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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Fourth Report on the implementation by Ukraine of the Action Plan on Visa Liberalisation

I. Introduction

On 29 October 2008, the EU and Ukraine launched a Visa Dialogue to examine the conditions for visa-free travel to the Schengen zone for citizens of Ukraine. On 22 November 2010, the Commission presented to Ukraine the 'Action plan on visa liberalisation'. This sets a series of precise benchmarks for Ukraine on four 'blocks' of relevant issues, with a view to both the adoption of a legislative, policy and institutional framework (phase 1) and its effective and sustainable implementation (phase 2).

The Commission has regularly reported to the European Parliament and the Council on implementation of the action plan on visa liberalisation. The first progress report on implementation by Ukraine was presented on 16 September 2011. The Commission published its second progress report on 9 February 2012, and the third on 15 November 2013. In that report, the Commission presented a comprehensive and consolidated assessment of the progress made by Ukraine in meeting the first phase benchmarks relating to the establishment of the legislative, policy and institutional framework. It found that Ukraine had made substantial progress in all four blocks of the action plan, but that there were still some important requirements to be met in the field of document security, asylum, anti-corruption and anti-discrimination, and data protection.

The Commission committed to continue to work closely with the Ukrainian authorities to address the outstanding issues identified above. The Commission has had an underlying objective to communicate to the European Parliament and to the Council when all measures required by the first phase of the action plan are adopted.

This Commission report is the fourth and final progress report on the first phase of the visa liberalisation action plan. It explains how the remaining first phase benchmarks have been addressed. It was preceded by a senior officials meeting in Kiev on 26 March 2014, where the Ukrainian authorities presented an update of their efforts to meet the outstanding benchmarks. Since then, Ukraine has provided further information on legislation adopted up to a cut-off date of 23 May.

In addition to the action plan benchmarks, issues related to reform of the judiciary and the Prosecutor's Office are monitored in other bodies, such as the informal Judiciary Dialogue launched in February 2013, the Cooperation Committee, the Cooperation Council, the EU-Ukraine Summit and in the implementation of the Association Agenda. The next Justice, Liberty and Security Sub-Committee is tentatively scheduled for the beginning of July 2014.

II. Context

The present report is presented at a time when Ukraine finds itself in an exceptional situation. The decision to suspend preparations for the signing of the Association Agreement and the Deep and Comprehensive Free Trade Agreement sparked massive civil protests, which culminated with the appointment of a new government on 27 February 2014. This was followed by the violation of Ukrainian sovereignty and territorial integrity by Russian armed forces and the de facto annexation of Crimea.

In the Conclusions of the Foreign Affairs Council of 20 February and 3 March, the EU has confirmed its commitment to enhance people-to-people contacts between the EU and Ukraine, for example, through the visa liberalisation process, under agreed conditions, in the framework of the action plan.

The European Parliament has even called for an immediate visa-free agreement[1] between the EU and Ukraine. It invited the Commission to present a proposal to include Ukraine on the list of third countries whose nationals are not subject to a visa requirement.

In its support package for Ukrainian stabilisation, which it presented on 5 March[2] ahead of the extraordinary meeting of EU Heads of State and Government, the European Commission committed to support Ukraine's efforts to move forward the visa liberalisation process as quickly as possible in line with agreed conditions under the visa liberalisation action plan. While noting that progress depends on how the new authorities are able to tackle the most important outstanding issues, the Commission stated that it will do its utmost to assist Ukraine in solving the remaining issues as speedily as possible. This commitment was reconfirmed by the recently endorsed European Agenda for Reform for Ukraine, which stated that the EU, in coordination with its Member States, will accelerate efforts to enable Ukraine to move to the second phase of the action plan, and to provide comprehensive support to Ukraine in the process towards achieving the goal of visa-free travel.

III. Assessment of measures under the four blocks of the visa liberalisation action plan

The Commission's third report at the end of 2013 concluded that there were still some important first phase requirements to be met and listed the outstanding issues. The approach of the new Ukrainian government has been to address systematically all these issues, either at executive level through the adoption of by-laws or ministerial orders, or at legislative level whenever amendments to existing law or the passing of new laws was necessary.

For **Block 1,** in the area of document security, the Commission requested Ukraine to complete the framework law with explicit reference to fingerprints and to adopt implementing regulations to ensure that the legislative framework is ready for the issue in due course of biometric passports.

As a follow-up to these recommendations, the Ukrainian government has drafted and adopted the required implementing regulations[3] to prepare for the issue of biometric passports. The government has proposed, and is about to adopt, an action plan for 2014-17 defining the responsibilities of the various authorities. The Ukrainian government is similarly finalising its proposal to amend the framework registry law (Law on Single Demographic Registry and Identity Documents) to make fingerprints an obligatory biometric feature.

Under **Block 2,** in the area of migration and asylum management, the Commission requested modification of the asylum law, in particular to widen the definition of complementary protection and temporary protection and to ensure free medical care for asylum seekers.

The Ukrainian government has followed up on these recommendations. The required amendments to the asylum law on the scope of complementary and temporary protection were adopted by Ukraine's parliament, Verkhovna Rada, on 13 May. Additional

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[1] European Parliament resolution of 27 February 2014 on the future of EU visa policy (2014/2586(RSP)).

[2] http://europa.eu/rapid/press-release_MEMO-14-159_en.htm.

[3] Cabinet of Ministers Resolutions on the technical description and the procedure.

amendments were introduced and have already been adopted by the parliament to ease access to employment for asylum seekers by making the work permit free of charge. As regards medical care, a by-law was adopted to ensure that medical care is provided.

While the legislation is now largely in place, increased efforts will be needed in the implementation phase to ensure an efficient asylum system, especially with regard to the asylum procedure and the integration of recognised refugees.

In relation to the required benchmarks in **Block 3**, the third Commission report underlined the need to urgently address a number of issues in relation to preventing and fighting corruption. These included: strengthening public procurement rules; clarifying exceptions and transparency rules; ensuring asset disclosure and effective and impartial checks on declaration of assets; completing rules on corruption in the private sector; and strengthening the system on lifting immunities.

As a follow-up, a package of amendments was prepared by the government and was adopted by the parliament on 13 May. These amendments address the system for declaration of assets by: introducing an external control mechanism; criminalizing all elements of bribery (active and passive); adding rules on corruption in the private sector as regards legal persons; and raising the level of penalties. In addition, whistle-blower protection has also been strengthened. A separate comprehensive law was adopted on public procurement, covering transparency rules, the award of public contracts, and the scope of procuring entities.

The remaining outstanding urgent issue — reforming the rules on lifting immunity for members of parliament — is linked to constitutional provisions and will therefore be addressed as part of an ongoing constitutional reform process.

In the implementation phase, special attention will need to be paid to ensure the adequate institutional setting. This should include a genuine, functioning and independent oversight, and a coherent implementation of the rules now in place, which are the result of many substantial changes in the last two years.

On data protection, the European Commission requested Ukraine to finalise its legislative and institutional framework. As a follow-up, the Ukrainian government introduced amendments both to the Data Protection Law and to the law on the Ombudsperson, notably to include the notion of consent on the part of the personal data subject, and to extend the powers of the Ombudsperson to the private sector. The amendments were adopted by the parliament on 13 May.

In terms of the outstanding requirements under **Block 4**, the Commission had, in its third report, requested Ukraine to further strengthen the legislative framework on anti-discrimination such as to provide adequate legal protection against discrimination on all grounds, in line with European and international standards.

This means in concrete terms: to amend the Anti-discrimination law to ensure protection against discrimination also on the ground of sexual orientation, and to strengthen procedural guarantees by introducing provisions on the reversal of the burden of proof, to clarify that the scope also applies to the private sector, to ensure that all aspects of labour rights are covered, to clarify the provisions on reasonable accommodation for disabled persons, to clarify the rights of victims with specific regard to compensation mechanisms and to extend the Ombudsperson competence to the private sector.

In terms of follow-up, amendments to the Anti-discrimination law were proposed by the Government and adopted by the parliament on 20 May, tackling key issues raised by the Commission and also introducing new aspects: provisions on the reversal of the burden of proof were introduced in the procedure before the Courts but not before the Ombudsman, the competence of the Ombudsperson was extended to the private sector; The concept of reasonable accommodation was introduced. Regarding the scope, no explicit reference to sexual orientation as a prohibited ground of discrimination was introduced. While provisions were introduced referring to the right of appeal before national courts, to compensation claims and to the individual liability of offenders, as well as references to the civil, administrative and criminal responsibilities, it remains to be clarified what sanctions and what type of compensation the respective Codes and legislation provide for acts of discrimination.

Regarding the protection against discrimination on the ground of sexual orientation, the Government asked the Highest Court[4] for an interpretation of the relevant provisions, to confirm that it is prohibited to discriminate on this basis. The Highest Court issued an interpretation on 7 May confirming expressly that sexual orientation is implicitly considered a prohibited ground of discrimination in the existing legislation. This opinion was widely publicised by the government: it was not only posted on the website of the Parliament and in Ukraine's official journal but it was also published in one of Ukraine's largest circulation newspapers. Finally, for its upcoming reform of labour code, the Ukrainian government has openly committed to explicitly prohibit discrimination on the grounds of sexual orientation.

While the anti-discrimination legislation was improved to provide for the necessary legislative basis to ensure the implementation of the benchmarks in the anti-discrimination area , additional legal guarantees will need to be given in the implementation phase to ensure that protection against discrimination on the basis of all grounds as well as procedural guarantees are sufficiently and effectively ensured and any derogation is applied in line with the principles of necessity and proportionality in the Ukrainian legal system.

In addition to the provisions to guarantee protection against discrimination, the Commission's third report also underlined that the Commission would closely monitor any further developments on the pending draft laws 0711 (subsequently 0945) and 0290. These proposed to amend various laws and to limit freedom of speech by banning 'propaganda of homosexuals'. In so doing, the Commission was taking into account the concerns raised by the Venice Commission in its opinion. The government of Ukraine has given assurances that these draft laws have been withdrawn from the registry in the parliament.

Concerning the pursue of specific recommendations of the Council of Europe/ECRI in protecting minorities, Ukraine ratified Framework Convention for the protection of national minorities in May 1998 and the European Charter for regional or minority languages in January 2006. The Law on the principles of state language policy was adopted in 2012 and remains valid. The Venice Commission assessed in its opinion (No. 651/2011) that it provided for adequate protection of regional or minority languages. Any changes to the law should be in line with international commitments, with special regard to those of the Council of Europe.

[4] Highest Specialized Court for Civil and Criminal Cases

IV. Overall assessment and next steps

In line with established practice, the Commission has continuously assessed and regularly reported — in September 2011, February 2012 and November 2013 — on Ukraine's fulfilment of benchmarks under the action plan on visa liberalisation. It has done this on the basis of information and legislative texts provided by Ukraine, together with assessment exercises on the ground carried out by staff from the Commission and the European External Action Service, accompanied by Member State experts.

Over and above this intensive reporting process for the action plan, the Commission has also continued to monitor the progress made by Ukraine in relevant areas in the framework of the EU-Ukraine Joint Visa Facilitation Committee, the EU-Ukraine Readmission Committee and EU-Ukraine Joint Sub-Committee No 3. In each of these committees, the state of dialogue and cooperation between the EU and Ukraine is considered advanced. Some of these issues are also monitored in other dialogue frameworks, such as the Cooperation Committee, the Cooperation Council, as well as in the context of the implementation of the Association Agenda.

The package of additional legislative reforms outlined in this fourth report represents a substantial effort undertaken by the new government in Ukraine. The Commission acknowledges that the content and breadth of these reforms is satisfactory, notably when considering the circumstances in the country and the internal and external challenges it currently faces. In conclusion, **the Commission considers that Ukraine has met the benchmarks under the first phase of the visa liberalisation action plan and that assessment of the benchmarks under the second phase can be launched.**

The Commission will continue coordinating the monitoring of the legislative and policy framework in subsequent stages of the EU-Ukraine dialogue. It will do this with a view to assessing whether the necessary implementing regulations, under the four blocks of the Action Plan, are effectively adopted and implemented. Moreover, the Commission will pay particular attention to whether appropriate and necessary financial and human resources as well as training will be allocated by Ukraine for implementation of the relevant legislative acts and their implementing regulations.

During the second phase of the action plan, the Commission will also provide an ongoing assessment of possible migratory and security impacts arising from future visa liberalisation for Ukrainian citizens travelling to the EU. In view of the current exceptional situation in Ukraine, the Commission considers that issuing such an assessment at this point of time would have only limited value.