



New
Direction

VISA FREEDOM IN UKRAINE AND THE ENSUING EFFECTS OF THIS VISA FREEDOM

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ARGUMENTS PRO AND CONTRA THE INTRODUCTION OF VISA FREE TRAVEL TO THE EU FOR UKRAINIAN CITIZENS IN THE PAST

On 17 May 2017, the European Parliament and the Council of the EU approved visa free travel for Ukrainian citizens to the EU¹ and on 11 June 2017, the respective decision has entered into legal effect.² The decision had been delayed for a considerable period of time due to doubts as to Ukraine's commitment to address the fight against corruption as a matter of priority and as to its border management and anti-discrimination practices.³

The Partnership and Cooperation Agreement of 1994 establishing a partnership between the European Communities (ECs) and their Member States, of the one part, and Ukraine, of the other part,⁴ which after the end of the Soviet Union and the reappearance of independent Ukraine opened up direct cooperation between Ukraine and the ECs, did not yet address the issue of abolishment of visa obligations. yet.

Things did also not change with the EU Action Plan on Justice and Home Affairs (JHA) in Ukraine of 23 November 2001.⁵ On 11/12 April 2000, the Partnership and Cooperation Agreement Subcommittee on JHA matters had met in Brussels and, based on the Ukrainian side's suggestion to conclude a bilateral agreement on organized crime, opened-up the doors at the EU/Ukraine Summit of 15 September 2000 for the elaboration of a more comprehensive plan. Prepared under the auspices of the working party on Central Asia and Eastern Europe, the result was the EU Action Plan on JHA in Ukraine. Besides

mentioning general issues of human rights, rule of law and transparency, the Action Plan laid down as its challenges and strategic aims, in particular, to

- “ensure the ratification and full implementation of the international instruments of particular importance in the field of combating illegal migration, organised crime and corruption;
- improve the management of migration issues and use appropriate measures in the fields of border management, readmission and visa, in order to avoid that the Ukraine territory is increasingly used for illegal immigration and transit of illegal migrants into the territory of the European Union;
- combat cross-border organised crime in particular trafficking in human beings, drugs, stolen vehicles, high taxed goods and nuclear material, as well as money laundering ...”⁶

The Action Plan identified as areas of cooperation next to migration and asylum, border management and visa.⁷ All areas of cooperation in this chapter aimed at assisting Ukraine in setting up an effective border regime preventing illegal migration and detecting false travel and identity documents at a border which soon later, after the Eastern enlargement of the EU of 1 May 2004, would become a border between EU member states and Ukraine. As for visa, the Action Plan envisaged “Continuation

1 Regulation (EU) 2017/850 of the European Parliament and of the Council of 17 May 2017 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (Ukraine). OJ L 133, 22.5.2017, p 1.

2 Art 2 of the Regulation (fn 1).

3 See eg Euronews, Ukraine's push for EU visa-free travel, 22/08/2011. Available at: <http://www.euronews.com/2011/08/22/ukraine-s-push-for-eu-visa-free-travel> (13062018) and A. Rettmann, Ukraine moves a step closer to EU visa-free travel, euobserver 17/03/2017. Available at: <https://euobserver.com/justice/132728> (13062018).

4 OJ L 49, 19.2.1998, p 3.

5 EU Council 14228/01. Available at: <http://data.consilium.europa.eu/doc/document/ST-14228-2001-INIT/en/pdf> (13062018).

6 (fn 5), p 3 paras 5 – 7.

7 (fn 5), chapter III.2.

of a dialogue on visa issues in order to prevent illegal migration flows into the European Union and Ukraine". The Action Plan was corrected about two weeks later, on 4 December 2001, so that instead of the quoted words above it should simply read "Continuation of a dialogue on visa issues".⁸ This version of the Action Plan was published in the EU Official Journal in 2003.⁹

The European Council of Sevilla of 21 – 22 June 2002¹⁰ and the Council of the EU of 15 October 2002¹¹ and 18 November 2002¹² also focused on issues, which by their very nature, at least at first glance, seemed to call for a restrictive visa and border policy. The Council wanted to integrate the management of migration, including the prevention and combating of illegal migration into the EU's relations with Ukraine and other partner countries. Further to that, the combating of trafficking in human beings was addressed. The first EU-Ukraine JHA Ministerial Troika, which met slightly later, assigned priority in cooperation on JHA to readmission and migration, border management, money laundering, trafficking in human beings, drugs, corruption, preventing and fighting sexual exploitation of women, children and child pornography and, thus, addressed the main issues that prevented the EU from abolition of visa requirements for Ukrainian citizens who wanted to enter the territory of a Member State of the EU.

The Proposal of the Commission of 16 December 2004 for a Council Decision on the position to be adopted by the Communities and its Member States within the Cooperation Council established by the EU – Ukraine Partnership and Cooperation Agreement with

regard to the adoption of a Recommendation on the implementation of the EU-Ukraine Action Plan¹³ sets an obvious new tone in the EU's approach. Whereas the proposal's chapter 2.6 ("People to people contacts") just deals with "cross-border and regional level co-operation",¹⁴ facilitating general cross-border and regional cooperation with the neighbouring new EU member states, chapter 2.4 includes the following phrase:

*"In the context of EU enlargement and the European Neighbourhood Policy, a constructive dialogue on visa facilitation between the EU and Ukraine will be established, with a view to preparing for future negotiations on a visa-facilitation agreement, taking account of the need for progress on the ongoing negotiations for an EC-Ukraine readmission agreement."*¹⁵

The EU Commission's proposal, thus, showed its readiness for a deal "readmission agreement" in exchange for a "visa-facilitation agreement". As a matter of fact, on 18 June 2007 the Agreement between the European Community (EC/now EU) and Ukraine on the readmission of persons was concluded.¹⁶ On the same day, the Agreement between the EC (now EU) and Ukraine on the facilitation of the issuance of visas was signed.¹⁷ The preamble of the latter agreement moved the visa issue into the bilateral context of people to people contacts. But before both agreements could happen, the Ukrainian President Yushchenko unilaterally by decree of 26 July 2005 abolished the visa obligation for EU citizens and citizens of Switzerland and



Liechtenstein for travels to Ukraine and for transits through the territory of Ukraine.¹⁸ Visa free stays in Ukraine for these persons have been limited to 90 days. The visa free regime for EU citizens entered into legal force on 1 September 2005, but was in fact already introduced on 1 May 2005. The conditions laid down by the visa facilitation agreement for Ukrainian citizens would have applied by reciprocity to EU citizens if the unilateral exemption from visa obligations by Ukraine had been cancelled. Such cancellation, however, did not take place.

The preamble of the visa facilitation agreement, which did not apply to the United Kingdom, the Republic of Ireland and Denmark, on the one hand, expressed the expectation that "visa facilitation should not lead to illegal migration" and special attention should be given to security and readmission, and on the other hand, recognized "the introduction of a visa free travel regime for the citizens of Ukraine as a long term perspective". The agreement provided for a long list of types of persons, enumerated in art 4 para 1, for which a comparably simple request containing comparably few data, specified in art 4 para 2, was sufficient for obtaining a visa for a stay of up to 90 days per period of 180 days (art 1 para 1). All types of visa were to be issued in a simplified procedure (art 4 para 3). Further to that, the agreement determined

the visa fee including a waiver for a number of persons (art 6), limited the length of procedures for processing visa applications (art 7) and provided inter alia for the extension of visa in exceptional circumstances (art 9).

The visa facilitation agreement was amended on 23 July 2012.¹⁹ Among other provisions, the amendment enlarged the number of types of persons who could profit from generalized requests specific for their type. At the same time, the amended agreement limited the freedom of Ukraine to withdraw the unilateral exemption from visa obligations for EU citizens by adding a new first subparagraph in art 1 para 2 of the original agreement specifying that Ukraine "may only reintroduce the visa requirement for citizens or certain categories of citizens of all Member States and not for citizens or certain categories of citizens of individual Member States."

In parallel to the visa facilitation agreement and after the formal launch of the EU-Ukraine Visa Liberalisation Dialogue on 29 October 2008²⁰ and presentation of a Visa Liberalisation Action Plan (VLAP) to Ukraine on 22 November 2010, the EU Commission monitored the implementation of the EU/ Ukraine Action plan by six progress reports dating from the years 2011 to 2015.

8 EU Council 14228/01 COR 1. Available at: <http://data.consilium.europa.eu/doc/document/ST-14228-2001-COR-1/en/pdf> (13062018).

9 2003/C 77/01, 29.3.2003.

10 See numbers 30 – 36 of the Presidency Conclusions European Council 21 and 22 June 2002. Attached to the European Commission Press Release Database available at: http://europa.eu/rapid/press-release_DOC-02-13_en.htm (130618). In number 33, the European Council, in particular, "urges that any future cooperation, association or equivalent agreement which the European Union or the European Community concluded with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration."

11 See the "Plan for the Management of the External Borders and Plan for the Fight against Illegal Immigration and Trafficking in Human Beings" adopted on the 2455th Council Meeting Justice, Home Affairs and Civic Protection in Luxembourg, 14/15 October 2002, C/02/308, p 13. Attached to the European Commission Press Release Database available at: http://europa.eu/rapid/press-release_PRES-02-308_en.htm (020618).

12 See, in particular, number 5 of "New Neighbours Initiative – Council conclusions" and numbers 5 and 8 of "Intensified cooperation and the management of migration flows with third countries – Council conclusions" adopted on the 2463rd Council Meeting General Affairs in Brussels, 18 November 2002, C/02/350, pp II, V, VII. Attached to the European Commission Press Release Database available at: http://europa.eu/rapid/press-release_PRES-02-350_en.htm (020618).

13 COM (2004) 791 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004PC0791&rid=3> (13062018) = 15991/04. Available at: <http://data.consilium.europa.eu/doc/document/ST-15991-2004-INIT/en/pdf> (13062018).

14 (fn 13), p 33 para (70).

15 (fn 13), p 26.

16 OJ L 332, 18.12.2007, p 48.

17 OJ L 332, 18.12.2007, p 68.

18 N 1131/2005. Available at: http://search.ligazakon.ua/1_doc2.nsf/link1/U1131_05.html (010618).

19 Agreement between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas. OJ L 168, 20.6.2013, p 11.

20 See Council of the EU, EU-Ukraine Visa Dialogue – Action Plan on Visa Liberalisation, 17883/10, p 2. Available at: <http://visa-free-europe.eu/wp-content/uploads/2012/03/EU-Ukraine-Action-Plan.pdf>, (130618).

The VLAP addressed document security, including biometrics, illegal migration, including readmission, public order and security, as well as external relations. It required as conditions for a visa-free regime for Ukrainian citizens, to be effectively put in place, “significant improvements in the level of document security, including biometrics; strengthening of border and migration management and asylum policy; reforms and cooperation in the area of public order and security; addressing external relations issues (including human rights and fundamental freedoms) linked to the movement of persons.”²¹ Furthermore, the EU demanded full and effective implementation of the EU-Ukraine readmission agreement.

At its initial assessment of the visa liberalization process the EU took note of a constant visa and entry refusal rate of Ukrainians at the EU’s external borders in 2008 and 2009 of below 5%, which meant about 5,000 persons. Also the number of apprehended illegally residing Ukrainian citizens had decreased from 22,000 persons in 2006 to 12,250 persons in 2009.²² Apart from following the future development of these data, the VLAP recommended to the EU Commission to assess possible migratory and security impacts of future visa liberalization for Ukrainian citizens travelling to the EU.²³ From the very beginning, the VLAP provided the vision of an amendment of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement²⁴ for Ukrainian holders of biometric passports issued in accordance with ICAO standards in case of a positive finding by the EU Commission.

The VLAP for Ukraine identified four blocks of topics as its elements and asked for each of them in a first phase to adopt a specific legislative and policy framework and in a second phase to provide for effective implementation. This included, in particular, a legislative framework for machine- readable biometric

passports and the gradual roll-out of biometric international passports (Block 1: Documentary security, including biometrics), the adoption of a law-enforcement programme on State Border Development and Reconstruction, of a National Integrated Border Management Strategy and Action Plan and respective training measures, side by side with effective implementation of the Law on Border Control 2009²⁵ and other implementation measures (Block 2: Illegal immigration, including readmission; border management, migration management and asylum policy). Block 3 (Public order and security) addressed preventing and fighting organized crime, terrorism and corruption by comprehensive strategies and legislation to be implemented, for example, through a State Programme for Combating Trafficking in Human Beings.²⁶ The same block required judicial cooperation in criminal matters within the Council of Europe and Eurojust, law enforcement cooperation by setting up a common database with access in the entire territory of Ukraine and asking for increased effectivity of cross-border cooperation, inter alia of border guards and customs officers. Last, but not least, the block dealt with data protection. Block 4 (External relations and fundamental rights) focused on freedom of movement within Ukraine asking for a revision of the legal and regulatory framework on registration and de-registration of persons in Ukraine and their non-discriminatory free movement, on conditions and procedures for the issue of identity documents and on citizens’ rights including protection of minorities based on UN, Council of Europe and OSCE/ODIHR instruments or specific recommendations. For the second phase, this block particularly asked for combating racism, xenophobia, anti-semitism and other forms of discrimination.²⁷

The First Progress Report of the Implementation by Ukraine of the Action Plan on Visa Liberalisation followed the development of legislation and implementation block for block and drew the overall conclusion that “work is still under way on several

pieces of draft legislation, strategies and action plans. The work of the Ukrainian Government to date shows that the Action Plan on Visa Liberalisation is an important tool for advancing reforms in the JHA area and beyond.”²⁸

The Second Progress Report on the Implementation by Ukraine of the Action Plan on Visa Liberalisation assessed that “limited progress was achieved in the area of document security”, but that “in the area of border management, all the necessary laws are in place along with the institutional framework, including provision of training and ethical codes to fight corruption. More efforts are needed to strengthen inter-agency cooperation in the area of border management.”²⁹ On the side of legislation a certain progress was found by the Staff Document with regard to

combating organized crime and trafficking in human beings, but limited as to the fight against corruption.³⁰ A need in significant improvement was, for example, assessed regarding law enforcement cooperation and data protection.³¹ Particular headache caused shortcomings in the area of combating corruption and led to not less than 13 recommendations which addressed just this area.³² Besides, further legislative work was required in order to insert effective provisions on human rights and fundamental freedoms into the Ukrainian legislation and to ensure

respect for the right to fair, impartial and transparent legal proceedings.³³ The overall assessment read even less optimistic than those of the first progress report.³⁴



These conclusions in a condensed manner became also part of the European Neighbourhood Policy (ENP) Package Country Progress Report – Ukraine, which assessed the first year of implementation of the new ENP, which was adopted in 2011 and flanked the process of negotiations of an Association Agreement, including a Deep and Comprehensive Free Trade Area between the EU and Ukraine, having taken place in the years 2007 - 2011.³⁵

The Third Report on the Implementation by Ukraine of the Action Plan on Visa

Liberalisation, submitted as a report of the EU Commission to the EU Council and EU Parliament, attested Ukraine substantial progress in all four blocks of the VLAP.³⁶ The report identified a need in further improvements as to anti-corruption policy, asked for agreements with Europol and Eurojust, saw minor issues as to border management and asylum and considered anti-discrimination legislation a step in the right direction, however not yet comprehensive, in particular, as to Roma and as to the registration and de-registration process of vulnerable groups.³⁷

21 (fn 20), p 3.

22 (fn 20), p 3.

23 (fn 20), p 4.

24 OJ L 81, 21.3.2001, p 1.

25 Zakon Ukrainy “Pro prikorodonnyy kontrol” (Vidomosti Verkhovnoi Rady Ukrainy (VVR) 2010, N 6, st 46, as last amended VVR 2014, N 20-21, st 712. Ukrainian text available at: <http://zakon4.rada.gov.ua/laws/show/1710-17/ed20130811/find?text=%CF%F0%E8%EA%EE%F0%E4%EE%ED%ED%E8%E9+%EA%EE%ED%F2%F0%EE%EB%FC> (130618).

26 (fn 20), p 7.

27 (fn 20), p 10.

28 European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Staff Working Paper SEC(2011) 1076 final (16.9.2011), p 17. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/news/intro/docs/20110920/ua_vlap_1st_progress_report_sec_2011_1076_f_en_document_travail_service.pdf (130618).

29 European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Staff Working Paper SWD(2012) 10 final (9.2.2012), pp 3, 4. Available at: http://ec.europa.eu/dgs/home-affairs/news/intro/docs/20120209/ua_2nd_pr_vlap_swd_2012_10_final.pdf (130618).

30 (fn 29), p 10.

31 (fn 29), p 11.

32 (fn 29), p 15 f.

33 (fn 29), p 25.

34 (fn 29), p 30.

35 Chapter “Cooperation on Justice, Freedom and Security” of MEMO/12/344 (15 May 2012). Available: http://europa.eu/rapid/press-release_MEMO-12-344_en.htm (130618).

36 COM(2013) 809 final (15.11.2013), p 27. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/news/docs/20131115_3rd_progress_report_on_the_implementation_by_ukraine_of_the_apvl_en.pdf (130618).

37 (fn 36), pp 11, 18, 20, 22, 27.

The Fourth Report on the Implementation by Ukraine of the Action Plan on Visa Liberalisation, also submitted by the EU Commission to the European Parliament and Council of the EU, fell into the period, when the Maidan revolution had caused a change of government and revision of the foreign policy of Ukraine.³⁸ Inspired by a call of the European Parliament for an immediate visa free agreement and in line with the EU Commission's Support Package to Ukraine,³⁹ the Commission showed itself ready to "do its utmost to help solve the remaining issues in an accelerated manner." The EU Commission acknowledged in this report that the content and breadth of the reforms in the four blocks were satisfactory, "notably when considering the circumstances in the country and the internal and external challenges it currently faces." The EU Commission, thus, considered that Ukraine had met the benchmarks under the first phase of the VLAP and launched the second phase.⁴⁰

The Fifth Progress Report on Ukraine's Implementation of the Action Plan on Visa Liberalisation called the progress achieved by Ukraine under the four blocks of the VLAP "noteworthy" "given the exceptional circumstances and the internal and external challenges" it faced.⁴¹ The report included a few recommendations as to document security and integrated border management and advised the Ukrainian authorities to adopt the law on external labour migration as soon as possible and implement other measures for monitoring migration processes.⁴² The report provided quite many recommendations in the area of asylum, saw a major issue as to preventing

and fighting organized crime, trafficking in human beings and preventing and fighting corruption. For all these areas the respective benchmarks were deemed only partially fulfilled.⁴³ The anti-drug, the enforcement-cooperation, the data protection and the freedom of movement benchmarks were considered to have been almost achieved.⁴⁴ Anti-discrimination remained an issue, but like for the whole citizens' rights, including protection of minorities' benchmark with good perspectives for further progress.⁴⁵ As a consequence of a positive overall assessment, the EU Commission decided to reduce the period for the next, which should turn out as the final, progress report.⁴⁶

The Commission Staff Working Document Accompanying the Fifth EU Commission's Progress Report included an Annex "Assessment of Migratory and Security Impacts".⁴⁷ Based on various Eurostat data and other contributions the annex identified the "main key trends in the areas of migration, mobility and security in relation to Ukraine and the possible impact for the Schengen area of a visa-free regime."⁴⁸ Possible impacts of the visa free regime were seen, in particular, in the following:

- Influx of Ukrainian emigrants to the EU due to lack of economic perspectives in Ukraine;⁴⁹
- Ukrainian visa overstayers could apply for asylum as a way to legalise their stay after visa validity;⁵⁰
- influx of asylum-seekers from conflict areas in Ukraine;⁵¹

- new opportunities for Ukrainian or Ukraine based Organized Crime Groups;⁵²
- increase of trafficking of human beings from Ukraine to EU members;⁵³
- smuggling of illegal immigration and goods toward Europe;⁵⁴
- increase of drug flows side by side with reduction of probability of detection;⁵⁵
- facilitation of the movement of foreign terrorist fighters.⁵⁶

The Sixth Progress Report on the Implementation by Ukraine of the Action Plan on Visa Liberalisation followed the findings of EU evaluation missions, which were organized in Ukraine from 31 August to 2 October 2015, and which attested that all benchmarks of the VLAP had been achieved by Ukraine, one of them (anti-corruption) based on commitments made by the Ukrainian leadership for 2016. They indicated green light for the introduction of a visa free regime for Ukrainians to the EU.⁵⁷

The Commission Staff Working Document attached to this report provided detailed information on legislative and other measures supporting the finding of the EU Commission.⁵⁸ When assessing the expected migratory and security impacts of an abolishment of the visa requirement, the document markably differs from the assessment half a year before by identifying, for example, the following expectations:

- Increased circularity in migratory flows between Ukraine and the Schengen area, but this will strengthen people-to-people contacts;⁵⁹
- flows of Ukrainian immigrants to the EU will become more self-regulated and more regularized;⁶⁰
- continued effectivity of measures in the EU and Ukraine to counter irregular migration;⁶¹
- preference by Ukrainians given to legal migration channels than to using asylum procedures;⁶²
- no drastic changes in the Ukrainian or EU criminal landscapes.⁶³

As to other aspects, the document confirms the findings of its precursor, but sees possible mitigation measures that can be undertaken by the EU members.⁶⁴ With regard to issues like an expected facilitation of criminal activities, such as trafficking in human beings and smuggling of goods, in particular, tobacco and drugs, the document only mentions counter-measures of a very general manner, such as the conclusion of an agreement with Europol and of bilateral agreements on cooperation to fight organized crime, further developing risk analysis cooperation or setting-up joint investigation groups.⁶⁵

In its First Report under the Visa Suspension Mechanism following to the introduction of the visa-free regime, the EU Commission held that overall the visa liberalisation benchmarks continued

38 See COM(2014) 336 final (27.5.2014), p 2. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/international-affairs/general/docs/fourth_report_on_the_implementation_by_ukraine_of_the_action_plan_on_visa_liberalisation_en.pdf (130618).

39 MEMO/14/159 (5 March 2014), p 6. Available at: http://europa.eu/rapid/press-release_MEMO-14-159_en.htm (140618).

40 (fn 38), p 6.

41 COM(2015) 200 final (13.5.2015), p 10. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/international-affairs/general/docs/fifth_progress_report_on_the_implementation_by_ukraine_of_the_action_plan_on_visa_liberalisation_en.pdf (140618).

42 (fn 41), pp 2 – 4.

43 (fn 41), pp 4 – 7.

44 (fn 41), pp 7 – 9.

45 (fn 41), pp 9 f.

46 (fn 41), p 10.

47 SWD(2015) 104 final (8.5.2015), pp 32 – 47. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/international-affairs/general/docs/fifth_progress_report_on_the_implementation_by_ukraine_of_the_action_plan_on_visa_liberalisation_sw_d_en.pdf (140618).

48 (fn 47), p 32.

49 (fn 47), p 46.

50 (fn 47), p 40.

51 (fn 47), p 41.

52 (fn 47), pp 42 and 45.

53 (fn 47), p 43.

54 (fn 47), pp 44 and 46.

55 (fn 47), p 45.

56 (fn 47), p 45.

57 COM(2015) 905 final (18.12.2015), pp 2, 7 f, 11 f. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/international-affairs/general/docs/sixth_report_on_the_implementation_by_ukraine_of_the_action_plan_on_visa_liberalisation_en.pdf (140618).

58 SWD(2015) 705 final (18.12.2015), pp 2 - 25. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/international-affairs/general/docs/swd_sixth_report_on_the_implementation_by_ukraine_of_the_action_plan_on_visa_liberalisation_en.pdf (140618).

59 (fn 58), p 32.

60 (fn 58), pp 35 f.

61 (fn 58), p 36.

62 (fn 58), p 40.

63 (fn 58), p 42.

64 Eg: Attractivity for labour migration to be met by the establishment of circular/temporary/seasonal migration schemes with the Ukrainian government. See (fn 58), pp 36 f.

65 (fn 58), pp 47 f.



to be fulfilled. It advised, however, that immediate actions needed to be taken in order to ensure full implementation and sustainability of past reforms, in particular as regards the anti-corruption benchmark. The EU Commission mentioned the following areas to be addressed:

- “Enhance cooperation with EU relevant agencies to prevent risks stemming from irregular migration,
- Step up targeted information campaigns clarifying the rights and obligations entailed in visa-free travel,
- Ensure the independence, effectiveness and sustainability of the anti-corruption institutional framework, in particular by setting up an independent and specialised high anti-corruption court in accordance with the Venice Commission opinion and Ukrainian legislation. In parallel, the independence and capacity of NABU and SAP must be ensured and reinforced, reversing current trends undermining their work.
- Restore as a matter of urgency the credibility of the NAPC and establish an effective verification system of asset declarations, including through the automatic verification software with direct and automatic access to state databases and registers;
- Repeal the amendments extending the scope of asset declaration obligations to civil society declarants and ensure that civil society can play its role without undue obstacles and interference;
- *Step up efforts to combat organised crime, including by dedicating sufficient resources and expertise in the National Police, introducing a clear delineation of competencies and improving cooperation between law enforcement agencies.”⁶⁶*

In its Second Report under the Visa Suspension Mechanism, the EU Commission concludes that “some recommendations of the First Report under the Visa

Suspension Mechanism have not been implemented and therefore immediate actions are needed to ensure the continuous fulfilment of the anti-corruption benchmark. Immediate actions are also needed to address the irregular migration challenges.”

The EU Commission requires that the following areas need to be addressed:

- “Strengthen the operational cooperation with concerned countries to swiftly decrease the irregular migration by Ukrainian nationals to the Schengen+ area;
- Continue to organise information campaigns on the rights and obligations of visa-free travel;
- Urgently repeal the amendments extending the scope of asset declarations to civil society and ensure that civil society can play its role without undue interference;
- Ensure the independence, effectiveness and sustainability of the anti-corruption institutional framework, including by ensuring that the High Anti-Corruption Court swiftly becomes fully operational and that the Public Council of International Experts can adequately play its role in the selection process;
- Re-establish the independence and credibility of the Specialised Anti-Corruption Prosecution;
- Establish a fully functioning system for the verification of asset declarations, notably by ensuring automated access to all remaining registers and databases, in order to produce a convincing track-record of effectively verified declarations;
- *Reinforce the capacities of the National Police and improve the cooperation between law enforcement agencies to further tackle organised crime, in particular cybercrime.”⁶⁷*

66 COM(2017) 815 final of 20 December 2017. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/20171220_first_report_under_suspension_mechanism_en.pdf (140618).

67 COM(2018) 856 of 19 December 2018. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20181219_com-2018-856-report_en.pdf (090319).

LEGAL BASIS AND REQUIREMENTS FOR VISA FREE TRAVEL FOR UKRAINIAN CITIZENS

The decisive legal document establishing visa free travel for Ukrainian citizens to the EU is the Regulation (EU) 2017/850, which has been adopted by the European Parliament and the Council of the EU on 17 May 2017.⁶⁸ By this regulation Ukraine has been removed from Annex I Part I and included into Annex II Part I of the Regulation (EC) 539/2001.⁶⁹ Annex I of Regulation 539/2001 lists the states with a visa requirement, Annex II lists the states with exemption from the visa requirement. The exemption for Ukraine has been limited to holders of biometric passports issued by Ukraine in line with the standards of the International Civil Aviation Organisation (ICAO).

The exemption from the visa requirement for Ukraine is subject to the general conditions laid down by Regulation 539/2001. The key condition laid down by this Regulation follows from its art 1 para 2, which lays down that the exemption is being granted only “for stays of no more than three months in all.” The Regulation itself does not limit the purposes of such stay, but allows EU members to “provide for exceptions from the exemption from the visa requirement ... as regards persons carrying out a paid activity during their stay.” (Art 4 para 3 Regulation 539/2001). Since the EU Member States as a matter of standing practice have been using this authorization, de facto, the exemption from the visa obligation for Ukrainians is limited to stays which are not used for carrying out a paid activity.

The exemption from the visa requirement does also not automatically extend to (recognized) refugees and stateless persons residing in Ukraine and where Ukraine has issued the respective travel documents. With regard to these persons the EU Member States remain free to extend the exemption from the visa requirement to them or not (Art 3 second hyphen of Regulation 539/2001).

The exemption from the visa requirement further does not overrule border control obligations of EU Member States. Thus, Ukrainian citizens continue to be subject to customs and border control at the EU’s external borders. For three of the neighbouring states to Ukraine (Poland, Slovakia, Hungary), the Schengen external border regime applies.⁷⁰ The Schengen acquis addresses practically all issues raised by the EU Commission (eg trafficking in drugs, human beings and weapons, cross border police cooperation, illegal immigration, etc) as possible implications of the introduction of a visa free regime for Ukraine.

As to the border with Moldova, the European Union Border Assistance Mission to Moldova and Ukraine (EUBAM) was launched on 1 December 2005 in accordance with a Memorandum of Understanding between the Government of the Republic of Moldova, the European Commission and the Government of Ukraine⁷¹ to support the Ukrainian and Moldovan authorities in order to strengthen the security of their border.⁷² The mission has been prolonged until 30 November 2020 and intends to “harmonise border

68 (fn 1).

69 Council Regulation (EC) No 539/2001 of 15 March 2001

listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. OJ L 81, 21.3.2001, p 1.

70 See Council Decision of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the

acquis (1999/435/EC). OJ L 176, 10.7.1999, p 1.

71 For the text of the Memorandum see: http://eubam.org/wp-content/uploads/2015/11/memorandum_of_understanding_en.pdf (140618).

72 See for further details http://eeas.europa.eu/archives/docs/csdp/missions-and-operations/moldova-and-ukraine-border-mission/pdf/01122007_2_factsheet_moldova-and-ukraine-border-mission_en.pdf (140618).



control, customs and trade standards and procedures with those in EU Member States. It helps to improve cross-border cooperation between the border guard and customs agencies and other law enforcement bodies and to facilitate international cooperation.”⁷³ EUBAM runs parallel to the EU Advisory Mission (EUAM) Ukraine, which in a much broader manner assists the Ukrainian authorities to meet EU standards

in key areas, including the rule of law. EUAM started to operate from its headquarters in Kyiv on 1 December 2014.⁷⁴

Only with regard to the direct border with Romania, no particular assistance measures on the EU side have been reported after the accession of Romania to the EU.⁷⁵ People and goods entering

the EU through Romania have to pass, however, the Schengen border west of Romania. On 14 June 2018, Romania signed an agreement with FRONTEX, the European Border and Coast Guard Agency, based in Warsaw, allowing for the deployment of

FRONTEX Liaison officers at the Romanian borders.⁷⁶ Cooperation with FRONTEX took place already before. Thus, for example, Romania participated in the FRONTEX Maritime Joint Operation “Poseidon Rapid Intervention” in Greece.⁷⁷

⁷³ <http://eubam.org/who-we-are/> (140618).

⁷⁴ <http://www.euam-ukraine.eu/our-mission/about-us/> (140618).

⁷⁵ At least, none can be deducted from EU Commission (ed), Post-Programme Surveillance Report. Rumania Autumn 2017. Available at: https://ec.europa.eu/info/sites/info/files/economy-finance/ip068_en.pdf (140618). For the period before accession, see eg Evaluation of PHARE financial assistance to Bulgaria (BG), Cyprus (CY), Czech Republic (CZ), Estonia (EE), Hungary (HU), Latvia (LV), Lithuania (LT), Malta (MT), Poland (PL),

Romania (RO), Slovakia (SK), Slovenia (SI). Final Report of 19 January 2015. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial_assistance/phare/evaluation/2015/20150806-phare-ex-post-evaluation-final-report.pdf (140618). The FRONTEX (since 2018: European Border and Coast Guard Agency) Report 2018 in brief, too, does not mention any particular programme with Romania. See: <https://frontex.europa.eu/assets/Publications/briefreport2018/files/assets/common/downloads/publication.pdf> (090319).

⁷⁶ <https://www.politiadefrontiera.ro/ro/main/i-politia-de-frontiera-romana-participant-activ-in-cadrul-agentiei-frontex-13301.html> (180618). Europol's European Migrant Smuggling Centre shows Romania as a transit country for secondary movements, however, not from the Ukraine, but on one of the Balkan routes. See: <https://www.europol.europa.eu/about-europol/european-migrant-smuggling-centre-emsc> (090319).

⁷⁷ <https://www.politiadefrontiera.ro/en/main/i-387-children-and-294-women-rescued-in-frontex-operations-by-the-romanian-border-police-in-2016-7300.html> (180618). The FRONTEX Annual Activity Report 2017 of 28 June 2018 reports of 7 joint operations with the Ukraine in 2017, p 38. See <http://statewatch.org/news/2018/jul/eu-frontex-annual-activity-report-2017.pdf> (250219).

SOME STATISTICAL DATA ON THE NUMBER OF UKRAINIAN CITIZENS HAVING TRAVELLED TO THE EU SINCE THE ABOLISHMENT OF THE EU VISA OBLIGATION AND OTHER DATA RELATED TO THE USE OF VISA FREE TRAVEL BY UKRAINIAN CITIZENS – COMPARISON TO NUMBER OF ENTRIES IN PREVIOUS YEARS

According to the official data included in the EU Commission Staff Working Document Accompanying the Second Report under the Visa Suspension Mechanism from the EU Commission to the European Parliament and the Council of 19 December 2018, based on Eurostat includes the following data:⁷⁸ The number of detections of illegal border crossings of Ukrainian nationals has shown a decreasing trend in the period between 2015 (159), 2016 (208), 2017 (169), and 2018 (first half) (64). Refusals of entry for Ukrainian nationals increased by 47 % between 2016 (22,495 refusals) and 2017 (33,105 refusals). Poland in 2015 refused entry to 19,020 Ukrainian nationals, in 2016 to 18,775, and in 2017 to 25,255. Hungary did so for 1,825 in 2015, interestingly 0 in 2016, and 2,980 in 2017, Romania for 1,090 in 2015, 1,490 in 2016, and 1,715 in 2017, whereas Slovakia refused entry to 440 Ukrainian nationals in 2015, 705 in 2016, and 925 in 2017. Lithuania followed with 330 in 2015, 345 in 2016, and 365 in 2017.⁷⁹

The Staff Document discloses that in 2017, the number of Ukrainian nationals found to be illegally present increased by 13% up to 33,485, compared to 29,570 in 2016. The numbers for 2016 meant an even larger increase compared to 2015. At the example of the two most affected countries Poland and Hungary, the respective numbers for 2015 were 11,885 (Poland)

and 2,820 (Hungary) for 2015, 17,445 (Poland) and 3,620 (Hungary) for 2016, and 19,815 (Poland) and 3955 (Hungary) for 2017. EUROSTAT lists Ukraine on 9th place of the top 30 countries of citizenship of non-EU citizens found to be illegally present in the EU for the period 2008 – 2017, after Syria, Afghanistan, Iraq, Albania, Pakistan, Eritrea, and Algeria. The total number of Ukrainian nationals for this whole period makes 178,310.⁸⁰ The number of Ukrainian asylum seekers in the Schengen+ area decreased from 12,460 in 2016 to 10,075 in 2017, which constitutes a 19% decrease.⁸¹ For the first half of 2018 4,710 asylum applications were counted.⁸²

Ukraine readmitted 32,135 Ukrainian nationals in 2017 compared to 26,875 in 2016, which was a high rate of 79 %, 90% of whom returned voluntarily.⁸³

The Staff Document mentions also that according to figures received from the Ukrainian authorities, “the total number of entries of Ukrainian nationals to the Schengen area between 11 June 2017 and 1 September 2018 was 25.9 million. Of these, six million entries were with biometrical passports and 1.3 million entries to the Schengen area were without visas (5% of the total).”⁸⁴

The Schengen Visa statistics by third country sees Ukraine on the third place after the Russian federation

⁷⁸ SWD(2018) 496 final. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20181219_swd-2018-496-report_en.pdf (090319).

⁷⁹ (fn 78), pp 43 f.

⁸⁰ See [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Top_30_countries_of_citizenship_of_non-EU_citizens_found_to_be_illegally_present_in_the_EU_2008-2017_\(number\)_1-png&oldid=392386](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Top_30_countries_of_citizenship_of_non-EU_citizens_found_to_be_illegally_present_in_the_EU_2008-2017_(number)_1-png&oldid=392386) (250219).

⁸¹ (fn 78), p 44.

⁸² (fn 78), p 45.

⁸³ (fn 78), p 45.

⁸⁴ (fn 78), p 46.



and China for 2015 by 1,233,530 visa applications, whereby 45,367 uniform visas were not issued, which made 3,4 %.⁸⁵ Also for 2016, Ukraine has been listed as third country with a total of 1,411,950 of visa applications and 45,789 uniform visas not issued (3,24).⁸⁶ For 2017, Ukraine moved down to 6th place with 720,976 visa applications in total. 26,925 or 3,73 % uniform visas were not issued.⁸⁷

The Annual Report 2018, released at 4 March 2019, of EUBAM and covering the period of 1 December 2017 – 30 November 2018, and, thus, the first full year of visa free regime, includes data on seized goods at the border control stations of the Moldovan – Ukrainian border falling under its mandate. Compared to the 2017 Annual Report, which mentions 14,762,553 units of cigarettes, 9,010 units of alcohol and 256 cars having been seized between December 2016 and November 2017, 135 forged travel documents and 1,000 irregular migrants having been detained in the same area in the same period of time, the 2018 Annual Report mentions the following numbers: 3,290,450 seized units of cigarettes, 3,737 seized units of alcohol, 231 seized cars, 47 forged travel documents and 1 illegal migrant between December 2017 and November 2018, which means a remarkable reduction of numbers.⁸⁸ The 2017 Annual Report includes a reference to an expert who mentioned that the level of illicit cigarette trade in Ukraine doubled in comparison to 2015-2016. However, neither this expert's statement nor the report indicates whether there was a difference between the last half year of visa requirement regime and the first half year of visa free regime. The same goes for the increase of "illicit whites",⁸⁹ which have been counter-acted in the 2017 report period by EUBAM, the Ukrainian and the Moldovan authorities and the European Anti-Fraud Office (OLAF) by the action called "Orbis" and in May and June 2018 in the action called "Janus".⁹⁰ Assuming that EUBAM gained in efficiency from 2017 to 2018 and given the fact that the overall illegal export from

the Ukraine to the EU has not decreased in the same period of time, the remarkable decrease of numbers of seized goods from 2017 to 2018 points at the fact that smugglers must have found new routes and/or methods.

There is, however, a good perspective for obtaining reliable data also on EU side, at least with regard to some aspects of the problems involved. On 15 March 2017, the European Parliament and the Council of the EU adopted Regulation (EU) 2017/458 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders.⁹¹ The amended regulation aimed at detecting foreign terrorist fighters among EU citizens.⁹² As a collateral result of a systematic check of the travel documents of all persons enjoying the right of free movement under Union law on entry into and on exit from the territory of EU members, against relevant databases for stolen, misappropriated, lost and invalidated travel documents in order to ensure that such persons do not hide their real identity, the number of entries/exits by EU citizens/Non-EU citizens can be established and will be reported.

According to art 1 para 2 of Regulation (EU) 2017/458

"On entry and on exit, persons enjoying the right of free movement under Union law shall be subject to the following checks:

- verification of the identity and the nationality of the person and of the authenticity and validity of the travel document for crossing the border, including by consulting the relevant databases, in particular:
 - the SIS;
 - Interpol's Stolen and Lost Travel Documents (SLTD) database;

85 See: <https://www.schengenvisainfo.com/statistics/schengen-visa-stistics-third-country-2015> (250219).

86 See: <https://www.schengenvisainfo.com/statistics/schengen-visa-stistics-third-country-2016> (250219).

87 See: <https://www.schengenvisainfo.com/statistics/schengen-visa-stistics-third-country-2017> (250219).

88 Report 2017 available at: http://eubam.org/wp-content/uploads/2018/03/Report_2017_ENG.pdf, p 23 (140618). Report 2018 available at: http://eubam.org/wp-content/uploads/2019/03/EUBAM_Annual_Report_2018_EN.pdf, p 31 (050319).

89 Meant: "cigarettes manufactured legitimately in one country, but smuggled and sold in another without duties being paid. Also known as "cheap whites", they are the fastest growing sector of the illicit tobacco trade, now accounting for 35% of the illicit market in the EU."

90 EUBAM, Annual Report 2017 (fn 88), p 24; Annual Report 2018 (fn 88), p 29.

91 OJ L 74, 18.3.2017, p 1.

92 See (fn 91), number 2 of Preamble.



- national databases containing information on stolen, misappropriated, lost and invalidated travel documents...
- *verification that a person enjoying the right of free movement under Union law is not considered to be a threat to the public policy, internal security, public health or international relations of any of the Member States, including by consulting the SIS and other relevant Union databases. This is without prejudice to the consultation of national and Interpol databases.”*

Even if there is the possible exemption of a temporary reduced data check in case of a disproportionate input on the flow of traffic of the otherwise applicable

data check,⁹³ a comparably reliable statistical documentation for Ukrainians will be possible. The Analysis of the Romanian Border Police activity in 2017, reports on 49,200,000 EU citizens and 10,500,000 non-EU citizens, as well as on 16,150,000 transportation means which crossed the Romanian borders in 2017. This means in comparison to 2016, an overall increase of persons with 6 %, however, with 30 % at the border with Bulgaria and with 20 % at the air border.⁹⁴ There is no particular mention of Ukraine, which allows the conclusion that for 2017 Ukraine stayed on the average trend as to Romania.

It can be expected also that a future Annual Report of FRONTEX might provide more insight, given that the aggregated data will be more diversified and specified

per border and country and the general character of the report will change to aims- and results orientation instead of driven by self-reflection and organization requirements. The currently last available reports for 2016 and 2017 include only very general data⁹⁵ and for a period, which could become relevant only, once a comparison can be made over years, including 2017 after introduction of the visa free system for Ukraine and the year 2018, which will be the first one completely under the visa free regime.

FRONTEX offers, however, a risk-analysis, which also includes the year 2017 and is specified by risk-countries.⁹⁶ FRONTEX reports in its risk-analysis for 2018 that for the first three months after abolishment of the visa requirement for Ukrainians (July – September 2017), the size of the passenger flow of Ukrainians to the Schengen area increased by 15 % compared to the same period one year before.⁹⁷ On the same page, the report mentions an increase of 170,000 visas issued to Ukrainians compared to the previous year. The number of refusals of entry from third countries by the Polish authorities fell from 162,302 in 2016 to 126,502 in 2017.⁹⁸ The Polish number was only commented with regard to the Polish-Belarus’ border and with regard to Russians and Tadjiks. However, the number of refused entries for Ukrainians by all EU states increased at the same time from 27,766 in 2016 to 37,117 in 2017. This made 20 % of all refused entries and marked an increase of 34 % from 2016 to 2017.⁹⁹ 16,546 of these persons, it means nearly half of all, had no appropriate documentation justifying the purpose and conditions of stay.

FRONTEX’s risk analysis for 2019 mentions as a peculiarity for 2018, that part of an increase in illegal

migration seen with regard to Ukraine was due to the visa-free-regime of Russia offered to ticket-holders for the 2018 FIFA World Cup.¹⁰⁰ The analysis 2019 emphasizes for 2018 that half of all refusals of entry at the external borders of the EU continue to be issued to Ukrainian, Russian and Albanian nationals. Refusals of Ukrainians increased by almost 60 % and, thus, more pronounced than in the years before. Nine out of ten refusals were done at the EU border with Ukraine (57,593) and mostly because of lack of appropriate documentation.¹⁰¹

A remarkable decrease of persons using fraudulent travel documents for entries into the EU from Ukraine is shown in the same report.¹⁰² The total amount detected in 2017 was 801 Ukrainians, 519 of them on the border between Poland and Ukraine. On the exit side, Ukraine has been emphasized for the number of detections of counterfeited stamps to conceal overstaying. Poland is shown on a graphics as one of the EU members with the highest amount of illegal stayers in 2017.¹⁰³ For 2018, FRONTEX reports 401 Ukrainians detected using fraudulent documents which considered as a remarkable progress in reduction due to the visa liberalization for biometric passport holders. Hungary has replaced Poland as land border with most Ukrainians having used fraudulent documents.¹⁰⁴

The statistics of FRONTEX show an increase of illegal stayers from Ukraine in the EU from 28,006 in 2016 to 32,599 in 2017, which places Ukraine first in 2017 with a share of 7,9 % of all illegal stayers in the EU. This trend continued in 2018 to a number of 36,251 or even 10 % share.¹⁰⁵ It can be assumed that this fact is to a considerable degree related to overstayers from Ukraine and is linked to illegal labour migration.

95 FRONTEX, Annual Activity Report 2016, pp 15, 70, 128. Available at: https://frontex.europa.eu/assets/Key_Documents/Annual_report/2016/Annual_Activity_Report_2016.pdf (180618) and fn 77. Even less can be seen from the 2017 Annual Activity Report of the Directorate General Neighbourhood and Enlargement Negotiations – DG NEAR, p 9, which even does not mention Ukraine in its reference to the Visa Liberalisation Suspension Mechanism. Available at: https://ec.europa.eu/info/sites/info/files/file_import/near_aar_2017_final.pdf (270219).

96 See: FRONTEX, Risk analysis for 2018: Available at: https://frontex.europa.eu/assets/Publications/Risk_Analysis/Risk_Analysis/Risk_Analysis_for_2018.pdf (180618).

97 (fn 96), p 17.

98 (fn 96), p 21.

99 (fn 96), p 48.

100 See FRONTEX, Risk Analysis for 2019, p 8. Available at: https://frontex.europa.eu/assets/Publications/Risk_Analysis/Risk_Analysis_for_2019.pdf (250219).

101 (fn 100), pp 19 and 46.

102 (fn 96), pp 22 f.

103 (fn 96), p 24.

104 (fn 100), pp 20 f.

105 (fn 96), p 47; (fn 100), pp 24 and 45.

93 See (fn 91), art 1 para 1 number 2b.

94 <https://www.politiadefrontiera.ro/en/main/i-analysis-of-the-romanian-border-police-activity-in-2017-7312.html> (180618 and 090319).

Ukrainians made for 29,267 return decisions from EU members in 2017, an increase by 19 % compared to 2016.¹⁰⁶ Effectively 24,356 Ukrainians were returned in that year.¹⁰⁷ 21,919 persons were returned voluntarily, 2,434 were returned by force.¹⁰⁸ In 2018, 118 Ukrainians were returned in FRONTEX-supported operations.¹⁰⁹ The detection of illegal border crossing at Ukraine – EU borders sank from 138 persons in 2016 to 105 in 2017.¹¹⁰ 104 of these cases in 2016 and 85 cases in 2017 were linked to smuggling of goods.¹¹¹

In total, FRONTEX reports, based on voluntary data, that in 2016 the passenger flow with Ukraine made 14,615,622 and in 2017 14,318,281 cases, that means a share of 4,7 % of the total passenger flow.¹¹²

The FRONTEX risk-analysis for 2019 does not allow a statistical insight into the real effects the abolishment of the visa requirement for Ukrainians had. Other data communicated for the time-being need to be dealt with cautiously and are to a certain degree even contradictory. Thus, the Ukrainian President Poroshenko, relying on official data of the Ukrainian State Border Guard Service, used the one year anniversary of the introduction of the visa free regime to declare that more than 555,000 visa free travels of Ukrainians took place in this first year.¹¹³ This number would just make 2,7 % of 20 million crossings of the Ukraine-EU borders by Ukrainians which were counted in total for the same period. The number obviously results from a misleading formulation of questions and errors in interpretation of answers by the Ukrainian State Border Guard Service.¹¹⁴ The real

number seems to be considerably higher, a fact which can be concluded from a number of about 40,000 refusals of entry to the EU, which took place in the same period and from the reduction of Ukrainian applications for Schengen visa by 700,000 in 2017, compared to 2016. For the first month of visa free regime, the Ukrainian State Border Guard Service reported 95,000 crossings of Ukrainian holders of biometric passports and 49 refusals of entry. 31 of them were refused because they could not prove the goal of their visit and/or could not demonstrate that they had sufficient means of subsistence.¹¹⁵ Earlier apprehensions, that the Ukrainian authorities would not be able to produce enough biometric passports,¹¹⁶ obviously did not become true.

Various other sources from Ukraine provide the following numbers: According to Bloomberg news, between 2015 – 2017 507,000 Ukrainians left Ukraine for Poland for working reasons, 122,000 for the Czech Republic, 147,000 for Italy and 343,000 for Russia.¹¹⁷ A Polish article with reference to Ukrainian data from 10 February 2018 even reports of 1,000,000 Ukrainians who go to work in Poland every year, in particular people from Lviv, Volyn, Ternopil, Ivano-Frankivsk, and Rivne.¹¹⁸ In total, 7 % of the work-force of Ukraine left the country in these two years. The main reason is the difference in salary, monthly 265 dollars in Ukraine compared to monthly 1,046 dollars in Poland.¹¹⁹ In 2016, 8,000,000 Zloty have been transferred by Ukrainian workers from Poland to Ukraine, in 2017, this sum amounted to 12,000,000 Zloty. Another increase of labour migration has been predicted for

2018, but as any estimate this is still uncertain.¹²⁰ In 2016, Poland issued 800,000 work permits, 98% of them to Ukrainians. Currently, this number is said to be at 1,000,000.¹²¹ Skoczynska-Prokopowicz mentions 1,200,000 visas that have been issued by Polish authorities to Ukrainians in 2017.¹²² If this trend of emigration continues, the population of Ukraine will decrease from 44,220,000 to 36,420,000 in 2050.¹²³ The last official census for Ukraine dates back to 2001 and showed 48,000,000 people. The next census should have taken place in 2016, but was postponed to 2020. As of 1 June 2017, the official number given by the State Statistics Service (Derzhstat) of Ukraine indicates a total population of 42,400,000 people.¹²⁴

Summarizing the various information available to date, there seems to be a number of about 6,000,000

Ukrainians more that crossed EU borders after introduction of the visa free regime compared to the previous years. Also the number of refusals of entry did increase, as the FRONTEX numbers suggest. The major reason for refusal of entry remained the same, namely that the refused persons could not prove the goal of their visit and/or could not demonstrate that they had sufficient means of subsistence. According to the EU Commission Staff Working Document Accompanying the Second Report under the Visa Suspension Mechanism and based on figures received from the Ukrainian authorities, the total number of entries of Ukrainian nationals to the Schengen area between 11 June 2017 and 1 September 2018 was 25.9 million. Of these, six million entries were with biometrical passports and 1.3 million entries to the Schengen area were without visas (5% of the total).¹²⁵

120 For conflicting views see eg <https://etcetera.media/na-rabotu-za-granitsu-skolko-ukraintsev-pokinut-stranu-v-2018-godu.html> (160618) and <https://www.bloomberg.com/news/articles/2018-02-19/lure-of-polish-riches-leaves-ukraine-bereft-of-workers> (080818).

121 <http://hochupolshu.com/novosti/skolko-ukraincev-v-polshe-2017.html> (160618). See also <https://112.international/opinion/ukrainians-are-forced-to-become-labor-migrants-how-to-turn-them-back-29504.html> (190618) which points on a special rather informal "statement" asked for by Polish authorities instead of a formal work permit which grants a possibility to work for up to 9 months and shall be prolonged to a validity of up to 12 months.

122 (fn 118), p 198.

123 <https://regnum.ru/news/2383119.html> (160618).

124 <http://gordonua.com/news/society/gordon-ukraina-razezhaetsya-ya-dumayu-nas-ostallos-maksimum-3035-mln-202660.html> (160618).

125 (fn 78), p 46. An Ukrainian source of 11 February 2017 mentions for the first six months after the introduction of the visa free regime that 11 million Ukrainians crossed the EU border which was an increase of 15% compared to 2016. See <https://openeurope.in.ua/news/rezultaty-pervykh-6-mesyatsev-bezviza-s-es-grazhdane-ukrainy-ezdyat-v-evrosoyuz-na-15-bolshe-30> (050319).

106 (fn 96), p 50.

107 (fn 96), p. 25.

108 (fn 96), p 51.

109 (fn 100), p 25.

110 (fn 96), p 43.

111 (fn 96), p 44.

112 (fn 96), p 52.

113 See S. Sydorenko, Year without visas and unreliable statistics: what is wrong with data on Ukrainians' visa-free travels?. *Yevropeiska Pravda*, 12 June 2018, p 1.

114 Sydorenko (fn 113), p 2.

115 See: Ukraine: stats of first month of visa waiver with the EU. Available at: <http://visa-free-europe.eu/2017/07/ukraine-stats-of-first-month-of-visa-waiver-with-the-eu/> (100618).

116 See O. Goncharova, Ukrainians to start traveling visa-free to EU countries no earlier than May. Available at: <https://www.kyivpost.com/article/content/eu-ukraine-relations/ukrainians-to-start-traveling-visa-free-to-eu-countries-no-earlier-than-may-365299.html> (100618).

117 <https://www.bloomberg.com/news/articles/2018-02-19/lure-of-polish-riches-leaves-ukraine-bereft-of-workers> (080818).

118 B. Skoczynska-Prokopowicz, Foreign Labour Migration of Ukrainians to Poland: Statistical Research from the Perspective of Ukrainian Studies. In: *Zeszyty Naukowe Politechniki Slaskiej. Seria Organizacja I Zarzadzanie* 2018 z 122, pp 195 – 204 (196).

119 <https://antikor.com.ua/articles/222171-za-dva-goda-iz-ukrainy-na-zarabotki-uehalo-7-trudosposobnogo-naselenija> (160618). Skoczynska-Prokopowicz (fn 118, p 197) reports of 14,000 hryvnias which is the average wage of a Ukrainian migrant in Poland compared to the average salary in Ukraine, which is 7,400 hryvnias.

GENERAL POLITICAL AND LEGAL MEASURES ADOPTED ON THE UKRAINIAN AND ON THE EU SIDES WITH RELEVANCE FOR THE INTRODUCTION OF VISA FREE TRAVEL

In its last progress reports the EU Commission stated that it would continue to monitor the further developments in Ukraine as to the identified crucial matters even after introduction of the visa free regime, and, in fact, did so by two reports so far.¹²⁶ The Staff Document accompanying the second of these reports emphasizes that for spring 2019 a new integrated border management strategy 2020 – 2025 and accompanying action plan is envisaged.¹²⁷ The document highlights the new law on cyber security which set up a State Cyber Defense Centre and a National Cyber Security Strategy and the fact that the State Bureau of Investigation, which deals with crimes committed by top-ranking officials, started its work and first criminal proceedings on 27 November 2018. According to the Staff Document a Strategy on Combatting Organised Crime and an action plan are due to be approved by the National Security and Defence Council and a Law on National Security was adopted in July 2018.¹²⁸ FRONTEX emphasized the adoption by Ukraine of a “National Strategy for Countering Illegal Manufacturing and Turnover of Tobacco Goods”, which has been drafted jointly by EUBAM experts and Ukrainian representatives.¹²⁹ The Strategy has been adopted by Order of the Ukrainian Government of 23 August 2017.¹³⁰

Through the EU Advisory Mission Ukraine (EUAM), through EUBAM and FRONTEX, the EU Commission can build on a reliable infrastructure for monitoring, advising and assisting the Ukrainian authorities in

order to meet the challenges raised by the visa free regime and counteract misuse and collateral damage caused to EU members.

According to its mission statement EUAM Ukraine with a team of over 300 Ukrainian and international staff, deployed in Kyiv, Kharkiv, Lviv and Odesa, “*aims to assist the Ukrainian authorities towards a sustainable reform of the civilian security sector through strategic advice and practical support for specific reform measures based on EU standards and international principles of good governance and human rights.*”¹³¹ The activities of EUAM are directed to achieve an efficient, accountable and trustworthy civilian security sector, comprised of agencies responsible for law enforcement and rule of law, such as the Ministry of Internal Affairs, National Police, Security Service of Ukraine, State Border Guard Service, General Prosecutor’s Office, local courts, anti-corruption bodies, the relevant parts of the civil society and the Parliament of Ukraine.

EUAM Ukraine has set five priorities which influence the quality of human-resource management in the civilian security sector, should strengthen the ability to fight organized crime and corruption, advise on maintenance of peace and order in line with human rights commitments, advise in community policing by building trust within communities through direct interaction and dialogue, and assist in the delineation and coordination of the competencies of the various state agencies active in the civilian security sector

¹²⁶ See above at fn 66 and 67.

¹²⁷ (fn 78), p 46.

¹²⁸ (fn 78), pp 46 f.

¹²⁹ (fn 83), p 4.

¹³⁰ N 75-r; Strategiya u sfery protydii nezakonomnu vyrobnytsvu ta obigu tyutyunovykh vyrobiv na period do 2021 roku. Available at: <https://www.kmu.gov.ua/ua/npas/250225276> (190618).

¹³¹ <http://www.euam-ukraine.eu/our-mission/about-us/> (190618).



Ukrainians travelling to the EU. It is, however, a task which can be realized only over years and will have to be accompanied sooner or later by solution of the Eastern Ukrainian conflict.¹³³

For the time-being a day-by-day, month-by-month and year-by-year monitoring and assistance process of Ukrainian laws, other normative acts and their implementation by the Ukrainian authorities in practice will be the only way for EUAM Ukraine to try to minimize eventual collateral issues facilitated or re-enforced by the EU visa free regime for Ukrainian citizens.

A cursory glance on major issues with relevance for evaluation in this context since the abolishment of the visa requirement for Ukrainians, without trying to be complete, shows that the Ukrainian authorities grosso modo continue the reform process monitored by the EU Commission in the context of visa liberalization.

As absolute highlight of the past year must be considered the adoption of a Law on the Supreme Anti-Corruption Court. The law entered into force on 14 June 2018.¹³⁴ It is based on a presidential initiative and, once the court will have been established, will have a fundamental impact on the whole court structure in Ukraine. Ukraine is doing more in this respect than is general practice among EU Member States. Usually corruption is being dealt with by ordinary criminal courts. Considering the systemic quantity and quality of corruption in Ukraine, however, it seems to be a proper starting point to assign cases of corruption to a special court. Such a special court, nevertheless, must fit into the general court system, must be assigned clear competences and, thus, means a fundamental challenge for the set-up of the Ukrainian legal order. Thus, the new law also involves a considerable number of amendments to other laws, in particular the Code on Administrative Offences,¹³⁵ the Criminal Code,¹³⁶ the Criminal Procedural Code,¹³⁷

in Ukraine.¹³² EUAM Ukraine has identified three cross-cutting issues: human rights – gender, good governance and anti-corruption. The goal of the whole EUAM Ukraine is to achieve a Ukrainian civilian security sector that is efficient, accountable, and enjoys the trust of the public.

This strategy, together with economic and social reforms which in a medium term perspective must lead to an approximation of the average monthly salary and real living conditions in Ukraine to those in the neighbouring EU members, is also by this study considered to be promising for effectively combating and in future avoiding collateral damage facilitated by the abolishment of the visa requirement for



corruption or fines linked to corruption is of interest¹⁴² as well as is amendments ordered by the Ministry of Justice of Ukraine to the Order on the Completion of an Anti-Corruption Expertise.¹⁴³

In the context of illegal exports of wood and related crimes also the draft law to amend a couple of respective laws currently under consideration in the Ukrainian Parliament is of major significance.¹⁴⁴

In the context of trading with human beings, the Ukrainian Parliament started to deal with a draft Law on amending a number of Ukrainian legislative acts concerning strengthening the fight against the trading with people and concerning the protection of the victims.¹⁴⁵ The draft law provides, in particular, for amendments of the Administrative Procedure Code of Ukraine,¹⁴⁶ of the Law on Local Self-Administration,¹⁴⁷ of the Law on Local State Administration,¹⁴⁸ of the Law on the Freedom of Movement and Free Choice of the Place of Residence in Ukraine,¹⁴⁹ of the Law on Resistance against Trading with People,¹⁵⁰ of the Law on the Legal Status of Foreigners and Stateless Persons¹⁵¹ and of the Law on Employment of the Population.¹⁵²

This draft deserves particular attention and needs an evaluation of the kind of measures provided for and of their effectivity to meet the addressed issues.

In the same context and on the same day, the Ukrainian Parliament started the debate on the amendment of a art 149 (“Trading with People”) of

the Code on the Administrative Court Procedure¹³⁸ and the Law on the Supreme Council of Jurisprudence.¹³⁹ An International Experts Council, whose members have been selected on 7 November 2018,¹⁴⁰ will assist in the selection of the judges of the court (Art 8 para 5, Art 9). The court will deal with the cases defined by the respective procedural norms (Arts 3 and 4), in particular the new art 33’ of the Criminal Procedural Code. Amendments of the Law on the Court System and the Status of Judges in Ukraine will follow.¹⁴¹

In the context of the fight against corruption, the Decree of the Ukrainian Government of 14 March 2018 dealing with the use of confiscated money from

138 VVR 2017, N 48, st 436.

139 VVR 2017, N 7-8, st 50.

140 See (fn 78), p 49.

141 See a respective draft attached to the Decree of the Ukrainian Parliament of 1 March 2018, N 2311-VIII. Available at: <http://zakon3.rada.gov.ua/laws/show/2311-19> (190618) and adopted by the Ukrainian Parliament in the second reading on 12 July 2018 (see <http://gordonua.com/news/politics/rada-prinyala-neobhodimye-dlya-zapuska-antikorrupcionnogo-suda-izmeneniya-v-zakon-o-sudoustroystve-i-statuse-sudey-262771.html> (130718).

142 N 165. Available at: <http://zakon3.rada.gov.ua/laws/show/165-2018-%DO%BF> (190618).

143 See Nakaz of 14 November 2017, N 3572/5. Available at: <http://zakon3.rada.gov.ua/laws/show/z1402-17>. (200618).

144 See the draft Law on the introduction of amendments to a number of laws of Ukraine concerning the protection of Ukrainian woods and concerning the prevention of the illegal export of raw woods material, attached to the Decree of the Ukrainian Parliament of 20 March 2018, N 2352-VIII. Available at: <http://zakon3.rada.gov.ua/laws/show/2352-19> (190618), however, just vetoed by the Ukrainian President.

145 Text of the draft law attached to the decree of 7 November 2017, N 2182-VIII. Available at: <http://zakon3.rada.gov.ua/laws/show/2182-19> (200618).

146 VVR 2005, N 35-37, st 446.

147 VVR 1997, N 24, st 170.

148 VVR 1999, N 20-21, st 190.

149 VVR 2004, 15, st 232.

150 VVR 2012, N 19-20, st 173.

151 VVR 2012, N 19-20, st 179.

152 VVR 2013, N 24, st 243.

132 <http://www.euam-ukraine.eu/our-mission/our-priorities/> (190618).

133 There are reports of the OSCE and others that both parties to the conflict are violating their obligations under the Minsk agreements.

134 For the draft see Postanova Verkhovnoi Rady Ukrainy pro Vyshyy antikorrupciynyy sud, N 2309-VIII. Available at: <http://zakon3.rada.gov.ua/laws/show/2309-19> (190618). The text adopted by the parliament on 7 June 2018 has been published in the official journal of the Ukrainian Parliament Golos Ukrainy. Available at: <http://www.golos.com.ua/article/304087> (190618).

135 VVR 1984, addendum to N 51, st 1122.

136 VVR 2001, N 25-26, st 131.

137 VVR 2013, N 9-13, st 88.

the Ukrainian Criminal Code. The draft law provides for a regular sanction for a person having committed this crime as defined by art 149 para 1 from three to eight years of imprisonment.¹⁵³

For a general evaluation of the practice of the Ukrainian authorities from the point of view of rule of law and protection of human rights, legal acts like the following will require an in-depth-view of the EU Commission:

- Law of Ukraine on Ratification of the Protocols N 15 and 16 Additional to the Convention on Protection of Human Rights and Fundamental Freedoms of 5 October 2017;¹⁵⁴
- Law of Ukraine of 6 October 2017 on the Creation of the Necessary Conditions for a Peaceful Solution of the Situation in Special Districts of the Donetsk and Lugansk Regions;¹⁵⁵
- Law of Ukraine on Peculiarities of the State Policy and Guarantee of the State Sovereignty of Ukraine on the Temporarily Occupied Territories in the Donetsk and Lugansk Regions;¹⁵⁶
- Decision of the Council for National Security and Defense of Ukraine of 1 March 2018 “On Urgent Measures for the Neutralization of the Dangers for the National Security in the Sphere of the Migration Policy”,¹⁵⁷ which inter alia recommends amendments on the Law of Ukraine on Citizenship and has been set in force by Decree of the Ukrainian President of 17 March 2018, N 72/2018;
- Decree of the President of Ukraine on Urgent Steps concerning the Strengthening of the State Status of the Ukrainian Language and the Promotion of

the Creation of a Single Cultural Area of Ukraine of 31 May 2018;¹⁵⁸

- Address of the Ukrainian Parliament of March 2018 to Parliaments of Foreign States and Parliamentary Assemblies of International Organizations in the Context of Its Relationship with the Russian Federation;¹⁵⁹
- Order of the Ukrainian Government in the version of 14 February 2018 on the Approval of the Concept of the Development of an Electronic Democracy in Ukraine and on the Plan for Development of Its Realization;¹⁶⁰
- Order of the Ukrainian Government of 21 March 2018 on the Confirmation of the Plan on Measures for the Promotion of the National Unity and Consolidation of the Ukrainian Society as well as Assistance to Initiatives of the Civil Society of the Respective Sphere;¹⁶¹
- Law of Ukraine of 7 November 2017 on the Amendment of Several Laws of Ukraine on the Strengthening of the Guarantees for the Security of Children;¹⁶²
- Order of the Ukrainian Government on Model Rules for Institutions of Social Assistance to Families, Children and Youth of 4 October 2017;¹⁶³
- Order of the Ukrainian Government on questions linked to the execution of the Laws of Ukraine “On the Status of War Veterans and Guarantees of Their Social Protection” and “On Victims of Nazi-Persecutions” in the redaction of 9 June 2018;¹⁶⁴
- Order of the Ukrainian Government of 25 October

2017 on Signing of the Agreement on Financing the Program “Support to Reforms for the Promotion of the Rule of Law in Ukraine (PRAVO)” of 25 October 2017;¹⁶⁵

- Order of the Ukrainian Government of 13 December 2017 on the Approval of the State Target Program of Recovery and Peace-Building in the Eastern Regions of Ukraine;¹⁶⁶
- Order of the Ukrainian Government of 27 December 2017 on Approval of the Regulations on the National System of Biometric Verification and Identification of the Citizens of Ukraine, Foreigners and Persons without Citizenship;¹⁶⁷
- Order of the Ukrainian Government in the version of 28 February 2018 on Some Questions concerning the Establishment and Guarantees of Functioning of Centers Providing Administrative Services, Including Services of a Social Character, in the Format “Transparent Office”;¹⁶⁸
- Decree of the President of Ukraine on the Declaration in Ukraine of the Year 2018 the Year of the Realization of the Law Education Project “I have a right” of 14 November 2017;¹⁶⁹
- Law of Ukraine on the Strategic Ecological Evaluation of 20 March 2018;¹⁷⁰
- Order of the Ministry of Justice of 3 March 2018 on the Inclusion of Amendments to the Concept of the Information Bulletin “Official Gazette of the Ukraine”;¹⁷¹

- Law of Ukraine on the National Security of Ukraine of 21 June 2018;¹⁷²
- Law of Ukraine on the Amendment of the Law of Ukraine “On the Judiciary and the Status of the Judges” in Connection with the Adoption of the Law of Ukraine “On the Supreme Corruption Court” of 12 July 2018;¹⁷³
- Law of Ukraine on the Amendment of Some Legislative Acts of Ukraine concerning the Protection of the Ukrainian Forests and the Prevention of the Illegal Export of Raw Wood Materials of 6 September 2018;¹⁷⁴
- Law of Ukraine on Amendments of the Criminal Code and of the Criminal Procedural Code of Ukraine in Connection with the Responsibility for the Illegal Crossing of the State Border of Ukraine of 18 October 2018;¹⁷⁵
- Law of Ukraine on the Confirmation of the Decree of the President of Ukraine “On the Introduction of Martial Law in Ukraine of 26 November 2018;¹⁷⁶
- Law of Ukraine on the Denunciation of the Treaty of Friendship, Cooperation and Partnership with the Russian Federation of 6 December 2018;¹⁷⁷
- Law of Ukraine on Amendments of the Constitution of Ukraine of 7 February 2019.¹⁷⁸

In general, apart from legislative and other normative acts, also court decisions, in particular of last instance courts and the Ukrainian Constitutional Court, are

153 Text of the draft law attached to the decree of the Ukrainian Parliament of 7 November 2018, N 2183-VIII. Available at: [http://zakon3.rada.gov.ua/laws/show/2183-19_\(200618\)_](http://zakon3.rada.gov.ua/laws/show/2183-19_(200618)_)

154 VVR 2017, N 45, st 401;

155 VVR 2017, N 40-41, st 384.

156 VVR 2017, N 42-43, st 392.

157 Available at: [http://zakon3.rada.gov.ua/laws/show/n0005525-18_\(210618\)](http://zakon3.rada.gov.ua/laws/show/n0005525-18_(210618)).

158 N 156/2018. Available at: [http://zakon3.rada.gov.ua/laws/show/156/2018_\(200618\)](http://zakon3.rada.gov.ua/laws/show/156/2018_(200618)).

159 VVR 2018, N 13, st 76.

160 Originally of 8 November 2017, N 797-r. Available at: [http://zakon3.rada.gov.ua/laws/show/797-2017-%D1%80_\(200618\)](http://zakon3.rada.gov.ua/laws/show/797-2017-%D1%80_(200618)).

161 N 179-r. Available at: [http://zakon3.rada.gov.ua/laws/show/179-2018-%D1%80_\(200618\)](http://zakon3.rada.gov.ua/laws/show/179-2018-%D1%80_(200618)).

162 VVR 2017, N 51-52, st 445.

163 N 741. Available at: [http://zakon3.rada.gov.ua/laws/show/741-2017-%D0%BF_\(200618\)](http://zakon3.rada.gov.ua/laws/show/741-2017-%D0%BF_(200618)).

164 Attached to the original version of 14 March 2018, N 170. Available at: [http://zakon3.rada.gov.ua/laws/show/170-2018-%D0%BF_\(210618\)](http://zakon3.rada.gov.ua/laws/show/170-2018-%D0%BF_(210618)).

165 N 769-r. Available at: [http://zakon3.rada.gov.ua/laws/show/769-2017-%D1%80_\(200618\)](http://zakon3.rada.gov.ua/laws/show/769-2017-%D1%80_(200618)).

166 N 1071. Available at: [http://search.ligazakon.ua/l_doc2.nsf/link1/KP171071.html_\(130718\)](http://search.ligazakon.ua/l_doc2.nsf/link1/KP171071.html_(130718)).

167 N 1073. Available at: [http://vobu.ua/ukr/documents/item/postanova-kmu-vid-271217-r-1073_\(130718\)](http://vobu.ua/ukr/documents/item/postanova-kmu-vid-271217-r-1073_(130718)).

168 Originally from 11 October 2017, N 736-r. Available at: [http://zakon3.rada.gov.ua/laws/show/736-2017-%D1%80_\(200618\)](http://zakon3.rada.gov.ua/laws/show/736-2017-%D1%80_(200618)).

169 N 361/2017. Available at: [http://zakon3.rada.gov.ua/laws/show/361/2017_\(200618\)](http://zakon3.rada.gov.ua/laws/show/361/2017_(200618)).

170 N 2354-VIII. Available at: [http://search.ligazakon.ua/l_doc2.nsf/link1/T182354.html_\(200618\)](http://search.ligazakon.ua/l_doc2.nsf/link1/T182354.html_(200618)).

171 N 616/5. Available at: [http://zakon3.rada.gov.ua/laws/show/v0616323-18_\(20618\)](http://zakon3.rada.gov.ua/laws/show/v0616323-18_(20618)).

172 N 2469-VIII. Available at: [http://zakon2.rada.gov.ua/laws/show/2469-19_\(130718\)](http://zakon2.rada.gov.ua/laws/show/2469-19_(130718)).

173 N 2509-VIII. Available at: [https://zakon.rada.gov.ua/laws/show/ru/2509_\(120319\)](https://zakon.rada.gov.ua/laws/show/ru/2509_(120319)).

174 N 2531-VIII. Available at: [https://zakon.rada.gov.ua/laws/show/ru/2531_\(120319\)](https://zakon.rada.gov.ua/laws/show/ru/2531_(120319)).

175 N 2599-VIII. Available at: [https://zakon.rada.gov.ua/laws/show/ru/2599_\(120319\)](https://zakon.rada.gov.ua/laws/show/ru/2599_(120319)).

176 N 2630-VIII. Available at: [https://zakon.rada.gov.ua/laws/show/ru/2630_\(120319\)](https://zakon.rada.gov.ua/laws/show/ru/2630_(120319)).

177 N 2643-VIII. Available at: [https://zakon.rada.gov.ua/laws/show/ru/2643_\(120319\)](https://zakon.rada.gov.ua/laws/show/ru/2643_(120319)).

178 N 2680-VIII. Available at: [https://zakon.rada.gov.ua/laws/show/2680-19#n6_\(120319\)](https://zakon.rada.gov.ua/laws/show/2680-19#n6_(120319)). By amendment of the Preamble, of arts 85, 102, and 116, as well as of the transitory provisions, the Constitution of Ukraine commits to membership in the EU and NATO.

relevant for a respective monitoring.¹⁷⁹ It is of interest for the evaluation also how the Central Election Commission has been dealing with the registration of particular Non-Governmental Organizations for elections on the local level.¹⁸⁰

Even if the list of relevant legal acts and activities on the side of the Ukrainian authorities is not complete and could be surveyed only cursorily, the Ukrainian authorities without doubt continue to feel committed to undertake effective measures on their side in order to answer and meet the challenges of a visa free travel regime with the EU. The EU, on the other hand, has tools available, re-enforced since the entry into force of the Association Agreement with Ukraine, in order to assist and advise the Ukrainian authorities on how to improve and better streamline these measures. This needs also to include domestic policies being in line with the EU Charter on Fundamental Rights and Freedoms and the commitments under the UN and Council of Europe Human Rights documents for protection of human rights in general and minorities in particular. In addition, the EU needs to remain an active and contributing partner to a peaceful settlement of the conflict in the Eastern Ukraine along the Minsk Agreements.

The Report of the Committee on Foreign Affairs on the Implementation of the EU Association Agreement with Ukraine of 16 November 2018 raises the following fundamental concerns about:

- “A proper functioning legal framework to fight corruptions, including institutions, financial transparency and audit;
- Finalisation of the decentralization reform;
- Lack of efforts in de-Oligarchisation and privatization.”¹⁸¹

The motion for a European Parliament Resolution included in this document addresses the “*people’s disappointment at deteriorating social conditions, uncertainty about the future, dissatisfaction with the government’s reform policy, the continuing power of the oligarchs and the persistence of endemic corruption in state institutions.*”¹⁸² The motion is aware of the fact that around 5,000,000 Ukrainians are working abroad, in particular in Russia and Poland.¹⁸³ The motion requires an institutional framework in place to implement reforms and requires Ukraine to focus on the above three main priorities in this context.¹⁸⁴ As to the rule of law and good governance, the motion inter alia regrets the ineffectivity, corruption and lack of political independence of the judicial system in Ukraine, the interference from the prosecutor general with the work of the National Anti-Corruption Bureau, and the lack of implementation of the recommendations of the Venice Commission as to amendments of the Constitution of Ukraine.¹⁸⁵ A good example for an aims-oriented measure on EU-side in addition to general monitoring, advice and assistance in the period under consideration is the EU Twinning Project “Support to the State Border Guard Service of Ukraine in Further Development of IBM Approaches for Travel Document Verification and Stolen Motor Vehicles Detection”. This project aims inter alia at improving the border checks systems, including IT solution in line with the EU models and best practices.¹⁸⁶

A border control, where officers upon entry to the EU ask Ukrainian citizens holding visa free biometric passports to show an invitation, inform on the intended length of stay, show their return ticket, and provide indications on the financial means they have in order to cover the expected expenses for their stay in the EU could offer an effective standard in order to avoid a potential misuse of the visa free travel regime.

¹⁷⁹ See eg the decision of the Constitutional Court of 6 June 2018, N 1-v/2018 on the constitutionality of an initiative to amend arts 157 and 158 Constitution of Ukraine. Available at: <http://zakon3.rada.gov.ua/laws/show/v001v710-18> (190618).

¹⁸⁰ See eg as to the NGO „All-Ukrainian Division for the Unveiling and Prevention of Corruption in the Organs of Power and Local Self-Administration” the Order of the Central Election Commission of 16 November 2017, N 255. Available at: <http://zakon3.rada.gov.ua/laws/show/v0255359-17> (210618) or as to the NGO “Council for the Protection of Legality and Legal Order” of 16 November 2017, N 254. Available at: <http://zakon3.rada.gov.ua/laws/show/v0254359-17> (210618).

¹⁸¹ A8-0369/2018, p 3. Available at: http://www.europarl.europa.eu/doceo/document/A-8-2018-0369_EN.html (270219).

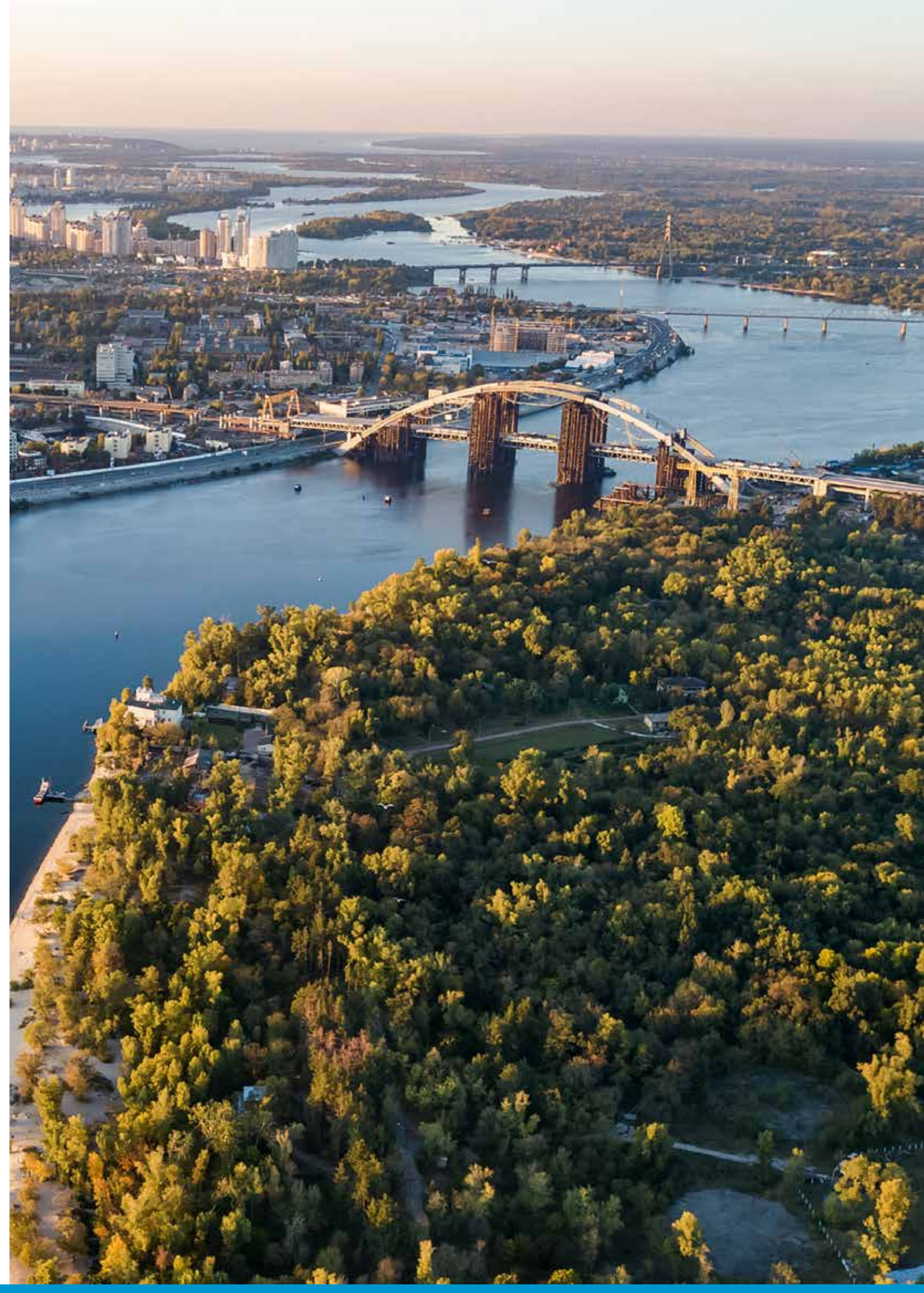
¹⁸² (fn 181), p 4.

¹⁸³ (fn 181), p 5.

¹⁸⁴ (fn 181), pp 6 – 8 (p 8 number 16).

¹⁸⁵ (fn 181), p 9 numbers 26 – 28.

¹⁸⁶ See <https://dpsu.gov.ua/en/twinning-project-eng/> (180618).



ISSUES RELATED TO VISA FREE TRAVEL BY UKRAINIANS TO THE EU IDENTIFIED

Having analysed the monitoring exercised by the EU Commission prior to the introduction of the visa free regime for Ukrainians and witnessing that the EU Commission continues such monitoring, as indicated by the Commission itself, also after the introduction of this system, there is one further method that can be used by the Commission for receiving reliable early warning information and follow-up and this is to observe reports in local Ukrainian media and, in particular, on the Ukrainian Internet.¹⁸⁷ The most recent reports that can be found in the given context at present highlight the following issues:

5.1. EXPORT OF CONTRABANDS TO THE EU

In an article on the Internet, dated 25 October 2017, Mariya Brovinskaya deals with the topic *"In the tobacco smoke: Why does the black market in cigarettes grow?"*.¹⁸⁸ The article has been published by the information agency Liga Biznes Inform (www.liga.net), which includes many interesting articles on current Ukrainian business and political issues. The agency cooperates with the research company TNS which reports that the share of illegal cigarettes on the Ukrainian market has nearly doubled from August 2016 to August 2017 and has reached 2,2 %. TNS identifies as main routes of this contraband to Ukraine Belarus, Moldova and Russia. Whereas the illegal import from Moldova and Russia has decreased, the import from Belarus has increased. The price of the illegal cigarettes is 4 – 5 UAH less than that of legal cigarettes. This difference in prices has been caused, in particular, by the substantial increase of excise on tobacco products in Ukraine, eg by 40 %

in 2017. TNS mentions two production companies in the Lugansk and Donetsk areas, currently not under control of the Ukrainian government, which are also responsible for the illegal products on the Ukrainian market (tobacco factory of Debal'tsevo and the factory Khamadey in Donetsk), but assumes at the same time that there might be more factories from Eastern Ukraine and the company Donskiy Tabak from Russia involved. According to the article the official fight against smuggle and illegal production of cigarettes widely remains on paper. A small part of confiscated cigarettes is publicly destroyed, whereas a much bigger proportion is being shared with illegal traders.¹⁸⁹ The project "Codentify" which in 2013 was proposed for introduction in order to electronically follow up the path of each package of cigarettes was not approved by the Ukrainian Government. Instead, in the summer 2017, the Government proposed an alternative system of electronic monitoring, which, on the one hand needs for an investment of 4.1 bln UAH of Grivny, and on the other hand, is considered by Ukrainian tobacco experts as not effective in order to fight the illegal production of and trading with cigarettes. It is assumed that the financial means assigned in the state budget for such electronic mark in fact will serve for hiding other business interests.

Even if the article praises the adoption of the National Strategy for Countering Illegal Manufacturing and Turnover of Tobacco Goods for the period until 2021, which had been under discussion in the Ukrainian Government since 2015, it also reflects elements worth of close follow-up on the Ukrainian as well as the EU Commission side and supported by other news on Ukrainian side, but also research in the West¹⁹⁰ and

¹⁸⁷ The Report of the Committee on Foreign Affairs to the European Parliament (fn 181), p 16 f, shows that the EU obviously is following such reports (see numbers 80 (illegal exploitation of natural resources) and 81 (depletion of Ukrainian forests and rivers).

¹⁸⁸ V tabachnom dymu: pochemu rastet chernyy rynek sigaret. Available at: <http://biz.liga.net/all/prodvolstvie/article/v-tabachnom-dymu-rastet-chernyy-rynok-sigaret> (180618).

¹⁸⁹ An example for a public confiscation not only of 200 packs of cigarettes found on 1 June 2018 by the border guards of the Mukachevo Guard Detachment in a car, but also of the car itself is shown for purposes of general prevention with photos on <https://dpsu.gov.ua/en/news/Citizen-of-Ukraine-lost-his-auto-because-of-200-packs-of-smuggled-cigarettes> (180618).

¹⁹⁰ Eg L. Joossens, M. Raw, From cigarette smuggling to illicit tobacco trade. In: Tobacco Control 2012/21, pp 230 – 234. Available at: <https://tobaccocontrol.bmj.com/content/tobaccocontrol/21/2/230.full.pdf> (180618).



the project “SUN” by the KPMG on the EU, Norway and Switzerland.¹⁹¹ In the meantime, the production seems to have moved over to the (North) Eastern neighbours of the Ukraine, including its own East, and the Ukraine serves as a hub for delivering the illegal cigarettes further to the West, in particular, to Poland. One of the key findings of the study of KPMG for 2016 is that the Ukraine seems to have replaced Belarus’ as the largest source of counterfeit & contraband.¹⁹² This trend continued in 2017, the portion of the Ukraine sank, however, from 5,8 billion cigarettes in 2016 to 4,8 billion cigarettes in 2017.¹⁹³ On the other hand, the direct inflow from Belarus’ to Poland with 1,83 billion cigarettes was higher than from the Ukraine with 1,51 billion cigarettes in 2017.¹⁹⁴ KMPG holds that lower prices and currency depreciation combined with increasing travel flows are the main reasons for Ukraine having acquired the first place of source for illegal cigarettes in the EU.¹⁹⁵

Even though the figures from the SUN report 2017/8 suggest a decline of volume by 17%, Ukraine still remains one of “the largest source countries”. An Ukrainian source based on the company Japan Tobacco International supports for the end of 2018 that the Ukraine is the country with the highest export of illegal cigarettes to the EU reaching an amount

of 250,000,000 Euro per year. The internal illegal cigaret market in the Ukraine has increased by one third compared to 2017.¹⁹⁶ According to data of the Department for Taxes and Fees from Legal Persons of the Ukrainian State Finance Service referred to by an Ukrainian article on 10 November 2018, the production of cigarettes in the Ukraine made 101,100,000,000 cigarettes in 2016, 96,000,000,000 in 2017 and 59,100,000,000 in the first 9 months of 2018. The market is dominated by four global transnational companies (Philip Morris International, Japan Tobacco Inc., British American Tobacco Plc., and Imperial Brands PLC) which together hold a share of 96%. They are joined, however, by a counterfeit production, in particular, of the brands Marlboro, Camel, and Winston. In 2017, the authority closed down 9 illegal cigarette production facilities, in the first 9 months of 2018 8 such facilities.¹⁹⁷ The executive summary of the SUN report 2018 concludes that low-volume high-frequency transfer of cigarettes across the border might have been facilitated by the introduction of visa-free travel from Ukraine.¹⁹⁸ The most recent update available holds, however, that Increased enforcement and controls along the Eastern EU border have contributed to an overall decline in inflows of Couterfeit & Contraband from Ukraine and Belarus’.¹⁹⁹ Another source describes the functioning

of the export of contraband to the EU as follows:²⁰⁰ Ordinary citizens take contraband cigarettes with them. Some more active Ukrainian citizens carry amber, metal, wood and/or alcohol with them. Under Ukrainian law they face only administrative sanctions (confiscation and fine). For the first six months of 2017, the Ukrainian border guards reported 205 cases of illegal export of goods from the Transcarpathian region only, in 45% of them cars and in 45 % cigarettes. Besides simply taking cigarettes with them on travel, drones and divers are used for smuggling or packs of cigarettes are simply thrown into border-rivers or border lakes or attached to swimming wood. The source reports, for example, of 25,000 packs of cigarettes which can be accommodated in one swimming trunk.

Two packs are allowed per person when passing the EU border and some individuals make a (small) business by crossing the border one time in the morning and one time in the evening. Though a rather small portion compared to illegal exports by trucks raising 500,000 to 1,500,000 USD per transport, the introduction of visa free travel certainly contributes to cigarette smuggling. The portion might still be comparably small given news that in Volhynia from small airplanes Ukrainians throw blocks with cigarettes on specific places in Poland.²⁰¹ If some regions even gave “green light”, as reported for Transcarpathia, the number of persons passing the EU

border and smuggling cigarettes will increase further. This tendency is also supported by the so-called system of “Jacketting” (“pidzhakov”). This means that on one side of the border a car loaded with goods is waiting. The goods are spread on a “brigade” of people. Each of them carries as many goods as allowed when crossing the border. On the other side of the border a car is waiting to be filled with these goods person per person. The other alternative is that a car carrying more goods than allowed takes up a number of “Jacketters” so that the total amount of goods in the car equals the allowed limit for all of them together.²⁰² It is estimated that Ukraine loses around one billion Euro per year only by this system.²⁰³ It is obvious, the more persons cross the border the more potential for such brigades, profiting a small portion from a much higher profit of the persons behind the cars, is being given.

A report in Narodnyy Korrespondent of 27 November 2018 describes the functioning of the illegal export of cigarettes from the Ukraine to the EU on the Black Sea, when an Ukrainian ship with 5,000,000 packs of illegal cigarettes on board needed to be rescued.²⁰⁴

The most recent SUN report puts particular emphasise on a rather new though alarming development: “organised crime groups are using fast parcels and postal services to send smaller volumes of illicit goods with higher frequency. [...] This form of trafficking is

191 See KMPG, Project Sun. A study of the illicit cigarette market in the European Union, Norway and Switzerland. 2016 Results. Available at: <https://assets.kpmg.com/content/dam/kpmg/uk/pdf/2017/07/project-sun-2017-report.pdf> (120718).

192 (fn 191), p 7.

193 See the statistics of KPMG available at: <https://assets.kpmg.com/content/dam/kpmg/uk/pdf/2018/project-sun-2018-report.pdf> (120319).

194 See the statistics of KPMG available at: <https://public.tableau.com/profile/project.sun#:/vizhome/CountryReport2017/CountrySelection> (120319).

195 (fn 191), pp 15, 21, and 25. Supported by Kontrabanda sigaret cherez Pol'skuyu granicu. Chernye dokhody vzleteli do milliardov dollarov (25/04/17). Available at: <https://strana.ua/articles/rassiedovania/67725-kontrabanda-sigaret-chnye-dohody-vzleteli-do-milliardov-dollarov.html> (050319).

196 See Ukraina lidiruet po nelegal'nyh postavkam sigaret v Evropejskij Soyuz. Kiyv 14/12/18. Available at: <http://realtribune.ru/news/news/1402> (050319).

197 Tabachnye milliardy: kak ustroen chernyy rynek sigaret. Available at: <http://politica.com.ua/tabachnye-milliardy-kak-ustroen-chnyj-rynek-sigaret> (050319).

198 See KMPG, Project Sun. A study of the illicit cigarette market in the European Union, Norway and Switzerland. 2017 Results. Executive Summary, p 12.

199 See KPMG at: https://assets.kpmg.com/content/dam/kpmg/uk/pdf/2018/08/project_sun_exec_summary.PDF (130319).

200 See the report on RIANOVOSTIUKRAINA of 29 October 2017: “Ukraine – the dream of a contrabandist. Schemes and proceeds.” Ukraina – mechta kontrabandista. Skhemy i zarabotki. Available at: <https://rian.com.ua/analytics/20171029/1028945544/Ukraine-kontrabanda-korupcia.html> (120718).

201 See <https://ru.tsn.ua/groshi/kak-ukraincy-zarabatyvayut-na-kontrabande-seryy-import-i-pidzhaki-na-granice-453078.html> (120718).

202 See (fn 202).

203 See <https://www.segodnya.ua/ukraine/pochemu-v-ukraine-procvetaet-kontrabanda-prichiny-i-shemy-1070921.html> (120718).

204 See Velikiy tabachnyy put'. Kak rabotaet grandioznyy biznes po morskoy kontrabande sigaret iz Ukrainy v EC. Available at: <https://nk.org.ua/ukraina/velikiy-tabachnyy-put-kak-rabotaet-grandioznyy-biznes-po-morskoy-kontrabande-sigaret-iz-ukrainy-v-es-170536> (050319).



particularly difficult to enforce against given the sheer volume of parcels now being sent on a daily basis.²⁰⁵ Smart solutions need to be found and implemented in order to close down this way of trafficking without impeding the newly developing digital economy between the EU and its neighbouring countries.

Cigarette smuggling on the other hand seems to be challenged by smuggling of other goods. The illegal export of wood makes 80 % of the wood market and raises UAH 2.2 bln, the illegal export of amber reaches USD 300 – 400 Million a year. Officially, around 5 tons of amber are allowed to be mined per year. In reality 200 – 300 tons are mined per year and the whole amount is illegally exported from Ukraine, most of the time to Poland.²⁰⁶

As a whole the Ukrainian export of contraband amounts to 10 bln USD or 36% of the Ukrainian budget a year. Also dangerous goods are part of this business. Thus, on 7 November 2017, the Ukrainian news Segodnya reported on a case, where four Ukrainians were caught in the centre of the city

of Chernovcy when trying to hand over 25 kg of cadmium used in nuclear reactors to persons who intended to cross the EU border.²⁰⁷ Recent reports highlight counterfeit cement²⁰⁸ and counterfeit pesticides problems as to Ukraine.²⁰⁹

Whereas the Ukrainian border guards named organized crime as responsible for such acts, media call politicians, army soldiers and other state officials as persons responsible for covering up such practice of private persons or organized groups.

It is advisable that the EU Commission addresses this issue and requests effective counter-measures on the side of the Ukrainian government in the context of monitoring the visa free regime, but well beyond in the general association context.

5.2. IMPORT OF CONTRABANDS FROM THE EU

With regard to the illegal import of goods from the EU to Ukraine two Ukrainian sources from 2018²¹⁰ mention the fact that nearly every second product in

Ukraine has been counterfeited. 75 % of all imported cheese did not comply with the relevant norms and standards, 74 % of meat was wrongly declared. Falsifications of the place of origin relate eg to macaroni from Italy, olive oil from Spain, sweets from Poland, sausage and sea-food. Falsified goods are sold in large cities all over the country at cheaper prices. Internet purchase plays a decisive role.

A 2014 report of the International Chamber of Commerce, the Business Action to Stop Counterfeit and Piracy and the Ukraine International Chamber of Commerce based on an estimate of the Ukraine Alliance Against Counterfeiting and Piracy held already then that the value of fakes in Ukraine could be as high as USD 1.3 billion per year but may be much more and that most of the counterfeit goods on the Ukrainian market are not produced domestically but imported.²¹¹

The favorite goods illegally imported from the EU to Ukraine are smartphones (25 % of all), IT-devices (30 % of all), storage disks (50 % of all), notebooks (20 % of all), cameras (25 % of all), refrigerators (20 % of all), washing-machines (20 % of all) and new

generation TV-sets (60 % of all). For all these goods, Ukraine misses income from customs at the total amount of UAH 4 bln per year.²¹² For the illegal import of oil-products Ukraine did not receive customs income in the amount of UAH 1.2 bln in 2017. The illegal import of oil-products, as well as medicines happens though sea-ports, in particular Odessa.

The Ukrainian Government tries to fight customs evasion and adopted on 20 June 2018 an Order on implementation of a pilot project on creation of conditions preventing evasion of payment of customs duties.²¹³

The persons, who profit from import of contrabands, are people living in the border regions. They showed very unsatisfied by measures implemented by the Ukrainian Government in order to combat the illegal import of goods and in 2018 have already twice blocked the border crossing points between Ukraine and Poland as a reaction to the intended reduction of the total value of goods being allowed to be imported customs-free per person to 50 € and the introduction of the requirement that between the exit to the EU

chomu-protsvitaye-produktova-kontrabanda-z-yes (100718) and <http://www.unn.com.ua/ru/news/1725811-yes-vvela-zakonodavchu-zaboronu-na-podviyni-standartiyakosti-produktiv> (100718).

211 See: <https://cdn.iccwbo.org/content/uploads/sites/3/2016/11/Ukraine-Promoting-and-protecting-intellectual-property-English-Value-of-IP-in-Ukraine.pdf>, p 4 (050319).

212 See (fn 209).

213 N 479. Available at: <http://ukurier.gov.ua/media/documents/2018/06/20/479-p.pdf> (130718).



205 (fn 200), p 13.

206 See: <http://dengi.ua/business/299830-Kontrabanda-v-cifrah-kakovy-sejchas-mashtaby-nelegalnyh-potokov> (120718). The report dates from 27 July 2017.

207 See: <https://www.segodnya.ua/regions/lvov/v-chernovcah-ostanovili-kontrabandu-yatovitogo-metalla-v-es-1070137.html> (120718).

208 See: Ukraine industry moves against counterfeit cement (21/09/18). Available at: <https://www.cemnet.com/News/story/164933/ukraine-industry-moves-against-counterfeit-cement.html> (050319).

209 See: Fake pesticides, real problems: addressing Ukraine's illegal and counterfeit pesticides problem (21/12/18). Available at: <https://www.unenvironment.org/news-and-stories/story/fake-pesticides-real-problems-addressing-ukraines-illegal-and-counterfeit> (050319).

210 I. Makarenko, „Spekulanty“ suchasnosti abo chemu procvitae produktova kontrabanda z EC (“Speculators” nowadays or why flourish contraband products from the EU). In: UNN (Ukrains'ki Nacional'ni Novyny). Available at: <http://www.unn.com.ua/uk/publication/1729960-spekulyanti-suchasnosti-abo>



and return from the EU to Ukraine at least 24 hours must have passed. A second exit is allowed only after 72 hours. If these requirements are fulfilled a total amount of 50 kg in the total value of 500 € is allowed to be imported without paying customs, when the border is crossed by car, on foot or by train. By plane the limit stays at 1,000 €.

The rather rigid regime introduced by the Ukrainian Government reduces the potential for increase of collateral smuggling as a consequence of visa free travel considerably. The system of “Jacketting” working in both directions of crossing the EU border seems to be weakened in its effects on the import of goods to Ukraine. Nevertheless, in the interests of protection of marks and signs of origin of goods a monitoring by the EU Commission seems to be advisable.

The Staff Document accompanying the EU Commission’s Second Report under the Visa Suspension Mechanism emphasizes the smuggling

of irregular migrants of Ukrainian nationality to Germany abusing the visa free travel by overstays, arms trafficking and raises concern relating to the effectivity and independence of the National Anti-Corruption Bureau and the Specialized Anti-Corruption Prosecution.²¹⁴

5.3. CORRUPTION AND ORGANIZED CRIME AT, AROUND AND ACROSS THE BORDER

It is held that in Transcarpathia alone, about 50 contraband organized groups are active across the EU border. The border guard sector is still considered to be one of the most severely poisoned by corruption branches of the Ukrainian state administration.²¹⁵

5.4. MIGRANT WORKERS

The Ukrainian National Bank expects that the migration of workers to Poland will continue for 2 – 3 years, but will diminish gradually. The Polish National

Bank assumes that in addition to the current 2 million Ukrainian workers in Poland, an annual increase by another 200,000 to 300,000 Ukrainians on the Polish labor market will follow until the end of 2020.²¹⁶ The study of the Polish expert Marta Jarosiewicz of the Center for Eastern Research Marek Karp in Warsaw on a prognosis as to the results of a visa free regime for Ukrainians, summarised on 13 June 2017 by the Lviv news portal Galinfo, expects as a result of the visa free regime for Ukrainians a loss of Ukrainian migrant workers by Poland as they would prefer other destinations in the EU which pay higher salaries than Poland (Czech Republic, Germany, Italy).²¹⁷

5.5. TRADING WITH HUMANS

On 29 September 2017, an interview of officials of the Department for the Fight with Crimes Linked to the Trading with People of the Ministry of the Interior of Ukraine with the news portal 112.ua has been published, which reports on a number of 221 criminal procedures for trading with human beings in the first 8 months of 2017 compared to a total number of 115 criminal cases for the whole year 2016.²¹⁸ Rather than considering this increase in numbers as a sign for a higher efficiency of criminal law institutions the article sees an increase of this business sector, rather openly advertised on the Internet and falling together with an ever growing poverty in certain regions of Ukraine, lack of economic expectations and desperate situations of many families and, in particular women, but also with the coming-up of a new type of women already active as prostitutes in Ukraine who use the visa free regime for moving over to the EU for better income. The ninth month of 2017 added another 42 criminal cases for trading with humans to the statistics.²¹⁹ Also Caritas Ukraine states that “*this issue [of Human Trafficking] is becoming more and more urgent and concerns many Ukrainians*”.²²⁰

Though, the persons to be considered as victims and those to be considered as responsible for trading are changing, the sources used are referring to mechanisms used for trafficking and, thus, offer a

chance for a cooperative follow-up by the Ukrainian authorities and the EU Commission.

5.6. PRIVATIZED BORDER REGIONS

Special attention should be given to a report of the Chief Military Prosecutor and Deputy General Prosecutor of Ukraine Anatolii Matyos, who stated that around 150 km of the Ukrainian border with Hungary is in private ownership used for agricultural purpose and that the Ukrainian border guards do not have full access to these areas. 134 hectares of agricultural land along 5 km of the border between Ukraine and Hungary not far from the border crossing point Beregovo belong to the family Horvat. Officially, they raise corn and nuts, but de facto have fenced all the territory and installed towers for armed watchmen and thermal cameras who make sure that cigarette and other smuggling is being done without any danger, once no border guards are visible. The system became broadly known at the occasion of the so-called Mukachevo-shooting in 2015 and led to the withdrawal from office of the governor of the region Gennadiy Moskal’ who protested against “corruption and contraband” “which happens with the participation of the central organs of power”. An article in Ria Novosti Ukraine of 26 October 2017 even shows a map of the privatized piece of the border.²²¹

It can be assumed that under such conditions along such “privatized” parts of the border much more illegal trading is possible than as a consequence of the introduction of the visa free regime for Ukrainians by the EU. This does not go only for smuggling of cigarettes, but also for all other goods as well as migrants and trading with human beings. Private property along state borders is accessible to border control by border guards in practically all types of states on Earth. It should not be a difficult issue for the EU Commission to make sure that also the Ukrainian Government extends effective border control on all parts of the Ukrainian border which are not affected by the current conflict in the Eastern Ukraine.

216 See https://gazeta.ua/articles/life/_v-ukrayini-migraciya-strashnisha-za-demografichnu-krizu/833378 (130718).

217 See https://galinfocom.ua/articles/bezviz_dlya_ukraintiv_naslidky_ta_vyklyky_261904.html (150718) (available in the archives section of galinfocom.ua by the date and author of the article).

218 <https://112.ua/statji/prostituciya-i-torgovlya-lyudmi-v-ukraine-zhertvy-obmana-ili-sovremennye-bizness-ledi-413519.html> (150718).

219 See <https://korrespondent.net/ukraine/3897539-v-ukrayne-aktyvyzyrovalas-torhovlia-luidmy-polytsiya> (130718).

220 See <https://caritas-ua.org/en/news-en/caritas-takes-eu-anti-trafficking-day-to-remind-the-urgency-of-the-problem-for-ukraine/> (080818).

221 See <https://rian.com.ua/analytics/20171029/1028945544/Ukraine-kontrabanda-korupcia.html> (120718).

214 See (fn 78), pp 47 f.

215 See(fn 202) above.

SUMMARY AND PERSPECTIVE

- Since the presentation of the Visa Liberalisation Action Plan (VLAP) to Ukraine on 22 November 2010, the EU Commission has been working on visa liberalization.
- The EU Commission monitored the implementation of the plan by six progress reports dating from the years 2011 – 2015.
- The monitoring related to four blocks (documentary security, including biometrics; illegal immigration, including readmission, border management, migration management and asylum policy; public order and security; external relations and fundamental rights).
- The monitoring under the VLAP took place hand in hand with the Package Country Progress Report – Ukraine within the European Neighbourhood Policy (ENP) and the negotiations for an Association Agreement, including a Deep and Comprehensive Free Trade Area between the EU and Ukraine.
- In 2014, the Maidan revolution having caused a change of president and government in Ukraine and new foreign policy orientation of Ukraine inspired the European Parliament to call for an immediate visa free agreement with Ukraine.
- The EU Commission reacted by declaring to “do its utmost to help solve the remaining issues in an accelerated manner”.
- The Fifth Progress Report of 13 May 2015 on the VLAP saw quite many benchmarks fulfilled on the Ukrainian side.
- The Sixth Progress Report of 18 December 2015 on the VLAP gave green light for the introduction of a visa free regime for Ukrainian citizens to the EU.
- The visa free regime for Ukrainians adopted on 17 May 2017 by the European Parliament and the





Council of the EU and set in force on 11 June 2017, is restricted to stays of no more than three months in all, but without limiting the purposes of such stay. The EU members are allowed to provide for exceptions from this regime for persons carrying out a paid activity during their stay. EU external border and customs controls stay in place.

- On the borders between Ukraine and Poland, Slovakia and Hungary the Schengen external border regime applies. As to the border between Moldova and Ukraine, the EU is involved in EUBAM (European Union Border Assistance Mission to Moldova and Ukraine) prolonged until 30 November 2020. By agreement with the European Border and Coast Guard Agency (FRONTEX), Romania allows for the deployment of FRONTEX Liaison officers at the Romanian borders.
- The EU maintains a general Advisory Mission to Ukraine (EUAM) with its headquarters in Kyiv.

- There are good reasons to assume that a number of about 6,000,000 Ukrainians more crossed EU borders after introduction of the visa free regime compared to the year before and that the increase in number also had an impact on smuggling in goods, in particular cigarettes.
- The EU Commission is continuing monitoring the further development in Ukraine as to the identified crucial matters even after introduction of the visa free regime and has issued two reports.
- As a major joint achievement of the year under consideration – at least on paper – one should mention the adoption of the National Strategy for Countering Illegal Manufacturing and Turnover of Tobacco Goods. The Strategy emphasises the important contribution Ukraine could make to the joint EU-Ukrainian efforts in fighting the illegal export of cigarettes to the EU. These efforts need to consider the most recent numbers suggesting

that illegal export is moving from bulk transport towards smuggling by individuals: smaller quantities but increasing numbers of carriers pose a new challenge to border controls.

- EUAM Ukraine focusses on assistance to Ukraine authorities in the cross-cutting issues of human rights – gender, good governance and anti-corruption.
- Ukraine’s major achievement of the first year of visa free regime can be seen in the adoption of a Law on the Supreme Anti-Corruption Court and a set of accompanying laws. It can be expected that their implementation in practice will lead to a reduction of wide-spread corruption, in particular in the central and border guard administration.
- Witnessing the continued monitoring by the EU Commission and focusing on the benchmarks identified as crucial, the following measures and

events since the introduction of visa free regime for Ukrainians are to be emphasized for evaluation:

- implementation of a series of legislative acts adopted for fighting trading with humans and illegal working migration in practice;
- implementation of a series of legislative acts adopted for addressing rule of law and protection of human rights in practice;
- finalization of the legislative procedures and implementation of the National Strategy as to combat the illegal export of cigarettes, wood and amber;
- twinning projects EU – Ukraine in the border guard sector so as to strengthen a functioning border and customs guard system along all Ukrainian borders with the EU and including also “privatized border areas.”

RECOMMENDATIONS

- It is recommended that the EU Commission, assisted by EUAM, EUBAM, FRONTEX and the Ukrainian authorities, continues its VLAP oriented monitoring along the crucial benchmarks identified. These are: human rights – gender, good governance and anti-corruption.
- It is recommended that the EU Commission expands its twinning projects and joint border control assistance to all Ukrainian borders with the EU in order to safeguard a customs and border control regime free of corruption and functioning under general rules of law.
- It is recommended to use and monitor EU member states' border controls along the whole of Ukraine's borders on land, air and water through inclusion of border guards from non-neighbouring EU member states in order to protect against misuse of the visa free regime for crimes, in particular organized crime and trading with humans, but also as to illegal migration and smuggling of goods, in particular cigarettes. The set-up of the border control shall consider that organized groups obviously have infiltrated border guards and customs officials and even regional and central bodies on both sides of the borders.
- It is recommended to follow-up the implementation of laws and other regulatory acts on the Ukrainian side in practice, thereby listening to news and people from the border regions witnessing or even being engaged in what is going on in reality.
- It is recommended that the EU Commission consults with all political, as well as societal as well as economic stakeholders prior to finalizing its preparations leading to an opening of existing visa regimes.



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