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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

**Sixth Progress Report on the Implementation by Ukraine of the Action Plan on Visa
Liberalisation**

{SWD(2015) 705 final}

I. INTRODUCTION

The EU-Ukraine **Visa Liberalisation Dialogue** was launched in October 2008. In November 2010, the European Commission presented the Ukrainian Government with an action plan on visa liberalisation (VLAP). The VLAP sets a series of precise benchmarks for four ‘blocks’¹ of technically relevant issues, with a view to adopting a legislative, policy and institutional framework (phase 1) and ensuring its effective and sustainable implementation (phase 2). The benchmarks need to be met before Ukrainian nationals holding biometric passports can enter the Schengen zone for short stays without the need for a visa.²

In September 2011, the Commission adopted its first progress report on Ukraine's implementation of the VLAP³ and made several recommendations for completing the first (legislative and planning) phase. The Commission published its second progress report on 9 February 2012, and the third on 15 November 2013. **Following the Commission's fourth report (27 May 2014)⁴ and its endorsement by the Council (23 June 2014)**, Ukraine was officially in the second phase of the action plan where an assessment was made regarding sustainable implementation of the legislative and policy framework.

The **Commission adopted the fifth progress report on Ukraine's implementation of the VLAP on 8 May 2015⁵**. The report stated that the progress achieved by the Ukrainian authorities in the implementation of the second phase of the VLAP was noteworthy. In line with the methodology outlined in the VLAP, the Commission organised on-site evaluations involving experts from EU Member States. The report was accompanied by an assessment of the potential migratory and security impacts of future visa liberalisation for Ukrainian citizens travelling to the EU.

The **sixth report** is the second progress report on Ukraine's implementation of the second phase of the VLAP. It considers how effectively and sustainably the Ukrainian authorities have implemented the second-phase benchmarks, in line with the recommendations issued in the Commission's fifth report. This report does not elaborate on those benchmarks that were considered as already achieved in the last report because monitoring has demonstrated that they are continuing to be fulfilled. These benchmarks are: judicial cooperation in criminal matters, conditions and procedures for the issuance of travel and identity documents.

The factual information and assessment are based on findings of the **EU evaluation missions** that took place in Ukraine from 31 August 2015 to 2 October 2015 in all four blocks of VLAP, which involved experts from EU Member States, Commission officials, representatives of the and the EU Delegation to Ukraine. Additional information was obtained through **subsequent meetings and communications between the Commission, the EEAS**

¹ These are: (i) document security, including biometrics; (ii) integrated border management, migration management and asylum; (iii) public order and security; (iv) external relations and fundamental rights.

² Beneficiaries of the visa waiver holding a biometric passport could transit through or stay in the territory of the EU Member States (except for the United Kingdom and Ireland) and Schengen associated States for a duration of no more than 90 days in any 180 days period without applying for a visa.

³ COM (2013) 809 final.

⁴ COM(2014) 336 final.

⁵ COM (2015) 200 final.

and the Ukrainian authorities, as well as the progress reports submitted by Ukraine on 17 August and 22 November 2015.

The report is **accompanied by a Commission staff working document**⁶ which elaborates on the developments described in the report. In the annex to the staff working document, as required under the VLAP, the Commission provides an updated analysis and statistics-based information on possible migratory and security impacts of future visa liberalisation for Ukrainian citizens travelling to the EU, based on inputs from relevant EU agencies and stakeholders. **The assessment of impact** gives prospective main trends in migration and security areas. It shows that the EU remains an attractive destination for migrants from Ukraine and that there are potential migratory and security challenges to be monitored.

2. ASSESSMENT OF MEASURES UNDER THE REMAINING BENCHMARKS OF THE ACTION PLAN ON VISA LIBERALISATION

2.1. Block 1: Document security, including biometrics

Significant progress has been achieved since 12 January 2015, with the issuance of biometric passports that comply with the requirements of the International Civil Aviation Organisation. For checks on Ukrainian citizens leaving the territory, **the second line control** in Kiev Boryspil airport can access fingerprints stored in Ukrainian passports and so can check the holder's fingerprints against those stored on the chip.

Amendments to the rules of procedure were adopted on 19 August 2015 to tackle any **side-effect of name changes** on the issuance of travel and ID documents. Both the internal passport and the passport for travelling abroad are cancelled in the event of a name change.

Technical consultations on **establishing an automatic link** between the Unified State Demographic Registry and Civil Registry records are ongoing. The link is expected to be operational from 1 January 2016.

In May, Ukraine started issuing biometric diplomatic and service passports and issuing biometric passports in consulates. The equipment was deployed in 98 consular posts. The new biometric ID cards are being tested and will be issued starting from 1 January 2016.

The document security benchmark is deemed to have been achieved.

2.2. Block 2: Integrated border management, migration management, and asylum

2.2.1 Integrated border management

Implementation of an integrated border management system in Ukraine has advanced. The State Border Guard Service (SBGS) is advancing towards a modern law-enforcement agency in line with the EU best practices, despite the complex situation in the east of the country.

⁶ SWD(2015)705 final.

The Ukrainian authorities have ensured **access to Interpol databases** at border crossing points. In November, 39 border crossing points were connected to Interpol databases. The remaining 118 BCPs will be connected in 2016. Ukraine has taken further steps in **cooperation on border control** and border surveillance with neighbouring countries, which already functioned fairly well. On the future Integrated Border Management Strategy, the SBGS drafted a new Concept for the period 2016-2020. The SBGS, in an inclusive dialogue with other border agencies and relevant actors, is now expected to deliver a comprehensive document following the best EU examples and addressing key issues of interdepartmental, interagency and international cooperation and coordination.

As of 6 November 2015, SBGS is considering proposals from the line ministries and agencies on the draft Concept and its implementing Action Plan. The draft envisages that the Concept will enter into force on 1 January 2016.

The integrated border management benchmark is deemed to have been achieved.

2.2.2 Migration management

The **law on external labour migration** was adopted in second reading on 5 November 2015 and was signed by the President on 21 November. This is a very positive step, as the law will regulate reintegration issues on the legislative level.

The capacity of the State Migration Service (SMS) to handle **inland detection** has been increased. On 27 May 2015, the Government of Ukraine adopted a resolution that from 1 January 2016 the SMS will be given 500 more staff, including officers tasked with fighting irregular migration and with inland detection. **Language training** is currently being carried out. The SMS is exploring further ways of involving international partners in improving the foreign language skills of its staff. The **Migration Profile** for 2014 was updated and published on 5 May 2015.

The migration management benchmark is deemed to have been achieved.

2.2.3 Asylum

Substantial progress has been made in carrying out the recommendations of the fifth report. The **'refugee' subsystem of the foreigners'** database was installed. Country of origin information is available to case processors on the website of the State Migration Service. One hundred publicly financed regional and local **legal aid** centres started work on 1 July 2015, providing secondary legal aid to international protection applicants.

Food corresponding to a certain daily amount of required nutritional value per person independent of cost is provided at the temporary accommodation centres for persons seeking international protection and of those entitled to international protection.

Training was given to staff working in reception centres, case handlers and judges. Ukraine currently has a reception capacity of 100 places available in Odessa and 130 places in the Transcarpathian Oblast. The opening of a new **accommodation centre** in Yahotyn, Kyiv Oblast with 353 additional places was postponed from this year to 2017. The refurbishment of

100 additional places in the Odessa temporary accommodation centre depends on unblocking the funds earmarked for this.

One ongoing point of concern is that the **current practice of detaining certain categories of asylum seekers** is not based on grounds for detention laid down in law. On 10 November 2015, Parliament adopted in first reading a draft law on amendments to the Law on Foreigners, which provides for the introduction of judicial decisions on the detention of persons subject to return procedures. Similar safeguards and specific detention grounds could be foreseen for the detention of applicants for international protection who stay legally in Ukraine.

The asylum benchmark is deemed to have been achieved.

2.3. Block 3: Public order and security

2.3.1. Preventing and fighting organised crime, terrorism and corruption

2.3.1.1. Preventing and fighting organised crime

On 26 May 2015 the President of Ukraine approved the National Security Strategy, which aims at defining the **overall vision and direction of the reform process**. The Strategy is a good step forward.

The complex reform process of the Ministry of Internal Affairs and the agencies responsible for preventing organised crime is ongoing. The authorities aim to establish competences of the law-enforcement agencies' remits clearly, including a clear chain of responsibility for the investigation and prosecution. Key elements of the reform, such as clear jurisdiction and preventing functions overlapping in the fight against organised crime should be further followed -up.

The Ukrainian authorities undertake efforts to **reduce the pre-trial investigative powers** of the Security Service for intelligence and counterintelligence. On 21 November 2015, the President signed the law aimed at the optimising law-enforcement powers in pre-trial investigation. The competence on the **pre-investigative powers** of illegal smuggling was transferred from the Security Service to the Ministry of Interior. The **specialization of judges and prosecution** for organized crime cases has been further considered.

To ensure **effective witness protection**, the Ukrainian authorities will consider the allocation of resources for the next budgetary period. A new procedure for cooperation on witness protection issues and consistent application of witness protection orders is envisaged.

The preventing and fighting organised crime benchmark is deemed to have been achieved.

2.3.1.2. Trafficking in human beings

Ukraine has taken a number of significant steps to develop an anti-trafficking policy and actions, through the adoption of a new *State Program to Combat Trafficking in Human Beings*, which is scheduled to enter into force on 1 January 2016.

The Ministry of Social Policy holds consultations with other authorities and international organisations; however, an **assessment** of the **reasons for the decrease** in identified victims and a better **monitoring of emerging trends** is still work in progress.

The numbers of victims identified continues to be very low. As of 19 November, the Ukrainian authorities granted the status of victim of trafficking (VOT) to 140 people: 60 women, 59 men and 21 minors.

The Ukrainian authorities introduced a formal procedure for identifying victims but the identification relies on the victims themselves applying for identification. A national mechanism to facilitate cooperation between relevant bodies involved in combating trafficking in human beings (THB) was also set up. The current anti-trafficking system focuses on Ukraine as a country of origin and only a few foreign victims of trafficking have been formally identified. Further attention should be paid to internal trafficking, especially in relation to internally displaced persons.

The **monitoring system for the existing action plan still needs to be implemented as does evaluation** from 2016 onward. This should include a clear role for non-governmental organisations, and sufficient funds for their effective participation. Ukraine would benefit from introducing a unitary statistical national monitoring system in the improving the process of identification of victims.

Ukrainian authorities envisaged funding under the **national referral mechanism** for the NGOs. **Training** for officials on their role and responsibilities in relation to the victim identification process has been improved.

The trafficking in human beings benchmark is deemed to have been achieved.

2.3.1.3. Preventing and fighting corruption

The progress noted in the fifth report on anti-corruption policies, particularly the legislative and institutional progress, has continued. The adoption by the Parliament, on 8 October 2015 of legislative packages covering aspects of the report's recommendations, is an important step forward. Civil society continued to play a key role in moving the anti-corruption agenda forward.

The **National Anti-Corruption Bureau (NABU)** was created, its head was appointed on 16 April 2015 following an open and competitive selection process, and around 100 investigators have been recruited and trained. The establishment of the NABU is therefore well-on track. However, the NABU cannot be fully operational without a specialised anti-corruption prosecution office.

While the setting-up of this **new specialised anti-corruption prosecution office** has begun, it nevertheless remains to be ensured that its independence and integrity are recognised beyond doubt. Shortcomings in the selection process for the leadership of the anti-corruption prosecution office such as the lack of objective track-record criteria for the nomination of the members of the selection committee and the candidates, highlighted the need for the relevant legal and institutional framework to be further improved in order to fully ensure the office's independence and integrity. To this end, the selection, appointment and dismissal procedures for the office's leadership and staff must follow stricter independence and integrity safeguards. The specialised anti-corruption prosecution office should become operational as a matter of top priority; it is an indispensable component of an effective and independent institutional framework for combating high-level corruption. On 30 November, the General Prosecutor appointed the head of the specialised anti-corruption prosecution.

There has been progress in setting-up of **the National Agency for the Prevention of Corruption (NAPC)**, especially since the new election of the Agency's board which took place on 28 August 2015. The Government is expected to approve the five-member board in December 2015. The law on prevention of corruption, adopted in October 2014 entered into force on 26 April 2015. It provides for mechanisms to check asset declarations. These tasks will be performed by the NAPC. The NAPC will also administer the web-portal of asset declarations, which is currently being developed. A law on political parties financing was adopted in 8 October 2015. A draft law on the National Asset Recovery Office (ARO) and the Asset Management Office (AMO) passed first reading in Parliament on 8 October 2015. On 10 November, Parliament adopted in second reading a set of laws aimed at improving asset recovery procedures. Specifically, the draft laws: on ARO and AMO, on asset seizure and on special third-party confiscation. In the form proposed by the Government, the draft laws envisaged the establishment of an Asset Recovery Office which also comprised management functions concerning frozen and confiscated assets, as well as provisions on the freezing and confiscation process. A number of amendments to the text in Parliament have limited the Agency's functions of active management of the seized assets, as well as the provisions on seizure and confiscation.

Progress made on legislative and institutional aspects can only bring significant end results if fully implemented.

The Ukrainian leadership committed to:

- ensure that the National Anti-Corruption Bureau and specialised anti-corruption prosecution are fully operational in the first quarter 2016;
- ensure by the first quarter 2016 independence and integrity of the specialised anti-corruption prosecution office, including through amendments to the Law "On Prosecution" appropriate safeguards for the selection and dismissal of the office's leadership;
- ensure that the National Agency for Prevention of Corruption is fully operational in the first quarter 2016 and verification of assets and potential conflicts of interests of public officials in areas and positions most vulnerable to corruption will be launched immediately after;

- improve the institutional capacity on recovery and management of assets and, in the first quarter of 2016, adopt legislation on procedures concerning seizure of assets and special confiscation with a view to make the Asset Recovery Office fully effective;

- ensure in the State Budget for 2016 and onwards the necessary financial resources for the well-functioning anti-corruption institutional framework, including the National Anti-Corruption Bureau.

Based on these commitments, **the anti-corruption benchmark is deemed to have been achieved.**

2.3.1.4. Money laundering and financing of terrorism

The National Bank of Ukraine (NBU) took measures against banks which do not disclose **ultimate beneficial ownership** and ensure effective client identification. As of 5 October 2015, 132 out of 135 commercial banks had disclosed their ownership in line with the new regulations. A special unit was created in the NBU, to monitor beneficial owners. By the end of December 2015, the NBU planned to finalise a risk-based off-site and on-site anti-money laundering supervisory tools focusing on risk related to domestic politically exposed persons.

A **specialised unit** to coordinate investigations into money laundering and terrorism financing was set up on 2 September 2015 in the Department of Supervision in Criminal Proceedings of the Prosecutor General. The unit is tasked with coordination of investigations in cases of money laundering and terrorism financing. The operational functioning of this unit should be further monitored.

All online services that do not have **client identification** or monitor the origin of the money must be seen as a risk. The NBU is making efforts to regulate payment systems not offered by banks. It also cooperates with law enforcement authorities to ensure compliance with legislation by those payment systems that are not in the NBU. It is also important to highlight that the Prosecutor Office brought charges and began criminal investigation into webmoney agents suspected of money laundering.

The money laundering benchmark is deemed to have been achieved.

2.3.1.5. Drugs

The **National Anti-Drug Strategy** and its related **action plan** is being implemented through the second action plan for the period 2015-2020.

The authorities considered consolidating the provisions regulating drugs in a **single legal instrument**. This will help to harmonise the legislation of Ukraine on drugs. The Ministry of Health ensures cooperation with other drug policy institutions that participate in implementing state policy on drugs control on regular basis. As part of the Action Plan for 2015 on the implementation Strategy of Drug Policy in 2020, the Ministry of Internal Affairs is involved in implementing of planned measures together with the Security Service, the State Border

Guard Service, and the State Fiscal Service, including conducting operative-preventive measures to detect and seize drugs, psychotropic substances, their analogues and precursors, and toxic and potent drugs. Between 1 January and 9 November 2015 the SBGS seized more than 200kg of drugs.

The anti-drug benchmark is deemed to have been achieved.

2.3.2. Judicial cooperation in criminal matters

The judicial cooperation in criminal matters benchmark, which was deemed to have been achieved in the fifth progress report, has remained achieved.

2.3.3. Law enforcement cooperation

Regarding **inter-agency cooperation**, reform of the Ministry of Internal Affairs is still ongoing. By the end of 2015, the Ministry is planned to be transformed into a civilian body, whose main purpose is to form a consistent state policy on internal affairs and direct the activities of other agencies (the National Police, the National Guard, the State Border Guard Service, the State Migration Service and State Emergency Service). On 2 July 2015, the Parliament adopted the Law of Ukraine “On the National Police”, which entered into force on 7 November 2015. The law envisages the optimisation of the National Police, a clear separation of structural powers, the elimination of duplicate functions in line with European standards. The Ministry's reform efforts in this regard are very positive.

The exchange of information between law enforcement agencies is being carried out using the "Arkan" system - an integrated interagency information-telecommunication system on the control of persons, vehicles and goods crossing the state border.

The procedure for the **conclusion of a Europol operational agreement** is very advanced. On 11 March 2015 a Memorandum of Understanding was signed by the Ukrainian Party and on 19 March the document was signed by Europol. On 4 June, Parliament adopted a law ratifying the Memorandum of Understanding between Ukraine and Europol on establishing a secure communication channel; the law came into force on 13 July. The decision to launch negotiations on signing the Agreement on Operational Cooperation was made by the Management Board of Europol on 7 October 2015. Currently the Ukrainian Bureau of Interpol is conducting negotiations with Europol to begin work on establishing the SIENA secure communication channel. The **Serious Organised Crime Threat Assessment (SOCTA)** for Ukraine is carried out using Europol's methodology.

International cooperation with Ukraine's law enforcement bodies is provided through Interpol and Europol channels for the prevention, detection and investigation of criminal offences.

The law enforcement cooperation benchmark is deemed to have been achieved.

2.3.4. Data protection

The Ukrainian authorities have been satisfactorily implementing the law on protection of personal data and the independent data supervisory authority operates efficiently.

The **budget of the Ombudsman's Secretariat** was increased by UAH 7 million (25%) and was allocated to three departments of the Secretariat: Data Protection Department, the Non-Discrimination Unit and the Unit for Access to Public Information.

The data protection benchmark is deemed to have been achieved.

2.4. Block 4: External relations and fundamental rights

Despite the continuous substantial external and internal challenges which the country is facing, Ukraine has made substantial progress in this area over a short period of time.

2.4.1 Freedom of movement within Ukraine

HIV/AIDS infection was excluded from the list of contagious diseases by order of the Ministry of Health No. 329 of 11 June 2015. This means that HIV/AIDS status cannot be invoked to refuse immigration permits. The Ukrainian authorities have gradually improved the application of the legal framework for access to and from the territories not under government control and have introduced measures simplifying the crossing of the contact line.

The benchmark is deemed to have been achieved.

2.4.2 Conditions and procedures for the issuance of travel and identity documents

This benchmark was deemed achieved in the fifth progress report.

2.4.3 Citizens' rights, including protection of minorities

Ukraine has demonstrated a strategic approach to developing the capacity of the equality institution, the key institution dealing with anti-discrimination issues. The number of its staff has been increased to 15; the 2015 budget and the forecast for the 2016 budget indicate significantly higher allocations. The institution continued to implement the strategy and the action plan on preventing and combating discrimination in Ukraine 2014-2017. Several awareness-raising campaigns were launched by the equality institution and relevant ministries. The President adopted the national human rights strategy on 25 August 2015, which includes sections on anti-discrimination. Ukraine continued to implement at a reasonable level the legal framework on the protection of persons belonging to national minorities. Significant progress was made on delivering training on anti-discrimination to law enforcement officials, prosecutors and judges with a more systematic and permanent approach. Since Ukraine committed in annex XL to article 21 of the Association Agreement to approximating its legislation with EU antidiscrimination directives, the recommendation of the last progress report on the improvements of the antidiscrimination law would be deemed fulfilled provided the action plan on the implementation of the national human rights strategy includes identified gaps and indicates a limited time for their redress. Parliament also adopted on 12 November amendments to the Labour Code which explicitly prohibit discrimination on

the basis of sexual orientation. They were signed by the President on 21 November and entered into force on 27 November. Subsequent legislation in this area, such as the new Labour Code which is pending adoption in the Parliament, will need to guarantee the same prohibition.

The benchmark is deemed to have been achieved.

3. OVERALL ASSESSMENT AND NEXT STEPS

Since the launch of the EU-Ukraine Visa Liberalisation Dialogue in October 2008 and the presentation to the Ukrainian authorities of the Action Plan on Visa Liberalisation (VLAP) in November 2010, the Commission has regularly reported to the European Parliament and to the Council on the progress made by Ukraine in fulfilling the benchmarks identified under the four blocks of the first and second phase of the VLAP.

The Commission has also continued to monitor the progress made by Ukraine in relevant areas of the VLAP through:

- the Senior Officials Meeting of the EU-Ukraine Visa Dialogue;
- the EU-Ukraine Joint Visa Facilitation Committee;
- the EU-Ukraine Joint Readmission Committee;
- the EU-Ukraine Subcommittee on Justice, Freedom and Security;
- and the EU-Ukraine Human Rights Dialogue.

At the last Visa Facilitation Joint Committee held on 23 April 2015 and attended by representatives of EU Member States, the Commission noted that implementation of the amended Visa Facilitation Agreement was very satisfactory overall. A recent consultation held on 6 May with Member States confirmed that the implementation of the Readmission Agreement continued to proceed with overall satisfaction.

The EU-Ukraine Visa Dialogue has proved to be an important and particularly effective tool for **advancing far-reaching and difficult reforms in the Justice and Home Affairs area** and beyond, impacting on areas such as the rule of law and justice reform. These issues are monitored in other dialogue frameworks, such as the Association Committee and the Association Council and will also be monitored in the context of the Association Agenda.

The progress achieved by Ukraine in all areas covered by the four blocks of the VLAP is steady and effective. It demonstrates the commitment and constant efforts of the Ukrainian Government and all state institutions that have made the fulfilment of the VLAP benchmarks a top national priority.

Ukraine allocated appropriate financial and human resources to ensure that reforms are sustainable. The EU is also contributing to this process, having already allocated over EUR 35 million for the construction and equipment of temporary holding facilities for illegal migrants (READMIT project), budget support for integrated border management (EUR 60 million) and substantial support through technical assistance and budget support for the fight against corruption (approximately EUR 30 million).

The continuous implementation of the VLAP-related reforms will continue being supported by the upcoming large package of migration support projects which will cover comprehensive capacity building and an upgrade of information management systems for the State Migration Service, the State Border Guards and the Courts dealing with migrants cases (EUR 28 million). Further initiatives supporting anticorruption and law enforcement are under preparation.

It is also essential to continue organising targeted information campaigns aiming to clarify the rights and obligations entailed in visa-free travel to the Schengen area and in the rules regulating access to the EU labour market.

Five progress reports on the implementation of the VLAP have been presented. The fifth progress report confirmed that given the exceptional circumstances the progress achieved under the four blocks of the VLAP has been noteworthy. Further, it stated that fulfilling the actions required in the report would ensure Ukraine's fulfilment of all benchmarks for the second phase of the VLAP.

The Commission considers that since then Ukraine has made the necessary progress and undertaken all the required reforms and commitments to ensure effective and sustainable achievement of the remaining benchmarks. All the measures identified in the fifth progress report have been addressed in order to ensure that the legislative and policy framework, the institutional and organisational principles, and the implementation of procedures throughout the four blocks comply with European and international standards. The Commission will continue to monitor the implementation of ongoing reforms, in fields such as, anti-corruption, trafficking in human beings and organised crime.

Based on this assessment and the commitments taken, and given the outcome of the continuous monitoring and reporting carried out since the launch of EU-Ukraine Visa Liberalisation Dialogue in October 2008, **the Commission considers that Ukraine meets all the benchmarks set in respect of the four blocks of the second phase of the VLAP.** Taking into account overall relations between the EU and Ukraine, the Commission will present, early 2016, a legislative proposal to amend Regulation (EC) No 539/2001.

The Commission will continue actively to monitor Ukraine's continuous implementation of all benchmarks under the four blocks of the VLAP through the existing association structures and dialogues, and, if necessary, through *ad hoc* follow-up mechanisms.