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Part II on the record to date of Georgia, Moldova, and Ukraine in meeting the technical criteria, and recommendations for reforms by **Nadya Dimitrova**, European Institute, Bulgaria

No shortcuts on the road to freedom of movement for the EU's Eastern neighbours

Visa-free travel for the EU's Eastern neighbours will come when they meet the technical criteria and EU skeptics' concerns on migration flows are addressed directly and convincingly

Part I by Piotr Kaźmierkiewicz

SQUARING THE TECHNICAL AND POLITICAL CHALLENGES

This study identifies opportunities and barriers to the process of visa liberalisation between the European Union (EU) and the states of the Eastern Partnership, in particular Ukraine, Moldova and Georgia. Attention is paid to two key factors: technical, involved in the process of adoption, implementation and evaluation of action plans, and political, centring on the will of the two parties (EU and EaP states) to move the process forward and complete it successfully.

Such analysis appears to be particularly timely in view of several recent trends, which raise questions as to the outcome of the process: the delays in the integration of Bulgaria and Romania into Schengen and the calls for

the reintroduction of border controls and suspension of visa-free travel for two Western Balkans states and the growing preoccupation with immigration in several EU member-states. The states of the Eastern Partnership, engaged in taking on, or attempting to meet, stringent technical criteria, may have valid concerns as to whether their efforts are going to be rewarded.

The EU's eastern neighbours are concerned about two scenarios of the outcome of the technical process of meeting EU requirements for lifting visa requirements:

- a) a protracted and "open-ended" process, which would depend on the "political climate" around visa liberalisation in the member-states;
- b) blocking of the decision after meeting the technical requirements, and imposing of further requirements.

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To estimate the likelihood of these two scenarios, it is necessary to focus on three aspects of the problem:

- to what extent the process may be considered merely an exercise in meeting technical requirements, and to what extent it is open to other, more “political” arguments?
- which countries are likely to oppose fast conclusion of talks and are going to raise further concerns, and which arguments can we expect from them?
- what should be the optimal timing and contents of advocacy efforts, and what is the best strategy for working beyond the Polish EU Council Presidency in this regard?

The study is based on a combination of desk and field research. As part of the desk research, official documents, expert and press reports were surveyed, while the fieldwork consisted of personal interviews with 15 respondents, carried out in Brussels and Warsaw in May 2011. The analysis was undertaken in the framework of the PASOS/LGI project “Paving the road towards visa-free travel between the Eastern Partnership countries and the EU”, aiming to identify the main factors likely to hamper the process of visa liberalisation and those stakeholders who need to be targeted with advocacy efforts.

RECOMMENDATIONS FOR THE GOVERNMENTS OF THE EASTERN PARTNERSHIP STATES:

- The **negotiating teams** are advised to take a proactive approach when it comes to responding to the European Commission’s findings of gaps in legislative and administrative arrangements. This implies firstly prompt and exhaustive responses to the Commission’s requests for information, in which not only are specific problems acknowledged but also timelines for tackling them and the responsible authorities are indicated. Interviews with Commission officials confirm that the unsatisfactory communication with the negotiators from some of the applicant countries is one of the main current obstacles to fast conclusion of the first stage of negotiations on visa liberalisation.

Working out effective mechanisms for sharing information within the format of the negotiations is crucial for developing trust, which in turn is essential for convincing the European Commission of the co-operative attitude of the Eastern Partnership governments. In turn, the applicant states need to recognise the European Commission as their ally, vitally interested in the success of the negotiations.

- The **Cabinets of Ministers** have a crucial role in making sure that the issues raised during the negotiations receive sufficiently high rank in the legislative initiative plans and in co-ordinating

the sectoral implementation strategies. The experience of Central European accession to the EU and the road towards visa-free travel for the Western Balkans countries indicate the need for establishing a strong co-ordination centre with political authority. Such a centre would not only ensure the consistency of actions and effective allocation of resources, but also stir the administration into action, giving a clear signal that the process represents the highest political priority on the national agenda. Moreover, the Cabinets are well-positioned to collect information from the involved ministries and agencies, passing it on to the negotiating team, thus shortening the communication lines.

RECOMMENDATIONS FOR THE GOVERNMENTS OF EU MEMBER-STATES SUPPORTIVE OF THE PROCESS:

- **Ministries of Foreign Affairs** occupy a pivotal position in the EU-level forums (such as the Council on Eastern Europe and Central Asia - COEST) at which the member-states express their general concerns on the current state of relations and prospects for co-operation with Eastern Partnership states. Their activities on behalf of the neighbours may take on two forms. On the one hand, they may counter some of the misconceptions and concerns related to future visa liberalisation by supplying factual information on

the positive experience of effective management of migratory flows across their borders with the neighbours, and by disseminating best practices in visa administration.

On the other hand, they need to show themselves as credible advocates of the process by demonstrating to the “skeptical” EU member-states that they are able to communicate their concerns to the candidates, and come back with solid evidence of progress specifically in the areas of utmost concern to the skeptics. While the dialogue on the technical level is likely to continue primarily between the European Commission and the Eastern Partnership governments, it needs to be complemented by vigorous political dialogue between the diplomacies of the EU member-states and the Eastern Partnership governments.

- As central authorities in the field of Justice and Home Affairs, **Ministries of Interior** are in the position to tackle concerns of their counterparts in the EU on a whole range of sectoral issues (illegal migration, organised crime, corruption). They may do so firstly by intensifying operational co-operation with the ministries and agencies (migration and border services) of the Eastern Partnership states (exchanging liaison officers, funding study visits, and capacity-building projects). Secondly, they may involve their EU partners in technical exercises, providing them with first-hand experience of progress that the Eastern Partnership states are making on the ground. Such an “intermediary” role would fulfil one of the objectives of the Eastern Partnership - transfer of know-how to state administration of the beneficiary countries while engaging the ministries and agencies of the “skeptical” states and gradually winning them over to support of the process.

RECOMMENDATIONS FOR THE POLISH AND DANISH EU COUNCIL PRESIDENCIES:

- The period of the Polish Presidency of the Council of the European Union (July-December 2011) continues to represent a unique opportunity for advancing the issue of visa

liberalisation for the EU’s Eastern Partners. Given the preoccupation with other pressing issues (in particular, the economic crisis) and the resistance of several EU member-states to the prospects of visa liberalisation, it is first of all essential that the Polish Presidency **keep the momentum** of the progress with the frontrunners, presenting them as “success stories” and building foundations for further progress under the coming Presidencies of countries that do not exhibit a comparable level of interest in the issue.

It is in particular expected that in this period Poland will manage to **oversee the closing of the first stage of the Action Plans with Moldova and Ukraine**, which would entail also the specification of requirements envisioned for the second stage and a declaration that full visa liberalisation is dependent on fulfilment of a set of jointly agreed standards. While it is not likely that a date for the ultimate abolition of visa requirements is going to be announced in this period, communication of a clear perspective for the process to continue would represent an assurance to the Eastern Partners that their genuine efforts at reform will be rewarded.

- At the same time, the Polish Presidency is expected to strive for demonstrable progress with all the other Eastern Partners, so as to maintain the cohesion of the Eastern Partnership initiative. The European Commission has initiated talks on visa facilitation with Armenia and Azerbaijan while efforts will have to be made to **commence by the end of the year negotiations on the adoption of the plan for visa liberalisation with Georgia**. The latter will be contingent on the review of the results of the operation of the visa facilitation agreement, and Poland is encouraged to call upon the other members of the Council to require that such a review be held still in 2011.

- While the priorities of the Danish EU Council Presidency (January-June 2012) are to be laid out only in December 2011, it is essential that through the format of the presidency trio with Poland and Cyprus work is carried out on **ensuring consistency of objectives and co-ordination of activities among the presiding states**. The fact that Denmark enjoys an opt-out in the area of Justice and Home Affairs

gives grounds for **expecting that Copenhagen will keep to its declaration**, presented in the list of focus areas for its Presidency, doing "its utmost to be an honest broker and deal with all the many issues in a fair, neutral and effective manner". The first steps of the new Danish centre-left cabinet in relaxing the stringent national immigration policy also indicate the possibility that the country's strong opposition to any moves relaxing the conditions for entry of nationals of Eastern Partnership states into the EU may be somewhat tempered. While Denmark is not expected to place the issue high on the agenda, some hope for the continuity of the EU's policy of continued dialogue with the neighbours on this issue is justified.

RECOMMENDATIONS FOR CIVIL SOCIETY ORGANISATIONS IN THE EASTERN PARTNERSHIP STATES:

- The process of negotiations towards visa liberalisation could be made much more transparent if **think-tanks, research institutes and advocacy NGOs** became more involved in the process of independent assessment of the progress that their governments are making towards a broad range of governance and human rights indicators. They may establish themselves as impartial yet supportive witnesses of the government's efforts, using a combination of public events and targeted advice to raise officials' awareness of the commitments flowing from the realisation of the Action Plans, particularly in the field of human rights. At the

same time, civil society organisations are set to become more visible, adding their voice to that of international organisations in identifying areas in need of reforms, and suggesting do-able solutions for implementing the commitments.

RECOMMENDATIONS FOR THE NON-GOVERNMENTAL ADVOCATES OF THE PROCESS, LOCATED IN THE EU:

- Erosion of the value of free movement by reference to European security, which has been observed, inter alia, in the tightening of conditions for the liberalisation of visas with the Eastern Partnership states, must be of concern to **organisations and networks preoccupied with civil liberties** (among them Open Society Foundations and PASOS).

As the growing preoccupation with illegal migration undermines a number of the achievements of European integration, the issue of upholding the values of freedom of movement and civil liberties in relations with the neighbours may be presented as a matter of larger significance. Furthermore, coalitions of NGOs from EU member-states and countries of the Eastern Partnership are likely to be viewed not merely as advocates of narrow interests of selected groups of population, but may propel the issue forward as a matter of concern to advocates of civil rights in the countries of "old Europe".

SHAPING THE STANCE OF EU MEMBER-STATES

Visa liberalisation between the EU and the countries of the Eastern Partnership is subject to constraints, which may be divided into two main categories: related to the process itself (and consisting of technical and political aspects) and reflecting the interests and positions of key stakeholders, often going beyond the question of the visa regime or relations with Eastern Partnership states.

The two types of constraints are intertwined: those member-states who are cautious about stepping

up relations with Eastern Partnership countries placed certain safeguards into the process so as to ensure that it does not progress too fast or without due oversight, and the positions held on related matters (Schengen evolution and enlargement, integration of Western Balkans, Mediterranean neighbourhood, domestic immigration policy) play a role in shaping the stance of member-states towards visa liberalisation for the Eastern Partner countries.

Thus it is not possible to separate the technical aspects (capacity of Eastern Partnership states for meeting obligations) from the broader political environment surrounding the issue. This study

argues that the larger political issues occupying European policy-makers must be dealt with head on to avert the possibility of a failure of the process leading up to the introduction of a visa-free movement between the EU and Eastern Partnership states.

The progress of the Eastern Partnership states toward visa liberalisation is conditional upon:

- *Ability to accept, implement and demonstrate the legal, institutional and technical requirements of the visa facilitation and liberalisation agreements.* Fast progress is possible at earlier stages; however, the division of the liberalisation process into two stages, of which the second one is very broad in scope, puts serious limits on the prospects of fast conclusion.

- *Progress of a pivotal state (Ukraine) determines the chances of the other Eastern Partnership states.* Unlike the Western Balkans, where the ultimate accession perspective allowed case-by-case treatment, the absence of such perspective and the disparity in size (hence potential migratory impact) focus the attention of EU policymakers on the progress and outcome of the visa-liberalisation process with Ukraine. This connection is reinforced by the insistence on the part of the opponents of fast visa liberalisation on demonstration that the relaxation of conditions of travel for nationals of one Partnership state does not reduce migration security in the entire neighbourhood of the EU.

- *Division of the visa liberalisation process into two stages and the requirement to meet the technical standards, envisioned in the first stage of the action plan (implemented by Ukraine and Moldova), places emphasis on the technical capacity of Eastern Partner institutions and elevates the role of the Ministries of Interior of member-states in verifying the progress.* EU member-states skeptical towards the prospect of relaxation of controls have been critical of the process of evaluation of Western Balkan states' progress in meeting technical criteria, which in their view did not grant the experts from member-states sufficient opportunity to monitor the performance of state agencies and to ensure that proper controls were in place.

What are the implications for the advocates of visa liberalisation, firstly the civil society

organisations in Eastern Partnership states and those member-states (like Poland and other new members) that welcome the prospect? Firstly, we may actually learn some lessons from the experience of accession and Schengen integration preparations - the initial preoccupation with dates and enthusiasm about the freedoms to be gained gave way to a more sober assessment - that the process had value in itself as it involved deep and fundamental restructuring of the security institutions and agencies, and thus made a crucial contribution to greater transparency of the state. In other words, **regardless of the ultimate benefit of granting freedom to travel, the citizens of Eastern Partnership states are going to see the security sector open up, resulting in improved treatment of their own citizens.**

From this point of view, a shift of emphasis from meeting a series of strictly technical requirements to achieving qualitative change in the operation of security institutions (including greater attention paid to civic and human rights) may actually be welcomed by civil society in the Eastern Partnership states. Incidentally, raising the bar in the negotiations and monitoring of implementation of action plans for visa-free movement realises one of the priorities of the Partnership initiative - genuine progress in the area of rule of law and human rights.

Experts in Eastern Partnership states have long postulated reforms of Ministries of Interior, turning them into civilian institutions with capacity for strategic planning and oversight of operational agencies. Diligent implementation of these reforms will **be a signal for the public in these states of the genuine commitment of the governments to civil and human rights and European integration, confirming their credentials as reformers.** CSOs have a crucial role in alerting the governments in their states of the extent of reforms that need to be undertaken, and in pointing out how such reforms could raise the trust of the public in the government.

Further down the road, **implementation reports can be used as opportunities for pointing out the outstanding problems and forging a common understanding on what needs to be done.** The feedback from the European Commission suggests that the governments of the Eastern Partnership states need to incorporate into their national action plans recommendations

from international organisations, and comply with commitments made (especially in the fields of anti-corruption or anti-discrimination).

Member-states supportive of the process are already becoming aware of the need to address head-on the concerns of skeptical EU governments, especially Ministries of Interior. Their own recent experience in implementation of Justice and Home Affairs (JHA) *acquis communautaire*, and preparations for entry into Schengen, demonstrated **the need to give experts from the skeptical member-states ample opportunity to visit the facilities, and to place liaison officers at institutions.** The Polish EU Council Presidency is not likely to push premature acceleration of the process, but is going on the one hand to complete the first phase with a leader (perhaps Moldova), give clear indication of the homework to be done by Ukraine in order to close the first stage, and open negotiations on visa facilitation with other Eastern Partnership states.

At the same time, Poland and other supporters will face a difficult task in raising the issue of specific internal policymaking challenges, faced especially by Ukraine, pointing to the need for **offering mid-term incentives and coming up with strategies for overcoming deadlock in talks with Ukraine.** Poland was the last country to close the JHA chapter in accession negotiations, and is aware that the technical process must be complemented by political dialogue.

This brings us to the fundamental question: is the presentation of the facts on the progress of individual countries sufficient to overcome the fundamental concerns of countries like the Netherlands, Belgium, or France? The lesson from the recent crisis following the lifting of visas with some Western Balkans countries is that domestic preoccupation with the burden of immigrants on the asylum and social security system will not be assuaged by showing technical progress on individual elements of the plan; but that it is necessary to **demonstrate the willingness of the governments of the Eastern Partnership states to acknowledge existing problems, and provide evidence to show that the situation inside the countries is improving to provide sufficient deterrence to abuse of the visa regime by the Eastern Partner countries' own citizens.**

THE NUTS AND BOLTS OF THE PROCESS

Visa liberalisation between the EU and the countries of the Eastern Partnership is subject to constraints, which may be divided into two main categories: related to the process itself (and consisting of technical and political aspects) and reflecting the interests and positions of key stakeholders, often going beyond the question of the visa regime or relations with Eastern Partnership states.

a. Technical

The format of the Eastern Partnership has provided an opportunity for the six countries covered by the initiative to enter a process of genuine approximation of legal and institutional frameworks with the *acquis communautaire*, and as a result align their administrative structures and processes with those found in the EU. Within this process, visa facilitation and liberalisation, which were once only in the realm of postulates, are being gradually achieved through a **technical process**, based on jointly agreed and measurable progress indicators.

This shift from a principle-based discourse to a technical exercise has profound implications for all the stakeholders in the process. As EU member-states have given the European Commission a mandate for initiating and conducting talks with the EU's neighbours, they have also expressed basic trust in the Commission's ability to monitor the progress toward the required standards, abstaining from intervention throughout the process except at certain, specified stages.

As a sole representative of the EU in the exercise, the European Commission is committed to its successful completion, deploying all measures necessary to ensuring that by the end of the exercise the relevant EU legal norms and standards are in place. In turn, upon entering the approximation process, the governments of the Eastern Partnership states have put to the test their capacity for undertaking clear commitments, covering a range of issues vital to national security, good governance, and human rights.

In this context, it is also important to draw a distinction between the format of the visa liberalisation process and that employed for negotiating readmission and visa facilitation. Unlike the latter, this one is not strictly a technical exercise whose outcome is certain. Its scope is far more comprehensive - requiring fundamental realignment of state services and reforms covering the entire justice and home affairs sector. In general, the division of the process into two stages, review of existing legislative base and institutional framework, and verification of the ability of the country to pull these resources together to achieve a qualitatively different outcome, hints at a fundamental issue: the institutions as we know them now in the Partnership states are not up for the task, and mere reallocation of resources will not meet the requirements.

Fulfilment of the technical criteria in the first phase of the visa liberalisation process is vital not only to demonstrate the capacity for border and migration control, but also to show that there is a will to carry out fundamental reforms of the legal and institutional framework. From this point of view, the European Commission reports, such as those published on the progress of Moldova and Ukraine in September 2011, are watched closely by the skeptics who are quick to point out delays, unmet promises and stalemates, and interpret them as a lack of will to reform.

When seen from this perspective, the gaps overshadow undisputed areas of progress (such as improved border management, conclusion of readmission agreements, preparation of the action plan for national migration management strategy, presence of legal framework in the area of public order and security). However, those clear gaps are not only symptomatic of the actual barriers to reform, but are at the same time points of particular interest for many EU member-states.

The Commission thus found issues in such sensitive areas as the adoption of anti-discrimination legislation (in both countries as of the time of preparation of reports), establishment of an anti-corruption agency (Ukraine), and progress in carrying out GRECO recommendations on tackling corruption (in both states), the need to align the asylum system with EU standards

(Ukraine), and to establish a mechanism for monitoring migration flows (Ukraine).

b. Political

At the same time, the road to visa-free movement goes beyond meeting narrowly understood technical criteria, and cannot be separated from the broader **political climate around the issue**. As observed in the cases of Western Balkans states and Romania and Bulgaria, when taking the ultimate decision on certifying the candidates as ready, the EU member-states considered issues other than those found on the original scorecard. In fact, when compared with earlier exercises of this type, progress towards visa liberalisation for Eastern Partnership states is likely to be even more vulnerable to the changing political climate.

In contrast to the above-mentioned exercises, this process is not anchored in the clear and foreseeable political perspective of EU and Schengen membership. In fact, its outcome is far from certain, and no guarantees may be given. Probably for the first time, deep reforms will have to be carried out not with the benefits in mind to the home population, but in order to prove to the EU member-states that the state apparatus in Ukraine, Moldova and Georgia is willing and able to reduce the threats associated with illegal migration, as perceived by the public inside the EU.

This means that certain assumptions no longer hold true: firstly, unlike in the case of citizens of Central European and Western Balkan states, the right of citizens of Eastern Partnership states to free movement within the EU is not explicitly stated - for the simple reason that visa liberalisation is not part of an accession perspective. Secondly, it is worth noting that the lack of political commitment of many EU member-states to the integration of Ukraine and other states of the Partnership de facto puts the brakes on any possible attempt by the Commission or some enthusiastic member-states to accelerate the process by reference to the right of the eastern neighbours to mobility within the EU (impact assessment). Without the foundation in the fundamental rights and freedoms, the process is likely to be influenced

by other, pressing points of the agenda of EU member-states - concern over their own ability to integrate migrants, combating organised crime and transborder criminality.

Unfortunately, the reverse also holds true. The broader context of domestic policy in certain Eastern Partnership states may potentially stall the progress of talks toward visa liberalisation. An example is the court case against Yulia Tymoshenko, which was criticised as an example of politically motivated "selective justice" by EU leaders. While the decision of the Kyiv court to detain the opposition leader did not have immediate effects on the process of review of Ukraine's capacity for visa-free movement in the EU, it certainly cast doubt on the country's commitment to a set of values cherished by the EU and its member-states. This point was underscored by European Commission President Jose Manuel Barroso who in his comment on the verdict, made on 10 October 2011, on the one hand stressed the importance of "a reinforced relationship with Ukraine" but on the other hand stated that the EU expects "Ukraine to uphold the values of rule of law, of human rights, of fundamental rights and of course an independent judiciary".

OPPONENTS: WHO ARE THEY, AND WHAT ARE THEIR ARGUMENTS?

A group of EU member-states can be expected to resist quick conclusion of the negotiations on visa liberalisation with Eastern Partnership countries. The opposition is likely to be well-entrenched, concentrating on issues already high on national agendas. The strength of the opposition can be expected to be more sustained than the resistance against the full entry into the Schengen zone of Romania and Bulgaria in December 2010 and then in October 2011 - a resistance that demonstrates the continuing sentiment against the extension of greater freedom of travel.

Notwithstanding the demonstrable progress on technical criteria in some of the Eastern Partnership countries, fundamental points of resistance will persist. Since the opponents tend to raise the points made earlier with regard to the integration of south-east European states into

the area of free movement, it is vital to tackle the relevance of these arguments in the context of the process of visa liberalisation between the EU and some states of the Eastern Partnership.

a. National preoccupations with migration

It is worth emphasizing that the Eastern Partnership is a relatively new initiative, launched in 2009, which is only making its way into the awareness of the European public, especially in the "old" states of the EU. This is clear when we consider that in the last comprehensive review of media references to the issues of further enlargement and European Neighbourhood Policy carried out by EU-27 initiative in July 2010, the Eastern Partnership received minimal attention in countries such as Belgium, the Netherlands, France, or Spain. A preliminary survey of the debates in these states this year shows little change, which may be easily explained by the following:

- diversion of attention to turmoil in the Mediterranean basin, which gave the states that always had been more interested in the transfer of resources and attention to the South at the expense of the East;
- preoccupation with integration of the Western Balkans and unfinished business concerning full entry of Romania and Bulgaria into Schengen. Both of these processes were supposed to be relatively trouble-free, and were not expected to draw the attention of member-states. In fact, they touched issues that already preoccupied the public in several member-states (abuse of asylum systems, threat of uncontrolled migration, vulnerability of migration systems to the activities of organised crime).

The first issue surfaced when five Southern EU countries made a diplomatic offensive, issuing a letter to the EU High Representative for Foreign Affairs and Security Policy, Catherine Ashton, dated 16 February 2011, and signed by the foreign ministers of France, Spain, Cyprus, Greece, Malta and Slovenia. The letter stated: "The profound popular movements calling for political, economic and social reforms in Tunisia and Egypt argue in favour of reinforcing the European Union's actions in its Southern neighbourhood." In the attached

analysis, the southerners argued that the Eastern neighbours had received disproportionately higher per-capita allocations than the southern counterparts, thus calling in fact for lowering the priority of activities assisting the East. Poland, Sweden, Romania, Hungary or the Baltic states view this differently, pointing to rough equality in absolute numbers. However, it is indisputable that the plans of the Hungarian and Polish Presidencies to push for progress with the Eastern Partners had to be modified, and a new consensus was required to balance the two directions.

These two issues (the stability of the Southern neighbourhood and concern over migration-related security) represent two axes along which potential opposition rests to the liberalisation of visas with the Eastern neighbours. There is an overlap between these two discourses as, for instance, in France the preoccupation with the stability in the South coincides with concern over the threats posed by uncontrolled migration. France's position is pivotal here as French diplomacy was widely seen as the initiator of the Southern coalition, and the proposal called for resurrecting the Union for the Mediterranean, earlier advocated by French President Nicolas Sarkozy. It was for instance acknowledged in the recent talks between Sarkozy and Polish prime minister Donald Tusk that the support of France was essential for maintaining the momentum of the Eastern Partnership.

At the same time, France has remained at the forefront of efforts to strengthen migration controls both within the Schengen area and on its external frontiers. This is clear from the statements made by the French European Affairs Minister Laurent Wauquiez, who justified his government's opposition to the early accession of Romania and Bulgaria into Schengen in a speech to the parliament citing that it would amount to "weakening of our borders and the capacity of Europe to manage and control its flow of migrants" (8 December 2010). In late April 2011, Wauquiez argued for the right to reintroduce border checks on national borders in case of a "major surge at Europe's gates".

These wider concerns may be countered firstly by highlighting the crucial differences between the migratory pressures on the Southern and Eastern flank of the EU, and secondly the progress in

co-operation on migration management and control of illegal movement that the EU's Eastern neighbours have made in collaboration with the EU. It is widely acknowledged that the Eastern border of the EU has been a significant barrier to illegal migration, whose scale was already a much lower degree of magnitude than the pressure recorded in the Mediterranean.

Improvement in border controls has taken place in all new EU member-states on their way towards accession and later integration into the Schengen area. The EU's Eastern neighbours, in turn, have accepted an ever greater responsibility for ensuring that their territory is not used for illegal transit. This process culminated in the conclusion and successful implementation of readmission agreements with the EU by three Eastern Partnership countries (Georgia, Moldova, Ukraine).

There is another reason for believing that visa-free travel with the states of the Eastern Partnership will not result in a significant increase of illegal movement. The migrants from the largest Partnership state, Ukraine, who had found their way to Southern Europe, took advantage of the regularisation schemes, and the small-border traffic schemes targeting western Ukrainian regions have also helped bring the substantial trans-frontier movement under control. The large interest of this category of migrants in seeking ways to legalise their status suggests that they may be expected to abide by the terms of the visa-free regime.

b. "Irreversible" reforms and "impact" on migration patterns

Another line of division concerns the contents of the process of negotiations with Eastern Partners, separating the countries having and lacking external Schengen borders. It coincides with the division observed already in the cases of the lifting of visas for Albania and Bosnia and Herzegovina, and the entry into Schengen of Romania and Bulgaria. Thus, Germany, Austria, the Netherlands, and France tend to stress the need to ensure that the progress is "irreversible" and that the "impact" of migration on EU member-states is taken into account when making the final decision.

These states:

- are willing to extend the scope of the verification to include broader aspects of justice and migration management;
- favour more extensive and repeated “on-the-ground” missions; and
- reserve the right to judge the progress outside the scope of the Commission’s criteria.

As part of this research, it was established that these EU member-states became critical over time of the format of negotiations with Romania and Bulgaria first into the EU and then into Schengen. As one press report put it, diplomats from those states “complained that security concerns were swept under the rug”, and chose the time at which the decision was taken on the candidacy of the two South-East European states for Schengen integration in December 2010 to make their discontent heard. The conviction that the strictly technical approach did not take into account other factors relevant for assessing state capacity led them to the conclusion that a change in the format of negotiations was necessary.

Citing in particular criticisms of the judiciary and about corruption, the German Minister of Interior, Thomas de Maiziere, stated that it was “premature” for Romania and Bulgaria to join Schengen as “it is important to link the two issues—the technical aspects and the political aspects—and make a decision taking both into consideration” (statement made in January 2011).

The Netherlands reiterated this position in May 2011 when its European Affairs Minister, Ben Knapen, declared that the Hague would object to the integration of Romania into the Schengen area as long as it was not “convinced that we are on a track that guarantees sustainable, irreversible and lasting progress” in the field of Justice and Home Affairs. Even more significantly, the minister dismissed the findings of the Commission periodic report confirming technical progress, stating that “it is hard to imagine that on the basis of one report you can talk about irreversible and sustainable progress” in the sector.

It is notable that both Germany and the Netherlands found it imperative to frame the initiative to reintroduce border controls in the

framework of EU values, and attempted to justify it by arguing that it would actually facilitate the prospects of expansion of the area of free movement and the extension of the visa-free regime to Europe’s neighbours. For instance, in May 2011 German Interior Minister Hans-Peter Friedrich argued that if the member-states could “restore controls... countries which are on the way to accession will find it easier to be accepted in this Schengen space”.

Similar sentiment was expressed with regard to the process of visa liberalisation with the Western Balkans, and was stated by an interviewed representative of an EU member-state skeptical towards the fast negotiation style as the reason why the Netherlands, backed by Belgium and France, pushed for the introduction of an “impact assessment” and on-the-ground missions comprising experts from EU member-states. The Commission has responded by addressing these concerns, and accepting a two-stage process of verification, concentrating in the European Neighbourhood Policy communiqué on vital shortcomings from the perspective of member-states (asylum law in Ukraine, anti-discrimination law in Moldova, asylum cases from Georgia).

However, these parallels are of limited use when discussing the visa liberalisation process with the Eastern Partners. Firstly, as already noted above, unlike in the case of the Western Balkans, Romania and Bulgaria, the progress towards visa-free movement is not for the time being tied to the prospects of EU accession. Thus, it cannot be argued that any of the states is being treated on grounds other than the strict technical criteria. If any parallel could be drawn, it would be one with Central European states, which were granted visa-free movement with the Schengen states far in advance, and independently, of accession to the EU. Indeed, the experience of Central European states in the 1990s shows that the solid progress they made on ensuring border security, improving migration management and co-operating with the EU on these matters gradually equipped them to undertake further obligations in the course of harmonisation with the EU.

Secondly, the Eastern Partnership is not viewed by the individual partner countries as a platform for lobbying for access to visa-free

movement on a group basis. Instead, it has served as a stimulus for competition among the states to adopt technical standards and move to higher levels of co-operation with the EU. The Partnership formula is proving useful for generating interest in some sort of facilitation of movement in all the states covered by the initiative, and also by proclaiming freedom of travel as one of its core values. At the same time, the model of quasi-roadmaps, providing clear benchmarks and dividing the process into stages, is an incentive for progress for individual states, and in principle is open to faster progress.

SUPPORTERS: WHO ARE THEY, AND WHAT ARE THEIR ARGUMENTS?

The group of supporters is far less recognisable, and it does not appear as consolidated as that of the opponents. These characteristics are not surprising when the qualities of the states making up the group are considered. The position favouring fast conclusion of visa-free agreements with countries of the Eastern Partnership is based on two main arguments:

- Unencumbered access to EU territory for citizens of Eastern Partnership states is a way of **promoting people-to-people contacts and a pro-democracy instrument**. This rationale underlies the Eastern Partnership's objective of promoting freedom of movement, and has been raised by countries lying along the Eastern border of the EU - in particular, Poland, Lithuania, Hungary, and Romania. It has received support from countries standing behind or sympathetic towards the Eastern Partnership initiative, such as Sweden and the Czech Republic. Occasionally, this idea was also voiced in the statements of the German Foreign Ministry.
- An additional argument, frequently raised by civil society organisations both within Eastern Partnership states and their EU counterparts and partners, views the lifting of visa requirements as a way to **end corruption and demeaning practices associated with the process of application and issuance of visas**. Moreover, contrary to the view circulated by Ministries of Interior of the "skeptical" states, they argue that restrictive visa regimes are far from being an effective instrument to combat organised

crime and illegal migration and instead are liable to abuse, incurring high costs on bona fide travellers. This view was in fact vindicated by the problems faced by consulates of EU member-states in the Eastern Partnership states in combating abusive practices through which third-party agents would establish corrupt networks, raising the real cost of visas for the applicants.

- Finally, the "new" states of the European Union, which have been the last to negotiate their accession to the Schengen area, tend to stress that the countries of the Eastern Partnership ought to be **assessed against a closed list of measurable indicators**. They are aware of their own experience (e.g. Romania's delayed Schengen entry), and maintain that the list of requirements ought not to be expanded at further stages of the assessment. Furthermore, they are opposed to adopting a "regional approach", in which the successful performers may still be held back if they fail to demonstrate that their entry into the visa-free regime does not increase the pressure of illegal migration in the region. Instead, they argue that each candidate ought to be assessed on its own merits - this would, for instance, allow the frontrunners to clear hurdles faster than others.

However, support for visa liberalisation is tenuous in this group for a number of reasons. Firstly, the countries in this group are relative newcomers to the EU who have not had as much experience in building effective coalitions on behalf of common causes. Secondly, despite Poland's limited successes in launching initiatives such as the Eastern Partnership, Warsaw has not managed yet to establish a permanent coalition and, while holding its Presidency of the Council, it has been preoccupied with other pressing European issues. In addition, some countries are on the fence with regard to the balance between mobility with Eastern Partnership states and security concerns related to increased migration. One case could be the Czech Republic, which has recently become alarmed at the problem of corruption surrounding visa administration in Ukraine.

Moreover, the advocates of visa liberalisation are going to find their task much harder as the process goes beyond clearly technical criteria (where they may call for fair assessment and act

as watchdogs for the Commission's work) and tackles broader issues of effective governance and adherence to shared values. For Sweden, Poland or Germany, the Eastern Partners' compliance with human rights standards and consolidation of democratic institutions and processes remains a central consideration in their foreign policy objectives with regard to this region. Such a position is shared by other members of the support camp, such as the Baltic or other Visegrad states.

Whenever the conduct of the governments of the Eastern Partnership states is in violation of these standards, the supporters are bound to raise the alarm and are unlikely to opt for advancing the negotiations toward visa liberalisation or other integration objectives at the expense of these core values. This was demonstrated in October 2011 when, in reaction to the Tymoshenko case, Sweden's Foreign Minister Carl Bildt warned that the court verdict could "endanger the entire relationship" with Ukraine, while the head of Poland's diplomacy, Radosław Sikorski, noted that it could "derail" the progress of EU-Ukraine talks on association and other agreements.

Action Plan benchmarks can support rule of law in Ukraine, Moldova, and Georgia

Part II by Nadya Dimitrova

Successive EU enlargements have brought the six Eastern Partnership countries (Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine) closer to the European Union, and **their security, stability and prosperity increasingly impact on the EU member-states**. All these countries, to varying degrees, are carrying out political, social and economic reforms, and have stated their wish to come closer to the EU. The EU encourages the active engagement of the partner countries and their commitment to shared values and principles, including democracy, the rule of law, the respect for human rights and good governance. All these principles are essential and will lead to negotiations for, and successful implementation of, future Association Agreements.

The Eastern Partnership initiative plays the role of a catalyst of transformation processes and provides an opportunity for the partner countries to integrate with the EU by developing stable democratic structures and enabling stronger participation of civil society. **It can facilitate the de-Sovietisation of some of the countries, and stimulate nation-building, finalising the process of building national identity and self-respect in their respective societies.**

The Eastern Partnership initiative and multilateral co-operation are to be based on the implementation of concrete projects. **Co-operation on migration issues, border management, the fight against illegal migration, organised crime and corruption would open up with the possibility for the EU to introduce an easier visa-facilitating process and a visa-free regime in the future.**

This paper focuses on recommendations regarding the progress in the above areas by three of the Eastern Partnership countries, **“the frontrunners”**: Moldova, Georgia and Ukraine in the context of the future visa liberalisation of the three countries' relations with the EU.

Visa policies were brought within the (then) European Community framework with the Maastricht Treaty, concretely the determination of the third countries whose nationals must be in possession of visas when crossing the external borders of the member-states, and the establishment of a standard model visa. The Amsterdam Treaty (1997) then broke new ground with an expansion of the EU's visa policy. It was pooled in the newly introduced Title IV “Visas, Asylum, Immigration and other Policies related to free movements of persons”, and brought under the legal framework of the Community. In addition, the Schengen acquis communautaire was annexed to the treaty, so that harmonisation measures regarding visas agreed by the Schengen members outside the Community now became part of the EU's legal framework.

Taking into consideration the wide range of issues relevant for the visa liberalisation dialogue and the need to establish an adequately secured context for visa-free travel, the objective of an Action Plan (a Questionnaire or a Roadmap) is to set up clear requirements and identify all the measures that need to be adopted and implemented by the three Eastern Partnership countries in the near future.

The EU member-states and the three countries of the Eastern Partnership share a mutual interest in the success of the action plans on visa liberalisation and the accompanying requirements in facilitating the removal of Moldova, Georgia and Ukraine from the EU Visa Negative List and in putting them on track for future EU membership.

RECOMMENDATIONS TO GEORGIA, MOLDOVA, AND UKRAINE:

- Ensure effective implementation of the Community Readmission Agreements;
- Provision of secure identity documents: issuance of biometric passports in compliance with ICAO and EU standards with a clear timeframe for phasing out the old documents;
- Adoption and efficient implementation of the Integrated Border Management (IBM) strategy;
- Enhanced co-operation with FRONTEX;
- Establishment of a mechanism for the monitoring of migration flows and a regularly updated migration profile;
- Implementation of legislation, strategies and action plans for fighting organised crime, in particular cross-border aspects such as combating trafficking in human beings; combating money laundering and the financing of terrorism; national counter-drug strategies; prevention of, and fight against, corruption;
- Implementation of international conventions concerning judicial co-operation in criminal matters (in particular Council of Europe Conventions), application of measures aimed at improving the efficiency of judicial co-operation in criminal matters with the EU member states and with countries in the region, and development of working relations with Eurojust (the EU's agency to co-ordinate judicial action to combat serious cross-border and organised crime);
- Adoption and implementation of data protection legislation.

RECOMMENDATIONS TO THE EUROPEAN COMMISSION, AND TO THE POLISH AND DANISH EU COUNCIL PRESIDENCIES:

- The EU should ensure better implementation of the Visa Facilitation Agreements, and open Common Visa Application centres in countries where Schengen Member States do not have consulates (e.g. Georgia);
- Based on the implementation of the Action Plans' benchmarks, **the EU should gradually move towards visa liberalisation**, provided that all the relevant conditions are fully met;
- Based on the readiness of Georgia to continue reforms in key areas, it is recommended that the country be offered a Visa Liberalisation Action Plan during the Polish Presidency;
- The EU should guarantee that **visa liberalisation can be used as a strong incentive to promote democratisation and human rights reforms** in the three countries;
- Provided most of the reforms are implemented, **the EU should take concrete steps towards political association and economic integration** of the respective country;
- The EU should continue to be engaged in the management/settlement of security issues in the Eastern Partnership countries (e.g. EUBAM in Moldova and EUMM in Georgia);
- **The EU should further support and encourage the Eastern Partnership Civil Society Forum** to be involved in official platform meetings and thematic working groups of the Eastern Partnership;
- More funding should be provided through, and better use should be made of, the European Instrument for Democracy and Human Rights and the new Neighbourhood Civil Society Facility in order to strengthen civil society's capacity to promote human rights and democratic reform.

ACTION PLANS FOR VISA LIBERALISATION - TOOLS FOR SERIOUS REFORMS

The Action Plans for Ukraine and Moldova obtaining a visa-free regime are structured in two layers of benchmarks - "two phases":

- *preliminary benchmarks* - covering the policy framework (legislation and planning);
- *specific benchmarks* - covering effective and sustainable implementation of relevant measures, including concrete results on the ground.

The Action Plans follow a balanced approach, setting benchmarks with clear requirements **for the reforms** to be implemented in **the same key areas** as with the visa liberalisation roadmaps used for the Western Balkan states, i.e.

- security of documents
- border management
- fight against illegal migration
- fight against organised crime and corruption
- fundamental rights.

However, the monitoring of the implementation of the Action Plans will be slightly different. The European Commission will regularly report to the European Parliament and to the EU Council on the countries' implementation of the first set of benchmarks from the Action Plans. **The Commission will also assess possible impacts in terms of migration and security for the countries' citizens** (at the moment from Moldova and Ukraine) **travelling to the EU.**

Based on the results, a decision will be taken by the Commission and the Council to initiate the assessment of the second phase of benchmarks. The implementation of the benchmarks will also be assessed through on-site evaluations by experts from the EU member-states and through detailed information (including relevant statistical data) provided by the respective Eastern Partnership countries. The information should include concrete results on the ground. Then, on the basis of the fulfilment of all the benchmarks, the Commission will make a proposal to the European Parliament and to the Council for the lifting of the short-stay visa obligation for the citizens of the country through an amendment of Regulation 539/2001, i.e.

listing the third countries whose nationals must be in possession of visas when crossing the external borders of the EU and those whose nationals are exempt from that requirement.

The visa liberalisation Action Plans for the three Eastern Partnership countries and the roadmaps for the Western Balkans countries do not differ fundamentally in the criteria set out, but in the way they are staged and monitored. The difference also comes from the more important role of the European Parliament for the Eastern Partnership countries - which is linked to the entry into force of the Lisbon Treaty.

In the case of the Eastern Partnership countries, there are several additional stages and constraints before the decision of visa liberalisation will be taken.

WHAT HAS BEEN DONE SO FAR BY THE THREE COUNTRIES IN THE KEY AREAS?

DOCUMENT SECURITY

Moldova

The issuance of Moldovan identity documents is regulated by the Law No.273-NIII on Identity Documents of the National Passport System and on other legislative acts.

Moldova was the first of the Eastern Partnership countries to start issuing biometric passports. The country has also centralised the system of documents personalisation based on the State Register of Population, accessible on-line through a secured network. This State Register also deals with the civil registry. Biometric passports are issued by the Ministry of Information and Technology.

However, so far only a small amount of biometric passports have been issued. The phasing out of the current, old passports is foreseen for 2019. It is recommended that Moldovan authorities speed up the process of the replacement of the passports with the new biometric ones.

The EU member-states' missions, assessing the implementation of the first set of benchmarks and the readiness of Moldova to start the operational phase, raised two concerns in the area of document security e.g.

- the chip containing the biometric data is not integrated but attached;
- a page for children is kept in the parent's passport instead of a separate passport.

It should be mentioned that an ethical code has been adopted for employees working in the system of identity document issuance. Special measures to prevent corruption have been taken like:

- closed circuit television cameras were installed
- payments for documents are made through ATM machines directly connected to the State Register
- a hotline has been introduced for reporting corruption cases.

Transnistria, however, remains a big challenge for the Moldovan authorities. Efforts have been made to put an end to the falsified and insecure breeder documents issued in this region. A new mechanism is being prepared.

Ukraine

Although the National Plan for the implementation of the Action Plan for Visa Liberalisation states that the Law on Identity Documents should be developed and submitted to the Parliament in the first half of 2011, it is still not a fact and Ukraine does not have relevant legislation. All the issues connected to the identity documents are set by government regulations. There is a lack of sufficient legislation ensuring proper control over personalisation and the storage of documents.

Everything is determined by the Cabinet of Ministers' regulations - which do not fully observe the EU standards on the integrity and security of

the personalisation, storage of documents and their delivery.

Ukraine is not yet issuing biometric passports. A regulation determining the sample of biometric passport has not been adopted yet.

There are **three types** of passport in parallel use in Ukraine now:

Polycarbonate page passports - issued since June 2007, International Civil Aviation Organization (ICAO)-compliant (not biometric), machine-readable passports containing sufficient quality polycarbonate page with personal data (blue colour passports).

Passports with the attached photo - the oldest type of passport, introduced in 1994, containing an attached photo and machine-readable line (red colour passports); a lot of them are still in use. Although their issuance officially stopped in 2007, some passports of this type were issued for the diplomatic missions abroad in 2010; their validity is for 10 years.

Passports with integrated photo (red colour passport) - introduced in 2000, and look like the previous ones; the only difference is the integrated digital photo instead of the attached one in the previous version.

The existence of three types of passports is not compatible with the visa liberalisation requirements. The government needs urgently to elaborate a schedule for phasing out of documents that do not meet ICAO standards.

Even more serious is the case with the so-called "domestic" passports, children's travel document, and driving licences (there are seven different types of driving licences valid simultaneously). All of them are old types of documents - examples of the Soviet legacy in urgent need of replacement.

Hence, in the area of document security, Ukraine has made very limited progress. Most of the identity documents are outdated and with low technical standards. The whole area is characterised by a lack of transparency, unhealthy competition between different institutions and unaccountable corporate

business interests. The recently adopted National Action Plan on Visa Liberalisation (22 April 2011) shows some understanding on behalf of the government of the need for measures to be taken in this field.

Georgia

The institution in charge of the provision for all identity and breeder documents for citizens and other nationals in Georgia is the Civil Registry Agency - an official structure under the Ministry of Justice.

The Agency started issuing biometric passports on 14 April 2010. Since January 2011, the Civil Registry Agency has been responsible for issuing only biometric passports, and for developing a unified database system. According to official sources, all information written on microchips is safe and the passports' quality satisfies ICAO standards. The Civil Registry Agency is also starting the issuance of electronic ID cards.

However, it is allowed for one and the same person to have several passports. The fact that there is no restriction barring citizens from holding more than one passport should be a matter of serious criticism. This practice does not correspond with the EU standards for document security.

Another issue of concern is the underdeveloped legislation that regulates the main activities of the Civil Registry Agency. At the moment, the main law for the functioning of the Agency i.e. "On Identification Document and Passport of Citizenship for Georgian Citizens and Registration of Foreigners Residing in Georgia" was first adopted in 1996. Since then, numerous amendments have been made that make the provisions of the law very difficult to be applied.

Therefore, a main priority for the well functioning of the Agency is the adoption of new laws on:

- The Citizens' Register
- Registration of Civil Acts
- Identity Documents
- Personal data Protection

ILLEGAL MIGRATION

Visa Facilitation and Readmission Agreements have been concluded first with Moldova and Ukraine, and later with Georgia.

Readmission Agreements should be regarded as an instrument for the authorities to better cope with illegal migration and address third-country nationals and stateless persons in a proper manner.

Moldova

The Integrated Border Strategy, adopted on 27 December 2010, is in accordance with the recommendations and assistance of EUBAM (European Union Border Assistance Mission). In addition to the Strategy on 3 May 2011, an Action Plan based on the Schengen Catalogue was also adopted. The new law on the State Border is being drafted and publicly debated at the moment. The Border Guard Service is expected to have a long-term development vision.

The Integrated Border Management system is considered difficult to be achieved at the moment due to the considerable efforts and funds that are needed.

The Border Service is still not fully professionalised without a General Director for several months and without the necessary equipment. Debates are continuing as to whether it should continue to be under the still unreformed Ministry of Interior.

The challenging and problematic part of Moldova's border is the perimeter of Transnistria, a territory de facto outside the control of Moldovan constitutional authorities. EUBAM, established in 2006, aims to counter the smuggling of goods and to assist in enhancing co-operation with Ukraine for more efficient border control.

The demarcation of the Ukraine-Moldova state borders has not yet been finalised in some locations neighbouring Ukraine and at the Transnistrian perimeter.

Moldova has an institutionalised relationship with Frontex, the EU agency established to co-ordinate co-operation between EU member-states in the field of border security. The Border Guards have to date participated in five joint activities and operations within Frontex and expect to attend more.

In 2008, Moldova adopted the Law on Asylum in accordance with EU standards but with a few inconsistencies. However, there is too little involvement of civil society and the personnel working in this area still need to undergo exchange programmes and training.

The current legislation of Moldova in the area of migration is dispersed and, therefore, a national strategy on migration and asylum management is needed.

The elaboration of such a strategy in 2011 is envisaged by the authorities. There are also plans for the collection of data on migration flows by establishment of a mechanism of co-ordination and an extended migration profile that will contribute to data collection and analysis of migration tendencies in Moldova.

Moldova has implemented programmes and projects for controlling migration flows, but the results have not yet been seen. The reason for this is the lack of co-ordination among the institutions and some inconsistencies related to the status of foreigners on the territory of Moldova. The problems for controlling migration flows come from Transnistria.

Moldova is part of the EU Mobility Partnership, a pilot instrument designed to manage the migration flows to the benefit of all the parties: EU, partner states and migrants.

RECOMMENDATIONS:

- To increase the role of EUBAM in assisting the establishment of a higher degree of co-operation between the Ukrainian and Moldovan border police authorities;
- To quickly move to define the future status of the Border Guard Service;
- To enhance co-operation between the state authorities and NGOs in the area of immigration.

As a whole, the illegal migration and border management block is still far from reaching the EU standards although a lot of resources are invested in the area.

Ukraine

The **State Border Service** of Ukraine (SBS) is an independent agency, the head of which is subordinated to the President of Ukraine. The State Border Guard Service of Ukraine is a national successor of the Soviet Union Border Troops, first organised in 1991 as the "Ukrainian Border Troops".

For the past ten years, steps have been taken in order to transform the SBS into an EU-style civil border protection unit. However, it remains under-reformed. Although since 2006 the personnel have been recruited on a professional basis, internal relations and the management are still regulated by military statutes and some substantial features of the military structure are preserved.

All the adopted documents aiming at the introduction of Integrated Border Management recommend ultimate demilitarisation and other relevant reforms. Several pieces of legislation regulating the work of the state border system of Ukraine have been an important step, but not sufficient.

On 27 October 2010, a Strategy for Integrated Border Management for the period 2011-2015 was adopted according to EU standards.

While Ukraine and Moldova are getting closer to finalisation of demarcation of the borders between the two countries, demarcation of the borders with Russia and Belarus have not yet started and the process will take several years. The issue of the sea border in the Kerch Strait remains unresolved.

There are several laws that regulate the migration policy of Ukraine. However, most of them - including the two important in this area, Law on Foreigners and Law on Refugees, still need amendments according to the EU criteria. **Similarly, Ukraine does not have relevant legislation on asylum seekers.**

A draft of the National Migration Policy Concept has been debated in the government, Parliament and in public discussions.

It is recommended that a unified migration service be established. Such an institution could regulate and co-ordinate migration and asylum policy, tackle and combat illegal migration. The problems in this area are connected to the existing division of responsibilities.

Ukraine is not a part of the Mobility Partnership project with the EU.

An analysis on the migration potential of Ukraine indicates that in the area of migration management Ukraine still has deficiencies both in terms of legislation and proper institutional building. The State Border Service is in a rather slow process of reforms, while the State Migration Service is in the process of formation.

Migration policy institutions require serious reforms, which are not possible without high-quality strategic planning, co-ordination, resources and political will.

Legislative reform is firmly recommended, and it should ensure good co-ordination of the migration policy implemented by all relevant institutions and monitoring of the migration flows and regulating the asylum policy.

Co-ordination of migration policy should be ensured at a high governmental level in order to overcome administrative resistance, which will arise because of the inevitable redistribution of power and resources.

Georgia

On 11 February 2004, the State Border Defence Department was transformed into the Border Police Department of Georgia. The new law on the Border Police of Georgia, adopted in December 2006, defines the agency's status as a partially independent law-enforcement service within the Ministry of Interior headed by a Deputy Minister of Interior. The establishment and reforms of the Georgian Border Police

Service have been supported by the Office of the EU Special Representative (EUSR) for the South Caucasus since 2005.

The EUSR Border Support Team have spearheaded the development and implementation of the Integrated Border Management Strategy of Georgia with an interagency commission. The Strategy, signed by the President in 2008, is based on a common border management model, which incorporates all four steps of border management:

- coherent and co-ordinated activities among relevant government agencies;
- efficient border control;
- co-operation with neighbouring countries;
- promotion of preventive measures in the third country.

The Action Plan on the Strategy, signed in December 2009, co-ordinates and regulates the line ministries and the agencies to implement the reforms of border management in Georgia in accordance with EU requirements. Investment in equipment and infrastructure is an integral part of the development plan. The EU Border Support Team (BST) is involved in implementation of the action plan of a border management strategy and in building the capacity of the Georgian Border Guard.

Demarcation and delimitation of Georgia's borders still represent a serious issue for the country and its relationship with its neighbours. Georgia has a 2,154 km length border with other states (including 315 km of sea border), and the state operates 18 actual border crossings, of which 15 have international, and three have interstate, status.

Among the four states neighbouring Georgia, the demarcation problem remains with three of them: Armenia, Azerbaijan, and Russia. Georgia is continuing a dialogue and conducting negotiations with Armenia and Azerbaijan on border demarcation and delimitation.

The main concern of the Georgian government relates to the Georgia-Russia border and the issue of the occupied territories of Georgia. As a result of the two conflicts that broke out in the

early 1990s, the Georgian government has not exerted control over its breakaway territories of Abkhazia and South Ossetia, including border crossings of these regions from and into Russia.

After the 2008 war, Russian border guard servicemen established border checkpoints along the administrative boundary lines (ABL) that separate these territories from Georgia proper. Those boundary lines are not recognised by Georgia as state borders, and accordingly they are currently under the control of patrol police special units of Georgia.

Georgian laws, in particular the Law on Occupied Territories (adopted in 2008 and amended in February 2010), and the Regulation on Modalities for Engagement of Organisations Conducting Activities in the Occupied Territories (adopted in October 2010), strictly regulate movement and travel to, and outside of, borders of persons who are residing in the occupied territories, citizens of foreign countries seeking asylum, or victims of human trafficking. Besides, citizens of Georgia, in particular internally displaced persons (IDP) from the breakaway regions, are allowed only to enter the breakaway regions when they have been cleared by the de facto authorities and the Russian border guard.

Taking into account that Russian and Georgian state agencies have no co-operation and institutional contacts, and that diplomatic relationships were broken off after the war in 2008, it is very important that an international presence be established and remain along the administrative boundary lines (ABL) that separate the breakaway territories and Georgia proper. Until then the only international body present close to the conflict zones is the unarmed civilian personnel of the EU Monitoring Mission (EUMM).

The EUMM's scope of de facto engagement remains much more limited than its official mandate prescribes because the authorities in Abkhazia and South Ossetia so far have denied access to the EUMM to the territories under their control. So, the presence of EUMM only facilitates direct contacts, utilises a telephone "hotline" system that functions in the context of

both territories, and helps to de-escalate rising tension.

The working agreement between Frontex and Georgia, signed on 12 April 2008, established new mechanisms for Georgia-EU co-operation and channels for information exchange and co-ordination of joint operational measures.

The Georgian government has made important reforms in the area of border control and management. The country managed to establish a border service with policing functions, elaborated an integrated border management strategy and started its implementation. Georgia has also developed successful co-operation with Frontex and has facilitated the return of illegal migrants.

However, serious challenges remain with the demarcation and delimitation of the borders with the three neighbouring countries - Armenia, Azerbaijan and Russia.

On 16 February 2010, EU-Georgia co-operation in the framework of the *Mobility Partnership* was officially launched. According to official statements, Georgia's main priority is to facilitate legal labour movement, including concluding agreements on labour and circular migration with the EU member-states.

In 2010, an independent governmental commission for migration was established consisting of all 11 government agencies involved in migration management. Apart from interagency co-operation, the commission's functions include developing strategic documents, a single integrated migration database, and preparation of proposals and recommendations for improvement of the migration management system. In May 2011, a working group was established under the state commission aiming at developing a national strategy on migration.

So far, a migration strategy has not yet been adopted, although it is important that the government has to review the legal framework of its migration management practice and approve the quality of the administrative management - and all this has to be addressed at the policy level.

Georgia has to elaborate and adopt its migration policy with the aim to control and manage migration flows in and out of the country in line with the national interest, but also staying in harmony with EU goals.

Currently, the government is facing several challenges:

- economic and demographic effects of a great number of emigrants at a productive working age with possibly positive effects of remittances;
- the status of legal migrants and their entry conditions (according to experts, laws are very liberal and do not make any division between 'employed' and 'self-employed/investor' categories);
- irregular and unwanted migration flows - the existent control mechanisms have to be strengthened.

The existing legislation in Georgia in the area of migration consists of a number of laws, regulations and instructions stipulating the rights of nationals, foreign nationals and stateless persons and regulating the issues of entry, issuance of the residents' permits, return, and irregular migration.

According to foreign experts' reports, the legislation regulating the entry procedures consists of a number of shortfalls. The concerns are connected with the absence of specific labour migration legislation and the procedures of granting residence permits based on labour contracts. According to the Georgian law on the Legal Status of Aliens, no work permit is necessary in order to obtain a residence permit based on employment grounds.

At the same time, article 66 of the same law foresees the establishment of a unified migration data bank, which is still not a fact. This very law, adopted in 2005 and amended several times since then, still has several flaws and deficiencies leaving it short of corresponding to EU criteria and standards in the migration area (e.g. no provisions to address the interests of the most vulnerable asylum-seekers - females and children).

A new law on Refugees and Persons with Humanitarian Status was drafted in 2010, which is to be reviewed by the government in 2011.

It may be concluded that Georgia has not yet developed and implemented a sustainable migration policy management fulfilling the EU criteria.

RECOMMENDATIONS:

- developing a mechanism for monitoring and regulating the migration flows in and out of Georgia
- establishing better co-ordination between the institutions/stakeholders that hold migration information, and securing its smooth exchange
- creating a unified database for monitoring migration processes - which will connect all relevant public institutions
- identifying an agency that would manage the database and coordinate the entire process.

PUBLIC ORDER AND SECURITY

Fight against Organised Crime and Corruption

Moldova

While Moldova does not have a strategy on combating organised crime, the country implements well its Strategy on money laundering and financing terrorism (adopted in 2007) with the Law on Preventing and Combating Money Laundering and Terrorism Financing. The implementation, however, lacks better co-ordination among law enforcement bodies and better compliance with the EU criteria in the operative investigation procedure by the Police department. Moldova has also ratified the Council of Europe Convention on Laundering,

Search, Seizure and Confiscation of Proceeds of Crime and Financing of Terrorism. The body in charge for combating money laundering is the Office for Prevention and Combating Money Laundering, an autonomous subdivision of the Centre for Combating Economic Crimes and Corruption Agency.

In 2000, Moldova signed and ratified the UN Convention against Transnational Organised Crime.

Trafficking in human beings (THB) is also an issue of concern. Although the co-ordination of the stakeholders (governmental, non-governmental and international institutions) in this area functions well, Moldova doesn't have a strategy on combating trafficking in human beings. The Law on Preventing and Combating Human Trafficking, adopted in 2005, the establishment of the Centre for Combating Trafficking in Human Beings in 2006, and the creation of a co-ordinating Council of the law enforcement agencies contributed to better information exchange and more effective and efficient results in the fight against human trafficking in recent years.

Moldova has a strategic partnership with Europol and is looking forward to closer co-operation in the form of an operational partnership allowing for the exchange of personal data. Such a partnership will take place after the adoption of the new data protection law whose draft is under public debate at the moment. Moldova has signed the Council of Europe Convention for Protection of Individuals with regard to automatic processing of individuals and is in the process of signing an additional protocol.

In spite of the many legislative and administrative steps the country has taken so far in this area, **one of the most under-reformed institutions remains the Ministry of Interior, which has to go through demilitarisation and professionalisation** based on the best practices from the EU member-states. Violent behaviour and a high degree of corruption among the police has a negative impact on their image. Expectations and needs are both high for inter- and intra- agency law enforcement co-operation. Overlapping and inefficiency plague the work of police departments.

The National Implementation Programme on Visa Liberalisation envisages signing a Co-operation Agreement with Eurojust in 2011.

The authorities are also planning to improve the legal framework in terms of mutual judicial assistance and enforcement of the international treaties adopted by Moldova, as well as exchange of experience between judges and prosecutors with their counterparts from the EU member-states.

In conclusion, it is noteworthy that Moldova has serious problems in combating high-level corruption that might create a problem for visa liberalisation.

RECOMMENDATIONS:

- more corruption cases should be uncovered;
- effective actions to be taken against organised crime and money laundering;
- more efforts and political will for the reforms at the Ministry of Interior with particular attention in respect of human rights.

Ukraine

During the recent period, Ukraine has taken steps in terms of adopting legislation, signing international agreements and developing regulations for combating organised crime, corruption, trafficking in human beings, smuggling, and drug-trafficking.

The country, however, still lacks comprehensive strategy on organised crime and corruption.

In September 2010, the Parliament ratified the Council of Europe Convention on Action against Trafficking in Human Beings.

Ukraine ratified the UN Convention against Transnational Organised Crime in 2004, together with additional protocols against a) trade in human beings and b) illegal transportation of migrants.

In September 2010, the cabinet adopted a Concept of an anti-drug policy and the fight against the illegal circulation of drugs and psychotropic substances for 2011-2015.

The Ministry of Interior in Ukraine remains under-reformed, a Soviet type centralised and heavy structure with a minister who is also the actual commander of the country's police. There is no integral database with direct access to the entire territory for relevant bodies dealing with public security. Hence, there is no co-ordination mechanism between all of them.

The Ministry of Interior has 30 departments and three agencies that are subordinated to it. The minister has up to eight deputies (other than his first deputy) that head the main departments of the ministry. In March 2010, **the new minister decided to abandon the Ministry's Department for human rights protection, a step strongly criticised by the human rights activists and ignored by the Minister.** At the same time departments like Internal Troops, a paramilitary unit with a deeply rooted Soviet legacy, still exist at the Ministry and, in this case, is responsible for domestic security.

Reports of torture and other ill-treatment by law enforcement officials and the authorities' failure to carry out effective investigations continue. Ukraine ratified the Optional Protocol to the UN Convention against Torture in 2006, but had still not set up a national mechanism for monitoring places of detention in accordance with its obligations under the Protocol.

All law enforcement and security bodies are totally dependent on the President, who (due to questionable constitutional changes of October 2010) can fire ministers, the Prosecutor General, the Security Service chief without even consultations with the Parliament (appointments need parliamentary approval, except the Security Service chief).

In December 2009, the Ministry of Interior signed an Agreement on Strategic Co-operation with Europol (Framework agreement). An operational agreement is not in place yet, and is connected to the absence of data protection legislation in Ukraine.

Corruption remains a serious problem in Ukrainian society. According to the Transparency International 2009 Global Corruption Barometer, public officials and civil servants are the most affected by corruption.

According to international organisations and experts, Ukraine does not effectively combat corruption. The country fails to implement sufficiently the recommendations made in GRECO evaluations reports.

In June 2009, the Parliament passed a package of laws expanding the list of entities involved in corrupt activities and establishing anti-corruption measures in the civil service. However, their implementation has been postponed twice, and finally the anti-corruption package was abandoned by the Parliament due to the submission of a new law by the President of Ukraine.

The new anti-corruption law (which provides a softer anti-corruption approach than the previous ones) was adopted on 12 May.

Ukraine has ratified the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the additional protocol to that Convention regarding supervisory authorities and transborder data flows.

The Law on Personal Data Protection was adopted in July 2010, and the data protection system is in the process of formation. In May 2011, the newly created State Service for Data Protection under the Minister of Justice started organising the tender for experts to work on the system.

However, the Data Protection law has not passed through sufficient international screening or assessment (e.g. Venice Commission). Human rights activists express some concerns regarding possible misuse of that law. The chapter of the data protection body does not stipulate clearly its independence.

In conclusion, it may be said that Ukraine has a variety of problems in the area of the fight against corruption and organised crime. The obvious lack of confidence between law enforcement bodies of Ukraine and those of the EU member-states is an important additional element contributing negatively to the overall picture.

RECOMMENDATIONS:

- elaboration of strategies on the fight against organised crime, corruption and human trafficking;
- implementation effectively and efficiently of existing legislation;
- reforming entirely the law enforcement institutions and mainly the Ministry of Interior;
- improving inter- and intra- agency co-operation.

Georgia

Fighting corruption and organised crime has been one of the main priorities of the country since the presidential elections in 2004.

At the end of 2005, a new law on Organised Crime and Racketeering was signed by the President and passed by the Parliament.

In December 2005, Georgia signed the UN Convention on Organised Crime, and ratified it in September 2006.

The new legislation, including amendments to the Criminal Code, introduced the new terminology 'thief in law' and 'the world of thieves', and has made the fight against transnational crime much more effective in Georgia. The law has enabled the law enforcement structures to identify these kind of criminals, confiscate their property, and hand it over to the state. The legislation has also defined measures against racketeering, racket groups and racketeers, and has made it possible for the state to seize illegally earned property from accused individuals without reimbursement in favour of the state. The new legislation has also focused on the protection of victims and witnesses of organised criminal activities.

Over the past several years, the government has made serious efforts in combating human trafficking. New legislation and a new institutional framework have been developed in this area. New mechanisms for victims' protection and assistance have been established.

Georgia ratified the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons in 2006 and the Council of Europe Convention on Action Against Trafficking in Human Beings on 14 March 2007. The Law on Combating Trafficking in Persons was also adopted and entered into force in 2006. The Law is based on the principle of 3 "Ps": protection of victims, prevention of trafficking, and prosecution of traffickers. It envisages the introduction of the State Fund for Protection of and Assistance to Victims, setting up of a shelter, creating the Co-ordination Council for Combating Trafficking in persons, forming a database of traffickers, and elaborating a National Referral Mechanism.

In accordance with an article from the law, an **Interagency Coordination Council for the prevention of Human Trafficking** was established in 2006, chaired by the Minister of Justice with representatives from governmental, non-governmental and international institutions. On 19 July 2007, the Council adopted the **Rehabilitation and Integration Strategy for Victims of Trafficking**.

The legislative changes, together with the efficient reforms carried out in the Ministry of Interior, contributed to a more effective and successful fight against organised crime and a decrease in crime rates. The reformed police and judiciary have developed better co-operation with their European counterparts - which led to successful investigation of large organised criminal groups in Spain and Belgium.

At the same time, several studies show that public trust in the enforcement agencies is not high enough. **The results of crime surveys carried out in 2010 discover victims' ill treatment on the part of the police authorities. According to some researchers, the steps often taken by the police have been quasi-legal and demonstrate disrespect for the rule of law.**

It should be noted that the implemented anti-crime and anti-corruption policy has never been the subject of supervision or debate by public or non-governmental bodies.

The **National Anti-corruption Strategy** was approved in 2005, followed by an Action Plan which was signed by the President in March 2006.

While a lot of studies confirm that corruption has been widely eradicated from citizens' daily life, many civil society representatives and representatives of international organisations believe **that high-level corruption has not yet been combated sufficiently, and there are concerns about corruption in some areas of governance.**

On 26 December 2008, the President of Georgia signed the Decree on Formation of a new **Interagency Coordination Council of Combating Corruption**. The functions of the Interagency Council include: coordination of anticorruption activities in the country, update of anticorruption action plan and strategy as well as supervision of their implementation, monitoring accountability towards international organisations, initiation of relevant legislative activities, and drafting recommendations. The head of the interagency is the Ministry of Justice of Georgia.

On 26 April 2010, the Council endorsed the new Draft of the National Anti-corruption Strategy and submitted it to the President. On 3 June 2010 the new National Anti-corruption Strategy was adopted.

The process of privatisation has been a subject of criticism from the point of view of corrupt practices. The 2006 GRECO (Groups of States Against Corruption) report confirmed the findings. It observed that the privatisation process was conducted in a way such that it remained unclear to whom this property had been transferred or sold, and whether anyone apart from the state benefited from it.

In its Compliance Report on Georgia (Second Round Evaluation Report), adopted in May 2009, GRECO concluded that out of 14 recommendations eight had been fully implemented, while the other six recommendations had been partially implemented.

Georgia signed and ratified the Council of Europe Convention for the Protection of Individuals with regards to Automatic Processing of Personal Data.

In 2010, a working group under the Ministry of Justice, with participation of non-governmental institutions and the private sector, elaborated a draft law on personal data protection. The final approval of the draft by the Parliament is expected in 2011.

Experts who reviewed the draft law underline the importance of the law and the urgency of its adoption, but at the same time mentioned several flaws. First of all, they express their concern about the vagueness of the law's provisions, which provides the entitled state agency access to a special category of personal data, such as racial and ethnic category, religious and political beliefs, health conditions, etc. Those data are considered very sensitive and should not be as easy accessible as they will become after the adoption of the new law.

In conclusion, it could be said that Georgia has made enormous efforts to prioritise the fight against organised crime and corruption, as well as to pass and adopt the package of new legislation in the parliament over a short period of time.

RECOMMENDATIONS:

- wider public discussions of the draft legislation in the area;
- no ill treatment and more respect of human rights by the police authorities towards detainees;
- better fight against high-level corruption;
- well established data protection system in the country.

EXTERNAL RELATIONS AND FUNDAMENTAL RIGHTS

Moldova

This is a rather small, but very important part of the Action Plans. However, it reveals the most delicate and sensitive issues that show the democratic development of the country.

There are no cases reported of violation of

the access to travel and identity documents by minority or vulnerable groups in Moldova.

In 2010, Moldova and the EU started the Human Rights Dialogue, the objective of which is to raise and address human rights issues more deeply with the achievement of concrete results and to enhance the dialogue on the topics in multilateral fora. As a part of the dialogue, the Government adopted the **Human Rights National Action Plan** in September 2010 which foresees Moldova's accession to some international instruments, to which the country has not yet become party, and outlines a series of measures and actions to be taken for better access to justice, improvement of the national mechanism of human rights, and professional training.

RECOMMENDATIONS:

- speedy and better implementation of the Human Rights Action Plan;
- adoption and efficient implementation of anti-discrimination legislation;
- training and information campaigns of certain institutions for the protection of minority and vulnerable groups;
- more programmes for integration of Roma minorities.

Ukraine

The Ukrainian Government seems open for dialogue with the Council of Europe, the Organization for Security and Co-operation in Europe (OSCE) and other international organisations dealing with human rights and liberties. However, their recommendations are often ignored.

Basically, human and minorities rights in Ukraine are protected, but some substantial shortcomings are indicated, especially concerning the rights of detained and imprisoned people.

RECOMMENDATIONS:

- Better treatment of detained and imprisoned people and better conditions in detention centres;
- Signing and ratification of European and international Conventions relating to mutual legal assistance and extradition to which Ukraine is not a part;
- Developing in a transparent way a new legislation on elections, taking into account the violations of October 2010 local elections;
- Adopting and implementing comprehensive anti-discrimination legislation;
- Strengthening the requirements for the acquisition of Ukrainian citizenship according to EU regulations.

Georgia

A strong and independent judiciary, the rule of law, protection of human rights and fundamental freedoms are among the priorities of the EU-Georgia co-operation framework documents. Nevertheless, the judicial system in the country has been acknowledged as one of the areas in need of serious reforms. The problems in the area of judicial independence hamper economic growth in the country and make impossible the proper protection of human rights in Georgia.

At the same time, Georgia has expressed strong commitment to start the EU-Georgia Human Rights Dialogue. Starting in 2009, three rounds of talks have taken place, and the issue of the freedom of assembly and association has always been among key concerns about the human rights situation in Georgia raised by the EU.

In 2011, Georgia accepted recommendation 105.64, proposed by the Czech Republic to "safeguard full and unhampered enjoyment of freedom of expression". Georgia should accept another recommendation on the right to assembly and to demonstrate at the upcoming session of the UN Human Rights Council in June 2011.

However, recent practices in Georgia indicate

that authorities are limiting the right to freedom of peaceful assembly. Amendments to the Georgian Law on Assembly and Manifestations introduced in July 2009 restrict the right to assemble in front of official buildings and establish a more burdensome procedure to receive authorisation. There has been an increased tendency to use excessive force when peaceful protesters have been arrested or violently dispersed by law enforcement forces upon expressing their demands.

The EU Progress reports from 2008-2010 and the official statements of high-level EU representatives stress that media freedom and pluralism remain an issue of concern. However, some positive changes have been noted by the former OSCE Representative on freedom of the media (an opposition channel received a broadcast licence and political opposition has free access to the nationwide public broadcaster).

RECOMMENDATIONS:

- Weaknesses of the judiciary should be speedily addressed;
- Georgia should start a Human Rights Dialogue with the EU and should adopt an Action Plan in the area;
- Media freedom and pluralism should not remain an unsolved problem in the country;
- Georgia should sign all the relevant EU and international conventions in the area of human rights protection;
- Force and ill treatment by the police should be terminated.

CONCLUSIONS

Georgia, Moldova and Ukraine have taken ambitious steps towards transition during the past decade. In order to finalise the process of reforms, they will certainly need the support and assistance of the EU's old and new democracies. They have to examine the lessons learned by most of the new EU member-states, especially by countries like Bulgaria and Romania, which

are subject to the EU monitoring mechanism concerning the fight against organised crime and corruption. It is in the EU's interest to support those of the Eastern Partnership countries that are making efforts to achieve the essential values and principles on which EU member-states have been built, i.e. human rights, democracy, and the rule of law.

The Action Plans on Visa Liberalisation, presented to date to Ukraine and Moldova, are definitely stepping-stones towards visa-free travel for the citizens of the two countries. Georgia will most probably be the next one to receive a similar Action Plan. However, the set of reforms and measures the three countries have to implement to achieve visa liberalisation are very demanding. The process has to be based on merit and thus be achievable.

The EU should continue to assist Ukraine, Moldova and hopefully soon Georgia in their efforts to implement the benchmarks from the Action Plans that require co-operation with the EU on migration, mobility, and security. Concrete measures have to be taken by the three countries to prevent irregular migration, control the borders effectively, ensure document security, and fight organised crime and corruption. Gradual steps towards visa liberalisation should be considered on a case-by-case basis, when and where the conditions for well managed and secure mobility are in place.

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