

The EU-Ukraine Action Plan on Visa Liberalisation: an assessment of Ukraine's readiness

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The Action Plan on visas adopted during the recent EU-Ukraine summit is a success for Ukraine. It is the first time that Kyiv has succeeded in obtaining a definition of the conditions and criteria whose fulfilment will enable Ukraine to apply for the lifting of EU visas for its citizens. Ukraine's strong point has been its political will; the lifting of this visa regime has been a priority for all Ukrainian governments since 2005. Since Viktor Yanukovich became president, Ukraine has adopted or prepared key legal acts that brought it nearer to European standards in the area of border and migration management. One of Kyiv's strengths is also its relatively well reformed and efficiently managed border service. Moreover, illegal transit migration via Ukraine is decreasing, and fewer Ukrainians are trying to enter or stay in the EU illegally. Also, Kyiv has efficiently implemented the EU-Ukraine readmission agreement.

The hardest task for Ukraine will be to meet the EU's expectations concerning values, the condition of Ukrainian democracy, and the rule of law. Corruption remains the main barrier to Ukraine's development and modernisation; the courts are weak and the judicial system inefficient. The main undertaking of the new migration service that is being formed at the moment will be to create a civil system of registration, monitoring and regulating the stays of foreign nationals. This may prove difficult, as the supervisory authority (the Ministry of the Interior) remains an unreformed, police-type bureaucratic institution. Ukraine is lagging behind countries such as Russia, Belarus and Moldova when it comes to the introduction of biometric documents. Another problem is the lack of an electronic information system on foreign nationals, visas and border crossings which would be accessible to all the relevant services and institutions.

For these reasons, the complete abolition of visas seems to be a long-term perspective, especially considering that many EU countries, which themselves are faced with the problem of migrants' integration, are rather sceptical about the further liberalisation of movement of people with their eastern neighbours. In the immediate future, if Ukraine meets some of the requirements set by the EU, it will be able to seek the extension of the visa facilitations that have been in operation since 2008.

An assessment of the document

The Action Plan towards visa liberalisation for Ukraine, adopted on 22 November 2010 during the EU-Ukraine summit, does not differ substantially from the road maps granted to the Western Balkan states in 2008 (the citizens of these states recently obtained visa-free entry to the EU). In both cases, meeting the requirements set by the European Commission did not automatically bring the abolition of visas. Also, visa liberalisation was in both cases made dependent on the level of risk of illegal migration to the EU, that is, on the visa refusal rate and the number of citizens apprehended and returned.

Thus, Ukraine has received a relatively standard document which sets quite strict requirements in five key spheres: document security including biometrics, illegal migration including readmission, public order and security, external relations and fundamental rights.

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What is new is the division of these requirements into two groups. The document singles out the requirements related to the introduction of relevant legal changes and the preparation of reforms on one hand, and the requirements related to the actual implementation of these reforms on the other. Ukraine's ability to fulfil the conditions of the second category will depend

on the decision of the European Commission and the Council. This provision of the Action Plan reduces Ukraine's chances of getting a visa-free regime soon, since it will have to pass through a long-term decision-making process in the European Commission, the Council and the European Parliament, as well as receive the initial approval of EU institutions. Another novel provision was the European Commission's assessment of Ukraine's progress in tandem with the assessment of how visa liberalisation may affect the EU's security in the context of the risk of illegal migration from Ukraine. This condition reflects the scepticism of many EU states (especially Germany, the Netherlands, Belgium and France) about lifting the visa regime for Ukraine.

Ukraine's strong points

Ukraine's strong points in its negotiations with the EU are above all its political will (Kyiv abolished visas for EU citizens back in 2005), its efficiency in legislative work, its relatively efficient border service, and decreasing illegal migration into the EU. Moreover, Kyiv succeeded in meeting the obligations of the readmission agreement with the EU, which came into full force on 1 January 2010.

Visa-free travel to the EU for Ukraine's citizens has been a priority for all Ukrainian governments since 2005, and it became even more urgent after the neighbouring EU states joined the Schengen zone. However, during the rule of the 'orange coalition', internal disputes prevented the adoption of basic bills that were supposed to bring Ukraine nearer to the Schengen legislation (the only positive step was the adoption in 2009 of the law on border control, compatible with EU standards). There was also a legal dispute (spanning two years) that concerned the creation of a migration service. As a result, the system of migration management was plunged into chaos, and Ukraine was unable to fulfil its basic international commitments, such as granting refugee status.

Within the last ten months, since President Yanukovich took power, Ukraine has adopted or prepared key legal acts that have brought it closer to European standards in the area of border and migration management. First of all, the strategy of integrated border management has been prepared and passed through the parliament at express pace. This is the main strategic document that prepares Ukraine to leave behind the post-Soviet system of border control and join the four-tier model of border management operational in the EU (activities in the third countries, cooperation with neighbouring states, border control, inland activities). Relevant legal amendments have also been prepared to break the legislative deadlock around the migration service. The presidential decree of 9 December 2010 meant to reform central government institutions in Ukraine has established the State Migration Service (under the Ministry of the Interior), which is to carry out work in the fields of citizenship policy, immigration, registration and asylum. This means that most of the tasks related to immigration policy will be performed by one institution. The new government

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has also introduced the legal amendments and institutional changes related to personal data protection that were necessary to launch the process of issuing biometric documents.

Ukraine can also boast a relatively well reformed and efficiently managed State Border Guard Service (SBGS). This service has succeeded in steering clear of political turbulence and frequent organisational changes, which is the fate that befell the migration service. In the last five years, SBGS supported by EU assistance

programs, has been reforming quite efficiently. The process of transforming the service from a military formation into a law enforcement agency has been almost completed. The service has undergone a process of professionalisation. It has also adopted new, non-military standards of recruitment, training and career development. Structural changes in the border service are underway, and their most important result have been the establishment of new organisational units at the tactical level (border units) who will deal with both border control and the border surveillance. Progress has been made in regulating the legal status of the Ukrainian borders: an agreement was signed with Russia on demarcating the land border, and Belarus has ratified the state border treaty. All these changes have notably increased the efficiency of border protection, and it must be added that Ukraine's western borders are its best protected. On the eastern borders there are deficiencies of infrastructure, equipment and well-trained staff, although significant progress has been noted within the last few years. It is equally important that border protection is becoming more of a technical than a political issue in Russian-Ukrainian relations.

Ukrainian aspirations to a visa-free regime with the EU are supported by the improving migration situation. Within the last few years illegal transit migration via Ukraine has decreased, and the number of people apprehended for illegal border crossing has been steadily decreasing. In 2008, the border service apprehended 4,800 people attempting to cross the border illegally; in 2009 this number fell to 3,600, and in the first eight months of 2010 it was 1,800. Moreover, fewer Ukrainians are attempting to illegally enter or stay in the EU.

This is mainly due to increasing chances of obtaining legal status in EU countries (migrant regularisation campaigns have been carried out in Southern European states, and Poland and the Czech Republic have simplified their regulations concerning the employment of foreigners). Falling rate of visa refusals in the EU states' consulates illustrates the declining visa risk posed by Ukrainian citizens. In 2009, the visa refusal rate was about 5 percent of all visa applications (the EU considers 3 percent to be a safe threshold for visa refusals). For comparison, the rate for Moldova and Armenia was about 10-12 percent, and for Russia, Belarus and Azerbaijan about 3 percent.

After a year of the full operation of the readmission agreement between Ukraine and the EU, it can be stated that Kyiv has been executing this agreement pretty smoothly, as was actually noted in the Action Plan. Ukraine may owe this efficiency to the fact that relatively few people have been readmitted from the EU states; nevertheless Kyiv has admitted the vast majority of them. It should be noted that the readmission agreement Ukraine signed was highly favourable to the EU. Among other things, Ukraine has agreed to take back those immigrants who illegally remained on EU territory, even if they had left Ukraine legally. Even though implementing protocols to the agreement have not yet been prepared, the accelerated procedure for returning people apprehended within 48 hours of crossing the border (which concerns most cases of people readmitted to Ukraine) is being executed efficiently and without delay. There is some more trouble with executing the standard procedure, for which Ukraine's lack of computerised databases is to blame.

Ukraine's weaknesses

The hardest task for Ukraine will be to meet the EU's expectations concerning values, the condition of Ukrainian democracy, and the rule of law. Some dangerous phenomena, such as the restriction of political pluralism, the concentration of power in the hands of the president, and the use of law enforcement agencies and courts in political struggles have not gone unnoticed. Even though the criteria related to the rule of law and judicial independence have not been directly referred to in the Action Plan, Kyiv has to fundamentally reconstruct its legal system if it wants to cooperate with EU member states effectively on criminal matters. This reconstruction would include improving the qualifications of judges, changing the legal system, which is now based mostly on regulations (and not laws passed by the parliament), improving the inefficient judicial system, and reforming the prosecutor's office. Even though Ukrainian law states that the maximum period for detention without charge is

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As for the specific criteria, Ukraine may have greatest trouble with meeting the requirements concerning the creation of an effective system to combat corruption, the institutional changes concerning migration management, and the reform of the Ministry of the Interior. Ukraine will also have to face the challenges connected to introducing biometric documents and establishing a common database for all the services operating in the field of border and migration management.

Most Ukrainian politicians admit that corruption remains a major barrier to the development and modernisation of Ukraine. During the Anti-Corruption Committee session in October 2010, President Viktor Yanukovich declared that corruption is a threat to national security. Corruption is widespread; both the administrative corruption faced by citizens every day, and the so-called 'grand' corruption where politics meets business. In 2010, in the Corruption Perception Index by the Transparency International, Ukraine ranked 134th among the 179 countries surveyed. So far, there does not seem to be enough political will to prove the government's intention to battle this phenomenon. Kyiv is failing to meet its obligations to its membership in the Group of States Against Corruption (GRECO). For several years now, Ukraine has been unable to adopt anti-corruption legislation. In mid-2009, at the initiative of the then President Yushchenko, the parliament adopted a package of anti-corruption bills, whose entry into force was delayed twice (first, until 1 January 2010, and later until 1 January 2011). In October 2010, the Constitutional Court declared part of the provisions unconstitutional.

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On 23 December, the parliament adopted at first reading the new anti-corruption legislation prepared by the Presidential Administration, which (according to the Ukrainian opposition) hardly differs from the provisions adopted in 2009. In February 2010, President Yanukovich set up the National Anti-Corruption Committee, although the committee has only had one session throughout the year, and its functions are mostly advisory.

The recent decision to set up the migration service is just a first step towards the creation of an effective system of migration management. The main problem of the new service will be the creation of a civil system for registering foreigners, issuing residence permits, granting refugee status, monitoring the migration situation, and coordinating migration policy in a situation when its supervisory authority (the Ministry of the Interior) remains an unreformed, police-type bureaucratic institution, which is focused on combating illegal migration rather than legalising migrants. The idea to leave tasks such as combating illegal migration and cross-border crime (usually dealt with by the police) within the remit of the new service seems to have been a bad idea. Ukraine has created a relatively effective system of apprehension and detention of illegal immigrants, but it will now have to face other problems, such as dealing with delays in granting refugee status, integration of migrants, the expulsion of undesired persons, and granting temporary residence to migrants who cannot or should not be returned. It also seems that the Ukrainian government has put too much effort into preparing a state migration strategy that should have the status of a legal act (work on this document has been ongoing for many years). Ukraine's migration system does not seem to be firm, and so it will be hard to regulate with one legal act. At the moment it would be better to adopt a political document at the governmental level.

Ukraine is lagging behind countries such as Russia, Belarus and Moldova regarding the introduction of biometric documents. Attempts to adopt the relevant legislation in 2007–2009 have failed due to the permanent political crisis, as have efforts to prepare personal data protection system and passports' production. In 2011, the government adopted the plan for introducing the biometrics. However, Ukraine is still in the initial phase of the process, whereas the possession of a biometric passport is a necessary condition for the possible visa-free entry of Ukrainian citizens to the EU. Another problem is the lack

of an electronic system with a database on foreign nationals, visas and border crossings which would be accessible to all relevant services and institutions. The Ukrainian border service and the Ministry of Foreign Affairs have their own databases that are not compatible with the databases of other institutions. The Ministry of the Interior has created its own database which is intended to be integrated with those of other institutions, but its completion is progressing very slowly.

Conclusions. Prospects for visa liberalisation

Immediately after the EU–Ukraine summit, President Yanukovich announced that Ukraine would be able to meet the requirements set by the Action Plan as early as the first half of 2011. This seems impossible, considering Ukraine's unpreparedness to meet the Action Plan's exacting requirements. Moreover, the document assumes that the first assessment of Kyiv's progress will be made right in the middle of 2011. It should also be borne in mind that many EU member states are rather unfavourably disposed towards the idea of further visa liberalisation, as they find it hard to cope with migrants' integration, and are unwilling to accept more migrants. Finally, another country seeking a visa-free regime with the EU is Russia, whose advantage over Ukraine is its powerful lobby in some EU states, and has a lower visa refusal rate in its relations with the EU. Russia can also boast an efficient migration service and has introduced biometric passports.

It seems that by the turn of 2012, Ukraine should be ready to meet the first group of requirements set by the Action Plan, which relate to the introduction of relevant legal amendments and preparation of reforms. So if the initial assessment of Ukraine's progress is positive, the government in Kyiv may have a chance to extend the current visa facilitation agreement. For example, the categories of persons subject to visa facilitation could be extended, whereas the number of documents required for obtaining a visa could be reduced, and visa fees could be lowered. Special liberalised visa regulations or rules for crossing the border could be applied during the European Football Championship in 2012. Such decisions are likely to be approved of by EU member states, as they do not increase migration risks, and meet Ukraine's European aspirations.

The complete abolition of visas within the next few years is not an unrealistic perspective. Ukraine's migration situation is tending to stabilise (both in terms of transit migration and the number of Ukrainians whose status on EU territory is unregulated), whereas its progress in border protection and migration management system is considerable. From Kyiv's viewpoint, it is crucial to convince the EU states that Ukraine is earnestly fighting corruption, and that European law enforcement authorities and courts can find trustworthy partners in Ukraine who will operate according to similar standards.



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