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NOTE

From : General Secretariat of the Council
To : Delegations

Subject : EU-Ukraine Visa Dialogue - Action Plan on Visa Liberalisation

Delegations will find attached the EU-Ukraine Visa Dialogue - Action Plan on Visa Liberalisation reflecting the outcome of the discussions in the Working Party on "Eastern Europe and Central Asia".

EU-UKRAINE VISA DIALOGUE

ACTION PLAN ON VISA LIBERALISATION

1. General Framework

1.1. Background

The EU-Ukraine Action Plan on Freedom, Security and Justice (JLS), in place since 2001 and revised in 2007, provides the overall framework for EU-Ukraine cooperation in the JLS area and its priorities are regularly monitored through EU-Ukraine JLS Ministerial and JLS Subcommittee meetings. As a first gradual step towards the long-term perspective of visa-free travel recognised therein, EU-Ukraine visa facilitation and readmission agreements entered into force on 1 January 2008.

At the Paris EU-Ukraine Summit on 9 September 2008, the parties decided *"to launch a visa dialogue, developing the relevant conditions, with the long-term perspective of establishing a visa free regime between the EU and Ukraine"*. The EU-Ukraine visa dialogue examining the conditions for visa-free travel of Ukrainian citizens to the EU as a long-term perspective was duly opened on 29 October 2008. Ukraine already exempts EU citizens from the visa obligation since 1 May 2005. The Prague Eastern Partnership Summit on 7 May 2009 reaffirmed the EU's long-term goal of full visa liberalisation for individual partner countries on a case-by-case basis provided that conditions for well-managed and secure mobility are in place.

The Kyiv EU-Ukraine Summit of 4 December 2009 reviewed progress and agreed to move to *"a structured visa dialogue focused on sequenced priorities of action and recommendations to the Ukrainian authorities"*.

At the EU-Ukraine JLS Ministerial meeting of 9 June 2010, the parties agreed to enter into a fully operational phase of the visa dialogue on the basis of an Action Plan setting out all technical conditions to be met by Ukraine before the possible establishment of a visa-free travel regime.

1.2. Initial impact assessment of possible future visa liberalisation

The exploratory phase of the EU-Ukraine visa dialogue, opened in October 2008, allowed for an initial assessment of the relevant factors for the long-term goal of visa liberalisation. A first round of expert meetings took place between December 2008 and May 2009 on the four blocks of relevant factors identified in the Terms of Reference of the dialogue: document security, including biometrics; illegal migration, including readmission; public order and security; and external relations. These meetings provided an opportunity to exchange information on legislation and administrative practices of Ukraine, EU Member States and the EU as a whole in these areas. A further round of expert meetings, including on-site visits, was carried out in October and November 2009. This detailed analysis and evaluation aimed at a clear assessment of the situation in each block, allowing for recommendations to be made, in view of setting up the methodology for developing the relevant conditions for establishing visa-free travel for Ukrainian citizens to the EU.

The findings of the exploratory phase of the visa dialogue confirm that a sustainable visa-free regime for Ukrainian citizens can only be established once the relevant conditions are put in place. In particular, visa liberalisation is conditional upon: 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. These reforms and improvements should result in a high level of effectiveness corresponding to relevant European and international standards.

In addition, the full and effective implementation of the EU-Ukraine readmission agreement (regularly monitored by the EU-Ukraine Joint Readmission Committee) remains an underlying condition for the continuation of the visa dialogue and is of paramount importance for the establishment of a sustainable visa-free regime. The EU-Ukraine Joint Readmission Committee has met three times, most recently in April 2010, and has found the implementation of the agreement to be satisfactory to date.

In terms of initial impact assessment of possible future visa liberalisation, it should further be noted that the visa refusal rate in Ukraine and the number of Ukrainian citizens refused entry at the EU's external border have been relatively constant in the past two years at under 5% and about 5,000 persons respectively. Moreover, the number of Ukrainian citizens apprehended illegally residing in the EU has steadily decreased in recent years from about 22,000 in 2006 to about 12,250 in 2009, while the number of return decisions has been stable at around 14,000 in the past two years (Eurostat data).

1.3. Methodology

Having in mind the wide range of issues relevant for the visa liberalisation dialogue and the importance of establishing a secure environment for visa-free travel, the objective of this Action Plan is to identify all the measures to be adopted and implemented by Ukraine and set up clear requirements to be achieved. The Action Plan is tailor-made to Ukraine's current progress in the visa dialogue, taking into account the experts' analysis produced during the exploratory phase of the visa dialogue and Ukraine's answers to a detailed questionnaire provided in the summer of 2010 covering the four blocks of issues within the dialogue. In case of substantial change of the current situation, the Commission could propose a review and re-adaptation of the Action Plan.

To promote sustainable and well-planned reforms, the Action Plan contains two tiers of benchmarks: preliminary benchmarks concerning the policy framework (legislation and planning), which would pave the way for meeting more specific benchmarks (effective and sustainable implementation of relevant measures) The Council will be kept informed through Commission reports on the fulfilment of the first set of benchmarks, in view of taking a decision to initiate an assessment of the second set of benchmarks. The latter will be assessed through on-site evaluations involving experts from EU Member States. To that end, the Commission will invite Ukraine to provide detailed information (including relevant statistical data) allowing for an evaluation of concrete results on the ground.

The speed of movement towards visa liberalisation will depend on progress made by Ukraine in fulfilling the conditions set. Therefore, there will be no automaticity and progress in the fulfilment of each set of benchmarks will be closely examined and decided upon by the Commission and the Council. The complete fulfilment of the first set of benchmarks will be closely examined and verified by the Commission and the Council before a decision is taken to initiate the assessment of the second set of benchmarks.

Moreover the full and effective implementation of the EU-Ukraine Joint Readmission Committee will continue to be monitored in the relevant Joint Committee. As regards the implementation of the EU-Ukraine Visa Facilitation Agreement (monitored by its respective Joint Committee) particular importance will be attached to tackling risks of supporting document fraud.

In order to provide for a full impact assessment of visa liberalisation, the Commission will also continuously monitor *inter alia* the visa refusal rate in Ukraine, the number of Ukrainian citizens refused entry at the EU's external border or apprehended illegally residing in the EU, the number of return decisions and the number of returns to Ukraine, etc.

The Commission will regularly report on Ukraine's implementation of this Action Plan to the European Parliament and to the Council, for the first time in mid-2011. The Commission will also provide a wider assessment of possible migratory and security impacts of future visa liberalisation for Ukrainian citizens travelling to the EU, before a decision is taken by the Commission and the Council to initiate the assessment of the second phase of benchmarks.

Fulfilment of all benchmarks will allow the Commission, taking into account the overall relations between the EU and Ukraine, to make a proposal to the European Parliament and to the Council for the lifting of the short-stay visa obligation for Ukrainian citizens, through an amendment of Regulation 539/2001 (such amendment should be limited to the holders of biometric passports issued in accordance with ICAO standards). In view of such a proposal, the Commission services will also take into account possible impacts of visa liberalisation on the basis of trends in *inter alia* the visa refusal rate, the number of Ukrainian citizens refused entry at the EU's external border or apprehended illegally residing in the EU, the number of return decisions etc.

Following the ordinary legislative procedure laid down in the Treaty on the Functioning of the European Union for these matters, on the basis of the Commission's proposal, the European Parliament and the Council will take a decision.

2. Elements of the Action Plan

2.1. Block 1: Document security, including biometrics

1st phase (legislative and policy framework):

- Adoption of a legal framework for the issuing of machine readable biometric international passports in full compliance with highest ICAO standards on the basis of secure identity management (civil registry and breeder documents) and taking into account adequate protection of personal data;
- Adoption of an Action Plan containing a timeframe for the complete roll-out of ICAO-compliant biometric international passports, including at Ukrainian consulates abroad, and the complete phasing out of non-ICAO compliant passports;
- Establishment of training programmes and adoption of ethical codes on anti-corruption targeting the officials of any public authority that deals with international passports, as well as domestic passports and other breeder documents.

2nd phase (benchmarks for effective implementation):

- Gradual roll-out of biometric international passports in compliance with ICAO standards, including at Ukrainian consulates abroad, and phase-out of non-ICAO compliant passports;
- High level of integrity and security of the application, personalisation and distribution process for international passports, as well as domestic passports and other breeder documents;
- Prompt and systematic reporting to Interpol/LASP data base on lost and stolen passports;
- Regular exchange of passport specimens and cooperation on document security with the EU.

2.2. Block 2: Illegal immigration, including readmission¹

2.2.1 Border management

1st phase (legislative and policy framework):

- Adoption of all necessary measures for the implementation of the law-enforcement programme on State Border Development and Reconstruction for the period till 2015 and the State Border Guards Service of Ukraine development concept for the period up to the year 2015, including a legal framework for inter-agency cooperation between the Border Guard Service, law enforcement agencies and other agencies involved in border management and allowing the Border Guard Service to participate in detection and investigation of cross-border crime in coordination with all competent law enforcement authorities;
- Adoption of a National Integrated Border Management Strategy and an Action Plan for its effective implementation, containing a timeframe and specific objectives for the further development of legislation, organisation, infrastructure, equipment, as well as sufficient financial and human resources in the area of border management;
- Establishment of training programmes and adoption of ethical codes on anti-corruption specifically targeting border guards, customs and any other officials involved in border management.

2nd phase (benchmarks for effective implementation):

- Effective implementation of the Law on Border Control of November 2009 through adequate border checks and border surveillance, procedures and operational effectiveness, situational picture at national, regional and local level, including implementation of risk analysis, intelligence and data-flow management as well as direct access and consultation of relevant national and international databases;
- Provision of adequate infrastructure, technical equipment, IT technologies, financial and human resources in accordance with the IBM Strategy to be adopted, and effective implementation of training programmes and anticorruption measures;
- Improvement of inter-agency cooperation (including exchange of data between the Border Guard Service and law enforcement agencies) and international cooperation, including implementation of working arrangement with FRONTEX to a high level of effectiveness.

¹ The full and effective implementation of the EU-Ukraine readmission agreement remains an underlying condition for the continuation of the visa dialogue and is of paramount importance for the establishment of a sustainable visa-free regime.

2.2.2. Migration management

1st phase (legislative and policy framework):

- Adoption of a legal framework for migration policy providing for an effective institutional structure for migration management, rules for entry and stay of foreigners, measures for the reintegration of Ukrainian citizens (returning voluntarily or under the EU-Ukraine readmission agreement), monitoring of migration flows, the fight against illegal migration (including return procedures, rights of persons being subject thereto, detention conditions, efforts to conclude readmission agreements with main countries of origin, inland detection of irregular migrants);
- Adoption of a National Migration Management Strategy for effective implementation of the legal framework for migration policy and an Action Plan, containing a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources;
- Establishment of a mechanism for the monitoring of migration flows, defining a regularly updated migration profile for Ukraine, with data both on illegal and legal migration, and establishing bodies responsible for collection and analysis of data on migration stocks and flows.

2nd phase (benchmarks for effective implementation):

- Continued effective implementation of the EU-Ukraine readmission agreement and measures for the reintegration of Ukrainian citizens (returning voluntarily or readmitted);
- Effective implementation of legal framework for migration management, including provision of administrative structures with adequate human resources with clear and relevant competences for all aspects of migration management, as well as effective cooperation between relevant agencies;
- Migration profile established and regularly updated and effective analysis of data on migration stocks and flows;
- Consistent implementation of an effective methodology on inland detection of illegal migration, risk analysis (including the reporting of relevant agencies and analysis on each administrative level e.g. regional, central), and investigation of cases of organised facilitated illegal migration, including effective cooperation between relevant agencies;
- Provision of adequate infrastructure (including detention centres) and strengthening of responsible bodies to ensure effective expulsion of illegally residing and/or transiting third country nationals from Ukrainian territory.

2.2.3. Asylum policy

1st phase (legislative and policy framework):

- Adoption of legislation in the area of asylum in line with international standards (1951 Geneva Convention with New York Protocol) and EU standards, providing grounds for international protection (including subsidiary forms of protection), procedural rules on examination of applications for international protection, as well as rights of asylum seekers and refugees.

2nd phase (benchmarks for effective implementation):

- Effective implementation of asylum legislation, including provision of adequate infrastructure (including reception centres) and strengthening of responsible bodies, in particular in the area of asylum procedures, reception of asylum seekers and protection of their rights (including documentation of asylum seekers and refugees in order to ensure effective access to their rights), as well as integration of refugees.

2.3. Block 3: Public order and security

2.3.1. Preventing and fighting organised crime, terrorism and corruption

1st phase (legislative and policy framework):

- Adoption of a comprehensive strategy to fight organised crime, together with an action plan containing a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources;
- Adoption of a law on trafficking in human beings, adoption of an action plan to effectively implement the State Programme for Combating Trafficking in human beings containing a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources;
- Adoption of legislation on preventing and fighting corruption and establishment of a single and independent anti-corruption agency; strengthening coordination and information exchange between authorities responsible for the fight against corruption;
- Adoption of a national strategy for the prevention and fighting of money laundering and financing of terrorism; adoption of a law on the prevention of financing of terrorism;
- Adoption of a new National Strategic Programme on drugs and its related action plan; ratifying the Memorandum of Understanding with EMCDDA;
- Adoption of relevant UN and Council of Europe conventions in the areas listed above and on fight against terrorism.

2nd phase (benchmarks for effective implementation):

- Implementation of the Strategy and Action Plan to fight against organised crime including effective coordination between the relevant authorities;
- Implementation of the State Programme for Combating Trafficking in human beings, including effective coordination between state agencies and effective protection of victims of trafficking including children;
- Implementation of legislation on preventing and fighting corruption, ensuring the efficient functioning of the independent anti-corruption agency; development of ethical codes and training on anti-corruption, especially targeting public officials involved in law enforcement and the judiciary;
- Implementation of the Strategy and Action Plan for the prevention of money-laundering and financing of terrorism, implementation of the law on the prevention of financing of terrorism, implementation of relevant legislation on confiscation of assets of criminals (including the provisions addressing cross-border aspects);

- Implementation of the National Strategic Programme on drugs and its related action plan, making the information on drug seizures and persons involved accessible at border crossing points; further developing cooperation and information exchange with relevant international bodies in the drug field;
- Implementation of relevant UN and Council of Europe Conventions, as well as GRECO recommendations in the above mentioned areas.

2.3.2. Judicial co-operation in criminal matters

1st phase (legislative and policy framework):

- Adoption of a legal framework on mutual legal assistance;
- Ratification of the 2nd Protocol to the European Convention on mutual legal assistance;
- Conclusion of an agreement with Eurojust.

2nd phase (benchmarks for effective implementation):

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

2.3.3. Law enforcement co-operation

1st phase (legislative and policy framework):

- Establishment of an adequate coordination mechanism between relevant national agencies and a common database guaranteeing direct access in the entire territory of Ukraine;
- Conclusion of an operational cooperation agreement with Europol with special emphasis on data protection provisions.

2nd phase (benchmarks for effective implementation):

- High level of operational and special investigative capacity of law enforcement services and its consistent and efficient use to tackle cross-border crime;
- High level of effectiveness of law enforcement co-operation among relevant national agencies - especially border guards, police, customs officers -, as well as cooperation with the judicial authorities;
- Strengthened regional law enforcement co-operation and bilateral and multilateral operational cooperation agreements, including by sharing on time relevant information with competent law enforcement authorities of EU Member States.

2.3.4. Data protection

1st phase (legislative and policy framework):

- Adoption of adequate legislation on the protection of personal data and establishment of an independent data protection supervisory authority;
- Ratification of relevant international conventions, such as the Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data and its 2001 Protocol.

2nd phase (benchmarks for effective implementation):

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

2.4. Block 4: External relations and fundamental rights

2.4.1. Freedom of movement within Ukraine

1st phase (legislative and policy framework):

- Revision of legal and regulatory framework on registration and de-registration procedures for Ukrainian citizens and legally staying foreigners or stateless persons with a view to avoiding unjustified restrictions or obligations to their freedom of movement within Ukraine in particular with respect to conditions for legal stay without residence registration and measures taken in case of failing to register as well as on the liability of tenants.

2nd phase (benchmarks for effective implementation):

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

2.4.2. Conditions and procedures for the issue of identity documents

1st phase (legislative and policy framework):

- Revision of legal and regulatory framework so as to ensure effective access to travel and identity documentation without discrimination, and in particular as regards vulnerable groups.

2nd phase (benchmarks for effective implementation):

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

2.4.3. Citizens' rights including protection of minorities

1st phase (legislative and policy framework):

- Adoption of comprehensive anti-discrimination legislation, as recommended by UN and Council of Europe monitoring bodies, to ensure effective protection against discrimination;
- Actively pursue the specific recommendations of UN bodies, OSCE/ODIHR, the Council of Europe/ECRI and international human rights organisations in implementing anti-discrimination policies, protecting minorities and combating hate crimes;
- Ratification of relevant UN and Council of Europe instruments in the fight against discrimination;
- Specify conditions and circumstances for the acquisition of Ukrainian citizenship.

2nd phase (benchmarks for effective implementation):

- Effective implementation of legislation and policies on anti-discrimination, implementation of relevant UN and Council of Europe instruments;
 - Effective implementation of the Action Plan on fight against discrimination; general awareness raising campaigns against racism, xenophobia, anti-Semitism and other forms of discrimination; strengthening the responsible bodies for anti-discrimination policy and combating racism, xenophobia and anti-semitism;
 - Provision of specific training to law enforcement officials, prosecutors and judges potentially involved in the prosecution of hate crimes.
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