TNGC) and have introduced measures simplifying the crossing of the contact line. After consulting interest groups, two new sets of orders were issued in June and September to this effect (Cabinet of Ministers Resolution No 367 of 4 June 2015 as amended by Resolution No 722 of 16 September 2015; State Security Service Antiterrorist Centre Order No 415 of 12 June as amended by decree No 810 of 15 September 2015).

Concerning the TNGC in certain areas of the Donetsk and Lugansk regions, a web-portal for applying for and receiving permits online, launched by the Government of Ukraine on 7 July, significantly simplifies the procedure for civilians and reduces the potential for abuse and corruption at the check points. In parallel, there is an alternative procedure for people without internet access. The closed list of grounds for entering/leaving the TNGC was expanded to cover grounds such as work, studies and healthcare. Detailed rules for refusing to issue a permit were introduced. On the ground, all security guards must have their license on them. If a checkpoint is closed in one sector, another one can be used. Following the tragic incident in Volnovakha, public transport was forbidden. In the period from July to September 2015, 362 100 online requests were processed, out of which 9 000 were rejected, mainly due to the incorrect filling of the form according to the Ukrainian authorities. NGOs reported some incidents, including corruption and difficulties in crossing the check points. Queues at checkpoints were reported to be long. For the access to Crimea/Sevastopol, the grounds for entry were expanded; crossing by children was regulated well in detail. Work is under way on simplifying the acquisition of birth and death certificates. The Ukrainian authorities should continue to monitor the situation in close cooperation with civil society and the Ombudsperson and to address the needs on the ground while respecting fundamental rights.

#### **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.**

Ukraine demonstrated a strategic approach to developing the administrative capacity of the equality institution (the Ombudsperson's Office), the key institution dealing with the prevention of and the fight against discrimination. The number of staff has been increased since the 5th progress report by more than 100%; another 9 posts were created, bringing the total to 15 positions in three units. Training courses were held for the newly recruited officers. In addition, the institution put in place a network of experts at the regional level which allows better coverage of the country. The budget of the equality institution was altogether increased by UAH 7 million (25%) and the outlook for the 2016 budget is good, according to the equality institution.

With the amended Law on non-discrimination having entered into force in 2014, the available data on anti-discrimination case law shows that there are complaints and legal proceedings. . However, the implementation and enforcement of the legal framework shows that further

improvement of the legislation would be needed to address in particular the protection of the victimisation; effective, proportionate and dissuasive sanctions and derogations (occupational requirement) in line with international standards. The Ministry of Justice included these needs in the draft action plan on the implementation of the national human rights strategy. Amendments to redress these gaps were drafted.

As mentioned in the fifth progress report, the Ukrainian government committed in 2014 to explicitly prohibiting in its upcoming reform of the Labour Code discrimination on grounds of sexual orientation. On 12 November, Rada adopted draft law No 3442 of 10.11.2015, which amended the current Labour Code to explicitly prohibit the discrimination on the basis of sexual orientation. The legislation was signed by the President on 21 November and entered into force on 27 November. A draft new Labour Code was adopted in the first reading, it did not yet include such explicit prohibition. The timing of the second reading is not known. From January to August 2015, the NGO Nash Mir Centre documented 34 cases of incidents and crimes motivated by homophobia. The number of acts against LGBT people increased.

Ukraine continued to implement at a reasonable level the legal framework on the protection of persons belonging to national minorities. Consultations of national minorities were held in decisions at central and local level on issues that might affect their rights. In this context, attention should be paid to national minorities' concerns about the possible impact of the process of decentralisation on their rights. Data on national minorities were collected. Given budgetary constraints, reasonable resources for implementation of the rights of national minorities were allocated. At the moment of writing of this report, the draft action plan on the implementation of the national human rights strategy encompassed measures concerning the protection of rights of national minorities. This included additional classes of Ukrainian language for pupils studying in national minority languages, which would help them pass the baccalaureate exam. A dialogue should be maintained between the Ukrainian authorities and representatives of persons belonging to national minorities in order to address their concerns.

- **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 antidiscrimination policy and combating racism, xenophobia and anti-semitism.**

The equality institution continued to be dynamic in performing its anti-discrimination duties, in close cooperation with civil society and international organisations, and to implement the strategy on preventing and combating discrimination in Ukraine 2014-2017 and the relevant action plan: Between 1 January and 8 September 2015, the institution considered 314 complaints on discrimination on the basis of different grounds including the ethnic origin, religion, disability and sexual orientation. Furthermore, the body initiated 39 proceedings with respect to hate crime, hate speech and discrimination. Lawyers, judges, Roma youth and Roma rights activists, representatives of ethnic minorities, public servants and law enforcement officials received training on anti-discrimination provided by the equality institution. Since it is expected that the anti-discrimination agenda will gradually continue to develop, the allocation of financial and human resources should progressively continue to ensure the compliance of the equality institution with its legal duties.

The equality institution is actively raising awareness against discrimination. It launched a campaign 'Discrimination restricts, Counteract' through different media (website, social



networks, video clips). In addition, it issued publications on different, relevant topics targeting different groups, e.g. a handbook for trainers 'How to teach non-discrimination'; 'Gaps in preventing, documenting, investigating and prosecuting hate crimes in Ukraine'; 'State Policy toward Roma: report on the state of implementation'; 'Human Rights of Roma'. The institution also issued a recommendation for lawyers on how to develop effective arguments in discrimination cases and a recommendation on investigation of hate crimes.

Relevant ministries launched campaigns and activities to inform citizens and officials about anti-discrimination: e.g. a campaign on empowering women in local elections and a special training for representatives of the executive and legislative branch on the needs of IDPs, both by the Ministry for Social Policy (MSP). A special section 'Combating discrimination' on the MSP official website covers relevant national and international legislation. Due to budgetary constraints, most awareness-raising campaigns continued to be financed by international donors through projects developed by NGOs, in some cases in cooperation with public authorities.

The President adopted the national human rights strategy on 25 August 2015 by decree (No 501/2015). Preventing and combating discrimination is one of the strategy's guiding principles. Prevention of and the fight against discrimination is also dealt with as one of the strategic areas for public action. The document sets strategic goals for an efficient system of preventing and combating discrimination and the expected outcomes, including awareness-raising programmes, positive actions at national and local level and efficient investigation of discrimination. Furthermore, it has special chapters on issues such as ensuring the rights of national minorities and indigenous people, protecting the rights of internally displaced persons and preventing and combating discrimination between women and men. Discrimination on the basis of sexual orientation and protection of the Roma population are not addressed.

In line with the presidential decree, the Cabinet of Ministers, in close cooperation with civil society and international organisations, elaborated the 2020 action plan to implement the national human rights strategy of Ukraine and adopted it on 23 November. At the moment of writing of this report, it was not made public. The latest available draft version of the Action Plan covered among others actions related to the Roma community and LGBT people.. The presidential decree tasked to allocate funds for financing the implementation of the action plan and to present a report on its implementation by 1 November each year.

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

Significant progress was made on ensuring a more systematic and permanent approach to training on anti-discrimination. The National School of Judges in Ukraine, the National Academy of Prosecutors and the Policy Academy amended their training curricula to this end. The tests for candidate judges, current judges as well as those aspiring to obtain management positions, and the tests for prosecutors include topics on the prevention and sanctioning of discrimination. Experts from NGOs trained the new patrol police on anti-discrimination issues, human rights and the rights of national minorities.

# ASSESSMENT OF MIGRATORY AND SECURITY IMPACTS UKRAINE

## 1. INTRODUCTION

### 1.1. Background

Under the visa liberalisation action plan (VLAP) methodology, the Commission committed itself to assessing the potential migratory and security impacts of future visa liberalisation for Ukrainian citizens travelling to the Schengen area.<sup>3</sup> This had to be done before Ukraine moves to the second phase of the VLAP.

In the Commission's fourth report on Ukraine's implementation of the action plan (adopted in May 2014,<sup>4</sup> concluding that Ukraine had met the first phase benchmarks), it took the view that the exceptional emergency situation in eastern Ukraine meant that issuing an assessment at that time would be of limited value.

Once Ukraine started the second phase of its VLAP, the Commission provided an assessment of the possible consequences of Ukrainian nationals travelling to the Schengen area without visa restrictions. It published the results in the Commission staff working document accompanying the fifth progress report on Ukraine's implementation of the action plan, adopted in May 2015.<sup>5</sup>

### 1.2. Methodology

This document updates the most recent assessment published in May 2015. This assessment is based on information provided by EU Agencies and the EU Border Assistance Mission to the Republic of Moldova and Ukraine (EUBAM). This document also draws on a combination of official Ukrainian and international organisation sources, and Eurostat data. Given the current crisis in and around Ukraine, it has been difficult to obtain reliable data for the territories not under effective control of the Government.

This update on the assessment of impact aims to identify new possible phenomena and emerging trends in the areas of migration, mobility and security in relation to Ukraine and the possible impact of a visa-free regime for the EU and the Schengen area.

This assessment reflects the state of play as of October 2015 and therefore provides only a snapshot of the situation. This assessment does not constitute a benchmark of the VLAP. Nevertheless, this assessment also lists below some measures the Ukrainian authorities have taken while implementing the visa liberalisation action plan to address the prospective migration and security issues identified by the assessment of impacts. In the conclusion of this document we also provide some possible measures that EU Member States could take to reduce migration and security risks.

---

<sup>3</sup> The visa waiver would apply to the Schengen area including: EU Schengen States, EU Member States who do not yet fully apply the Schengen *acquis* and non-EU Schengen States.

<sup>4</sup> COM (2014) 336.

<sup>5</sup> SWD (2015) 104.

## **2. ASSESSMENT OF MIGRATORY IMPACTS**

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

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

According to the International Organisation for Migration (IOM), 70 % of labour migrants from Ukraine are male and aged between 20 and 49. Men work mainly in manual labour (such as construction and agriculture), while women tend to be domestic or seasonal agricultural workers. The conflict in eastern Ukraine, the sharp devaluation of the Ukrainian currency, growing inflation and falls in workers' real wages are inevitably causing Ukrainians' living conditions to deteriorate. As the situation on the Ukrainian job market remains difficult, working abroad remains an attractive option for many would-be migrants. Furthermore, with 16 % of the population aged under 15 in 2013,<sup>6</sup> Ukraine will have to provide inclusive economic opportunities in the near future to avoid large emigration flows. Available figures on unemployment in Ukraine indicate very low annual rates ranging between 6 % and 9 % since 2004. However, figures on monthly gross wages indicate a very low level of earnings. The differences between wages in Ukraine and many of its neighbouring countries in the EU are therefore the most likely reason for Ukrainians to leave their home country and seek work abroad.

Ukrainian labour migrants can be found all over the world. The Russian Federation remains one of the main destination countries for Ukrainian labour migrants with an estimated number of 3.6 million Ukrainians, although for economic reasons it is currently losing its appeal. Other labour migrants opt for EU Member States and, to a lesser extent, Canada, the USA, Turkey, Israel and Belarus.

Ukraine is located in the immediate neighbourhood of EU countries, and has a land border with Poland, Slovakia, Hungary and Romania, making travel to the EU relatively straightforward and affordable. Travel flows and cultural, political, linguistic and economic links with the EU result in large migratory movements between Ukraine and neighbouring EU Member States. Other Member States such as Italy and Germany are also attractive destinations for Ukrainians labour migrants. A number of airlines provide direct flight connections from Kiev to various destinations across Europe.

According to Frontex (the European agency for the management of operational cooperation at the external borders of the European Union), Ukrainian's migration preferences depend on which part of the country they come from: western Ukraine prefer Poland and other EU Member States, while people from central and eastern Ukraine prefer the Russian Federation for cultural and linguistic reasons. The Zakarpattia region in the far west of Ukraine has the highest proportion of labour migrants. People from this region prefer to migrate to Czech Republic, Hungary and Slovakia due to language similarities.

---

<sup>6</sup> IOM – [www.iom.int](http://www.iom.int) - Ukraine country profile.

### 2.1.2. Regular migration facts

The data available for 2014 confirm that Ukrainians are spread across Europe and not clustered in the EU States neighbouring Ukraine.

Eurostat data suggest that in 2013 there were over 850 000 Ukrainian nationals legally residing in the EU. Of these, 750 000 were in the five EU countries that host the largest Ukrainian diaspora populations, namely Italy, Poland, Germany, the Czech Republic and Spain.

In 2014, Ukrainian nationals were mainly registered in Italy (236 346), Poland (210 402), Germany (111 650), the Czech Republic (110 712), Spain (82 726) and Portugal (37 849).

The data also show a substantial increase between 2011 and 2014 in the number of valid residence permits held by Ukrainian citizens in the EU Member States and Schengen area as a whole, corresponding to a growing interest among Ukrainians for the EU. Poland recorded the largest increase in valid residence permits held by Ukrainians.

**Table 1: All valid residence permits by reason, length of validity and citizenship (Ukrainians), 2011-2014**

EU Member States and Schengen area	2011	2012	2013	2014
European Union (28 countries)	756 289	782 712	849 946	NA
Belgium	3 613	3 745	3 850	3 853
Bulgaria	773	900	1 072	2 623
Czech Republic	119 083	103 165	107 254	110 712
Denmark	6 259	6 573	7 045	7 909
Germany	112 016	111 747	109 781	111 650
Estonia	5 909	6 025	5 994	6 649
Ireland	3 076	2 609	1 959	1 624
Greece	20 182	18 477	18 487	NA
Spain	76 180	78 214	80 866	82 726
France	7 478	8 009	8 524	9 294
Croatia	NA	NA	247	262
Italy	223 790	224 681	233 604	236 346
Cyprus	5 080	NA	2 775	2 842
Latvia	3 380	3 641	3 931	4 747
Lithuania	2 801	3 239	3 714	5 277
Luxembourg	387	499	513	562
Hungary	19 221	13 802	13 149	NA
Malta	215	235	395	570
Netherlands	2 898	2 796	2 651	NA
Austria	5 338	5 930	6 453	NA
Poland	76 162	122 274	175 656	210 402
Portugal	48 022	44 079	41 090	37 849
Romania	1 409	1 317	1 401	1 574
Slovenia	1 460	1 501	1 565	1 728
Slovakia	5 515	6 193	6 361	7 450

Finland	2 454	2 678	1 782	3 157
Sweden	2 946	3 267	3 531	3 465
United Kingdom	NA	6 311	6 296	6 569
Iceland	154	162	163	NA
Liechtenstein	NA	NA	48	46
Norway	1,706	1 803	1 845	1 821
Switzerland	NA	5 828	6 147	6 319

Source: Eurostat data. Last updated 09.10.15, extracted on 13.1.2015

The main pull factors for Ukrainians going to Poland, Italy, Germany, Sweden and Czech Republic are better working conditions compared with Ukraine and the Russian Federation. At the same time, factors attracting Ukrainian migrants to Italy, Spain or Portugal include higher wages, frequent regularisation programmes and the presence of a large diaspora.

As the data in Table 2 suggest, the number of Ukrainian citizens receiving valid residence permits in the EU increased from 166 950 in 2010 to more than 300 000 in 2014. Demand for residence permits in all other EU Member States apart from Poland was roughly stable in 2014: there was a decrease in the Czech Republic, Italy and UK; in contrast with growing interest in Germany, Latvia, Lithuania, Slovakia, Denmark, Sweden and Finland. The overall increase in the numbers of residence permit is overwhelmingly due to a sharp rise in the number of first permits issued in Poland. Indeed, Poland issued the highest number of residence permits in 2014 at 247 397, accounting for almost 82 % of the permits.

**Table 2: First residence permits by reason, length of validity and citizenship (Ukraine), 2009-2014**

EU Member States and Schengen area	2009	2010	2011	2012	2013	2014
European Union (28 countries)	87 740	166 950	125 754	160 222	236 472	302 772
Belgium	647	760	681	599	518	518
Bulgaria	250	249	297	398	476	598
Czech Republic	7 945	13 679	5 521	18 152	18 622	12 867
Denmark	3 174	2 604	2 287	2 181	2 341	2 603
Germany	3 294	3 288	3 179	4 548	4 838	6 163
Estonia	595	252	645	403	440	853
Ireland	378	211	211	208	252	265
Greece	798	964	821	742	885	836
Spain	5 112	3 857	4 413	3 687	3 637	3 595
France	1 008	1 067	1 152	1 241	1 429	1 577
Croatia	NA	NA	NA	NA	67	98
Italy	39 640	48 249	15 409	8 493	13 996	8 761
Cyprus	983	897	752	611	576	779
Latvia	378	267	466	733	678	1 316
Lithuania	366	222	409	773	873	2 053
Luxembourg	81	43	60	60	59	89
Hungary	2 829	2 681	2 104	1 119	930	1 164
Malta	63	55	58	78	126	306

Netherlands	505	508	603	632	879	938
Austria	700	832	903	1 053	903	936
Poland	8 447	76 485	75 168	104 730	171 769	247 397
Portugal	2 409	2 064	1 789	1 517	1 126	1 038
Romania	294	257	214	309	254	339
Slovenia	221	209	262	181	175	258
Slovakia	1 356	969	686	782	1 040	1 592
Finland	600	658	813	866	938	1 119
Sweden	1 908	1 348	1 459	1 412	1 192	1 322
United Kingdom	3 759	4 275	5 392	4 714	7 453	3 392
Iceland	24	20	31	29	32	NA
Liechtenstein	NA	NA	NA	NA	19	14
Norway	822	687	873	778	787	840
Switzerland	NA	NA	NA	1 133	1 499	743

*Source: Eurostat data. Last updated 12.10.15, extracted on 13.10.2015*

### *The Polish-Ukrainian land border and local border traffic agreements*

Regular passenger flows at EU's eastern land border with Ukraine tend to be fairly large, despite the current visa obligation. Poland has a specific role due to its geographical position and registers many Ukrainians going to Poland for shopping on daytrips. According to Frontex, there were over 4.7 million border crossings recorded in the first half of 2015 at the border between Poland and Ukraine (on entry to Poland). The Polish-Ukrainian border section remained by far the busiest section of the EU eastern land border, with an increase of 15.5 % during January-June 2015 compared with the first half of 2014. Most Ukrainians crossing the border do so in order to shop in Poland and stayed there for up to a day. The main flows of travellers come from towns located up to 30 km from the border.

Ukraine has concluded separate local border traffic agreements (LBTAs) with Poland, Slovakia and Hungary that lay down simplified border crossing procedures for residents in the border area. LBTAs are primarily intended to increase cross-border trade, social and cultural exchanges and regional cooperation.

### *Visa applications*

On short-stay visas, the Commission has data from the Member States on issuing and refusal rates. Table 3 below shows a 12 % decrease in visa applications by Ukrainian citizens in 2014 compared with 2013. 1.35 million C visas were issued to Ukrainian citizens in 2014 (compared with roughly 1.54 million in 2013).

In 2014 the 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 proportion of multiple entry visas (MEVs) issued to Ukrainian nationals during 2014 increased to 52.4 % (compared with 39 % in 2013). This is likely a direct result of the implementation of the provisions introduced by the upgraded visa facilitation agreement with Ukraine since 1 July 2013, which limited the discretion of Member State consuls when issuing MEVs for the categories of Ukrainian visa applicants covered by the facilitations. Half

of all MEVs issued to Ukrainian nationals in 2014 (708 826) were delivered by Poland (368 515) followed by Hungary (65 665), Greece (52 189), Germany (39 338), Slovakia (35 251) and Lithuania (30 746).

The average visa refusal rate for short-stay visa applications submitted by Ukrainian nationals in 2013 was 1.70 %, while in 2014 the average refusal rate was 2 %.

The consular authorities of Member States have differing perceptions of irregular migration risks when it comes to issuing short-stay visas to Ukrainians. Refusal rates differ among Member States, ranging in 2014 from 4.6 % for Sweden to just 0.6 % for Lithuania.

These differing perceptions of the irregular migration risks are likely to remain even after possible visa liberalisation and will be driven by similar considerations i.e. risk of overstay or abuse of visa-free travel to engage in illegal work.

**Table 3: Applications for short-stay and multiple entry Schengen visas in Ukraine, 2013-2014 (countries with consular presence in Ukraine)**

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%	803	9.5%	-7.5%	-10.8%
Czech Republic	79,343	78,197	14,096	18.0%	1,092	1.4%	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%	327	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%	5,005	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%	1,832	1.3%	-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%
Lithuania	30,495	29,546	18,568	62.8%	350	1.1%	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	3.1%	22,303	21,127	14,395	68.1%	955	4.3%	-17.6%	-19.2%
Norway	7,179	7,003	1,666	23.8%	176	2.5%	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	1.8%	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	0.5%	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	0.8%	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	2.4%	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	0.5%	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	2.4%	9,325	8,142	4,698	57.7%	426	4.6%	2.1%	-6.8%
Switzerland	13,083	12,861	5,873	45.7%	213	1.6%	10,231	9,763	4,797	49.1%	467	4.6%	-21.8%	-24.1%
<b>Total</b>	<b>1,587,223</b>	<b>1,534,972</b>	<b>598,364</b>	<b>39.0%</b>	<b>27,165</b>	<b>1.7%</b>	<b>1,387,086</b>	<b>1,351,757</b>	<b>708,826</b>	<b>52.4%</b>	<b>27,273</b>	<b>2.0%</b>	<b>-12.6%</b>	<b>-11.9%</b>

*Source: European Commission, Directorate-General for Migration and Home Affairs. October 2015*

According to experts at the EU institutions and border agencies of the neighbouring countries, at present, the migration situation at the EU's common border with Ukraine is considered stable and under control.

It is not possible to measure the extent to which the visa requirements have deterred Ukrainians from travelling to the EU. However, it is reasonable to assume that lifting visa requirements for Ukrainians would increase the likelihood of them leaving their home country to travel to the EU. However the decision of Ukrainians whether or not to travel to the EU will also depend to a large extent on their financial means.

Abolishing the visa requirement would also be expected to result in increased circularity in migratory flows between Ukraine and the Schengen area. This in turn would strengthen people-to-people contacts.

### **2.1.3. Irregular migration trends**

#### ***Refusals of entry at the border***

In 2014, Ukrainian nationals ranked second (after Morocco and followed by Albanians) in being refused entry at the EU's external borders.

The number of Ukrainians refused entry decreased from 2012 to 2014 (see the Eurostat indicators in Table 4). 16 150 refusals of entry were issued to Ukrainians in 2014, a decrease of roughly 1 000 cases compared with 2013. However, provisional data from Frontex indicates that in 2015 the number of refusals of entry issued to Ukrainians has increased and was mostly concentrated on the land border with Poland.

Already in 2014, most of refusals (almost 70 %) occurred at the Polish land border. Hungary and Romania issued the second and third largest number of refusals of entry to Ukrainians nationals (2 040 and 855 refusals respectively).

**Table 4: Ukrainian citizens refused entry at the EU's external borders 2011-2014**

EU Member States and Schengen area	2011	2012	2013	2014
European Union (28 countries)	16 440	18 655	17 095	16 150
Belgium	15	25	25	25
Bulgaria	65	185	130	50
Czech Republic	15	10	10	10
Denmark	0	5	0	10
Germany	120	135	150	165
Estonia	30	35	30	45
Ireland	50	30	30	75
Greece	35	60	55	60
Spain	20	30	15	10
France	40	40	35	45
Croatia	NA	NA	220	185
Italy	75	60	125	150
Cyprus	25	15	20	50
Latvia	45	70	65	50
Lithuania	60	55	60	70
Luxembourg	0	0	0	0
Hungary	4 560	2 985	2 190	2 040
Malta	5	0	0	0
Netherlands	70	55	50	45
Austria	15	0	5	5
Poland	9 115	12 555	12 060	11 185
Portugal	5	5	5	10
Romania	1 125	1 320	1 000	855



Slovenia	100	125	80	25
Slovakia	550	530	395	410
Finland	15	20	25	30
Sweden	0	0	0	0
United Kingdom	300	305	295	535
Iceland	NA	NA	NA	NA
Liechtenstein	0	0	0	0
Norway	0	0	0	10
Switzerland	10	25	25	30

*Source: Eurostat data. Last updated 20.08.2015, extracted on 13.10.2015*

A large proportion of the refusals of entry into the EU and Schengen area are issued to Ukrainian nationals were due to them not holding valid visa or residence permits or because they did not have the appropriate documentation to justify the purpose and conditions of stay.

Ukrainian nationals are prominent among other nationalities using of false documents to enter the EU: 981 Ukrainians were identified as using falsified documents at the EU and Schengen border in 2014 and 516 in the first half of 2015. Most cases were detected exiting Ukraine at its land borders with Poland and Hungary. In most cases, those caught had counterfeit border crossing stamps in their passports, typically to fabricate their travel history and extend their periods of stay. People do this to avoid being caught overstaying, which usually has quite negative consequences for the migrant in question i.e. removal and an entry ban. False border stamps are intended to show that the person has exited the Schengen area and give the impression that the person is now re-entering.

The visa information system recently launched in Ukraine (as of 23 June 2015) should improve the management of visa issues in the long-term.

### ***Border management***

Compared with nationals of countries in the western Balkans prior to visa liberalisation, would-be labour migrants from Ukraine have fewer incentives to try to cross borders illegally. This is because Ukrainian nationals have sufficient legal travel channels for entering 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.

Indeed, despite rapid political and economic changes resulting from the drawn-out conflict in the east of Ukraine, the figures show few illegal border crossings with the purpose of irregular migration. Frontex reports that illegal border crossings are a marginal issue. In 2014, only 60 out of 154 cases of illegal crossings at border crossing points involving Ukrainian nationals were linked to irregular migration. The number of cases is negligible given the size of Ukraine's population (roughly 45 million) and the length of its borders with the EU.

Ukraine has been able to keep border surveillance on migratory issues at a sufficient level despite the crisis. EUBAM had found that although Ukraine still has to make progress on capacity building, it has improved operational capacities at its borders, particularly at the border with Moldova where EUBAM is actively involved in bringing the border protection

system into line with EU standards. Ukraine also operates joint patrols with the border services of neighbouring EU member States and with Moldova and Belarus.

The ongoing conflict will continue to have a significant impact on the capacity of Ukraine to manage its borders adjacent to the conflict area, including flow of people and goods in and out of the country. Ukraine adopted legislation regulating entry into and exit from the territories not under Government control: access from/to the rest of Ukraine is allowed only through several check points on the basis of a special permit. Foreigners travelling from another country to Ukraine cannot enter legally the country through these check points. Based on the Minsk Package of 12 February 2015, Ukraine should re-establish control of the currently uncontrolled sections of its eastern border with the Russian Federation by the end of 2015. However, following the summit in Normandy format in Paris on 2 October 2015, it was publicly admitted that some provisions of the Minsk package of measures will not be possible to implement by that deadline.

### ***Detection of irregular migrants***

Ukrainians tend to travel to the EU and the Schengen area using legal and regular travel channels. Most Ukrainian nationals move to the EU and Schengen area by using to work and stay as regular migrants. "Illegal stays" cover two possible situations: cases where people have entered the country irregularly and are detected staying illegally; cases where people entered legally but overstayed the duration of their regular visa or residence permits. This second situation can also involve cases where Ukrainian citizens fail to have their first or successive residence permits renewed because they lose their jobs and might be requested to leave the EU country in which they are residing. Ukrainian nationals reluctant to return home have largely continued to use the same *modus operandi* over the past several years, i. e. abusing the legal entry channels. Therefore it is logical that the countries hosting the largest number of Ukrainian citizens with visa/temporary residence permits also detect the highest number of illegal stays.

Many Ukrainian migrants have been detected staying illegally in the EU and Schengen area. In 2014, Ukrainian nationals were the eighth most likely third country nationals to be detected staying illegally in the EU.

Eurostat data show that although the number of detections of Ukrainian illegal stayers was relatively stable between 2008 and 2010 at about 12 000 detections a year, in 2014 the figure jumped to 16 600, a 37 % rise on 2013. In 2014, Poland was the EU country where most of the Ukrainian illegal stayers were detected (7 455 persons) followed by Hungary (1 460), Germany (1 455), Sweden (where the 2014 figure of 1 225 showed a very high increase on 2013) and the Czech Republic (1 020). Based on the figures available so far for 2015, Frontex suggests that there may be a further increase in 2015.

Nevertheless, compared with the number of valid permits, the number of irregular migrants detected is not high. Furthermore, Frontex has also found that almost half of Ukrainian irregular migrants were identified when exiting the EU's external air and land borders (mainly at the Polish and Hungarian borders with Ukraine). In other words, those people were voluntarily returning home.

During the first half of 2015, there was a significant increase (85 %) in detections of Ukrainian illegal stayers exiting Poland to return to Ukraine compared with the same period

in 2014. This seems to indicate ongoing transit through Poland in both directions i.e. circular migratory pattern.

**Table 5: Third country nationals found to be present illegally (annual data for Ukrainians), 2009-2014**

EU Member States and Schengen area	2009	2010	2011	2012	2013	2014
European Union (28 countries)	11 220	10 875	11 880	12 555	12 060	16 600
Belgium	150	145	130	165	135	225
Bulgaria	10	10	15	10	5	5
Czech Republic	1 500	955	1 125	1 065	890	1 020
Denmark	10	5	5	0	5	0
Germany	1 155	1 070	1 095	1 280	1 265	1 455
Estonia	15	20	35	35	45	60
Ireland	60	35	15	35	25	5
Greece	150	105	100	75	95	115
Spain	1 060	955	840	640	380	590
France	355	290	375	310	340	565
Croatia	NA	NA	NA	NA	5	10
Italy	1 480	1 460	690	720	570	490
Cyprus	120	120	180	135	120	70
Latvia	15	10	5	5	10	5
Lithuania	130	125	90	70	75	75
Luxembourg	0	5	0	5	0	0
Hungary	1 000	1 605	1 095	1 310	1 370	1 460
Malta	10	5	20	10	5	5
Netherlands	125	140	105	NA	NA	NA
Austria	220	230	195	185	190	410
Poland	2 070	1 885	3 995	4 800	5 210	7 455
Portugal	520	470	425	480	280	235
Romania	105	85	120	75	70	55
Slovenia	5	145	105	20	10	10
Slovakia	410	365	370	335	355	500
Finland	25	25	30	40	35	70
Sweden	135	105	165	105	95	1 225
United Kingdom	385	510	555	640	490	490
Iceland	0	NA	NA	NA	NA	NA
Liechtenstein	0	0	0	0	0	0
Norway	10	NA	10	45	20	45
Switzerland	75	65	50	60	70	65

Source: Eurostat data. Last updated 20.08.15, extracted on 13.10.2015

#### **2.1.4. Possible consequences of a visa-free regime**

Simplified travel arrangements are expected to result in increased circularity in migratory flows between Ukraine and the EU. This in turn will strengthen people-to-people contacts. It

is likely that if a visa-free regime with the EU/Schengen area is implemented, flows of Ukrainian immigrants will become more self-regulated and more regularised.

Regarding labour migration, if there is no demand for specific jobs, Ukrainian nationals will either refrain from entering the EU countries and/or leave the EU area. In the latter case, they will leave safe in the knowledge that they can return if better economic opportunities arise.

Regarding irregular migration, Eurostat data shows roughly that the most popular countries for Ukrainian nationals' first place of residence also have the highest number of detections of irregular migration. The detection of irregular migrants has grown significantly since 2013. The number of irregular migrants detected is not very high at present compared with the number of valid residence permits, but the number of irregular migrants being detected is increasing. The most likely *modus operandi* will continue to be the use of false entry/exit stamps and abuse of legal forms of entry, although visa-free regime arrangements could limit this trend.

Nevertheless almost half of the detected overstayers were identified when exiting the EU's external air and land borders i.e. voluntarily returning home. Visa liberalisation will not reduce the effectiveness of measures in the EU and Ukraine to counter irregular migration.

Ukraine's successful implementation of local border traffic agreements with neighbouring EU countries has enabled many Ukrainian citizens to enjoy visa-free travel. The local border traffic agreements can be considered as a test run for visa liberalisation.

According to Passport Index,<sup>7</sup> Ukrainian citizens are already exempted from a short-stay visa obligation by 96 countries. The rules of stay for these visa-free regimes are largely being complied with.

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

In 2014, 14 060 Ukrainian nationals applied for asylum in EU Member States (14 415 in the Schengen area). According to Eurostat data asylum applications from Ukrainian citizens are widely distributed throughout Europe, with highest numbers of applicants registered in Germany (2 705) followed by Poland (2 275), Italy (2 080), France (1 425), Sweden (1 320), Spain (895), Belgium (570), the Czech Republic (515) and Austria (455). The most popular countries for asylum applications are also the most popular destination countries of Ukrainian migrants. With the exception of Poland, EU countries neighbouring Ukraine received very few applicants.

**Table 6: Asylum applicants by citizenship (Ukraine), 2008-2014**

EU Member States and Schengen area	2008	2009	2010	2011	2012	2013	2014
European Union (28 countries)	925	935	830	940	1 095	1 055	14 060
Belgium	65	35	65	75	90	65	570
Bulgaria	0	10	5	0	10	0	40

<sup>7</sup> [www.passportindex.org](http://www.passportindex.org)

Czech Republic	320	200	115	150	175	145	515
Denmark	5	5	5	20	15	40	135
Germany	45	85	70	55	135	150	2 705
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	1 425
Croatia	NA	NA	NA	NA	NA	0	10
Italy	15	10	20	20	35	35	2 080
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	35	265
Austria	140	120	80	65	80	60	455
Poland	40	35	45	65	70	45	2 275
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	1 320
United Kingdom	:	65	55	50	60	75	285
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
Total	975	995	855	980	1 165	1 120	14 415

Source: Eurostat data. Last updated 09.09.15, extracted on 13.10.2015.

Significant pull factors for Ukrainian nationals' choice of the destination country include the presence of an established Ukrainian diaspora or previous experience in the destination country for work or study, although there are also other factors that play a role. Therefore the presence of Ukrainian residents in different countries seems to be mirrored in the geographical distribution of Ukrainian applicants for asylum.

Certain characteristics of the asylum system in a particular EU country / Schengen state may also act as pull factors for people who are not in need of international protection, but who instead want to come to the EU and access other benefits linked to the asylum procedure.

The experience of EU countries with applicants from countries in the western Balkans has been that the combination of a lengthy procedure and cash benefits (which are substantial when compared with the usual level of income in the country of origin) may act as a pull

factor for large numbers of unfounded applications, including repeat applications, made by people with no valid grounds for claiming international protection.<sup>8</sup>

### ***2.2.1. Consequences of the Ukrainian crisis***

About 1 000 Ukrainians per year sought asylum in the EU and Schengen area between 2008 and 2013. Based on Eurostat statistical data, the highest number of applications were recorded in 2003 (5 100) and 2004 (4 655), coinciding with times of political change in the country. Even if Ukrainians are not primarily interested in seeking international protection and prefer using other channels to legalise their stay, the number of asylum applicants has grown substantially as a result of the ongoing crisis in the eastern part of the country.

Eurostat data show that the number of asylum applications by Ukrainian nationals rose significantly in 2014 in a large number of the EU and Schengen countries. In 2014 there were over 14 060 applications for asylum by Ukrainian nationals, compared with only 1 055 in 2013. The figure rose each month during the first 10 months of 2014, with the highest number of applicants (2 260) being recorded in October 2014.

Despite some countries reporting an increase in the number of refusals of entry, Ukrainians have been able to obtain a visa to travel legally to the EU and Schengen country of their choice and then apply for international protection.

It is also important to note that according to OCHA<sup>9</sup> reports, the total number of Ukrainians who entered in neighbouring countries stood at 1 123 800 as of 7 September 2015, with the majority going to the Russian Federation (911 500) and Belarus (126 450).

At the beginning of 2015 the number of Ukrainian applicants remained stable but still stood at about 1 500 applicants a month, in spite of hopes for a peaceful solution to the crisis in the east of the country after the signature of ceasefire agreements in September 2014 (the Minsk Protocol and Memorandum) and February 2015 (Minsk Package of Measures). The current number of applications is more than 15 times the average monthly level of applicants registered before the crisis. However, a decrease has been observed in the second half of 2015.

From the beginning of EU-level data collection in 2008 until 2013, recognition rates for Ukrainian applicants at first instance were rather low, ranging on average from 7 % to 14 % per year. In 2014, however, the rate rose to 18 %, as did the number of positive decisions. This reflected the changes in the situation in the country, as indicated by Eurostat data's hereafter in Table 7 below, which shows a total of 520 positive decisions at first instance in the EU out of the 2 860 applications received in 2014 (figures updated in October 2015). There is, however, a large disparity in the recognition rate at first instance between EU/Schengen States. Furthermore, according to information on safe countries of origin available, Ukraine is still on the safe country of origin lists of Bulgaria, Luxembourg and the UK. By contrast, France, Belgium and Switzerland have removed Ukraine from their lists.

---

<sup>8</sup> European Asylum Support Office (EASO) report: *Asylum applicants from the western Balkans: comparative analysis of trends, push-pull factors and responses*, update May 2015.

<sup>9</sup> The United Nations Office for the Coordination of Humanitarian Affairs.

**Table 7: First-instance decisions on applications by citizenship (Ukraine), 2012-2014 and positive decisions in 2014 per country**

EU Member States and Schengen area	2012	2013	2014	Positive decisions in 2014
European Union (28 countries)	880	855	2 860	520
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	30
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	35	160	5
Austria	80	45	NA	NA
Poland	50	45	655	15
Portugal	5	0	20	15
Romania	0	5	30	15
Slovenia	0	0	10	0
Slovakia	5	10	10	5
Finland	5	15	200	5
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	915	3 005	525

Source: Eurostat data. Last updated 18.09.2015, extracted on 13.10.2015

### ***2.2.2. Challenges following the Ukrainian crisis***

The determining factor behind the influx of people in need of asylum in the EU since March 2014 is the political and security situation in and around Ukraine (including Crimea<sup>10</sup>) and the developments in the conflict areas in eastern Ukraine (Donetsk and Luhansk regions in particular).

An agreement brokered during talks of the Trilateral Contact Group on 26 August 2015 has resulted in a noticeable de-escalation of hostilities in eastern Ukraine, where it was agreed to strictly stick to the ceasefire as of 1 September. This has brought an end to a period of intense movements by Ukrainians directly affected by the conflict. However, the situation remains tense and Ukraine needs to manage the mass exodus of civilians from the regions outside its control. As of 7 September 2015 there were 1 460 000 internally displaced persons (IDPs) registered by the Ukrainian Ministry of Social Policy.<sup>11</sup> It cannot be ruled out that some of these people might consider emigration and applying for asylum in the EU as an option in future if they do not receive enough state support with monthly targeted social assistance i.e. social protection for families and children, legal assistance, education, offers of employment, guaranteed pension funds. Ukraine is actively cooperating with many international organisations on international technical and humanitarian assistance for IDPs. Ukraine also adopted a special legislation on IDPs.

To note also that whereas the unstable security and political situation was initially the main reason given for asylum applications, this pattern has changed since mid-2014, with applicants now citing grounds not immediately related to the conflict. These include hostility faced by IDPs, military service and subsequent waves of mobilisation into the Ukrainian army.

As long as the situation in the east of the country remains unstable, we cannot rule out a rapid increase in asylum applications in EU neighbouring countries. Ukrainian citizens and a high number of IDPs are struggling to find proper accommodation and face an uncertain future.

### ***2.2.3. Possible consequences of a visa-free regime***

Most Ukrainian migrants have so far preferred to use legal migration channels rather than the asylum procedure. A visa-free regime may not radically change this trend.

We may see a decrease in the number of asylum applications from Ukrainian citizens, as a result of visa liberalisation, since they may see less need to use asylum as a means to stay in the EU or Schengen area.

Conversely, in the context of current flows, a visa-free regime could result in an increase of the number of asylum applicants because it would open up legal travel channels and make it easier to access to the asylum procedure.

---

<sup>10</sup> The Autonomous Republic of Crimea and the city of Sevastopol are not under the effective control of the Ukrainian authorities following their illegal annexation by the Russian Federation. The EU condemns and does not recognize the illegal annexation of Crimea and Sevastopol by the Russian Federation.

<sup>11</sup> According to UNHCR, as of 26 June 2015 there were 1 354 000 registered internally displaced persons in Ukraine.



In this context, the number of Ukrainian asylum applicants could also rise if Ukrainian overstayers lodge applications for international protection as a means of legalising their stay.

To counter this potential abuse of the asylum procedure, Ukraine must continue to implement the readmission agreement in place with the EU already since 2008 (including implementing protocols with EU Member States). At the most recent meeting of the Joint Readmission Committee on 6 May 2015, the Committee recommended that Ukraine further implement the agreement in an effective manner. As of November 2015, Ukraine has concluded 17 bilateral agreements on readmission with third countries.

The ongoing crisis in and around Ukraine will continue to be an important factor affecting population movements. So far, the conflict areas are limited to parts of two regions in eastern Ukraine, which has triggered only limited migration toward the EU in contrast with the scale of migration to the Russian Federation for instance. Should the crisis evolve in a way that would degrade the security situation in western regions of Ukraine, where the population has more ties with neighbouring EU countries, we could see significant population movements towards the EU.

The long-term challenges facing IDPs may also result in an increased flow of Ukrainians for which emigration and asylum application to the EU might be an option even if Ukraine is actively cooperating with international organisation to manage assistance for IDPs.

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

According to various assessments, the shadow economy in Ukraine has achieved a historic high, accounting for between 42 % and 60 % of Ukraine's GDP<sup>12</sup>, which means that the shadow economy and the State effectively exist in parallel. The shadow economy covers active illegal economic activities, VAT fraud, all kinds of smuggling and high-level corruption. Economic pressure from the conflict in eastern Ukraine continues to create demand for goods and sustain the already flourishing black market economy.

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

Ukrainian organised crime groups (OCGs) are active in a large number of EU Member States, as well as in countries neighbouring the EU such as Moldova, Norway, Serbia, Switzerland, the Russian Federation and Turkey. The spread of Ukrainian OCGs in the EU reflects their increasing international reach.

Such groups tend to be structured as small to medium sized semi-independent cells with links to broader networks. They use several types of transport, including private cars, taxis, minibuses and trains. The deliberately use of multiple means of transportation across several routes as an effective means of evading law enforcement.

Russian speaking OCGs, which include Ukrainians among their members invest mainly in construction, transportation and logistics, real estate, wholesale and retail trade, hotels, bars

---

<sup>12</sup> International Monetary Fund estimates that Ukraine's underground, and non-tax-paying economy accounted for 50 % of the GDP in 2014.

and restaurants, while also developing activities in cybercrime. Their activities in the legal economy are often aimed at laundering the proceeds of their criminal activities.<sup>13</sup>

Ukrainian motorcycle gangs are present in some EU Member States and are known to use violence as an integral part of their business strategy. Outlaw motorcycle gang members adopt a multi-crime approach.

Recent data on OCGs inside Ukraine is limited due to the crisis in and around Ukraine, which impedes data collection. Nevertheless, available resources show that the Donetsk, Crimea and Odessa regions have the highest criminality rates. The eastern Donbass 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 increasing since the 1990s. In view of the conflict, it is likely that criminal groups will expand their activities not only inside Ukraine but also in neighbouring countries. The use of the Russian language facilitates their cooperation with other groups from the region.

The general pattern of cross-border crime and irregular migration has not substantially changed: smuggling activities continue to take place at Ukraine's borders. The smuggling of goods and illegal border crossing remained key challenges. According to EUBAM, Ukraine's priorities for the period to come are to formalise practical cooperation between police and customs on information exchange and analysis, and to put in place integrated operational procedures on intelligence. To note that border control points have been connected to the Interpol databases.

In order to counter security threats, Ukraine aims to strengthen border infrastructure at its border with Russia. Ukraine may also create special customs police units for combating smuggling from Transnistria. Ukraine and Republic of Moldova continue in cooperation with EU Border Assistance Mission (EUBAM) enhancing the overall border and customs management capacities and their abilities to fight against cross border and organised crime and to approximate the standards of the border and law enforcement authorities to those of the EU.

Visa liberalisation may open up new opportunities for Ukrainian (or Ukraine based) OCGs. They will presumably adapt their methods to the new conditions created by visa liberalisation and operate with greater flexibility. However, removing the visa obligation for Ukrainians citizens would not have a major impact on organised crime activities in the EU, because most criminals already travel through the EU. It is therefore unlikely that visa liberalisation will result in drastic changes in the Ukrainian or EU criminal landscapes.

### **3.2. Trafficking in human beings: trends and possible consequences of 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 have fallen victim to Trafficking in Human Beings (THB) since 1991, making Ukraine one of the main countries of origin of trafficking

---

<sup>13</sup> Transcrime study: "From illegal markets to legitimate businesses: The portfolio of organised crime in Europe" March 2015.

in human beings in Europe. Economic hardships and unemployment have made the population more vulnerable especially in rural areas.

Ukraine is a source and a transit country for THB victims from some European countries (Bulgaria, Croatia, the Czech Republic, Hungary, Slovakia and Slovenia) towards western Europe (France, Germany, Italy, the Netherlands) the Baltic countries and Russia. The Russian Federation remains the top destination country for human trafficking from Ukraine, but EU is second on the list.

Most victims are used for forced labour and sexual exploitation in EU countries. Ukrainian OCGs involved in THB use residence permits or legal businesses owned in EU Member States to issue invitation letters for visas. Although there is not enough reliable information on the impact of the Ukrainian crisis on THB it can be assumed that OCGs are taking the increased number of vulnerable people as an opportunity.

Indeed, Ukraine may face a heightened risk of an increase in trafficking in human beings due to the high numbers of persons fleeing from the territories not under the effective control of the Government. This displaced population is deemed to be very vulnerable to intermediaries looking for potential victims. Through regular press monitoring and discussions with internally displaced persons, the International Organisation for Migration (IOM) identified the following trends by separatists in conflict-affected areas: kidnapping of women and girls who are then subjected to sexual exploitation and/or forced labour; forced recruitment of men and boys into the separatist groups for exploitation in conflict and forced labour. The IOM is helping the Ukrainian government to counter fraud in employment linked to THB.

We are likely to see an increase in THB from Ukraine to the EU as a result of the combination of the current crisis in the country and the increased freedom of movement under a visa-free regime.

To counter this, Ukraine has put together a comprehensive raft of measures to fight against THB: the law on the combat of human trafficking, the national strategy for human rights, the state targeted social programme combating human trafficking. Ukraine has also approved the concept for the State programme combating human trafficking until 2020. Ukraine aims to further improve the coordination between law enforcement agencies (police, border, migration, etc.) both inside the country and internationally to prevent, detect and stamp out crimes related to human trafficking.

### **3.3. Facilitation of irregular immigration: trends and possible consequences of visa-free travel**

#### *Document security*

Little information is available on the extent to which Ukrainians OCGs are involved in facilitating irregular migration to the EU, but this phenomenon remains a significant threat to the Ukraine's internal and border security. However, Ukrainian criminals use stolen, forged and counterfeit identity documents to facilitate the movement of irregular migrants. In some cases, Ukrainian nationals with a residence permit or dual nationality in an EU Member State have been known to help migrants travel to the EU by issuing them with invitations for work. Furthermore, false visa stickers for EU Member States and the Schengen area are produced in factories in Ukraine.

## *Migrant crisis*

Ukraine plays multiple roles as a country of destination and as a transit zone for illegal migrants heading for Europe.

The crisis in Syria has changed the structure and composition of migratory flows in Ukraine, with an increased number of migrants from Syria but also from Afghanistan, Iraq, Iran and Pakistan. Data from the Ukrainian Ministry of Foreign Affairs show that most asylum applicants in Ukraine in 2014 were Afghans (275) and Syrians (267). In 2014, the Ukrainian State Migration Service processed applications by 1 173 persons. Of these, 105 were granted refugee status and 222 were recognised as being in need of subsidiary protection. On irregular migration, the State Migration Service reports that 3 135 irregular migrants were detected in 2014, and 1 420 during the first quarter of 2015.

The conflict in eastern Ukraine could make the destabilised border regions more attractive as a transit area for migrants from eastern European, central Asian and ex-USSR countries. It is also possible that migrants wishing to reach the EU may increasingly use Ukraine as an alternative route to the harsher restrictions being put in place in some transit countries. European and western Balkans criminal groups currently active in illicit trafficking may change their focus to facilitating irregular immigration due to the high demand for such services. Ukrainian OCGs are already involved in smuggling migrants into the EU: we are seeing more reports of Ukrainian nationals acting as facilitators though there is no evidence of an organised network. In 2015 the Ukrainian government dismantled 16 criminal groups involved in moving people illegally across borders.

The increased freedom of movement of Ukrainian OCGs could lead to an increase in the smuggling of people towards Europe, even if the figures are not as high as for Turkey and the Balkans. Nevertheless, Ukraine is developing measures to counter the facilitation of irregular migration.

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

There is no evidence available to suggest that Ukrainian OCGs are involved in arms trafficking within the EU but violent OCGs could take advantage of the possible proliferation of weapons in Ukraine, resulting in weapons being smuggled into EU Member States by firearms traffickers. Given the conflict, access to weapons has likely become easier and cheaper but even if we can assume that weapons are diverted from the conflict zones it is not clear whether these firearms remain in the country or are trafficked to destination outside of Ukraine for criminal purposes, potentially presenting a threat to the EU with border traffic increases.

Regarding drugs, 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, Bulgaria and Romania. A rising trend can be seen in significant seizures of heroin at the Ukrainian borders. The Black Sea port in Odessa is known as a hub for heroin trafficking to the EU.

In this context, a visa-free regime may increase drug flows and make it harder to detect them, especially when drugs are transported by rail or air: OCGs may also use people travelling from Ukraine to the EU as drug couriers.

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

Ukraine is a country of origin and transit country for counterfeit alcohol, cheap cigarettes, medicines and pesticides. Cigarettes are one of the most frequently smuggled goods through Ukraine's borders. The scale of the trafficking to the EU is significant: Ukraine plays a central role in supplying the EU markets with counterfeit tobacco products.

The scale of the smuggling is difficult to assess given the lack of detailed data. However it might be assessed that although OCGs are often involved, individuals with no prior criminal background may also get involved in the trafficking and take advantage of a visa-free regime.

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

Available data suggest that Ukrainian OCGs involved in motor vehicle crime cooperate with Lithuanian, Moldovan and Russian networks. Other nationals involved in this criminal activity include Bulgarians and Belarusians. Ukrainian groups are also active in northern European countries, smuggling large amounts of stolen goods through central European countries. Such activities could develop with increased movements under a visa-free regime.

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

Ukraine is a victim of several types of financial crime. As Ukraine's banking system is less robust, it is used for money laundering, particularly of the proceeds of offences such as grand larceny, illegal gambling, abuse of online banking and VAT fraud. The proceeds of crime are laundered by the same groups that commit the initial offences. No specialised OCGs providing money laundering services have been detected although Ukrainian nationals with EU residence permits are also involved in money laundering. Currently there are no grounds to believe that a visa-free regime would affect this type of criminal activity.

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

There is no official information to suggest that there are any foreign terrorist fighters from the EU or abroad in Ukraine, that foreign terrorist fighters transit Ukraine heading for conflict zones such as Syria and Iraq, or that terrorism is financed from inside the country. The preferred route for foreign terrorist fighters from the EU to reach conflict areas is through central European countries to Turkey. However, increased law enforcement controls on these routes are making travel more difficult for foreign terrorist fighters.

As a result, OCGs may consider alternate routes and there is concern that Ukraine may be used as an indirect route to middle eastern conflict zones. Some evidence suggests that Ukrainian groups are already involved in the smuggling of Syrian citizens into the EU, so it is possible to assume that irregular migration channels could be also used to facilitate the movement of foreign terrorist fighters from the EU to conflict zones.

#### **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 the EU remains an attractive destination for migrants from Ukraine with potential migratory and also security challenges to be monitored.

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

- a) Ukrainians nationals are widespread across Europe, with roughly 850 000 nationals legally residing in the EU in 2013. The most recent trends show a growing interest for migration towards the EU. Regular passenger and circular migration flows between the EU and Ukraine will increase significantly in the coming years due to rising regional and global mobility. Visa liberalisation for Ukraine will reduce the barriers to travel to the EU and will encourage regular temporary and circular migration, strengthening people-to-people contacts.
- b) Given the current economic situation in Ukraine, the demand for residence in EU Member States will remain robust and EU will continue to be attractive for Ukrainian would-be labour migrants.
- c) Ukrainian nationals tend to use legal travel channels. The level of irregular migration is not high compared with the number of valid permits, and almost half of all cases were identified when exiting the EU's external air and land borders i.e. voluntarily returning home. Still, the number of irregular migrants being detected is increasing, Ukrainian nationals' most likely *modus operandi* will continue to be the abuse of legal forms of entry to the EU and Schengen area, although a visa-free regime could limit this trend. However, the successful implementation of local border traffic agreements with EU Member States are already enabling many Ukrainian citizens to travel visa-free and as such can be seen as a test run for visa liberalisation.
- d) The number of asylum applications from Ukraine will probably decrease as a result of visa liberalisation as asylum will no longer be seen as one of the best ways of entering EU Member States and the Schengen area. On the other hand, it is possible that a visa-free regime could increase the number of asylum applicants because it would open up legal travel channels and make access to the asylum procedure easier. Applying for asylum could also be used as a means of legalising overstays and avoiding being sent home.
- e) As long as the situation in eastern Ukraine remains unstable, the EU Member States and the Schengen area will remain an option for asylum seekers. Rapid increases of asylum applications at the EU's borders with Ukraine cannot be ruled out if there is an important escalation of the conflict in eastern Ukraine.
- f) Population movements will continue to be affected by the ongoing crisis in eastern Ukraine. The challenges facing IDPs might also result in an increased flow of Ukrainians emigrating to the EU or seeking asylum there. Ukraine is actively cooperating with international organisations to manage the assistance for IDPs.

##### ***Possible mitigation measures to be undertaken by the EU Member States***

The EU Member States could consider taking the following actions to reduce migratory risks:

- Work more actively to establish circular/temporary/seasonal migration schemes with the Ukrainian government to facilitate legal migration of qualified Ukrainian nationals to EU Member States;
- Work to establish of legal channels for irregular migrants from Ukraine to regularise their status, provided they qualify and meet the needs of EU Member States' labour markets;
- Provide opportunities for university graduates from Ukraine who have graduated in an EU Member States to extend their stay in order to look for work;
- Work with the Ukrainian government to better protect the rights of Ukrainian labour migrants in the EU Member States and to establish bilateral social benefit transfer systems;
- Revise the approach to processing asylum applications, especially in those EU Member States and Schengen associated States where the numbers of asylum claims are particularly high, to limit abuse of asylum benefits. Further improve the implementation of the readmission agreement EU-Ukraine at the level of each Member State.

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

- a) The increased spread of Ukrainian organised crime in the EU underlines a trend towards the internationalisation of Ukrainian OCGs. Such groups have already found ways to circumvent travel restrictions and are already present in several EU Member States. The removal of the visa obligation for Ukrainians citizens would not have a major impact on organised crime in the EU. Measures are in place to limit and subsequently tackle possible impacts.
- b) A visa-free regime for Ukrainian citizens would not significantly affect the effectiveness of customs and border control procedures. However, there are concerns that visa liberalisation with Ukraine may facilitate criminal activities, especially trafficking in human beings and the smuggling of goods from Ukraine to EU Member States.
- c) Ukraine is a platform for drug trafficking and plays a central role in supplying EU markets with counterfeit tobacco products. A visa-free regime may create additional opportunities for Ukrainian citizens to take part in illegal activities associated with tobacco and drug smuggling.
- d) Ukraine plays multiple roles as a country of destination, and to a lesser extent, as a transit zone for irregular migrants heading for Europe. OCGs will probably have less opportunity to facilitate the irregular migration of Ukrainian nationals into the EU, compelling criminals to seek new opportunities such as helping Ukrainians to arrange long term stays in the EU, or by facilitating the irregular migration of other nationalities or ethnic minorities from neighbourhood countries in eastern Europe or migrants from central Asia or the Middle-East. Ukraine is already developing measures to counter irregular migration services.
- e) Despite the improved security measures in place, eastern regions of Ukraine remain high risk zones for the smuggling of goods in and out of the country. The current instability in eastern Ukraine opens the door to significant growth in activities by Ukrainian and other Russian-speaking OCGs activities in the region, posing a threat to the EU. For example, OCGs may use the conflict in eastern Ukraine as a source for firearms, which may be trafficked to the EU in the future.

- f) Under the Minsk Package of 12 February 2015, Ukraine is supposed to re-establish control of the currently uncontrolled sections of eastern border with the Russian Federation by the end of 2015. However, following the summit in Normandy format in Paris on 2 October 2015, it was publicly admitted that some provisions of the Minsk package of measures will not be possible to implement by that deadline. In order to counter security threats, Ukraine aims to strengthen border infrastructure at the border with Russia. Ukraine regulated entry into and exit from the territories not under Government control. Ukraine may also create special customs police for combating smuggling from Transnistria. In addition, the EU Border Assistance Mission (EUBAM) will continue enhancing the overall border and customs management capacities and the abilities of Moldova and Ukraine to fight against cross border and organised crime and to approximate the standards of the border and law enforcement authorities to those of the EU. These measures will help to address the above mentioned concerns over the security situation, trafficking in human beings and the smuggling of people and goods.

***Possible mitigation measures to be undertaken by the EU Member States***

The EU Member States could consider taking the following actions to reduce the possible security impacts of visa free regime with Ukraine:

- Conclude bilateral agreements on cooperation in the fight against organised crime and establish relevant contact points, and where applicable deploy police attachés;
- Invite Ukrainian counterparts to participate in joint investigation groups (Ukraine-EU Member States), to exchange expertise and information on the *modus operandi* of Ukrainian criminals;
- Further develop existing risk analysis cooperation with EU Member States to combat irregular migration;
- Speed up conclusion of an agreement with Europol to improve Ukrainian's tools for crime analysis and to facilitate information exchanges.