

**Strengthening Migration Management and Cooperation on Readmission  
in Eastern Europe (MIGRECO)**

**Regional Gaps Analysis of Institutional  
Migration Management Capacities (Ukraine)**

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# **REGIONAL GAPS ANALYSIS OF INSTITUTIONAL MIGRATION MANAGEMENT CAPACITIES**

## **UKRAINE**

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## **ABBREVIATIONS**

SMS – State Migration Service of Ukraine

SBGS – State Border Guard Service

EU – European Union

MIA – Ministry of Internal Affairs

MFA – Ministry of Foreign Affairs

MSP – Ministry of Social Policy

IOM – International Organization for Migration

ILO – International Labour Organization

VLAP – EU Action Plan on Visa Liberalization (provided to Ukraine by the EU in 2010)

RTAC –Refugee Temporary Accommodation Centre

OSCE/ODIHR – Organization for Security and Cooperation in Europe / Office for Democratic Institutions and Human Rights

UNHCR – The Office of the United Nations High Commissioner for Refugee

## 1. INTRODUCTION

### 1.1. Contextual basis

A state's migration policy sets out to regulate and control migration processes. Its implementation and effectiveness relies heavily on the institutions that operate within the sphere of migration management.

As one commonly applied definition suggests, migration policy is a system of legal, financial, administrative and organizational practices that are carried out by governmental and non-governmental institutions in order to manage migration processes. This policy is derived from immigration priorities, the quantitative and qualitative composition of migration flows, as well as the social, demographic and economic structure of these flows<sup>1</sup>.

Over the past decade, a greater understanding of the nature and context of migration policy has developed. This has led to a growing emphasis on respect for fundamental human rights and freedoms. A modern approach to a coherent and integral migration policy management implies that its institutions are in fact able to solve complex problems. These institutions act in accordance with legislation that meets international standards.

Migration management is a complex branch of public policy, which embraces a number of interrelated components. The responsibility for the implementation of this policy lies with a variety of government agencies. Contemporary approaches to migration management require these agencies not only to meet the demands of a sufficient institutional capacity within its own jurisdiction, but also to oversee interagency cooperation, collaboration and coordination. Their ability to cooperate internationally is also important.

The main government bodies responsible for the implementation of Ukraine's migration policy are the State Migration Service of Ukraine (SMS) and the State Border Guard Service of Ukraine (SBGS), which are under the jurisdiction of the Ministry of Interior (MIA). Other involved government bodies are the Ministry of Social Policy of Ukraine (MSP), the Ministry of Foreign Affairs of Ukraine (MFA), the Human Rights Commissioner of the Verkhovna Rada of Ukraine, and the State Employment Office of Ukraine.

In Ukraine the adaption of new approaches to migration management is largely derived from priorities outlined in the EU-Ukraine cooperation. Ukraine's aim for European integration serves as an overarching framework in this process, and this lies as a foundation for more specific migration policy priorities. In 2001, European standards were adopted through the Action Plan on Justice, Freedom and Security, which is a practical tool that lays out a number of migration policy priorities.

The need for a swift introduction of new approaches to migration management in Ukraine became evident through the EU Action Plan on Visa Liberalization (VLAP, November 2010). This document aims to facilitate visa liberalization for citizens of Ukraine who plan short-term visits to the Schengen area. The VLAP introduced a specific format of planning, implementing, reporting and evaluating policies, which allowed for a more systematic assessment of changes that occur in the respective fields.

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<sup>1</sup>Petrova T. P.: The Conception of the State Migration Policy of Ukraine: Goals and Core Directions (in Ukrainian). — Kyiv, 1991. — p. 27.

In accordance with the VLAP implementation, a Presidential Decree of 30 May 2011 introduced the State Migration Policy Concept in Ukraine<sup>2</sup>. This decree was supported by the Action Plan for the implementation of the State Migration Policy Concept<sup>3</sup>, which was approved by the Cabinet of Ministers on 12 October 2011. The passing of these bills was an important step in creating a legal and regulatory framework for Ukrainian migration policy, which lives up to European standards. Nevertheless, a number of shortcomings in these laws allowed for certain institutional and functional gaps to develop. These gaps are the subject of this study.

The implementation of the VLAP in Ukraine is overseen by the European Commission, which has published three reports on the matter so far. The establishment of a modern migration policy that would adequately live up to international standards, in particular those outlined in section 2 of the VLAP ('Illegal immigration, including readmission'), is hopefully within reach.

The key to success in a short-term perspective would be the introduction of a visa-free regime for citizens of Ukraine with the EU. Besides, Ukraine's ability to cope with unexpected migration challenges will also be of the utmost importance.

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<sup>2</sup>The Presidential Decree "On the State Migration Policy Concept" No. 622/2011 of 30.05.2011. - <http://zakon1.rada.gov.ua/laws/show/622/2011>

<sup>3</sup>"On Action Plan for implementation of State Migration Policy Concept", The Decree of the Cabinet of Ministers of Ukraine No. 1058-p of 12.10.2011 N 1058-r. - <http://zakon2.rada.gov.ua/laws/show/1058-2011-%D1%80>

## **1.2. Scope, goals and objectives**

This study focuses on migration policy in the broadest sense of the term. The subject of this study covers the evolution of state management of legal and illegal migration, the policy on refugees and asylum seekers, migration calculation, readmission and, finally, migration management at the state border.

Institutional capacity analysis of the involved agencies comprises assessment of the legislative framework. Such analysis covers activities, structure, responsibilities, tasks and functions, budget and financial planning, as well as staff management (human resources). The latter includes training of staff and international cooperation.

This study focuses exclusively on changes that have occurred (as of September 2014) in the domain of migration management in Ukraine since the VLAP was introduced in November 2010. In some cases, however, it has been necessary to draw on older data.

The aim of this study is to identify the strengths and weaknesses of reforms introduced in various areas of migration policy in Ukraine from 2010-2014. It also sets out to assess the capacity of those government agencies responsible for implementing this policy in line with international/European standards. In particular, this concerns their willingness to qualitatively carry out the stipulated tasks under the second (implementation) phase of the VLAP.

This study aims to analyze and conclude on:

- The current migration legislation in Ukraine;
- Institutional support for various components of migration policy, as well as the operation and communication of the responsible government agencies;
- The current state of international cooperation, hereunder Ukraine's readiness to carry out tasks in the context of the European integration process;

The authors of this study aim to offer professional recommendations on how to improve the state of the migration policy in Ukraine, how to eliminate legal, institutional and other gaps, and, finally, how to increase the organizational capacity of the government agencies responsible for implementing this policy.

### 1.3. Methodology

Our research has been carried out in accordance with the standardized approaches outlined in the MIGRECO project, which has been launched in Ukraine, Belarus and Moldova.

In particular, this methodology embraces the analysis of:

- Legislative framework;
- Structure, responsibilities, tasks and functions of the responsible agencies;
- Budget and financial management;
- Staff management (human resources), hereunder training;
- The state of international cooperation.

The legislative framework analyzed in this paper includes international conventions and protocols, national laws and other legal acts, concept notes, governmental regulations, planning documents (action plans, activity plans) etc. Statistical and analytical data from a variety of sources has also been included in the research.

A variety of reports and assessment documents have been analyzed for this study. In particular, the reports published by the Ukrainian side on the implementation of the Action Plan on Visa Liberalisation – the VLAP (four reports have so far been published in 2011, 2012, 2013 and 2014 respectively) have been closely analyzed. The European Commission's progress reports on the implementation of the VLAP by Ukraine (four reports have been published in 2011, 2012, 2013 and 2014 respectively) have also been taken into close consideration.

In addition to comprehensive textual analysis, interviews with public officials from partner bodies of executive power make out an important part of the research. These interviews (both oral and written in-depth interviews) were conducted in two rounds during the course of the research period.

Oral interviews were conducted with officials and personnel responsible for department and division management of the participating agencies. These agencies were the SBGS, the Office of the Commissioner of the Verkhovna Rada on Human Rights, the SMS, the MSP and the MFA. These oral interviews were later supplemented with a number of written interviews. During this second round of interviews the representatives of the partner government agencies responded to in-depth questions. This study will be sent to the partner government agencies for comments and additions.

Our findings are presented in the final recommendations. These recommendations are primarily offered to the partner organizations of this study. It should be noted, however, that some of these recommendations go beyond the competence of the partner organizations. Consequently these recommendations are addressed more directly to the Cabinet of Ministers and its underlying Ministries, which have not been involved in this study. They are also addressed to the Verkhovna Rada of Ukraine.

## 2. ASSESSMENT OF THE MIGRATION SITUATION IN UKRAINE

### 2.1. Assessment of migration processes

Ukraine is geographically located in Central and Eastern Europe. The fact that it borders with seven other countries, four of which are EU member states, has made it an attractive transfer country for migrants. It does, however, also serve as a country of final destination.

As the SMS on its website provides a detailed description of Ukraine's Migration Profile throughout the entire period of its independence<sup>4</sup>, this study confines itself to address only those components that are directly related to those legal and institutional gaps that are the subject of this study.

#### *Illegal (irregular, unlawful) migration*

The scope and dynamics of *illegal migration* over a given period of time is an important indicator of the overall migration situation. The term 'illegal migration' is commonly used along with similar terms, such as 'unlawful' and/or 'irregular' migration in a number of Ukrainian sources. This study, however, prefers to operate with the term 'illegal migration' as this is the one most frequently applied in contemporary migration literature, here under publications published by IOM and other international organizations.

Evaluating the scope of illegal migration is a difficult task for any country. It is often hard to determine the precise number of foreigners and stateless persons who have violated the migration regime in some way, much due to a certain lack of effective methods. Nevertheless, addressing the issue of illegal migration is essential when developing adequate estimates of migration flows. It is also vital for the development of a sustainable migration policy.

Some migrants violate immigration laws already when they cross the state border. In the cases where they are detained, a record is made of it in the official statistics of the SBGS. There are, however, no reliable estimates concerning the proportion of migrants who succeed in crossing the border illegally.

It is also difficult to precisely determine the number of individuals who stay on the territory of Ukraine illegally. In order to calculate an approximate number of migrants in Europe and the world, special methods are applied. This includes methods of estimating the 'hidden population', and also methods of assessing and evaluating settlement growth and multiplication of immigrants ('multiplier estimation techniques')<sup>5</sup>.

In Ukraine, official bodies and independent research projects do not apply such methods. This hampers a comprehensive assessment of the scope of illegal migration. As a result, data concerning the detention of immigrants who cross the Ukrainian border illegally is devoted much attention. Such statistics do not generate the full picture, but they do allow us to detect certain trends.

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<sup>4</sup>Migration Profile of Ukraine (in Ukrainian) – [http://rv.dmsu.gov.ua/images/files/UKR\\_Migration\\_%20Profile\\_2013.pdf](http://rv.dmsu.gov.ua/images/files/UKR_Migration_%20Profile_2013.pdf)

<sup>5</sup>Michael Jandl, The Estimation of Illegal Migration in Europe, International Centre for Migration Policy Development (ICMPD), 2004 - [http://internazionali.ulss20.verona.it/docs/projects/here/inventory/LITERATURE/European/The\\_Estimation\\_of\\_illegal\\_immigration\\_in\\_Europe.pdf](http://internazionali.ulss20.verona.it/docs/projects/here/inventory/LITERATURE/European/The_Estimation_of_illegal_immigration_in_Europe.pdf).

For instance, the number of individuals confined by the SBGS when crossing the state border illegally decreased steadily from 4999 individuals in 2008, to 1841 individuals in 2011. In 2012 this number grew to approximately 2100 (Figure 1). The majority of illegal migrants in Ukraine originate from former Soviet republics.

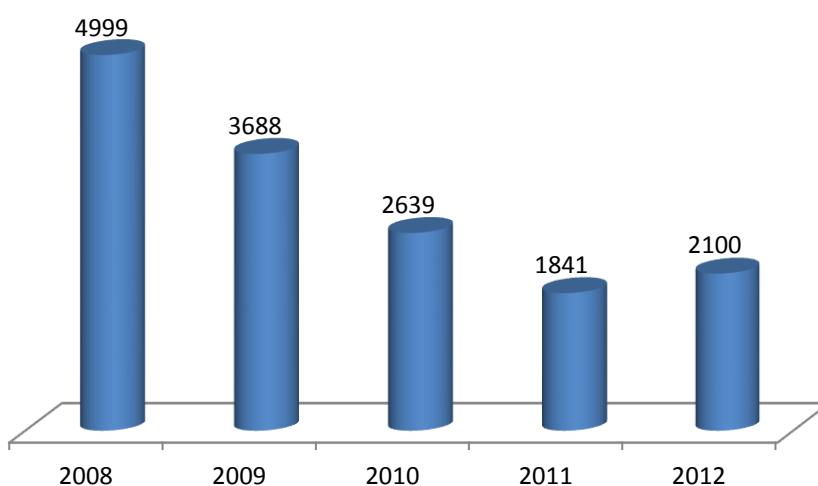
The number of illegal migrants detained by the Ukrainian border guard units dropped by 10% from 2182 in 2012, to 1965 in 2013. Out of this amount, the number of individuals detained while crossing the border illegally decreased by 16% from 1120 in 2012, to 944 in 2013. The number of those who were not granted permission to enter the territory of Ukraine increased by 48% from 4640 in 2012, to 6849 in 2013. Out of these, 40% of were rejected entrance at air border control checkpoints, whereas an additional 32% were rejected at the Russian, 15% at the Belarusian and 12% at the Moldovan borders<sup>6</sup>.

In 2012, 68 % of those detained while crossing the state border of Ukraine were citizens of former Soviet republics: Moldova (740 people), Georgia (219), the Russian Federation (119), Azerbaijan (92), Armenia (84) Uzbekistan (72) Tajikistan (59), Kyrgyzstan (17), Kazakhstan (17) (Figure 2). Citizens of Asian and African states with low levels of economic development, such as Afghanistan, Somalia, Iraq and Vietnam, constituted most of the remaining 32%.

As of the first half of 2013, the proportion of illegal migrants from former Soviet republics in Ukraine had dropped to 65%. This included citizens of Moldova (217 persons), Georgia (111), the Russian Federation (56), Armenia (32), Uzbekistan (14), Tajikistan (11) and Kyrgyzstan (6)<sup>7</sup>.

The number of illegal migrants in Ukraine is, although decreasing, still significant. This represents a big challenge for the authorities. Not only are they responsible for detecting and detaining illegal migrants, they are also responsible for treating detainees in accordance with human rights conventions and other international laws. This situation is even further complicated by the fact that the migrants' country of origin, as is often the case, is a state with significant social problems and where numerous violations of human rights have been detected.

*Figure 1. Number of illegal migrants who were detained by the SBGS when crossing the state border of Ukraine in 2008-2012*

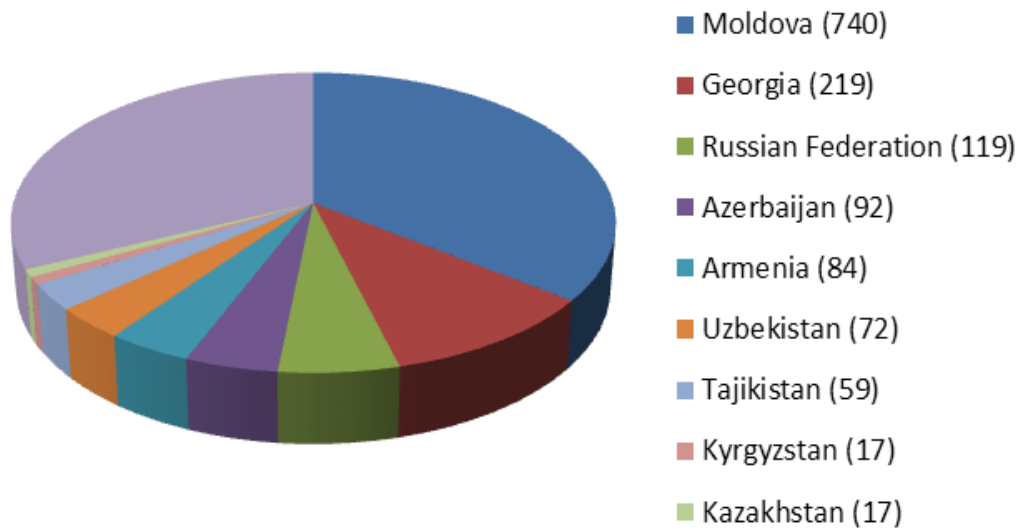


<sup>6</sup>The SBGS of Ukraine, web-site: [http://dpsu.gov.ua/ua/about/news/news\\_3198.htm](http://dpsu.gov.ua/ua/about/news/news_3198.htm)

<sup>7</sup>The SBGSU press-service, 12.08.2013 -

[http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=246583970&cat\\_id=244277212](http://www.kmu.gov.ua/control/uk/publish/article?art_id=246583970&cat_id=244277212)

Figure 2. States of origin of illegal migrants who were detained by the SBGS when crossing the state border of Ukraine in 2012<sup>8</sup>

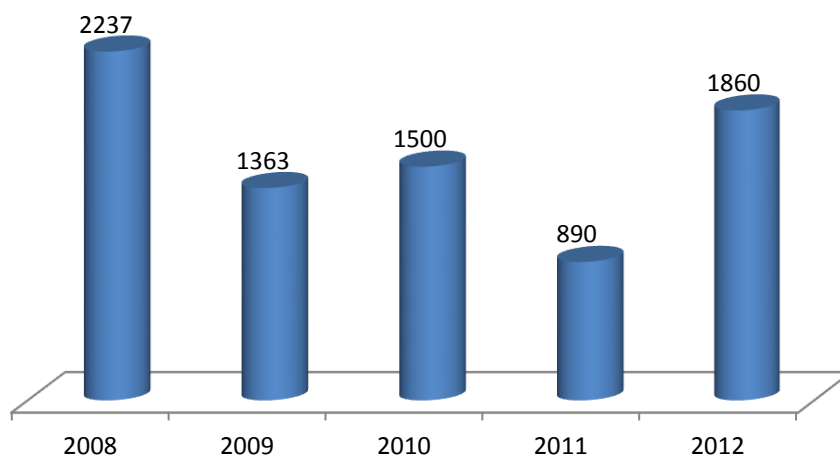


### Asylum seekers

The management of migrants who are seeking asylum or temporary protection, or who try to obtain refugee status, is even more challenging. Citizens of countries with on-going civil conflicts and massive violations of human rights and freedoms dominate this category of migrants. The management of this particular group of individuals places high demands on the receiving state.

The number of asylum seekers to Ukraine steadily decreased from 2237 individuals in 2008, to 890 in 2011. However, from 2011 to 2012 this number more than doubled, and reached 1860 (Figure 3). Citizens of Afghanistan have topped the statistics of asylum seekers to Ukraine for the past five years, and in 2012 this group accounted for as much as 30 % of the total. Citizens of Somalia accounted for 17%, Syria 16 % (Figure 4).

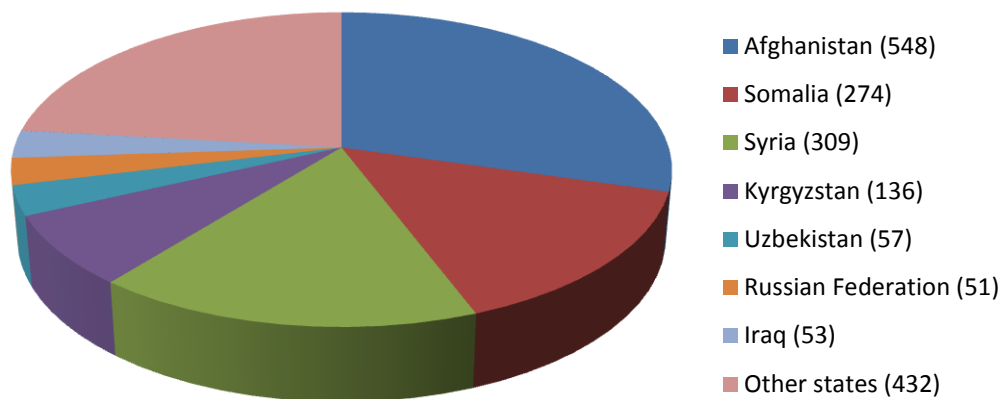
Figure 3. Number of asylum seekers to Ukraine in 2008-2012



<sup>8</sup>The SBGSU press-service, 12.08.2013 –

[http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=246583970&cat\\_id=244277212](http://www.kmu.gov.ua/control/uk/publish/article?art_id=246583970&cat_id=244277212)

Figure 4. States of origin of foreign citizens who requested asylum in Ukraine in 2012



From 2008-2012, 632 out of a total of 7850 applicants were granted refugee status in Ukraine. An additional 89 individuals were granted subsidiary protection, which is a special form of protection that was introduced in Ukraine in 2012. 270 refugees acquired Ukrainian citizenship. By the end of 2012, there were approximately 2500 people with refugee status in Ukraine. According to UNHCR experts, the majority of people with refugee status have left Ukraine. It is unlikely that they have returned to their countries of origin.<sup>9</sup>

During that same period, the number of individuals who were granted refugee status in Ukraine rose from 121 in 2008, to 152 in 2012 (Figure 5). In 2012, 63 individuals were granted refugee status, whereas 89 people were granted subsidiary protection. Citizens of Afghanistan constituted the largest group (35%) among those who successfully obtained refugee status in Ukraine in 2012.

It should be noted, however, that the proportion of approved refugee status applications in Ukraine is relatively low (approximately 8%), which has caused various international organizations to criticize Ukraine.

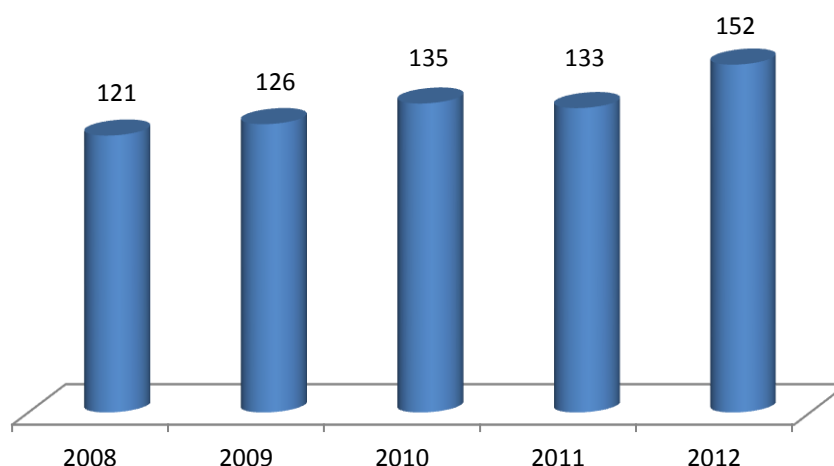
The lack of a sustainable migration policy in Ukraine that fully complies with international standards and fundamental human rights complicates the situation for refugees and asylum seekers. Ukraine has significant problems in this domain, as pointed out in one of the UN High Commissioner for Refugees' reports (UNHCR). This report argues that the asylum system in Ukraine requires fundamental improvements<sup>10</sup>. It should be noted, however, that representatives of government bodies in Ukraine consider this report and its conclusions to be insufficiently balanced.

<sup>9</sup>"Ukraine as a country of asylum. Observations on the situation of asylum-seekers and refugees in Ukraine", UNHCR, Geneva, 2013 –

[http://unhcr.org.ua/attachments/article/338/2013%20Ukraine\\_country\\_paper\\_UKR.pdf](http://unhcr.org.ua/attachments/article/338/2013%20Ukraine_country_paper_UKR.pdf)

<sup>10</sup>Ibid., p. 3.

Figure 5. Number of individuals who received refugee status in Ukraine from 2008-2012



### Public opinion

Despite an overall tolerant attitude towards foreigners in Ukraine, human rights organizations have reported a gradual increase in hostility towards foreigners. They have also raised their concern regarding the phenomenon of 'migrantophobia', which is currently the dominant form of xenophobia in Ukraine<sup>11</sup>.

According to the survey "Regional tolerance, xenophobia and human rights in 2012" conducted by the Kyiv International Institute of Sociology, ethnic, interracial and interethnic relations in Ukraine can be characterized as moderately estranged. This characterization reflects a predominantly cautious attitude of Ukrainian citizens towards establishing personal relations (family, friendship, work, etc.) with other ethnic or national groups. The findings in this study indicate that the highest level of xenophobia among Ukrainians can be found in their attitudes towards the Romani, Jewish, African, Asian and Arab ethnicities.

Human rights organizations also raise their concern regarding the growing rate of hate crimes in Ukraine. According to a monitoring conducted by the Kharkiv Human Rights Protection Group from April 2011 to April 2012, 62 crimes based on hate or intolerance were registered in Ukraine. This constitutes an increase in reported hate crimes compared to previous years<sup>12</sup>. Foreign citizens were injured in 48 of these cases. According to the same study, a number of organizations, whose activities have clear elements of ultranationalism and intolerance (e.g., "Immigration-Stop!", "Patriot of Ukraine"), are operative in Ukraine<sup>13</sup>. According to government agencies, however, in particular the SMS, the problem of hate crimes in Ukraine is not of a critical nature, and statistics on these offenses do not document a wide public distribution.

<sup>11</sup>Kyrychenko, Iryna. Xenophobia as an indicator of ignorance: it grows with the person // *ZerkaloNedeli*, 19.03.2013 (in Russian) - <http://gazeta.zn.ua/socium/ksenofobiya-kak-pokazatel-nevezhestva-rastet-vmeste-s-chelovekom-.html>

<sup>12</sup>Hate crimes in Ukraine. Kharkiv Human Rights Protection Group, 2012 (in Ukrainian) - <http://library.khpg.org/files/docs/1339735328.pdf>

<sup>13</sup>Typical myths about migration (in Ukrainian). - <http://www.khpg.org/index.php?id=1372618485>

## Recommendations:

- Governmental agencies, in particular the SMS, should base their future research on contemporary methodologies for calculating the scope illegal migration. More specifically, it is necessary to use approaches developed by European experts, who successfully have made use of such methods as ‘hidden population’ calculation, and assessment and evaluation of settlement growth (‘multiplication’ or ‘multiplier estimation techniques’) of guest workers. These methods have long been used in the European Union<sup>14</sup>.
- It is necessary to distinguish between the calculation of illegal migration as outlined in border crossing statistics, and the actual scope of illegal migration and the number of illegally employed guest workers. This particular approach is described in detail in a study conducted by Michael Jandl<sup>15</sup>.
- Ukrainian authorities have not yet sufficiently analyzed the problem of hate crimes and ethnic aggression, particularly as far as migrants are concerned. It is necessary to introduce efficient procedures of monitoring and preventing such crimes. These procedures should be based on internationally recognized methodologies, such as those developed by the OSCE/ODIHR and the National Center for Victims of Crime (U.S.)<sup>16</sup>. Reference is here made to annually published reports on the subject, such as “Hate Crimes in the OSCE region”<sup>17</sup>.

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<sup>14</sup>Michael Jandl, The Estimation of Illegal Migration in Europe [http://internazionali.ulss20.verona.it/docs/projects/here/inventory/LITERATURE/European/The\\_Estimation\\_of\\_illegal\\_immigration\\_in\\_Europe.pdf](http://internazionali.ulss20.verona.it/docs/projects/here/inventory/LITERATURE/European/The_Estimation_of_illegal_immigration_in_Europe.pdf) International Centre for Migration Policy Development (ICMPD), 2004.

<sup>15</sup>Ibid.

<sup>16</sup><http://www.victimsofcrime.org/>

<sup>17</sup>The latest published report: “Hate crimes in the OSCE Region – Incidents and Responses. Annual Report for 2012 - <http://www.osce.org/odihr/108395>

## 2.2. The borders of Ukraine in the context of the migration situation

As a country located in the Central and Eastern Europe, Ukraine shares land borders with seven other countries; Poland, Hungary and Slovakia in the west; Romania and Moldova in the southwest; Belarus in the north; and the Russian Federation in the northeast. Ukraine's coastline stretches along the Azov and the Black Sea in the south. The former separates Ukraine from Bulgaria, Georgia, Turkey and Romania, whereas the latter separates Ukraine from the Russian Federation.

The total length of the Ukrainian state border is 6992 km 982 meters. Whereas the land border is 5637 km 982 m long, the maritime border accounts for 1355 km of the total. Out of these, 1056 km 500 meters extend along the Black Sea, 249 km 500 meters along the Azov Sea, and, finally, 49 km extend along the Kerch Strait. The total area size of the maritime economic zone of Ukraine is 72658 km<sup>18</sup>.

2295 km 40 meters of Ukraine's border is shared with the Russian Federation. The length of the border shared with Moldova is 1,222 km (including 452 km shared with the self-proclaimed Transnistrian Republic). Belarus shares 1084 km 200 meters of its border with Ukraine.

The total length of the borders Ukraine shares with EU member states is 1390 km 742 meters; 613 km 800 meters with Romania, 542 km 390 meters with Poland, 136 km 700 meters with Hungary, and 97 km 852 meters with Slovakia.

The Ukrainian borderlines shared with EU member states have undergone the process of delimitation and demarcation. Today, the process of demarcation is being finalized also along the border to Moldova (the part of the border shared with Transnistria). Demarcation of the land border with the Russian Federation began in 2012. The demarcation process of the state border Belarus has not yet started<sup>19</sup>. In June 2013, the two sides exchanged instruments for ratification of the Agreement on the Border between Ukraine and the Republic of Belarus of May 12, 1997.

There is to this day an unresolved issue of delimitating 321 km of the Ukraine-Russia maritime border (in the Sea of Azov, including the Kerch Strait). This situation has become increasingly difficult following the annexation of the Crimean peninsula by the Russian Federation.

The section of the Ukrainian border that has proven to be the most problematic is that shared with Transnistria. This can largely be explained by the lack of a legitimate counterpart on the other side of the border.

### *The intensity of cross-border movement*

The intensity of cross-border movement varies with seasons and special events (such as the Euro-2012). The highest intensity of border crossing is normally found during the summer months of July and August. According to official data from the SBGS, in July 2013, an approximate of 9.6 million people crossed the Ukrainian border. In August 2013, this number reached 11.1 million<sup>20</sup>. By comparison, in February 2013, the intensity of cross border movement was estimated to

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<sup>18</sup>These data refer to all the internationally recognized borders of Ukraine. They do not take into account the circumstances surrounding the recent annexation of the Autonomous Republic of Crimea by the Russian Federation.

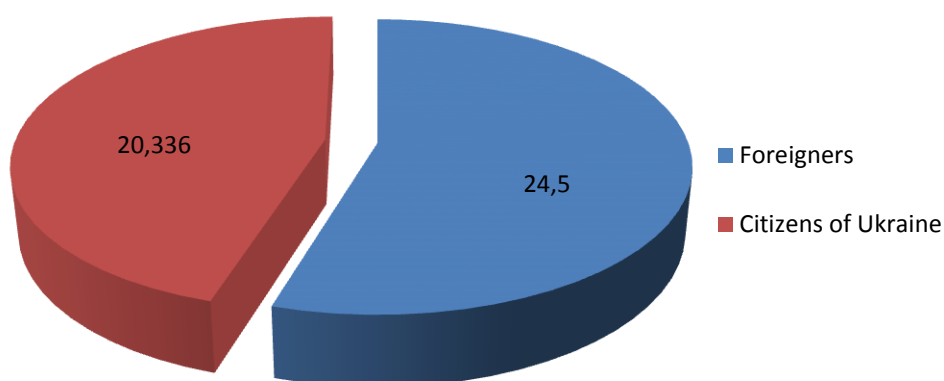
<sup>19</sup>The information was provided by the SBGS of Ukraine as a response to an inquiry by the Civic Initiative "Europe without Barriers". – June, 2013.

<sup>20</sup>Prykordonnyk Ukrayiny // The SBGS. – [Electronic document]. – Available at (in Ukrainian): <http://dpsu.gov.ua/ua/about/newspaper.htm>

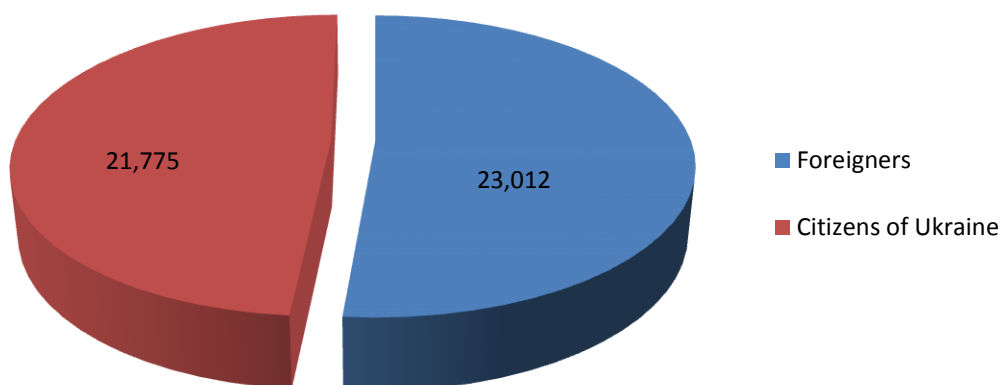
approximately 5.1 million people. Somewhere in the range of 14.5 million people crossed the border of Ukraine between January and March 2013<sup>21</sup>.

The amount of foreign citizens visiting Ukraine normally out numbers the amount of Ukrainian citizens who travel abroad. According to data from the State Statistics Committee and the SBGS, in 2011 approximately 24.5 million citizens of foreign countries visited Ukraine. The number of Ukrainians who travelled to other countries amounted to 20.336 million (Figure 6). In 2012, statistics seemingly confirmed this trend of border crossing activity: 23.012 million foreigners visited Ukraine, whereas 21.775 million Ukrainians travelled abroad (Figure 7)<sup>22</sup>.

*Figure 6. Number of foreign citizens who visited Ukraine and citizens of Ukraine who travelled abroad (2011) (millions).*



*Figure 7. Number of foreign citizens who visited Ukraine and citizens of Ukraine who travelled abroad (2012) (millions).*



<sup>21</sup>Ibid.

<sup>22</sup>Ukrainians have crossed the state border almost 22 million times. Information provided by the SBGS as a response to an inquiry from Tyzhden.ua // Tyzhden.ua – [Electronic document]. – Available at (in Ukrainian): <http://tyzhden.ua/News/76674>

Citizens of the neighbouring countries Russia, Moldova, Belarus and Poland constituted the largest group of foreigners who visited Ukraine in 2012. The Russian Federation alone accounted for as much as 41% of the total (Figure 8)<sup>23</sup>. Citizens of Ukraine also frequently visit neighbouring countries<sup>24</sup>.

Figure 8. Citizens of foreign countries who visited Ukraine in 2012 (millions).

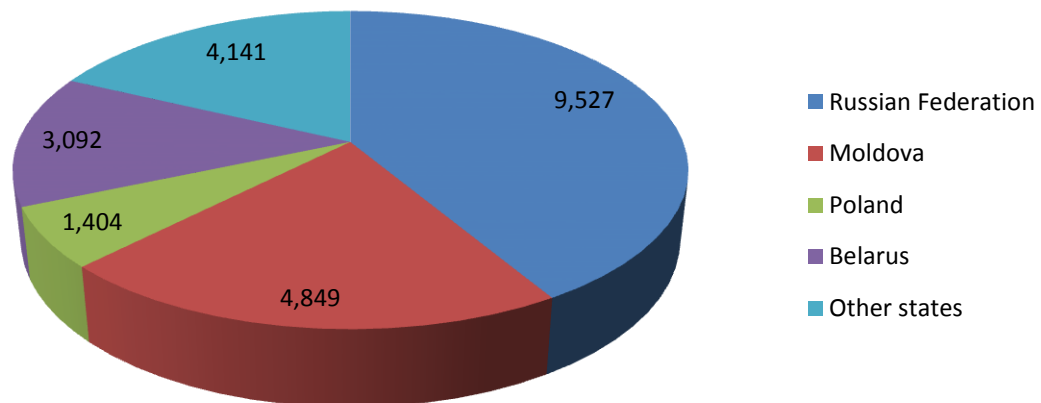
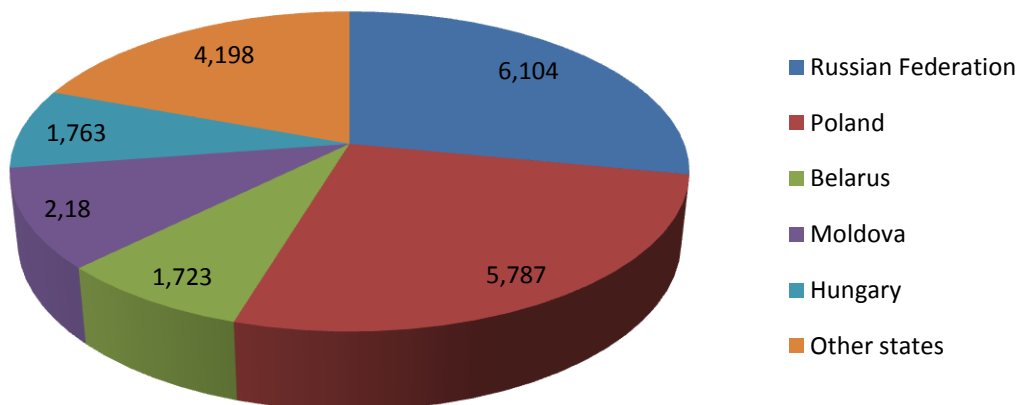


Figure 9. Citizens of Ukraine who visited foreign countries in 2012 (millions).



<sup>23</sup>In 2012, more than 23 million foreigners visited Ukraine. Information provided by the SBGS as a response to an inquiry from Tyzhden.ua // Tyzhden.ua – [Electronic document]. – Available at (in Ukrainian): <http://tyzhden.ua/News/73135>

<sup>24</sup>Consolidated report on Ukrainian citizens who exited Ukraine in 2011 – 2012. Information provided by the SBGS as a response to an inquiry from Tyzhden.ua // Tyzhden.ua – [Electronic document]. – Available at (in Ukrainian): <http://img.tyzhden.ua/Content/PhotoAlbum/2013/April/05/zakordon.pdf>

### *Cross-border infrastructure*

Based on various agreements concluded between Ukraine and neighbouring states, a total of 372 border checkpoints have been established along the state border, 252 of which are operative today<sup>25</sup>.

The frequency of checkpoints along the various borders much depends on the borders' respective length and the intensity of cross-border movement. The highest frequency of border checkpoints is found along the long border to the Russian Federation<sup>26</sup>.

61 of these checkpoints are designated to the control of cross-border movement along rails, 34 control air traffic, 44 control maritime traffic and 11 (9 local and 2 international) control cross-border movement along rivers<sup>27</sup>.

According to SBGS, Ukraine's cross-border infrastructure generally meets stipulated requirements for control of cross-border movement<sup>28</sup>. However, the SBGS also stresses the need for further improvement of about 100 checkpoints in order to fully comply with the demands outlined in the arrangement of checkpoints at the state border, which was approved by the Cabinet of Ministers on 17 August 2002<sup>29</sup>.

The insufficient number of border checkpoints and the lack of effective border control procedures is a problem for Ukraine. The time spent by travellers at Ukrainian border checkpoints is unsatisfactory long. In particular, this concerns the checkpoints along the borders to EU member states. At some of these checkpoints it is not unusual to spend as much as 3-5 hours (sometimes even longer) in order to cross the border. According to the SBGS, the main responsibility for this unsatisfactory situation lies with the respective neighbouring states. However, according to observations made by the authors of this study, this can be said to be a shared responsibility between the Ukrainian side and the neighbour states in question.

It should be noted that Ukraine already has undertaken steps to significantly simplify border crossing. Some of these steps took the form of temporary measures as part of the preparations for the Euro-2012. They did, however, contribute to a significantly speedier border crossing experience for travellers, as well as to streamline the movement of people in general.

The most successful of these measures was the experiment of launching a 'one-stop shop'. The main feature of this experiment was the introduction of joint document and personal luggage checks, which were executed by border control authorities from both countries in one spot and at one side of the checkpoint. The official evaluation of this experiment was conducted by Stefan Batory Foundation (Poland) and "Europe without barriers" within the framework of the project "Polish-Ukrainian border during Euro 2012: 'one-stop shop' border checks as a chance to improve border crossing capacity". The conclusions of this evaluation suggest that the experiment was a successful and promising initiative<sup>30</sup>.

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<sup>25</sup>The information was provided by the SBGS as a response to an inquiry from the Civic Initiative "Europe without Barriers". – June, 2013.

<sup>26</sup>As of October 2014, all Ukrainian border crossing points located on the territory of Crimea are closed. This is also the case with those border crossing points that are located on territories that are currently not under Ukrainian control in the Donbas region.

<sup>27</sup>The list of border crossing points (checkpoints) at the state border // The SBGS. - [Electronic document]. – Available at (in Ukrainian): [http://dpsu.gov.ua/ua/activities/skipping/skipping\\_18.htm](http://dpsu.gov.ua/ua/activities/skipping/skipping_18.htm) Recently closed border crossing points are not included here.

<sup>28</sup>The information was provided by the SBGS as a response to an inquiry from the Civic Initiative "Europe without Barriers". – June, 2013.

<sup>29</sup>Ibid.

<sup>30</sup>'One-stop shop' as a way to increase the capacity of the border crossing checkpoints between Ukraine and the EU. Experiences from the Ukraine-Poland cooperation during the Euro-2012 (in Ukrainian).- <http://novisa.org.ua/wp-content/uploads/2013/08/RELIZ-24.07.-yedina-zupinka2.pdf>

### *Local border traffic*

The simplification of border crossing procedures is the main key to a successful establishment and development of cross-border relations and contact between people. In 2008, Ukraine and Poland signed an agreement on local border traffic. After it entered into force on 1 July 2009, citizens of Ukraine who reside within the 30-kilometer zone of the Ukraine-Poland border in Lviv and Volyn regions were allowed to make use of a simplified border crossing procedure. The agreement included 1,822 localities in Poland and 1545 settlements on the territory of Ukraine.

As a result of the introduction of this regime, the flow of people across the Ukraine-Poland border significantly intensified. In 2011, citizens of Ukraine crossed the border to Poland more than 5 million times within this local border traffic framework<sup>31</sup>. The average participant of local border traffic crosses the border approximately 70 times every year, more often than not for commercial purposes<sup>32</sup>.

Local border traffic contributes to boosting bilateral trade relations. According to official statistics for the second quarter of 2013, citizens of Ukraine have purchased Polish goods for a total of \$ 360 million, which represents an increase of 40% compared to the year before<sup>33</sup>. Participants of local border traffic spent approximately half of this amount.

Ukraine has also signed an agreement on local border traffic with Hungary, which covers 244 Hungarian and 384 Ukrainian settlements. An agreement has also been signed with Slovakia. This agreement comprises 299 Slovak and 80 Ukrainian settlements. However, compared to the Poland case, these agreements have not resulted in a significant increase in cross-border movement. The fact that these countries trade less with Ukraine, and also the fact that there have been disruptions in the processes of issuing permits for simplified border crossing, has contributed to this.

As the procedures of obtaining long-term visas have simplified, the demand for local border traffic has been reduced. Travellers stand to prefer long-term Schengen visas as they allow for stays in the entire Schengen area. Nevertheless, local border traffic will remain a useful instrument up to the point where a visa-free regime with the EU will be introduced for citizens of Ukraine. It is essential to monitor local border traffic intensity separately at the border crossing points. Data from such monitoring should be taken into account when the authorities evaluate the capacity of border crossing checkpoints.

Cross-border links with the neighbouring states have a significant effect on the social and economic situation in Ukraine, in particular in the border regions. Further adjustments of small border migration, such as the simplification of border crossing procedures for law-abiding citizens, will continue to ensure progress in the sphere of migration. The official migration policy must be combined with effective border management.

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<sup>31</sup>100 000 Ukrainians travel to Poland within the local border traffic framework // UNIAN (with reference to the Border Guard Service of the Republic of Poland) - [Electronic document] – Available at (in Ukrainian): <http://eunews.unian.net/ukr/detail/196723>

<sup>32</sup>Khudytskyi V. Local border traffic // DzerkaloTyzhnia. – March 2012. - [Electronic document]. – Available at (in Ukrainian): [http://gazeta.dt.ua/ECONOMICS/mistseviy\\_prikordonnii\\_ruh\\_u\\_serednomu\\_odin\\_uchasnik\\_malogo\\_prikordonnogo\\_ruhu\\_peretinae\\_kordon\\_bl.html](http://gazeta.dt.ua/ECONOMICS/mistseviy_prikordonnii_ruh_u_serednomu_odin_uchasnik_malogo_prikordonnogo_ruhu_peretinae_kordon_bl.html)

<sup>33</sup>Ukrainians spend 40% more money in Poland // UNIAN (with reference to research conducted by the Central Statistical Office of the Republic of Poland). - [Electronic document] – Available at (in Ukrainian): <http://www.unian.ua/news/592458-ukrajintsi-zbilshili-pokupki-u-polschi-na-40.html>

**Recommendations:**

- Authorities responsible for border management should further develop the infrastructure at checkpoints along the state border as a response to the increase in movement of individuals and vehicles across the border. The aim of the official policy in this area should be to balance necessary control and a simplification of border-crossing procedures.
- Best practices that facilitate a significant reduction of the time required for border crossing should be adopted. One such example is the 'one-stop shop', which proved to be a success at the Ukraine-Poland border during the Euro-2012.
- Along with the usual practices of monitoring the movement of persons across borders at international checkpoints, it is necessary to introduce separate monitoring of local border traffic. It is essential to increase the capacity of border crossing checkpoints to meet the most urgent needs of cross-border traffic, hereunder local border traffic.

### 3. SECTOR ANALYSIS OF MIGRATION POLICY

#### 3.1. General principles of migration policy

The legal framework that regulates migration in Ukraine is made out of the Constitution of Ukraine, the Laws of Ukraine 'On citizenship', 'On the legal status of foreigners and stateless persons', 'On refugees and persons in need of temporary protection', 'On immigration', 'On national minorities', 'On freedom of movement and the choice of place of residence in Ukraine', 'On the procedure for exiting Ukraine and entering Ukraine for citizens of Ukraine', and other related acts.

Substantial progress in the legislative support for migration policy has been demonstrated in recent years. Updated versions of existing laws, and also a number of amendments to them, have been introduced to basic migration legislation. They have been supplemented with departmental regulations.

Basic programmatic policy documents on migration are actively introduced. The State Migration Policy Concept was approved by the Decree of the President of Ukraine No. 622 of 30.05.2011. The Action Plan on its implementation was approved by the Order of the Cabinet of Ministers No. 1058 on 12 October 2012.

The State Migration Policy Concept is a framework document. Since this document was drafted at a time when no specific migration agency existed in Ukraine, and as it was designed solely to meet the VLAP criteria, it is largely declarative. Due to the absence of functioning institutions, its implementation proved difficult. Based on this, the preparation and implementation of the corresponding Action Plan calls for a rethinking of the methods applied when working with framework documents of this kind. It is essential to take into account lessons learned from the implementation of the current document, and also to look to the most successful international experiences in drafting a new Concept of state migration policy and the corresponding Action plan on its implementation. This would ensure congruence between setting goals, planning activities, budget planning and implementation monitoring.

It should be noted that a number of experts have detected a high degree of compliance of the newly adopted legislation with the outlined goals. They also largely meet international standards; hence do they largely solve the tasks they were designed to solve. However, in the view of the authors of this study, certain legal provisions do not fully achieve their objectives. It is therefore crucial to start preparing new drafts of the framework documents within the scope of migration policy. This process should be lifted to a higher institutional level, and it should be stressed that migration, as a social phenomenon, is interdisciplinary in its nature.

#### *Integration of immigrants and reintegration of Ukrainian migrants*

The Action Plan for integration of immigrants and reintegration of Ukrainian migrants in Ukraine, 2011-2015, was adopted on 15 June 2011 by the Order of the Cabinet of Ministers No. 653. This plan set out to establish favourable economic and social conditions that would facilitate the return of Ukrainian migrant workers, as well as to facilitate their adaptation to the Ukrainian society. It also set out to introduce a set of measures that would guarantee their social security, employment and social services, as well as to resolve issues of economic, cultural, political and social integration of migrants in Ukraine. However, this document mainly focuses on the integration of refugees, and only three of the measures are aimed at the reintegration of citizens of Ukraine.

There is an obvious lack of certainty and clarity in the division of powers and functions between the SMS and the MSP in this policy area.

The implemented measures (under the Action Plan) are not always closely linked to the objectives of migration policy, particularly to those highlighted in the annual address of the President of Ukraine 'On the internal and external situation of Ukraine in 2013'<sup>34</sup>. In particular, these objectives stressed the need to promote responsible behaviour of potential immigrants by means of the state and through regional information policy. Such policy is aimed at helping immigrants maintaining good relations with their family and homeland, and to thoroughly review information regarding the potential for employment. Furthermore, it is aimed at developing and establishing a state program on the return and reintegration of long-term migrants by expanding its regional component. This provides information and advisory services to the migrants on how to start and run a business, find employment, receive psychological assistance etc.

There is a lack not only of measurable indicators for accomplished reintegration, but also for clear priorities at both national and regional level on how the comprehensiveness and efficiency of the measures are being assessed.

In this context, relevant experience and achievements of international assistance<sup>35</sup> and research projects should be taken into account. The study on integration of foreigners and prevalence of hate crimes and discrimination, which is now carried out by IOM in Ukraine, is one such project.

#### *Mechanisms of voluntary return of migrants*

The new legislation also introduces mechanisms of voluntary return of migrants who lack a proper legal status. This is regulated by paragraph 2 of the Article 25 of the Law of Ukraine "On legal status of foreigners and stateless persons", and by the "Procedure of considering applications of foreigners and stateless persons about assisted voluntary return", which was approved by the Order of the Cabinet of Ministers No. 179 on 7 March 2012.

Paragraph 4 of this order stipulates that the procedures of voluntary return of foreigners and stateless persons are administered by territorial SMS in collaboration with international and/or non-governmental organizations, whose statutes allow for them to assist in these processes. This cooperation is based on bilateral or multilateral agreements on cooperation and coordination of voluntary return. In accordance with paragraphs 14 and 27 of the Order, the responsible territorial SMS must within two working days pick an international and/or civil society organization that will facilitate the voluntary return of a foreigner or stateless person once this decision has been made. Voluntary return to the country of origin or a third country is in cases where sufficient funding is lacking, performed by means that are not prohibited by the law. The process can for instance be supported by international and/or non-governmental organizations.

This mechanism is valid only when international organizations and other donors assist in the process. No governmental programs that support voluntary return of migrants have been implemented so far. There is also a lack of competent personnel able to conduct a quality advocacy campaign aimed at those migrants who could actually benefit from voluntary return, had they been sufficiently informed about its benefits.

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<sup>34</sup>See pp. 113-114 of the aforementioned document-<http://www.niss.gov.ua/articles/1192/>(in Ukrainian), and the appeal of the President of Ukraine "On internal and external affairs of Ukraine in 2012", pp. 106-107.

<sup>35</sup>See the project "Assistance to migrants upon return to Ukraine", carried out by the International Centre for Migration Policy development in collaboration with the Dutch Repatriation and Departure Service

For the above mentioned reasons it is essential to review the procedural, organizational and financial components of the relevant policies in order to make voluntary return an available option to the largest possible number of migrants.

### *Regularization of migration*

The issue of migration amnesty has so far been devoted little attention, and it has therefore failed to become an actual element in current public policy. However, it is clear that some elements derived from international experiences on migration amnesty can be implemented in Ukraine.

The President of Ukraine has on various occasions recognized the need to establish a mechanism of legalization for immigrants who have resided in Ukraine without a specific legal status, but who have families and did not break the law<sup>36</sup>. One such occasion was his annual address “On the internal and external situation of Ukraine in 2013”. The SMS, in turn, participated in the Round Table on Migration Amnesty, which was organized by the IOM, and highlighted its interest in this problem. However, this interest has not yet been sufficiently followed up through practical steps.

Nevertheless, it is essential to look to various experiences of migration amnesty and its influence in the EU, the USA and the CIS when developing mechanisms related to migration amnesty in Ukraine. It is also important to analyze general migration trends in order to identify the main categories of migrants who may be subject to legalization. Finally, it is important to assess risks and to make good decisions regarding its implementation.

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<sup>36</sup>See p. 114 of the aforementioned document (in Ukrainian). -<http://www.niss.gov.ua/articles/1192/>

## Recommendations:

- Having taken into account the flaws of the current document, which is declarative and largely fails to resolve specific problems connected to goals and policy planning (particularly budget planning), we recommend that a new Concept of state migration policy be drafted. Furthermore, we recommend that an interagency work group be established to draft such a document. This group should include representatives of the MIA, the SMS, the SBGS, the MSP, the MFA, the Presidential Administration, the NSDCU Secretariat, the SSU, and, possibly, other government bodies. It should also include non-governmental experts.
- We also recommend that the institutional level of policy decision planning in the domain of migration policy should be lifted to the National Security and Defence Council of Ukraine. The function of drafting strategic decisions (particularly amendments to both framework and target migration legislation) should be transferred to the NSDCU.
- The relevant regulatory, procedural, organizational and financial components of the relevant policies should be reviewed in order to make voluntary return a real and available option to the highest possible number of people. More specifically, good information on relevant procedures, hereunder financial and organizational aspects, should be made more available to the target audience. The number of professionals doing advisory work on these procedures should be increased. Sufficient funding for this area of migration policy should be provided over the state budget.
- The Action Plan for integration of foreign migrants and reintegration of Ukrainian migrants in Ukraine 2011-2015, should be revised and amended in order to improve and speed up the processes of reintegrating Ukrainian citizens. There is a need for a clear delimitation of the authority and the coordination between the SMS and the MSP in this domain. Measurable indicators of achievements within the scope of reintegration should be introduced, and priorities for national and regional levels should be identified and accompanied by necessary funding.
- Finally, we recommend that migration amnesty be introduced in Ukraine. Relevant administrative mechanisms based on international experiences should be developed and implemented within this domain, and draft projects on how to implement such a regime should be prepared.

### 3.2. Policy on asylum and refugees

The legislative framework for policy on asylum and refugees is found in the Law of Ukraine “On refugees and persons in need of subsidiary or temporary protection”.

This law is generally consistent with the provisions outlined in the Convention relating to the Status of Refugees of 1957, and the Protocol relating to the Status of Refugees of 1967. It is also largely consistent with resolutions and recommendations of the EU and the Council of Europe within this area.

A number of social laws have been amended through legislative acts in order for them to comply with Ukraine’s policies on refugees and persons in need of subsidiary or temporary protection. These laws ensure these categories of migrants the right to education, health care and temporary housing on equal terms with ordinary citizens. They also ensure free legal aid, the exemption from payment for court services when requesting refugee status, and financial aid. In particular, this relates to state aid to families with children, various social services, and state social aid to persons who are not eligible for a pension or who have disabilities.

Furthermore, a set of by-laws now regulate the provisions on personal identification for persons who are in need of subsidiary protection, and on travel documents for persons who have been granted subsidiary protection. Procedures regulating centralized registration and the issuance, exchange, transfer, withdrawal, return to the state, and destruction of identification documents and documents confirming the citizenship of Ukraine or a special status of a person, have been introduced. Finally, these documents have been unified<sup>37</sup>.

Similarly, instructions have been introduced on cooperation among bodies of executive power concerning children who are separated from their families, who are not citizens of Ukraine, and who have requested to be recognized as refugees or persons in need of subsidiary protection.

The Order of the MIA No. 649 of 7 October 2011 stipulates the legal framework concerning applications for refugee status or subsidiary protection. These applications are to be assessed based on up-to-date and multiple-source information about the country of origin of an applicant (paragraphs 4.1. and 5.1.).

The initial version of this law had certain flaws, which was pointed out in the European Commission’s first and second reports on the implementation progress of the VLAP. In particular, the definition of subsidiary protection was found to be too narrow. As a result of this narrow definition, a significant number of people in need of international protection, in particular those fleeing from armed conflicts potentially had no legal right to protection in Ukraine<sup>38</sup>. According to the first version of the law, temporary protection could be granted to persons who arrived to Ukraine only from neighbouring states. This was considered not to be in line with European standards. These flaws were addressed through the law “On amending the Law of Ukraine ‘On refugees and persons in need of subsidiary or temporary protection’”, which was passed by the Verkhovna Rada on 13 May 2014.

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<sup>37</sup>The relevant decree of the Cabinet of Ministers was suspended by through decree No.415 of 12.06.2013.

<sup>38</sup>The comments by the UNHCR on the Law of Ukraine “On refugees and persons in need of subsidiary or temporary protection”. –

[http://unhcr.org.ua/img/uploads/docs/Comments%20on%20Law%20of%20Ukraine%20on%20Refugees\\_UKR%20\\_Full.pdf](http://unhcr.org.ua/img/uploads/docs/Comments%20on%20Law%20of%20Ukraine%20on%20Refugees_UKR%20_Full.pdf)

Among other flaws that have not yet been eliminated from the law, is a lack of guarantees that information used about the country of origin is accurate and up-to-date. This is not in line with European standards. Furthermore, Ukraine does not yet have a sufficiently resourced institution in place responsible for collecting, systematizing and regularly reviewing such information. As a result, there are no clear definitions of 'safe' and 'dangerous' states, which in turn negatively impact the application assessment procedures.

A comprehensive analysis on the implementation of legislation, compliance with international standards and the introduction of a general policy in Ukraine on refugees and asylum-seekers, was conducted by UNHCR. This report was published in 2013, and bears the title "Ukraine as a country of asylum: Observations on the situation of asylum-seekers and refugees in Ukraine".

According to the conclusions presented in this document, the asylum system in Ukraine, although having undergone significant progress in recent years, still requires fundamental improvements. Among other things, it does not offer sufficient protection against expulsion. Neither does it provide to the applicant a fair and effective opportunity to process the application. Ukraine can therefore not be considered a safe third country, and UNHCR urges other countries not to return asylum seekers to Ukraine for this particular reason<sup>39</sup>.

It should be noted that representatives of SMS and SBG object to the overwhelmingly critical and, in their opinion, unbalanced conclusions of the study, which they claim is subjective.

Nevertheless, the above mentioned regulations, which were adopted between 2011-2013, have contributed to a significant progress in the area of migration management, particularly in the field of asylum management. It is the opinion of the authors of this study that this policy domain is the one where the pace and substance of reforms have been the most comprehensive and systematic in comparison with other areas of public policy. Over the past three years, Ukraine has moved substantially closer to reaching the goal of creating a modern regulatory framework for the European-style migration policy.

The Ukrainian government should establish a government agency responsible for evaluating countries of origin, and for classifying them as 'safe' or 'dangerous'. This is a main precondition for a fair assessment of applications for asylum, temporary protection and refugee status.

Issues related to health care should be particularly emphasized. For the time being, asylum seekers receive medical assistance on the same legal basis as foreign nationals who reside in Ukraine, but they do not have the right to free health care. In this particular area, as of August 2014, the lack of regulation of by-laws hampers a satisfactory implementation of the current legislation.

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<sup>39</sup>"Ukraine as a country of asylum. Observations on the situation of asylum-seekers and refugees in Ukraine", UNHCR, Geneva, 2013 – [http://unhcr.org.ua/attachments/article/338/2013%20Ukraine\\_country\\_paper\\_UKR.pdf](http://unhcr.org.ua/attachments/article/338/2013%20Ukraine_country_paper_UKR.pdf)

## Recommendations:

- A refugee's right to have his or her application assessed on the basis of accurate and up-to-date information about the situation in the country of origin should be made statutory. The responsibility for collecting such information should be delegated to a designated and relevant government agency.
- Health care regulations should be brought in line with the Law of Ukraine "On refugees and persons in need of temporary protection". More specifically, access to free medical health care, on equal terms with citizens of Ukraine, should be provided to refugees and asylum seekers.
- We also recommend that the implementation of recommendations presented in the report 'Ukraine as a country of asylum. Observations on the situation of asylum-seekers and refugees in Ukraine', which was published by UNHCR in July 2013<sup>40</sup>, be reinforced.

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<sup>40</sup>"Ukraine as a country of asylum. Observations on the situation of asylum-seekers and refugees in Ukraine", UNHCR, Geneva, 2013 – [unhcr.org.ua/attachments/article/338/2013%20Ukraine\\_country\\_paper\\_UKR.pdf](http://unhcr.org.ua/attachments/article/338/2013%20Ukraine_country_paper_UKR.pdf)

### 3.3. Readmission and return

Readmission is a set of complex policies based on respect for human rights, which aim to return illegal migrants to their countries of origin. Ukraine, like any other state, is interested in signing readmission agreements with home countries of illegal immigrants.

Ukraine has signed a set of readmission agreements with the EU, as well as with the majority of the CIS states and a number of other countries in the world. For Ukraine, the aim of signing such agreements is to establish a unified readmission space in its near abroad. This allows for Ukraine to claim responsibility for its own migrants, while migrants from third countries, who have been returned to Ukraine under the readmission regime, will be transferred back to their country of origin or to the country from which they entered the territory of Ukraine.

'Readmission chains' for migrants from third countries should be formed. With the help of such chains, Ukraine will fulfil its obligations to other states. It will also prevent readmitted migrants from third countries from accumulating in Ukraine. For the time being, the establishment of such a system is in an early phase. This is why it is important to monitor the current dynamics of readmission flows in the context of reviewing the migration profile of Ukraine.

The readmission agreement between the EU and Ukraine has been effective since 2008. The massive inflow of migrants, which was feared by many prior to its implementation, never materialized. Both sides consider the implementation of the agreement to be satisfactory.

In order to fully implement the EU-Ukraine Agreement on Readmission, as well as other similar agreements, it is essential to sign readmission protocols that define algorithms for the implementation of readmission agreements.

Negotiations on how to best implement the Agreement on readmission between Ukraine and the EU<sup>41</sup> is held between Ukraine and 14 EU member states, including the Benelux countries, Austria, Malta, Estonia, Cyprus, Poland, Croatia, Portugal, Romania, Slovakia, Hungary and the Czech Republic. So far this has resulted in the following:

On 21 October 2013, an Implementation Protocol between the Government of Ukraine and the Government of the Czech Republic was signed as a part of the Agreement between the European Community and Ukraine on readmission of persons.

On 4 December 2013, an Implementation Protocol between the Government of Ukraine and the Government of the Republic of Estonia was signed as a part of the Agreement between Ukraine and the European community on readmission of persons (order No. 958 of the Government)<sup>42</sup>.

On 22 January 2014, the Government approved the draft Act on the approval of the Implementation Protocol between the Government of Ukraine and the Austrian Federal Government on implementation of the Agreement between Ukraine and the EU on readmission of persons (decree No. 22 of 22.01.2014).

As of mid-2014, the work on developing a draft of the Ukraine-Cyprus Implementation Protocol continues. Furthermore, similar draft protocols have been submitted for consideration to the relevant authorities of the Portuguese and Polish sides. The Ukrainian side has finished the work on the Implementation Protocols with the Benelux states, as well as with Hungary and Romania,

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<sup>41</sup>The EC-Ukraine Readmission Agreement was signed on 18 June 2007 (ratified by the Verkhovna Rada of Ukraine on 15 January 2008). To monitor the implementation of this Agreement, the Joint Readmission Committee was established. The meetings of the JRC take place twice a year in Ukraine and Brussels respectively.

<sup>42</sup>As of 25.01.2014, Ukraine considers to sign this protocol.

which will soon be submitted to the competent authorities of those countries. Draft Implementation Protocols are finalized with Slovakia.

In addition, in September 2013, Ukraine and Iceland signed the Agreement on visa facilitation and readmission<sup>43</sup>. Negotiations on bilateral agreements on readmission with an additional four European countries (Bosnia Herzegovina, Macedonia, Switzerland and Serbia) continue.

The Cabinet of Ministers has approved the work plan for the implementation of the Agreement between Ukraine and the EU on readmission of persons. This plan is divided into four sections: organizational measures, international cooperation, improvement of the legal framework and the improvement of infrastructure for detention of illegal immigrants.

The implementation of the Readmission Agreement between Ukraine and the EU started in 2008. As of 2010, the Agreement has applied also to third countries. Three agencies share the responsibility for carrying out the provisions stipulated in the Agreement (the MIA, the SBGS and the MFA). The distribution of competencies and the work plan for implementation of the Agreement function in accordance with the "Instructions for the Procedure of actions by the agencies of Internal Affairs and agencies of the State Border Guards for implementation of the Provisions of the Agreement between the European Community and Ukraine on Readmission of Persons", which was approved through a joint order of the MIA and the SBGS No. 552/862 of 12.11.2010 (coordinated with the MFA, registered at the Ministry of Justice on 08.12.10, No. 1226/18521).

More specifically, Ukrainian citizens and nationals of third countries who have valid visas or residence permits fall under the jurisdiction of the SMS. The SBGS, in turn, handles matters related to citizens of third countries who illegally cross the border. The MFA (diplomatic/consular missions in the EU Member states) handles interviews of Ukrainian citizens and the corresponding document processing.

Ukraine and the EU have reported virtually no serious problems with the implementation of the readmission dialogue and the thematic Agreement, which have been repeatedly discussed during meetings of the Joint Readmission Committee<sup>44</sup>.

In 2013, the SMS received 205 requests for readmission. 211 requests were assessed (6 requests from 2012). Readmission was approved in 161 cases. Out of these 157 were citizens of Ukraine. 3 citizens of foreign countries with a permanent/temporary residence permit in Ukraine, and also one stateless person with a permanent residence permit, were granted readmission. 50 applicants had their requests declined.

These applications<sup>45</sup> were lodged in the following countries: Netherlands (37 requests, 24 approved, 13 denied), Sweden (34 requests, 23 approved (including 1 foreigner), 11 denied), Germany (62 requests, 42 approved (1 request from 2012), 22 denied (1 request from 2012)), Poland (41 requests, 43 approved (including two foreigners, 4 requests from 2012), 2 denied), Switzerland (10 requests, 10 approved (including 1 stateless person)), the Russian Federation (20 requests, 18 approved, 2 rejected), Norway (1 request, 1 approved). At the same time, these statistics do not provide information on fully accomplished cases.

On 5 June 2013, the Agreement between Ukraine and the Russian Federation on readmission was ratified (Law No. 324-VII), and it came into force on 8 August this year. Due to current

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<sup>43</sup>The draft agreement was approved by the decree of the Cabinet of Ministers No. 277 of 29.04.2013.

<sup>44</sup>Third report on the implementation in Ukraine of the Action Plan for Visa Liberalization, 15/11/2013.Com (2013) 809 final, pp. 8-9.

<sup>45</sup>These statistics do not include the number of implemented decisions.

complications in Ukraine's relationship with the Russian Federation, this agreement is at this point *de facto* not in force.

Negotiations are currently taking place with the CIS member states Belarus, Kazakhstan, Kyrgyzstan, Moldova, and Tajikistan on the Agreements on readmission and their Executive Protocols. Ukraine decided to sign the Agreement on readmission with the Republic of Armenia through the Decree of the Cabinet of Ministers No. 1045.

Ukraine also has an active dialogue with so-called 'countries of migration risk' concerning readmission agreements. Draft model agreements on readmission and implementation protocols have been submitted to the competent authorities of Afghanistan, Bangladesh, India, Iraq, Pakistan, China and Sri Lanka. Negotiations on renewing the Ukraine-Nigeria readmission agreement are on-going. Finally, the Ukrainian side is preparing such an agreement and a corresponding Executive Protocol with Lebanon.

According to the SBGS officials interviewed for this study, a low activity level in the MFA on the matter is the main reason for the slow pace of signing the Agreements and Protocols on readmission. The MFA, however, denies these allegations. Representatives of the SBGS also point to flaws evident in certain procedural provisions of the Agreement on readmission, which, according to them, complicate an effective implementation.

Ukraine has comprehensive experience in implementing agreements on readmission with various countries. A critical evaluation of the rules and mechanisms outlined in these agreements should be conducted. This is particularly relevant when it comes to the Agreement on readmission with the EU. Conclusions from such an analysis could reveal a need for necessary amendments and additions.

The Joint Committee of Experts should, based on an overall assessment, initiate amendments and additions to the Agreement on readmission between Ukraine and the EU. This committee has been operative since 2008. Similarly, the Joint Committee evaluated the implementation of the EU-Ukraine Visa Facilitation Agreement, and proposed necessary amendments to it in 2010. These amendments soon entered into force, and these experiences can be used to improve also the Agreement on readmission.

As the implementation of the Agreement on readmission with the EU was largely satisfactory, the Joint Committee appeared to lack an interest in follow-up work. It did not gather in 2013, which we find unsatisfactory. A meeting of the Joint Committee was, however, initiated in 2014.

### **Recommendations:**

- The work on developing implementation protocols and readmission agreements should be continued. Special emphasis should be put on migration risk countries.
- We recommend that a comprehensive assessment of the implementation of existing agreements on readmission be conducted. If the outlined provisions and mechanisms have failed to carry out the objectives of the Agreements, necessary amendments and additions should be drafted.
- The regular work of the Joint Committee of Experts on readmission between Ukraine and the EU should be re-established. We recommend that this committee draft amendments and additions to the Agreement on readmission between Ukraine and the EU.

### 3.4. New challenge: internally displaced persons (IDPs)

Russia's annexation of the Crimean peninsula, and the later outbreak of a military conflict in Eastern Ukraine in April 2014, triggered an unprecedented migration situation in post-Soviet Ukraine. Internally displaced persons are a category of people who are forced to leave their homes and seek protection elsewhere in the country due to threats to their lives, health and civil rights. As of June 2014, the estimate of IDPs in Ukraine reached tens of thousands.

The authorities were unprepared for this situation, and have accordingly been unable to quickly address it. It seems clear that effective mechanisms that provide needed assistance to internally displaced citizens are not in place. For this reason, most of the help provided to these citizens come from volunteers, civil society activists and private persons. The state appears to remain passive.

A bill aimed to protect the rights and freedoms of internally displaced persons was drafted in cooperation with NGOs and later registered in the Parliament in August 2014. On 20 October 2014, the Verkhovna Rada adopted this law<sup>46</sup>. This law provides legal guarantees for internally displaced persons; outline procedures through which they can find jobs or receive necessary assistance. In order to implement the law, it is essential to adopt a number of by-laws, as well as to ensure necessary funding.

#### Recommendations:

- A timely implementation of the Law of Ukraine 'On providing rights and freedoms of internally displaced persons' should be ensured. Necessary funding should be provided in the 2015 state budget.
- Mechanisms for handling internally displaced persons should be developed. A law ensuring the rights of internally displaced persons should be drafted and passed.
- The legal framework in this sphere should be further developed, and the relevant competencies in this domain should be distributed to the SMS and the MIA.
- We recommend that instruments facilitating special partnerships between official and civil actors in providing temporary housing and other forms of help to the internally displaced be introduced.

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<sup>46</sup>The Law of Ukraine 'On providing rights and freedoms for internally displaced persons'  
[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=52046](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=52046)

### 3.5. Border management in the migration policy context

Border management is a part of public policy closely interconnected with migration policy. The modern European concept of Integrated Border Management (IBM), which is based on the conceptual premise that 'there is a border everywhere', largely 'interferes' with field of migration policy.

IBM consists of:

- Border control and supervision, hereunder risk assessment and exploration;
- Investigation of transnational crime in cooperation with the competent law enforcement agencies;
- Four-tier access control model;
- Interagency cooperation within the sphere of border management (border guards, customs, police, immigration services, security services and other specialized agencies) and coordination of international cooperation<sup>47</sup>.

Important instruments, such as risk<sup>48</sup> and crime analysis systems, have been introduced. These instruments help the law enforcement agencies to make informed decisions aimed at detecting crime, reducing security risks and facilitating the legal movement of people and goods. International projects undertaken on the establishment of a system of risk analysis in recent years by, among others, IOM and its partners, have allowed for the Ukrainian side to benefit from international experiences. It has also facilitated the establishment of training programs, and necessary equipment has been provided through these projects. This system was presented in August 2010<sup>49</sup>.

A 'four-tier risk management system' has also been designed. The following institutions are integrated into this system: The administration of the service, regional centers, control centers for the SBGS, and control centers for border management. This particular approach to management strengthened the operational border control capacity. However, further improvements are needed.

#### *Investigatory power*

The new amended Criminal Procedure Code (CPC) has brought about a major change in the legislation in recent years. These amendments apply, above all, to the SBGS in its preliminary investigation of transnational crime. In the second progress report on the implementation of the Action Plan on Visa Liberalization, the European Commission recommended Ukraine to provide the SBGS with the authority to detect and investigate transnational crime in coordination with other law enforcement agencies. However, the third progress report mentions that a potential

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<sup>47</sup> Council of the European Union, Doc.13292/06, Integrated Border Management, Brussels, 27 September 2006

<sup>48</sup> Risk assessment facilitates a selective, yet effective, control, which aims to identify those spheres where the biggest risks are concentrated. Based on the risk profiles, limited resources (both human and technical) can be allocated, and obstacles to the legal border crossing can be eliminated.

<sup>49</sup> Project «Development of risk analysis and criminal analysis system according to the European Commission standards» (ARCA) 2006-2010 <http://eu.prostir.ua/calendar/242460.html>

loss of the SBGS's authority concerning effective law enforcement should be analyzed as a part of the implementation phase of the VLAP<sup>50</sup>.

Based on relevant provisions of the CPC, in particular Articles 208-213, the SBGS approved the Order No. 931 of 14.11.2012 "On approval of the Instruction for the SBGS personnel on detention of persons suspected in committing an offense, without a decision of an investigating judge or a court order, and subsequent interaction of the SBGS with the bodies of pre-trial investigation" (registered at the Ministry of Justice on 12.05.12, No. 2033/22345).

In accordance with these provisions of the CPC and the above mentioned Instruction, the SBGS contributes to pre-trial investigations. However, the SBGS only informs the nearest pre-trial investigating body depending on the jurisdiction, the border guard service management center, and bodies authorized by law to provide free legal aid. The SBGS registers this information. An individual detained in accordance with the CPC of Ukraine is handed over to a pre-trial investigator along with the accompanying paperwork and other confiscated belongings. This procedure follows a protocol that complies with Article 104 of the CPC.

The CPC does not fully comply with those recommendations given to Ukraine by the European Commission. Broader powers should be given to the SBGS within the domain of investigation of cross-border crimes, hereunder migration-related crimes.

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<sup>50</sup>See p. 5-6 of the Third report on the implementation by Ukraine of the VLAP.

**Recommendations:**

- Amendments should be introduced to the CPC of Ukraine, according to which the SBGS is granted a broader authority. This particularly concerns the detection and investigation of transnational crime along with other law enforcement agencies.
- We recommend that the European approach to the 'four-tier' IBM be fully implemented. This includes not only the relevant organizational hierarchy and interagency cooperation on a national level, but also legal action in third countries and cooperation with responsible authorities in neighbouring states.
- An effective procedure for data exchange between the 'Arkan' system and the responsible authorities at the regional level should be established. However, this should be accompanied by mechanisms that minimize the risk of abuse of such data, and also proper procedures to control how these data are used.

## 4. INSTITUTIONAL FRAMEWORK FOR MIGRATION MANAGEMENT

### 4.1. The State Migration Service

#### 4.1.1. Structure, powers, tasks and responsibilities

The State Migration Service (SMS) was established by the Decree of the President of Ukraine No. 1085 of 09.12.10. In accordance with this decree, the Minister of Interior coordinates the SMS<sup>51</sup>.

The Provision on the SMS was approved by the Decree of the President of Ukraine No. 405 of 08.04.11, which defines the structure, main tasks and functions of the SMS.

The President, who has two Deputy Heads, including one first Deputy Head, formally heads the SMS of Ukraine. The Central Office of the SMS is comprised of 12 independent structural units.

The SMS executes its powers directly, but also through its territorial administrative headquarters, such as the central boards of administration of the migration service in the Autonomous Republic of Crimea, Kyiv and Sevastopol, and its underlying territorial units: Administrations, departments (sectors) of migration service in districts, city districts, cities of regional and republican significance (the Autonomous Republic of Crimea). This suggests that a quality migration management system has been established in Ukraine.

In accordance with the Decree of the Cabinet of Ministers No. 658 of 15.06.11, 27 local bodies of the SMS have been established, and 679 regional offices operate within this structure.

There are two Temporary Immigrant Residence Centers (TIRK) for foreigners and stateless persons who are illegally on the territory of Ukraine. Furthermore, three Refugee Temporary Accommodation Centers (RTACs) operate within the SMS system<sup>52</sup>. Competent representatives from UNHCR and IOM believe that this is an insufficient number.

The Law of Ukraine “On Amendments to certain legislative acts of Ukraine concerning the powers of the central body of executive power that provides implementation of state policy on migration, and the authority of the central executive powers to form and implement the national policy in the field of foreign affairs of Ukraine” determines that the SMS has the authority to issue travel documents. The Law of Ukraine “On amendments to some legislative acts of Ukraine concerning activities of the MIA, Ministry of Emergency Situations, Ministry of Regional Development, Construction and Housing, other central executive bodies, whose activities are directed and coordinated by the relevant ministers” amended two Codes of Ukraine and eight Laws of Ukraine on the passing of migration authority from the MIA to the SMS.

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<sup>51</sup>The SMS is the central body of executive power. It has taken up the legal status of the State Department on issues of citizenship, immigration and registration of natural persons at the MIA and of the State Committee on Nationalities and Religions.

<sup>52</sup><http://dmsu.gov.ua/pro-dms-ukrainy/zagalna-informatsiya>

The main tasks of the SMS include:

- To produce policy proposals on migration issues (immigration and emigration), such as citizenship issues, issues regarding registration of individuals, refugees and other categories of migrants as defined by the legislation, and the countering of illegal migration.
- To implement Ukraine's migration (immigration and emigration) policy.

The analysis of the SMS legal framework<sup>53</sup>, concludes that it has become a fully functioning body two and a half years after its establishment. This analysis is based on interviews with SMS representatives conducted during the course of this research, and also available analytical assessments. The SMS internal procedures can be said to be clear from a legal point of view, and the terms of reference have been firmly defined.

The SMS has become the leading implementing agency of migration policy in Ukraine with an appropriate coordinating role and responsibility for cooperation with other responsible institutions.

One major impetus for reforms within the scope of migration was the fulfilment of Ukraine's commitments under the EU-Ukraine visa liberalisation process. The implementation of the EU-Ukraine Readmission Agreement, the EU-Ukraine Action Plan on Freedom, Security and Justice, and also the EU's support regarding the development and implementation of the Institution Reform Plan in the area of migration have also facilitated necessary reforms. The latter plan is a part of the Comprehensive Institution Building Program.

However, the analysis of the current legislation and its application over the period 2012-2013 clearly shows a number of areas in need of improvement, as well as better practices of the existing norms and stronger institutional capacity.

It is important, however, to understand that, in the context of institutional capacity analysis, certain responsibilities of the SMS are new policy areas, or they are in the process of formation. This calls for further efforts to develop the institutional capacity and financial security in order to comply with the objectives and functions outlined in this policy area.

#### *Implementation of the Concept of State Migration Policy and planning of activities*

In the context of the VLAP, the Decree of the President of 30.05.2011 established the State Migration Policy Concept<sup>54</sup>. This is a framework document that defines the goals, principles and tasks of the current migration policy. An Action Plan concerning its implementation was approved on 12.10.2011<sup>55</sup>. The approval of these documents was an important step in creating a legal and regulatory framework for Ukraine's migration policy, which meets European standards. However, a number of shortcomings in these documents have created certain institutional and functional gaps. This is the subject of this study.

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<sup>53</sup>In general, more than 40 legal and normative acts regulate and define responsibilities of the SMS. Ex., see the order of the CMU No. 658 of 15.07.11, the order of the CMU No. 937 of 07.09.11, the regulation of the CMU No. 370 and No. 371 of 27.04.11, the order of the CMU No. 336 of 16.06.1992 (with amendments); the order of the SMS ДМС No. 11 of 30.05.11 On approval of the SMS institutional capacity development plan; the order of MIA No. 1077 of 22.11.2012, the order of the MIA of Ukraine "On approval of the Procedure of registration of place of residence and place of stay of natural persons in Ukraine and samples of the documents required for it" etc.

<sup>54</sup>The Decree of the President of Ukraine "On the State Migration Policy Concept" No. 622/2011 of 30.05.2011. - <http://zakon1.rada.gov.ua/laws/show/622/2011>

<sup>55</sup>On Approval of the Action Plan for implementation of the State Migration Policy Concept, the Decree of the Cabinet of Ministers of Ukraine No. 1058-r of 12.10.2011 p. <http://zakon2.rada.gov.ua/laws/show/1058-2011-%D1%80>

Both documents aim at strengthening the cooperation and coordination between governmental authorities, local authorities and NGOs in the implementation of migration policy. They also introduce a number of necessary measures in order to expand state authorities' capacity in the field of migration. In particular, these are aimed to improve the efficiency of the SMS, to identify training needs, to develop training programs for public officials and judges, and to introduce a proper level of material and technical support to the SMS. Finally, they also aim to introduce an electronic work flow in the bodies of those executive powers responsible for the formulation and implementation of state policy on migration.

It is expected that these measures will facilitate an improvement of the public administration efficiency in this area.

As stated in paragraph 3.1 of this paper, the Concept of state migration policy, which was designed to meet the VLAP criteria, is partially declarative. The planning of measures is poorly linked to budget planning. Neither are they likely to facilitate a materialization of the goals stipulated in the Concept. These problems have to be solved through a new draft of the Concept and Action Plan, which should commence in 2014.

Although the Concept and the Action Plan do pay some attention to institutional issues, the approach to solving the institutional tasks proposed in the Action Plan has complicated a continued progress in this domain. It has also contributed to erosion in clarity of these tasks, and it has increased formalism in the treatment of objectives and tasks defined by the Concept.

To name one example, the Action Plan suggests that the Interdepartmental Commission for formulation and implementation of migration policy should be created by the end of 2011. However, it does not present any details on the future role of this Commission or how it should ensure a consistent implementation of the Concept according to the Action Plan. Although the SMS has decided to establish a *Temporary* Interdepartmental Commission for formulation and implementation of migration policy, it seems clear that neither the Concept nor the Action Plan facilitate the establishment of a coherent institutional system of migration policy.

The Action Plan also envisaged the reinforcement of the role of local administrations in integrating refugees, persons in need of subsidiary or temporary protection, and foreigners and stateless persons into the Ukrainian society. This would include the development of regional programs (paragraph 3). Heads of the Regional State Administrations have approved Action Plans for the implementation of the Concept, which mentions tasks for further program development and outreach activities<sup>56</sup>.

The authors of this study believe that a more precise order of coordination and cooperation with regional and local units of the SMS, as well as the planning of joint activities, will better unleash the potential of regional state administrations in the executing migration policy. This includes the integration of refugees and persons in need of subsidiary or temporary protection, foreigners and stateless persons, into the Ukrainian society.

It is also worth mentioning that other measures envisaged in the Concept and the Action Plan, which have the potential of strengthening the institutional component of the migration policy, are still in the implementation phase despite missed deadlines. This has particular relevance for the

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<sup>56</sup>See e.g. the decree of the Head of the Kherson Regional State Administration No.796 of 14.12.11 "On measures to implement the Concept of State Migration Policy in the oblast". This outlined a regional program for the period up to 2020 on integration of persons who were granted asylum in Ukraine into the Ukrainian society, to develop an action plan for 2012 - 2015 on combating xenophobia, racial and ethnic discrimination in the Ukrainian society, and to ensure its implementation, to spread information about the Ukrainian national culture, customs, traditions and democracy among foreigners and stateless persons who reside in the area.

introduction of a system of electronic workflow in those bodies of executive power responsible for developing and implementing the state migration policy. It also has relevance for the establishment of a functioning single national migration flow management database. It appears that one of the reasons for this delay was the Concept's vague definition of the content for these measures, and also the role of electronic information systems in the migration policy structure.

As is often the case with documents of this type, the Action Plan is overloaded with measures. Phrases such as 'study the issue', 'explore the possibility' and so on, are frequently found. As a result, even a precise implementation of these measures is not necessarily synonymous with reaching the goals outlined in the Concept. These formulations are used because they are convenient to use in reports. This is happening much due to the lack of objective criteria to assess implementation quality.

**Recommendation:**

- Having considered the results of the implementation of the Action Plan to implement the Concept of State Migration Policy in 2013, we recommend that a new Action Plan for 2014 be developed. This plan should take into account both the achievements and the failures of the previous planning documents. It should also aim to minimize formalism, and to focus on specificity, consistency, attainability and measurability of the results.

### *Detection of illegal migration inside the country*

The Law<sup>57</sup> specifies that the SMS is delegated the authority to detain illegal migrants in the country. By the order of the MIA, this task has been assigned to the Militia Unit for Migration Control of the MIA, which is subordinate to the SMS of Ukraine. The Minister of Internal Affairs<sup>58</sup> has the overarching responsibility for this agency. However, the agency was disbanded in November 2012. After the militia for migration control was eliminated, major difficulties appeared in combating illegal migration in Ukraine.

The SMS itself proposed to establish a competent division consisting of 1,500 employees to perform this task. It put particular emphasis on the personnel that would be responsible for detecting and escorting migrants without a legal status to their places of accommodation.

This has, however, not yet been decided upon. The corresponding units have been disbanded under the jurisdiction of the MIA. They are now being formed under the SMS.

It is believed that the solution to this problem, which arose after the migration control militia was eliminated, can be found through amendments to the legislation that would pass the militia's responsibilities on to police units under the jurisdiction of the MIA<sup>59</sup>. Another possible approach is to establish such units within the SMS. In the view of the authors of this study, the latter option is preferable as it proposes to adopt a series of legal acts needed to fully transfer the authority to the SMS.

### *Using the Centers for Administrative Services*

The SMS is obliged to seek a possibility to transfer part of its services to the newly established Centers for Administrative Services, which operate in accordance with the 'one-stop shop' principle. However, as uttered by some respondents in this study, it is not effective to transfer the responsibility for such services as issuance of biometric travel documents.

Within one single city, it would be preferable to issue biometric travel documents in *one* single location. This should be equipped with the necessary infrastructure and bandwidth. This solution would be better than to disperse these services to a number of locations. It would also better ensure data protection and a more secure handling of documents.

Within this context, the authors consider the opening of a specialized center for issuance of travel documents under the SMS in Kyiv to be positive<sup>60</sup>. The infrastructure and practices of this center generally meet the citizens' needs, and also technological standards. However, in the authors' opinion, the cost of issuing a passport in such a center is too high (627 UAH).

It is important to ensure a de facto equality concerning administrative costs throughout Ukraine (including issuance of passports) regardless of location, and to ensure a full realization of the 'one-stop shop' principle. As of today, it is in many cases necessary to visit three or more locations in order to obtain an international passport.

In order to ensure a positive development of the SMS and to guarantee that it functions in accordance with the new legislation, it is essential to increase the number of employees and to optimize and simplify the relevant administrative procedures.

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<sup>57</sup>Article 3 of the Presidential decree No. 405 of 06.04.2011 « Issues of the State Migration Service».

<sup>58</sup>The order of the MIA of Ukraine No. 142 of 20.02.2012 " On approval of the Regulation on the Ministry of Internal Affairs Department of the migration control police".

<sup>59</sup>See e.g. position of the Central Scientific Experts Office of the Verkhovna Rada of Ukraine on the bill No. 2367-a.

<sup>60</sup>The aforementioned passport service is carried out by the state enterprise "Document", which was established to effectively provide paid passport and visa services. According to the order of the Cabinet of Ministers, the SE "Document" is under the SMS's jurisdiction. The main services are issuance of international passports to citizens of Ukraine, issuance of second international passports to citizens of Ukraine, issuance of child travel documents and entering information on children into international passports.

**Recommendations:**

- The problems concerning financial and institutional support to the system for detecting illegal migrants should be solved through a proper division and coordination of functions between the SMS and the MIA (militia).
- The number of officials responsible for implementing the legislation on migration should be increased. In particular this concerns officials who assess refugee status applications and applications from asylum seekers and others in need protection.
- We also find that the actual cost for administrative services (including issuance of passports), should be the same in all of Ukraine, regardless of region. The 'one-stop shop' principle should be fully introduced.

#### 4.1.2. Budgeting and financial planning

The state budget expenditures on the SMS activities are planned annually and amounted to over 460 million in 2013<sup>61</sup>. In 2014, approximately 787 million are provided in the general and special funding over the budget<sup>62</sup>.

As indicated by both civil servants and independent experts, insufficient funding is a major problem. International assistance programs are contacted in order to attract funds for the programs in question.

This is relevant in the context of the Memorandum of Understanding between Ukraine and the European Commission on the Framework Document of the Comprehensive Institution-Building Program, which was signed by Ukraine and the EU on 13 October 2010.

Proposals on technical assistance on migration for Ukraine are drafted by the responsible working group under the SMS, which includes representatives of the concerned authorities of Ukraine, the EU and donor organizations.

To this date, this working group has held four meetings. A fundraising plan to attract external assistance has been proposed in order to implement the EU Action Plan for Implementation of the State Migration Policy Concept.

The Program of sector budget support in the area of migration is being finalized.

In the opinion of the authors of this study, the key to ensuring adequate financing of migration and asylum management is not only the usual state budget expenditures, but also the implementation of medium-term budget forecasting. This includes the identification of a relevant conceptual framework and a program-oriented method, as well as strategic planning at the ministerial level and in other budget planning centers.

Taken into account the abovementioned issues, it is important to properly implement the Strategy for Improvement of Public Finance Management through the Action Plan for its implementation. These documents were approved by the Order of the Cabinet of Ministers No. 774 of 01.08.2013 in order to ensure a proper institutional capacity development of public authorities that draft and implement migration and asylum policy.

These documents do not only foresee the adoption of an appropriate legal framework, but also envision how managers will learn about budget instruments and how to properly use them. They also envision how staff in the respective structural units will be trained to use essential program-oriented tools and medium-term budget planning.

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<sup>61</sup>See Annex 3 of the Law of Ukraine "On the State Budget of Ukraine in 2013"(program classification code 1004000)

<sup>62</sup>Annex 3 to the Law of Ukraine "On the State Budget of Ukraine in 2014"(program classification code 1004000)

**Recommendations:**

- We recommend that current approaches to budget planning in the SMS be reviewed. More specifically, we recommend that a more detailed list of the state budget expenses be introduced. Separate budget programs that finance policies on refugees, asylum, subsidiary protection, integration and reintegration of migrants, health care, and combating human trafficking, should also be introduced. Interconnected planning of the relevant articles of the state budget and international aid should be proposed.
- Priorities, activities and expected results related to the Program of sector budget support for migration should be identified in order to provide potential technical assistance and to strengthen the capacity of the SMS.
- We also recommend that the SMS participate in the implementation of the Strategy of Development of the Public Financial Management System and the Action Plan for its implementation.

### 4.1.3. Human resources, hereunder training and anti-corruption measures

#### *Human Resources*

The decree of the Cabinet of Ministers No. 658 of 15.06.11 established separate central administrations and administration units of the SMS in the Autonomous Republic of Crimea, the Ukrainian oblasts and the cities of Kyiv and Sevastopol. It also established corresponding territorial units, such as departments, divisions (sectors) of the migration service in districts, city districts, and cities of republican significance (the Autonomous Republic of Crimea).

Initially the total number of employees in the central administration of the SMS was 199. The territorial units and departments of the SMS employed 5133 persons (in accordance with the Decree of the Cabinet of Ministers No. 937 of 07.09.11). However, an upper limit of employees was later set to 186 in the central administration and 4613 in the territorial units of the SMS. This was approved by the decree of the Cabinet of Ministers No. 85 of 5.04.2014 'On some questions of defining limits for employment scope in the administration and territorial units of the central bodies of executive power, other government bodies'. Furthermore, their names and the number of structural departments were also changed.

The Action Plan for the development of the institutional capacity of the SMS was approved by the order of the SMS No. 11 of 30.05.11.

It is important to increase the number of employees responsible for the implementation of legislation on migration, here under the processing of applications for status of refugees, asylum and subsidiary protection. Due to a number of reorganizations and the lack of competent personnel in those state agencies responsible for processing applications for asylum, there have been significant delays in the processing of these applications.

The SMS' Division on refugees and other categories of migrants, which is subordinate to the Department for Refugees and Foreigners, is responsible for the abovementioned activities<sup>63</sup>. It is also responsible for the drafting of proposals concerning public policy in the field of refugees and persons who need subsidiary or temporary protection. It is responsible for the implementation of this policy and to create conditions for free movement, free choice of residence and the opportunity to leave the territory of Ukraine for foreigners and stateless persons, with the exceptions prescribed by the law. It is responsible also for the handling of immigration permits, such as the issuance, refusing and cancelling of immigration permits, and preparation and issuance of certificates for permanent/temporary residence in Ukraine to foreign nationals. These functions are in the department performed by approximately 3-4 employees, which is clearly insufficient.

In 2013<sup>64</sup>, the above mentioned division of the SMS reviewed 994 applications for refugee status or subsidiary protection (75 individuals were recognized as refugees, 141 were recognized as persons in need of subsidiary protection).

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<sup>63</sup>The Department consists of 6 divisions (21 employees): the Division on refugees and other categories of migrants; the Division on accommodation of refugees and other categories of migrants; the Division of social integration and communication with non-governmental organizations; the Division on temporary accommodation and registration of foreigners and stateless persons; the Division on identification of foreigners, voluntary return and readmission; the Division on Immigration.

<sup>64</sup>See "The Head of the SMS of Ukraine: In order to implement all of its functions, the Service would need over 4 thousand additional employees"// The SMS News. (in Ukrainian)-<http://dmsu.gov.ua/novyny/novyny-dms-ukrainy/2177-golova-dms-ukrajini-dlya-vikonannya-vsikh-funktzij-sluzhbi-dodatkovy-neobkhidno-ponad-4-tisyachi-pratsivnikiv>

However, according to the SMS, the main problem in the Service's activity is an insufficient number of employees in its territorial units. 50 per cent of these units have as little as 2-3 full-time employees.

Over 5,000 people are involved in the processes of issuing identity documents and performing other procedural functions in more than 700 locations under the jurisdiction of the SMS.

In 2013, the SMS prepared and issued more than 1.1 million internal passports and more than 1.3 million international passports to citizens of Ukraine.

Interviews conducted with central administration staff, as well as with staff in local units, clearly indicate an insufficiency of personnel and infrastructure in the SMS. Nevertheless, to employ additional personnel will not by itself solve the problem. The modernization of the current cumbersome procedures, which sometimes result in long queues of visitors, should be taken into account in this process.

For example, when issuing international passports the services should not request 'hard copies' of references on previous charges, on alimony, on court enforcement action etc. This and other information can be easily obtained via electronic communication.

According to calculations made by the SMS, to fully implement the functions assigned to this agency, which were previously performed by MIA divisions and housing enterprises, and to lift migration management in Ukraine up to European standards, the total number of full-time employees in the territorial units of the SMS should be increased by at least 4,100 people<sup>65</sup>.

However, it is expected that the increased productivity of the SMS, which was made possible through information systems, education and training, should minimize the mentioned personnel problems.

#### *Education and training*

To secure education and professional training of the SMS staff, the SMS cooperates with the National University "Odessa Law Academy" and Taras Shevchenko National University of Kyiv.

Since late 2013, 50 students have received training in the Odessa Law Academy on the recommendation of the SMS (without obligations for future graduates to work in the SMS, and without a commitment of the SMS to employ these graduates). As of December 2013 there were no courses specifically dedicated to migration policy, and the students are therefore enrolled in standard programs.

The first graduations under this program are expected in 4 years; hence does this middle-term solution not eliminate the need for faster and more efficient staff training and preparation.

Taras Shevchenko National University of Kyiv has introduced a weekly set of regular courses for the professionals in question. In addition, an intensive two-day workshop for the SMS staff has been introduced. A 'mobile' team of trainers teaches these courses and seminars from various divisions under the SMS. Involved international experts teach these trainers.

Despite state educational programs and professional extension courses, the lion's share of training and seminars are held under the support of international aid programs. Although generally positive, this also has a negative effect as staff training and professional development may become irregular and unsystematic. The best effect of this training is achieved if the relevant government programs are coordinated through international assistance programs.

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<sup>65</sup> Ibid.

The SMS expects to improve internal regulations that have not always provided clear requirements and rules (terms of reference) for recruitment, as well as the criteria for evaluation and career advancement.

There is generally a significant progress in the EU-Ukraine cooperation. In particular, the implementation of the VLAP has been successful in adopting relevant legislation and establishing the relevant institutional framework. However, the EU emphasizes the need to strengthen inter-institutional and interagency cooperation<sup>66</sup>.

### **Recommendations:**

Additional training courses and material should be introduced in the following areas:

- International standards (hereunder the EU standards) in migration management (for mid-level civil servants who work with foreigners).
- Biometric travel documents and detection of forged documents presented in connection with passport issuance (for junior staff who issue travel documents).
- Training should be in line with international standards, not only on the current legislation of Ukraine.
- We recommend that the qualification requirements for personnel be raised. They should focus on experience in communication with foreign partners, international experience, familiarity of human rights protection, and knowledge of foreign languages.
- Additional education material should be developed. This material should focus on international standards within the sphere of migration (for mid-level public servants who work with foreigners), biometric travel documents, and detection of forged documents.
- The practice of coordinating relevant government programs with possible educational projects under programs of international aid should be introduced.
- We recommend that staff instructions be upgraded. Special emphasis should be put on clear requirements and rules (terms of reference), as well as the criteria for evaluation and career advancement.

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<sup>66</sup>See the Second report on the implementation in Ukraine of the Action Plan for Visa Liberalization.

### *Anti-corruption measures*

In order to combat corruption in bodies of executive power, including those responsible for drafting and implementing migration policy, measures are outlined in the framework of the National Anti-Corruption Strategy for 2011-2015. This was approved by the Presidential Decree No. 1001 of 21.10.11 and the State Program for Preventing and Combating Corruption for 2011-2015, approved by the Regulation of the Cabinet of Ministers No. 1240 of 28.11.11.

The purpose of these documents is to reduce the level of corruption in Ukraine by addressing preconditions for its existence, and to introduce preventive measures. They also aim to strengthen the rule of law, as well as to raise the awareness of corruption as a dangerous phenomenon in the Ukrainian society. The government and civil society organizations jointly execute these tasks. International organizations also contribute in the process.

The implementation of these measures is carried out through governmental and departmental regulations<sup>67</sup>, which are aimed at combating corruption.

In particular:

- Mandatory training for civil servants and representatives of local self-government on how to prevent and combat corruption has started (the resolution of the Cabinet of Ministers No. 642 of 06.07.11);
- The educational network that provides professional training on how to prevent and combat corruption has been expanded (the regulation of the Cabinet of Ministers No. 287 of 5.04.12 No. 287 to amend the regulation to the Cabinet of Ministers No.1262 of 14.07.1999 and No. 828 of 2.06.2003).

Educational institutions carry out the training on how to prevent and counteract corruption<sup>68</sup>.

A special Sector has been established within the SMS, which is dedicated to preventing and fighting corruption. Its functions and objectives are defined by the Order on the Sector for combatting corruption of the SMS<sup>69</sup>. In particular, this sector was designed to process appeals from citizens who claim to be victims of corrupted SMS employees. To ensure adequate communication with the public, the Sector employee's contact details are available on the SMS website and on public information boards found in every territorial unit of the SMS.

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<sup>67</sup>Joint order of the MIA, the MFA, the Ministry of Infrastructure and the National Agency of Ukraine on civil Service No. 319/149/145/145 of 14.06.2011 "On the code of conduct of officials who issue identity documents".

2. Staff training program on the implementation of state policy in the field of migration (adopted by the SMS and the National Agency of Civil Service on 14.06.2012).

3. The order of the SMS of Ukraine No. 42 of 27.04.2012 "On Approval of the Provision on Sector for combating corruption of the SMS".

4. The order of the MIA of Ukraine No. 452 of 25.05.2012 "On Approval of the Provision on prevention of violations by the employees of the State Migration Service of Ukraine".

5. The order of the SMS of Ukraine No.163 of 06.08.2012 "On Approval of the Action Plan for prevention of corruption offences".

6. The plan on supplementary measures to prevent corruption offences by SMS employees.

7. The order of the MIA of Ukraine No. 155 of 22.02.2012 "On Approval of the code of conduct and professional ethics for regular employees and management of the organs of internal affairs of Ukraine".

<sup>68</sup> Centers for retraining and advanced training for employees of state agencies, local governments, heads of state enterprises, institutions and organizations (there are 27 centers in Ukraine); thematic institutions of postgraduate education (4 institutions); the National Academy of Public Administration under the President of Ukraine; the National Academy of Internal Affairs of Ukraine.

<sup>69</sup> Adopted by the order of the SMS of Ukraine No. 42 of 27.04.2012.

The SMS has also established a public telephone hot line<sup>70</sup>, which citizens can use to report corruption in the public domain.

In order to fight corruption and other offences committed by the SMS and its territorial units, the Regulation on the prevention of offenses related to the official activities of the SMS<sup>71</sup> was adopted along with a corresponding Action Plan<sup>72</sup>.

A review of the case processing time, as well as the submission of needed documents and regulations of fees for administrative services, contributes to a reduction of corruption risks. Furthermore, information on the SMS website and public information boards in every territorial unit has also proven effective.

In order to address the Sector's problems related to the practical implementation of anti-corruption measures, a Plan of additional measures was adopted to improve the work on corruption prevention in the SMS. The plan envisages un announced controls in the SMS territorial units. A model plan for these controls has been designed.

The effectiveness of these measures, however, is questionable. For instance, no offenses have been reported among SMS employees who work with issuance of identity documents.

Combating corruption in the field of migration policy should be considered in a broader context of anti-corruption policy. This include sasatisfying implementation of the measures proposed in the third block of the EU-Ukraine Action Plan on Visa Liberalisation, as well as effective cooperation with the Group of States against Corruption and the Istanbul Action Plan of the Organization for Economic Cooperation and Development.

#### **Recommendations:**

- Additional educational material should be developed and published. This material should focus on international standards within the sphere of migration (for mid-level civil servants who work with foreigners), biometric travel documents, and detection of forged documents.
- The qualification requirements for personnel should be raised. Greater emphasis should be put on communication experience with foreign partners, international experience, familiarity with advocacy and knowledge of foreign languages.
- We recommend that the territorial unit workforce be increased in order to ensure that current and new functions of the SMS are carried out.
- The implementation of the measures and objectives outlined in the third block of the EU Action Plan on Visa Liberalisation for Ukraine, as well as the recommendations of the Group of States against Corruption and the Istanbul Action Plan of the Organization for Economic Cooperation and Development should be ensured.

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<sup>70</sup>Order of the SMS No. 32 of 22.07.2011.

<sup>71</sup>Order of the SMS No. 452 of 25.05.2012.

<sup>72</sup>Order of the SMS No. 163 of 06.08.2012.

#### 4.1.4. International cooperation

The SMS cooperates with IOM and UNHCR in Ukraine, and functions as the central executive body responsible for Ukraine's participation in the IOM. Furthermore, the SMS is actively involved in fulfilling tasks within the framework of Ukraine's cooperation with the European Union, the Council of Europe and NATO.

The MIA and the SMS actively participate in international cooperation and aim to facilitate the creation of special immigrant detention centers for persons who have violated Ukrainian immigration laws.

As part of the international technical assistance programs, seven temporary detention centers have been established at the Mukachevo, Chop, Mostyska, Lviv, Luhansk and Sumy border checkpoints.

The project "Consultative Assistance for Establishment of Detention Centers and Temporary Accommodation of Illegal Migrants in Ukraine - READMIT 1" is currently being realized. This project aims to establish two detention centers in Mykolaiv and Donetsk regions.

In May 2013, the Plan for cooperation between the SMS and the IOM in Ukraine 2013-2014 was signed.

In addition, the EU project "Effective Governance of Labour Migration and its Skills Dimensions" is being implemented. This project aims to improve Ukraine and Moldova's ability to regulate labour migration, to support sustainable return of migrants, to prevent qualified personnel from leaving their positions, and to use these personnel effectively.

The implementation process of the project "Assistance to migrants upon return to Ukraine" (for the Ukrainian migrants who are not entitled to stay in the Netherlands) continues. The International Centre carries out this project for Migration Policy Development in collaboration with the Dutch Repatriation and Departure Service.

In 2013, the UNHCR Regional Representative for Belarus, Moldova and Ukraine launched the projects "Local Integration of Refugees in Moldova, Belarus and Ukraine" (commenced on 31.12.2013), "Regional Protection Program - Phase II" and "Asylum Systems Quality Initiative in Eastern Europe and South Caucasus". These were co-funded by the EU.

As an integrated part of these projects, several TRACs were repaired in Odessa and in the Transcarpathian region.

In order to assist law enforcement agencies in Interpol member countries with combating illegal migration, the General Secretariat of Interpol has introduced a number of analytical projects<sup>73</sup>. These are aimed at developing appropriate practical recommendations based on the analysis of migration-related criminal facts.

Through these projects Ukrainian institutions participate in thematic workshops, during which they discuss practical aspects of combating illegal migration that aim to facilitate the exchange of best practices in law enforcement in this area. These aspects are presented at international conferences. The meetings are not regular, and the involvement of the SMS staff is not systematic.

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<sup>73</sup> In particular, the following projects are in focus: AMAZON, which is aimed at identifying channels of illegal migration from South America to Europe; ANACONDA, which is aimed at identifying channels of illegal migration from Central America to Europe and North America; BRIDGE, which is aimed at identifying channels of illegal migration from China, Bangladesh, Pakistan, India to Europe, hereunder through Russia and Africa; JAWA, which is aimed at identifying channels of illegal migration from Western Africa via the Canary Islands to Europe; IRAQ, which is aimed at identifying channels of illegal migration from Iraq to Europe (mainly the UK and Sweden), the USA, Australia; project MTM (Mediterranean Transit Migration), which is aimed at identifying channels of illegal migration by sea from North Africa and the Middle East to Europe.

**Recommendations:**

- Both the time and resources spent on the training of mid-level personnel in modern principles, conditions and procedures of international cooperation, should be increased.
- A regular training program that involves the EU migration services, EU countries that border with Ukraine, and the Western Balkans (which have recent experiences in adopting best practices in migration management), should be introduced.
- We also recommend that the instruments available through international cooperation (training, education) be more widely adopted. The focus on human rights issues should be stronger in the implementation of migration policy. The corresponding changes need to be made in training programs and courses.

## 4.2. The State Border Guard Service

### 4.2.1. Structure, powers, tasks and responsibilities

Border management in Ukraine has undergone substantial changes. The transition from Soviet-style 'military security' (under the KGB management) to 'civilian policing' philosophy of border security is largely completed. At the same time, the conflict that arose in 2014 in the Eastern part of Ukraine, is largely connected with the current condition of Ukraine's borders, calls for a re evaluation of some components of Ukrainian border management.

The need to reform the SBGS is largely recognized by the state. This has become evident through the number and content of the recently approved regulatory acts aimed at reforming the Service. These regulations primarily reflect the standards laid down by the flagship initiative on integrated border management. They are carried out within the Eastern Partnership framework<sup>74</sup>, through which current EU laws on border management (Schengen Borders Code etc.) and recommendations of the competent institutions (FRONTEX)<sup>75</sup> are taken into account.

The SBGS is the agency most rapidly developing compared to other law enforcement structures as it is transforming from a militarized entity to a law enforcement agency (police type). The main factor contributing to the Service's development was its actual depolitisation, institutional stability and significant lobbying efforts along with active international cooperation. At the same time, regular contact and the exchange of experience between the SBGS officials and their European counterparts has led to a revision of the views on border guarding system and methods<sup>76</sup>.

The only significant difference between the European-style border guard services (border police) and the SBGS of Ukraine is the fact that the internal procedures of the SBGS are outlined in the statute of the Armed Forces. This is unusual for this kind of law enforcement agencies, and thus an indication of an incomplete reformation of the SBGS. At the same time, so far, it is not advised to forcefully complete the transition into a non-military border guard service, considering the rising security concerns along the Ukraine's eastern border.

According to the Law of Ukraine on the SBGS, it is the responsibility of the SBGS to ensure the inviolability of the state borders and to protect the sovereign rights of Ukraine within its exclusive (maritime) economic zone<sup>77</sup>.

The SBGS consists of a central administrative body – the Administration of the SBGS, as well as five regional offices: Northern regional administration (Zhytomyr); Western regional administration (L'viv); Southern regional administration (Odessa); Azov and Black Sea regional government (Simferopol); and the Eastern regional office (Kharkiv).

The borders are secured by border guard units that are subordinate to the regional administrations of the SBGS, as well as the staff of stationary checkpoints along the state border.

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<sup>74</sup>Integrated Border Management, EaP Flagship initiative

[http://eeas.europa.eu/eastern/initiatives/docs/fs\\_integrated\\_border\\_management\\_canciani\\_en.pdf](http://eeas.europa.eu/eastern/initiatives/docs/fs_integrated_border_management_canciani_en.pdf)

<sup>75</sup>Border Crossing: Harmonizing rules and procedures <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/border-crossing/>

<sup>76</sup><http://uipp.org.ua/publication/inshe/reformuvannya-sistemi-upravlinnya-kordonami-v-konteksti-realizatsiyi-planu-dij-shchodo-liberalizatsiyi-yes-vizovogo-rezhimu-dlya-ukrayini-.html>

<sup>77</sup>The Law of Ukraine " On the State Border Guard Service of Ukraine". – <http://zakon4.rada.gov.ua/laws/show/661-15>

One of the current priorities of the SBGS is the establishment of mobile units. According to prepared plans, mobile units should have been fully operative by the end of 2013. In order to achieve this it is important to ensure recruitment, to improve logistics, training systems and technical support, and to establish special border protection mobile units designated to fighting organized crime. In the context of the current security threats to Ukraine, special emphasis should be put on securing the border with the Russian Federation. An efficient operation of mobile units along this border should be strengthened.

The on-going conflict with the Russian Federation has shown that further efforts to improve the institutional capacity of the SBGS are needed. The situation along Ukraine's eastern border demonstrates that it is essential to preserve military component in the SBGS organization, to supply the SBGS units with ammunition and to improve its communication with the Armed Forces in the context of anti-terrorist operations.

### **Recommendations:**

- The current Concept of integrated border management and the corresponding Action Plan should be evaluated. The conclusions of this assessment should in turn create the basis for amendments to the Concept, and to develop a new action plan based on the experience gained and lessons learned. Special emphasis should be put on the establishment of the 'virtual centers' mentioned in the Action Plan, whose main task is to collect and analyze information. The establishment of a coordinating body overseeing the implementation of the IBM should be considered.
- We recommend that the SBGS units be better equipped, taken into consideration the on-going military conflict in Eastern Ukraine. We also recommend that infrastructure be improved and that military equipment be upgraded at stationary units along the border, in particular, at border crossing points.
- Extra efforts should be made in order to establish mobile units under the SBGS. In particular, the management of their operational activity should be improved, and to a technical modernization of their available equipment should be undertaken.

#### 4.2.2. Budget and financing planning

The main expenditures for the SBGS are:

- Supervision and management of state border protection;
- Technical and logistical support, as well as the personnel of the SBGS;
- Training and professional development conducted by the National Academy of the SBGS;
- Construction and purchase of housing for the SBGS servicemen;
- Equipment and reconstruction of the state border;
- Construction, reconstruction and reconditioning of the SBGS infrastructure.

The funding provided over the state budget is an approximate 2.6 billion<sup>78</sup>. The budget is usually planned on an annual basis, but the financial planning of certain programs is done in a more long-term perspective. This approach is derived from the contemporary public finance management system in Ukraine.

Furthermore, the financing of the SBGS, hereunder funding of technical equipment and infrastructure, is largely derived from the SBGS's active participation in various international technical assistance programs. These programs include sector budget support. The budgetary funding for border management and infrastructure was also increased in connection with the Euro-2012. The SBGS argues that almost all delays in the implementation of policy documents, logistics, technical re-equipment, human resources etc., are associated with a lack of funding.

Insufficient funding is a major problem, which is also pointed out by civil servants and independent experts. In 2007-2012, the financing for the state target program "Organization and reconstruction of the state border", which was scheduled for completion by 2015, reached only 45.4% of the planned amount (30.5% came from the state budget, 3.1% - from local budgets, 11.8% - from other sources).

In particular, the program "Development and Reforming of UASBGS Mobile Units" is constrained due to the lack of sufficient funding. This is also the case with the Concept of maritime border guard and the aviation branch of the SBGS, as well as the programs to reform them by 2020.

In recent years, the SBGS has been forced to operate with restricted funding. Analytical material developed by the SBGS offered a plan of activities based on a complex 'cost – utility' index. This particularly concerned the method of dynamic programming<sup>79</sup>. However, there is a lack of information on the effects of these recent developments in the SBGS practice.

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<sup>78</sup>See Annex 3 of the Law of Ukraine "On the State Budget of Ukraine in 2013" (program classification code 5340000)

<sup>79</sup>Lytvyn M. M.:Methodology of a complex assessment and recommendations on the implementation of measures for the development of the State Border Guard Service of Ukraine (in Ukrainian). [www.dpsu.gov.ua/upload/file/35.doc](http://www.dpsu.gov.ua/upload/file/35.doc)

**Recommendations:**

- We recommend that the cost optimization methods that have been analyzed and adapted to the SBGS's needs in accordance with poor financing, be more widely used. These methods are based on a complex 'cost – utility' index, such as a method of dynamic programming.
- The funding projected for the Program for Development and Reforming of UASBGS Mobile Units, as well as the Concept for Maritime Border Guard and Aviation of the SBGS and the reform program for the period to 2020, should be fully provided.

#### **4.2.3. Human resources, including training and anti-corruption measures**

For the time being all of the SBGS' employees are working on a contractual basis.

In 2011-2013, staff training and professional development was carried out on the basis of curriculums provided by the Bohdan Khmelnytskyi National Academy for the State Border Guard Service. These covered a range of issues relevant to the SBGS, as well as general professional programs. These programs were adapted in accordance with amendments to the legislation, and covered issues such as legal terms and cooperation with other law enforcement agencies, as well as current approaches and best practices. Special emphasis was put on the development of a language training center.

The SBGS Training Center in Cherkasy provides training and education to junior specialists in the SBGS sergeant corps. It also provides basic training for new staff.

Furthermore, the SBGS Canine Training Center provides training, requalification and vocational training to cynologists. It also provides them with state certificates. Training facilities and training ranges are expanded to include a non-canine training cycle (faculty), where professional training will be provided on border guard services, border control, foreign languages and legal security.

Ismail maritime security training squad provides training, requalification and advanced training for various specialists in maritime protection.

Educational programs for border guards, however, need further improvement. In the opinion of IOM experts, the SBGS should more actively introduce European employee differentiation practices, which differentiates between junior staff, mid-career and advanced training. Modern methodology, such as 'training of trainers', cartoon approaches to learning, and training in the workplace are insufficiently used.

The SBGS has established a six-tier system aimed at preventing and combating corruption. This system stipulates measures within human resource management, cooperation with the civil society, improvement of internal security and financial control and sustainment of international cooperation. It also mentions background checks of individuals who are candidates to fill a vacancy in the SBGS and implementation of rules regarding gifts etc.

The Decrees of the SBGS No. 922/19660 of 27.10.11 and No. 780 of 19.10.2011, stipulate that the SBGS is subject to the Code of Conduct for the personnel that is authorized to perform border control, as well as the manual "Rules of conduct of the personnel of the SBGS in preventing corruption". The latter manual was approved by the Order of the SBGS Administration.

Furthermore, corresponding educational activities are carried out. For instance, the National Academy of the SBGS (NASBGS) provides a total of 114 academic hours of training on the legal framework for corruption prevention, as well as on the Code of Conduct, to personnel authorized to work with border control. It also provides professional training to the SBGS staff on these topics.

In 2011-2012, a total of 1563 SBGS officers received training through the NASBGS programs. An additional 768 were trained in the centers for junior officers. Approximately 70 internal security officers responsible for operative-investigative activities were also appropriately trained.

The SBGS, along with EUBAM, prepares training programs on how to prevent and combat corruption.

Having assessed the results of the aforementioned measures, it is worth noting that the SBGS reported a reduction in corruption cases. In 2013, court decisions were issued on two corruption charges, and four cases are currently under investigation. More than 2,000 SBGS employee checks were conducted, which resulted in 1600 measures aimed at preventing situations that potentially could facilitate corruption. Disciplinary action and workplace rotations were among these measures.

Experiences gained through international anti-corruption work should be used more actively in the Ukrainian border guard services. A research conducted by FRONTEX suggests a classification of typical corruption segments in border guard services. It also suggests a division into 'organized crime related corruption', 'petty corruption' and 'administrative/bureaucratic corruption'<sup>80</sup>. European specialists have made recommendations on how to reduce corruption in border guard services in Ukraine through means such as 'integrity testing', electronic surveillance (video-monitoring) and rotation of personnel.

To complete the transformation of SBGS into a European-style law enforcement agency, it is important to develop an organizational culture. The order of the SBGS No. 141 of 29.02.2012 "On Approval of standards for border guard culture" touches on this particular issue.

Further efforts in training personnel are needed to ensure adherence to the Law "On refugees and persons in need of subsidiary protection" and the corresponding UN convention. Foreigners who cross the border and fail to correctly apply for asylum and subsidiary protection often make complaints. These facts are reflected in a report by UNHCR<sup>81</sup>. Solving this problem requires not only changes in the legal framework, but also an effort to ensure sufficient training.

In line with international best practices, the SBGS Administration established the Internal Security Department. The Internal Security Department is an independent and autonomous operational-investigative unit that has clearly defined objectives and working methods that aim to combat corruption. This relies on an integrated vertical. The main tasks for the management are:

- To prevent, detect and repress crimes related to illegal conveyance of persons across the state border, smuggling, violations of the border guard service rules, violations of duty as well as corruption offenses committed by SBGS officers and personnel;
- To ensure the physical security of units, security forces, facilities and information from unlawful acts and threats from organized criminal structures and individuals, as well as to coordinate security measures for the SBGS officers and personnel.

Greater emphasis should, however, be put on the protection of basic human rights at the border. The quality of the information provided to the public on new border management practices, especially the information provided to border zone residents and frequent border crossers, should be improved.

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<sup>80</sup>Study on anti-corruption measures in EU Border control, FRONTEX, 2012. [frontex.europa.eu/assets/Publications/Research/Study\\_on\\_antirruption\\_measures\\_in\\_EU\\_border\\_control.pdf](http://frontex.europa.eu/assets/Publications/Research/Study_on_antirruption_measures_in_EU_border_control.pdf)

<sup>81</sup>"Ukraine as a country of asylum. Observations on the situation of asylum-seekers and refugees in Ukraine", UNHCR, Geneva, 2013 – [http://unhcr.org.ua/attachments/article/338/2013%20Ukraine\\_country\\_paper\\_UKR.pdf](http://unhcr.org.ua/attachments/article/338/2013%20Ukraine_country_paper_UKR.pdf)

## Recommendations:

- We recommend that the professional training provided to the SBGS staff be improved. It should to a larger degree meet international standards as well as to comply with the Ukrainian legislation on refugees, asylum seekers and persons in need of subsidiary protection. Specialists on human rights protection and international experts on best practices should be involved in this training.
- The organizational culture among border control staff should be improved in order to ensure compliance with legislation and departmental standards. A system of independent audit of the border control culture should be established for this purpose.
- Routines on feedback collection should be established. Reviews of the work conducted by the SBGS should be collected from those who cross the border, as well as from local communities. The data results should be systematized and, in turn, used actively to modify practices.
- We recommend that civil society organizations and the Office of the Ukrainian Parliament Commissioner for Human Rights be more included in human rights protection work at the border.
- Border service divisions should be transformed into local law enforcement agencies with certain responsibilities in public administration and greater autonomy in decision-making. Some powers should be transferred from the national and regional levels to a local level. This will result in a further decentralization of the SBGS governing structures, as well as to provide a wider range of opportunities for interagency coordination and international cooperation. This, in turn, will ensure effective law enforcement operations at the border.
- We recommend that methods developed by international experts be more widely adopted. In particular, we find that the classification of typical categories of corruption in border services fruitful, i.e. the division into ‘organized crime related corruption’, ‘petty corruption’ and ‘administrative/bureaucratic corruption’. This is how a study conducted by the European agency for management of external borders of the EU member states FRONTEX have defined them<sup>82</sup>. The corresponding training programs for target groups of public officials should be adjusted accordingly.
- Modern technologies should be more widely introduced as a means of reducing corruption in border guard services. Examples of this are ‘integrity tests’, video surveillance, and rotation of personnel<sup>83</sup>.
- We recommend that online learning systems for all categories of military personnel using ‘training for trainers’ methodology, cartoon approaches to teaching and learning in the workplace be introduced. It is necessary to differentiate between training of junior staff, ‘mid-carrier’ and ‘advanced’ personnel.
- The training programs for the SBGS military departments should be enhanced. Special emphasis should be put on working with local communities, local media and public relations.
- We recommend that new underlying criteria for definitions of professional competence of candidates be developed. The procedures for staff selection should be optimized. A competence-based human resources management system, which includes recruitment, training, career guidance and assessment, should be implemented.

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<sup>82</sup>Study on anti-corruption measures in EU Border control, FRONTEX, 2012. [http://frontex.europa.eu/assets/Publications/Research/Study\\_on\\_antirruption\\_measures\\_in\\_EU\\_border\\_control.pdf](http://frontex.europa.eu/assets/Publications/Research/Study_on_antirruption_measures_in_EU_border_control.pdf)

<sup>83</sup> Ibid, p. 9.

#### **4.2.4. International cooperation**

The participation of Ukraine and the SBGS in international border management cooperation can be described as comprehensive. Decisive weight is here attached to practical aspects and problems, such as counselling, joint border monitoring, information exchange on risks and joint control of border checkpoints.

##### *Counselling enters*

Counselling centers is an important forum for interaction and cooperation between border guard services of neighbouring countries.

The counselling centers' task is to share relevant information and to facilitate efficiency in border management.

Such counselling centers were established at the automobile border checkpoints 'Krakivets-Korchova' in Ukraine and 'Yagodyn-Dorogusk' in Poland at the Ukraine-Poland border.

A similar center was created near the Romanian border at the 'Porubne' checkpoint, which is located on Ukrainian territory.

Furthermore, negotiations are scheduled with border guard agencies of the Russian Federation and Hungary on the establishment of such centers with these states. Experience from European countries where such counselling centers function today, shows that the range of tasks can be significantly expanded.

##### *Joint border monitoring*

On 22 October 2009, a protocol was signed between the SBGS of Ukraine and the General Inspectorate of Border Police of the Ministry of Administration and Interior of Romania on the navigation of floating vessels in boundary waters of Ukraine and Romania, as well as on cooperation in protecting the Ukraine-Romania state border. According to the protocol, joint border surveillance is carried out on the river Danube.

On 7 December 2010, the SBGS of Ukraine and the Commander-in-Chief of the Polish Border Guard on joint patrols at the Ukraine-Poland border signed a protocol of joint border patrols. Such patrols have been in effect since March 2011.

On 20 December 2011, the Government of Ukraine and the Government of the Republic of Moldova on joint patrols of the Ukraine-Moldova border conducted an agreement of joint border patrol .On 6 June 2012, a protocol was adopted between the Administration of the SBGS of Ukraine and the Border Guard Service of Moldova on how to organize the joint patrolling of the Ukraine-Moldova border. Joint patrols have been carried out since June 2012.

The SBGS of Ukraine and the Commander-in-Chief of the Polish Border Guard later drafted a protocol on necessary amendments to the previous protocol on joint patrols of 08.12.2010. These amendments facilitate the organizing of joint patrols along the Ukraine-Poland border. It also provides instructions on how the parties will act in emergencies and other situations that demand swift action. For the time being, discussions of the project are being held on a national level.

Agreements on joint border monitoring with Slovakia, Russia and Belarus are in the making. The implementation of coordinated border surveillance along the Russia-Ukraine and Ukraine-Belarus

borders continues. Joint border surveillance is being carried out with Slovakia, Hungary and Romania.

### *Information exchange and risk analysis*

Information exchange and risk analysis is being carried out in accordance with protocols on information sharing and cooperation in combating organized cross-border crime. Such protocols have been concluded with the border guard services of all countries that share borders with Ukraine.

One important area of cooperation is joint border risk assessment and analysis, which involves exchange of statistical and analytical information between border guard services of neighbouring states. Agreements have been conducted in order to undertake joint risk assessments with colleagues from Poland, Russia and Belarus. The format of joint analysis has been enhanced with the border guard services of Moldova.

Particular importance was attributed to the analytical cooperation between Ukraine and Poland in their preparations to the Euro-2012. Joint reports on threat analysis were thoroughly assessed at the Ukraine-Poland and Ukraine-Moldova borders.

The border and customs services of Moldova and Ukraine have, with the participation of EUBAM, performed monthly analysis of the situation at the Ukraine-Moldova border. They also conduct an annual joint risk analysis with the Polish border guard. Finally, they have reached an agreement on the processing of such reports with the border guard services of Russia and Belarus.

With the participation of EUBAM specialists, a working group of border guard officers from Moldova and Ukraine was established in order to improve the information exchange flow (under the Protocol between the SBGS of Ukraine and the Border Guard Service of the Republic of Moldova on information exchange of 21.11.2006). This working group has held a total of 9 meetings, which have resulted in certain improvements in the exchange flow of statistical and analytical information on the detection of forged border crossing documents. They have also contributed to the establishment of risk profiles on illegal activities along the state border.

On the basis of the positive experiences from the above mentioned working group, similar agreements were reached with the border agencies of Belarus, Poland, Slovakia and Germany.

Furthermore, counselling centers were established to facilitate a more streamlined exchange of information at the following border checkpoints: Krakivets (Ukraine), Dorohusk (Poland), Porubne (Ukraine), Siret (Romania), Goptivka (Ukraine) and Matveev Kurgan (Russia)<sup>84</sup>.

A draft Protocol on the order of the information exchange at the state border of Ukraine and Belarus was prepared by the Administration of the SBGS of Ukraine and the State Border Committee of Belarus. The Ukrainian Government was granted the authority to sign it on 04.03.2013.

A draft protocol on the procedures for information exchange between Ukraine and Romania is now in the making. The Administration of the State Border Guard Service of Ukraine and the General Inspectorate of Border Police of the Ministry of Administration and Interior of Romania are jointly preparing this document.

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<sup>84</sup>As of October 2014, this center is not operative due to the ongoing armed conflict in Eastern Ukraine..

The cooperation within the framework of the Eastern Borders Risk Analysis Network FRONTEX (EB-RAN) continues. As an integrated part of the system, the exchange of statistical information between the participating countries is carried out monthly. They also work on an annual report on the situation along the borders.

The enhanced cooperation in joint border risk assessment and analysis is an important element in the exchange of statistical and analytical information between border guard services of neighbouring states. In particular, Ukraine has agreed to conduct joint risk assessments with Poland, Russia and Belarus. It has also agreed to conduct an in-depth analysis together with the Moldovan border guard service. However, the practical outcomes of this cooperation are yet to be assessed.

#### *Joint border controls*

Special attention has been paid to the cooperation between the SBGS and border authorities of neighbouring countries. Special emphasis has been put on joint border controls in accordance with bilateral agreements between states or responsible authorities

#### *Poland*

According to the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Poland on cooperation on the control of persons, goods and vehicles crossing the Ukraine-Poland border of 25.06.2001, border and customs control was introduced at the automobile checkpoints 'Ustilug – Zosin' and 'Smilnytsia – Krostsenko', as well as at the train checkpoint 'Khyriv – Krostsenko'.

#### *Slovakia*

Joint controls at border checkpoints are currently not in place, as the regulating agreement has not yet been signed. The decree of the President of Ukraine No. 142 of 23.04.2008 has commissioned the relevant authority from the Ukrainian side to sign the Agreement on cooperation on control of persons, goods and vehicles crossing the border shared between Ukraine and the Slovak Republic.

#### *Hungary*

The Agreement between the Government of Ukraine and the Government of Hungary on border traffic control at automobile and train checkpoints of 04.05.12 envisages the establishment of a counselling center at one checkpoint on Hungarian territory. Paragraph 2, Article 7 of this Agreement, calls for the establishment of a joint counselling center.

#### *Belarus*

The Agreement between the Government of Ukraine and the Government of the Republic of Belarus on the organization of joint control at border checkpoints was signed in 1995. It entered into force in 1997. However, today joint controls are not carried out.

## *Moldova*

In accordance with the Agreement between the Government of Ukraine and the Government of the Republic of Moldova on the organization of joint border control at the checkpoints along the Ukraine-Moldova border of 11.09.1998, and the protocols between the SBGS of Ukraine, the State Customs Service of Ukraine, the Border Guard Troops Department of the Republic of Moldova, and the Customs Service of the Republic of Moldova on organization of joint control at the automobile checkpoints 'Kelmentsi – Larga', 'Mamalyga – Kryva', 'Reni – Giurgiulești', 'Rososhany – Briceni' of 12.01.2004, joint border controls are carried out at these checkpoints.

On 21 February 2012, a pilot project concerning joint border control at the checkpoint 'Rososhany – Briceni' was launched. The protocol of this project was signed by the heads of the customs services in Ukraine and the Republic of Moldova respectively on 08.12.2011 in Astana, Kazakhstan. The heads of the border guard services of Ukraine and the Republic of Moldova signed the protocol on 20.12.2011 in Odessa, Ukraine.

## *Russia*

On 18 October 2011, a bilateral agreement between Russia and Ukraine on cooperation on the implementation of joint control at border checkpoints along the Ukraine-Russia border entered into force. However, the implementation of this agreement presupposes the resumption of Ukrainian control over all of its border with the Russian Federation.

It should be noted that a number of bilateral agreements with neighbouring states, including Moldova, Poland and Belarus, on joint border patrol was signed. Similar agreements with other countries, such as Romania, Slovakia, Hungary and Russia, are being drafted.

## *Cooperation with FRONTEX*

In June 2007, an agreement on cooperation between the SBGS of Ukraine and FRONTEX was signed in Luxembourg.

In May 2010, the Cooperation Plan between the SBGS and FRONTEX for 2010-2012 was signed in Warsaw. As an integrated part of this plan information exchange of risk analysis between the SBGS of Ukraine and FRONTEX was introduced in July 2010. Information is being exchanged regularly under the Eastern Borders Risk Analysis Network (EB-RAN).

The SBGS actively participates in operations, such as 'Jupiter', 'Poseidon', 'Fokal Points' etc., and training projects organized by FRONTEX. This includes projects related to the detection of stolen cars and forged documents, training of cynologists, English language courses etc.

Special operations along land, sea and air borders ('Jupiter 2012', 'Focal Points 2012', pilot project 'No stamps for railway crews', 'Pulsar', 'Hammer 2012', 'Meteor 2012', 'Hubble 2012', 'Poseidon', 'Minerva') are carried out.

Despite considerably positive experiences, the SBGS needs to further improve and develop its international cooperation. At an administrative level it is essential to enhance cooperation with EU officials in Kyv (such as the EU Delegation and embassies of EU Member States) who work with immigration and border security issues.

In order to improve the communication with key international partners, a SBGS Liaison Office should be established in diplomatic missions of Ukraine abroad.

## Recommendations:

- We recommend that joint patrolling of the Ukraine-Hungary, Ukraine-Romania and Ukraine-Slovakia borders be established. The positive experiences gained from border cooperation with Hungary and Slovakia should be used to improve the cooperation with Romania at border checkpoints. Coordinated patrolling of the Ukraine-Belarus border should be fully implemented.
- The involvement of personnel in international operations, risk assessment and joint analytical work coordinated by FRONTEX, should be expanded.
- We recommend that the open exchange of statistical and analytical information between border agencies of neighbouring and partner countries be extended. Mechanisms of joint border risk analysis in accordance with reached agreements should be enhanced.
- To adopt the recommendations from the Ukraine-Moldova joint reports on cooperation with the EUBAM, as well as to continue the Ukraine-Poland joint risk assessments that were introduced prior to the Euro-2012.
- International cooperation should be further strengthened through various measures, such as the establishment of SBGS Liaison Offices in diplomatic missions abroad. Responsible authorities should more actively cooperate with Kiev-based EU officials who work with immigration and border security issues.
- The introduction of the 'one-stop shop' practice at border checkpoints should become a priority in international cooperation in order to create trust and to ensure an effective use of resources (see section 2.2).

### 4.3. Other executive bodies involved in migration policy

#### 4.3.1 The Ministry of Foreign Affairs

A considerable amount of authority within state migration policy is assigned to the Ministry of Foreign Affairs of Ukraine (MFA). According to the Decree of the President of Ukraine No. 381/2011 of 6.04.2011, the MFA is involved in shaping and implementing public policy on visa and migration issues<sup>85</sup>.

The Law of Ukraine "On refugees and persons in need of subsidiary or temporary protection" mentions that the MFA and its diplomatic missions abroad are involved in the process of preparing documents and making relevant proposals to the Cabinet of Ministers on the conclusion of international agreements. These are agreements related to the protection of social, economic and other rights and interests of refugees, including compensation of damage caused to refugees, and also the cost of their accommodation.

The MFA and its diplomatic missions report on the situation in the refugees' countries of origin to the central executive body responsible for the implementation of state policy on refugees and persons in need of subsidiary or temporary protection. Furthermore, the foreign service missions issue entry visas to family members of persons recognized as refugees or persons in need of subsidiary protection. They also facilitate voluntary return of refugees to their respective countries of origin, as well as resettlement in countries that have granted them asylum.

To this can be added that the MFA supervises the implementation of international treaties on refugee protection ratified by the Verkhovna Rada<sup>86</sup>.

The MFA subdivision responsible for the above mentioned aspects of migration policy is the Department of Consular Service.

This department aims to safeguard national interests in the consular area. It ensures that the constitutional rights of citizens and legal persons of Ukraine outside the country are protected. It is also responsible for a set of consular functions outlined in Ukrainian and international laws.

The Department of Consular Service manages consular offices abroad, hereunder supernumerary (honorary) consulates.

124 Ukrainian consular offices are operative outside Ukraine. Among them are:

- 85 consular departments of diplomatic missions of Ukraine;
- 29 General Consulates ;
- 9 Consulates;
- 1 Consular agency.

In addition, 99 consular offices are operative in 62 countries. These are headed by Honorary Consuls<sup>87</sup> (Honorary Consulates perform limited consular functions).

The MFA has a significant effect on Ukraine's migration policy, in particular the following areas:

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<sup>85</sup>The Decree of the President of Ukraine "On the Regulations of the Ministry of Foreign Affairs of Ukraine" No.381/2011 of 6 April 2011 - <http://zakon4.rada.gov.ua/laws/show/381/2011>

<sup>86</sup>The Law of Ukraine "On refugees and persons in need of subsidiary or temporary protection" of 8 July 2011 - <http://zakon4.rada.gov.ua/laws/show/3671-17>

<sup>87</sup>The MFA web-site:<http://mfa.gov.ua/ua/consular-affairs/directorate>

**Issuance of visas to citizens of countries that have a visa regime with Ukraine.** The MFA is responsible for visa issuance. It is the MFA's consular staff that decides whether an applicant fulfils the outlined conditions for obtaining visas.

The Regulation of the Cabinet of Ministers "On Approval of the Rules for issuing visas for entrance and transit through the territory of Ukraine" No. 567 of 01.06.2011<sup>88</sup> constitutes the legal framework for visa issuance to foreign citizens.

This document was an important step in bringing the Ukrainian visa and migration policy in line with European standards. Two important measures outlined in this document was to modify the list of visa categories, as well as to adopt the European practice in terms of short-term visa validity.

The following visa categories were introduced: 1. Transit Visa (B), 2. Short-term visa (C), 3. Long-term visa (D). Short-term visas allow foreign citizens to stay on the territory of Ukraine for a total of 90 days within 180 days from the date of first entry. Short-term visas are issued with single, double or multiple entries. Its period of validity varies, but never exceeds five years.

Despite the fact that many essential visa procedures were brought in line with EU standards, some components outlined in the Regulation are too cumbersome, which in turn complicates the entry into Ukraine for certain categories of foreign citizens. For example, it is not sufficient for a foreigner invited by a Ukrainian institution/organization to provide an invitation signed by the organization's management. According to paragraph 11.2 of the Regulation, a foreign citizen should provide 'a standardized invitation of a person or entity issued by the regional body or by the state division of the Immigration Service of Ukraine'. The Ukrainian inviting party must certify their invitation in a local SMS territorial division before sending it to the invited person. This procedure takes anything from several days to weeks, which greatly complicates visits of foreign nationals from countries subject to a visa regime with Ukraine. It would be reasonable to limit this practice to citizens of countries with a high migration risk. Citizens of other states should be exempt.

Consular fees for visas are relatively high: A single-entry visa costs 85 USD, and double-entry visas are issued for 130 USD. A multiple entry visa costs as much as 200 USD (in some cases, special bilateral agreements regulate and lower the price). The cost to obtain a Ukrainian visa is much higher than the price for a Schengen visa (35 Euros regardless of the number of entries), national visas to the EU member states and visas to the absolute majority of countries. Thus, Ukrainian consular fees are unreasonably high and should be reduced. The cost of Schengen visas should serve as a reference point.

**Issuance of long-term visas for long-term stays**(work, study, business, family visits etc.) for citizens of all foreign countries, including countries exempt from the visa regime.

Foreign citizens who wish to stay in Ukraine for more than 90 days must obtain a long-term visa, which is issued as a single-entry document for 45 days in order to enter Ukraine for registration.

As stated in the regulation of the CMU, a foreigner who wishes to stay in Ukraine for more than 90 days must first obtain a work or study permit in Ukraine. This permit entitles the person to receive a single-entry long-term visa valid for 45 days. After arriving in Ukraine, a temporary residence permit is issued. The foreign national should not leave Ukraine before this permit is issued, as the visa is valid for one single entry.

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<sup>88</sup>The decree of the Cabinet of Ministers of Ukraine "On Approval of the Rules for issuing visas for entrance and transit through the territory of Ukraine" No. 567 of 01.06.2011 p. <http://zakon1.rada.gov.ua/laws/show/567-2011-%D0%BF>

In our view the Ukrainian legislation is still not in line with European standards as the visa and registration procedures to which the foreign national is subject, are far more complex than what is the case in EU member states. This is happening despite the fact that the EU has rather strict standards in the sphere of migration protection, hereunder labour markets protection. In the Schengen case, long-term visas are equivalent to a residence permit, and can be used in many cases as a self-sufficient document for the whole period of its validity. Long-term visas issued by a Schengen state is usually a type D visa valid either for one year, or for the term of a work contract or for the term suggested in education documents.

In the Ukrainian case, long-term multiple-entry visas are issued as an entry visa to Ukraine in order to obtain a residence permit. This substantially limits a person's rights. More specifically, the foreign national cannot leave Ukraine until a residence permit has been issued. Until then this person does not have access to social rights and services.

**Analysis of the situation in refugees' and asylum seekers' countries of origin.** The information provided by the MFA influences decision-making of the relevant authorities in asylum cases, as well as applications for subsidiary protection and refugee status. In recent cases, incomplete or distorted information has resulted in a failure to provide asylum/protection/refugee status to certain immigrants, in particular immigrants from Russia, Central Asia and other regions where citizens are threatened with persecution because of their beliefs or social, religious and political activities.

As a result of this, foreign citizens who asked or intended to ask for refugee status in Ukraine were often expelled to their countries of origin, where they faced threats of prosecution or even death<sup>89</sup>. This is not in line with the Council of Europe's standards. This practice resulted in a significant reputation loss for Ukraine on the international arena. To avoid such incidents in the future, it is necessary to raise the standards of information collection on the situation in the countries of origin of refugees/asylum seekers. A special emphasis should be put on respect for basic human rights.

An important competence subscribed to the MFA is **to facilitate voluntary return of refugees to their country of origin or to resettle them in the countries that have granted them asylum**. Whereas the former is well established in Ukraine, the latter has been in focus for a long time.

Cases in which a third country has granted a person asylum, and he or she regardless of this is being expelled from Ukraine to the country of origin, are particularly unacceptable. The trial of Abdumalik Abdulladzhonov (who was not deported back to Tajikistan in 2013) is a positive example, but human rights groups repeatedly point out examples of the opposite<sup>90</sup>.

Respect for the principle of non-refoulement, according to which no refugee can be forced to return to his or her country of origin, and which is fixed in the UN Convention on Refugees, must be strictly adhered. Officials involved in relevant procedures, hereunder the provision of information on the country of origin, must undergo special training in this area with a special emphasis on international standards.

**Development of an information system.** In order to comply with subparagraph 2 of paragraph 2 of the Action Plan on the implementation of Integrated Border Management, as well as paragraph

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<sup>89</sup>Uzbecks deported from Ukraine sentenced to 3-17 years in prison. (in Ukrainian) - [http://ua.comments.ua/politics/57180-Vislani\\_z\\_Ukraini\\_uzbeki.html](http://ua.comments.ua/politics/57180-Vislani_z_Ukraini_uzbeki.html)

<sup>90</sup>Ukraine did not deport a refugee. That's what I call news (in Ukrainian). Bezkrordoniw, 12.04.2013 - <http://noborders.org.ua/sfery-dijalnosti/bizhenci-ta-shukachi-prytulku/bizhenci-ta-shukachi-prytulku-z-centralnoji-aziji/ukrajina-ne-vyslala-bizhentsya-tse-novyna/>

51 of the Action Plan for implementation of State Migration Policy, an information and telecommunication system for processing and issuing entry or transit visas to foreigners and stateless persons (ITS 'Visa') was established in 2012. Its implementation will follow certain stages for the next two years. This system should be developed in close cooperation with the SBGS and the SMS in order to improve the efficiency of visa issuance. This would include a simplification of the visa application procedures. At the moment there are no publicly available documents (concepts, strategies) on the development of this system.

One typical gap, which should be taken into consideration, is the lack of training in specific aspects of visa issuance. This is happening because the horizontal rotation between consular personnel and diplomatic corps not always takes into account the specificity of this portfolio.

### **Recommendations:**

- We recommend that the document requirements for obtaining a Ukrainian visa be simplified. In particular we recommend that rightfully registered Ukrainian legal entities should be allowed to issue visa invitations to foreign citizens, who have low or medium migration risk, without the currently required certification by territorial units of the SMS. The application process for citizens with high migration risk should be simplified. In particular, we recommend that electronic application procedures be introduced.
- The cost to obtain visas to Ukraine should be lowered, and consular fees should be brought in line with current European practices (35-60 Euro regardless of visa validity term and number of entries).
- The long-stay visa (type D) should give its holders the right of unimpeded entry to and exit from the territory of Ukraine for the entire period of its validity. The visa should be issued not for 45 days, but for the entire period of stay.
- Stricter requirements to the information obtained on the refugees' and asylum seekers' countries of origin should be introduced. Special emphasis should be put on whether these countries protect basic human rights, as well as rights to health care and other fundamental rights. The training of competent personnel within this area should be based on international practices and standards.
- We recommend that effective measures to prevent unjustified forced return of refugees to their countries of origin be introduced. Effective procedures in order to establish a practice of voluntary return of refugees to their country of origin, or resettlement in countries that have granted them asylum, should be introduced. Personnel working with this should receive necessary training.
- Staff training in visa issuance should be enhanced. Greater emphasis should be put on European practices and information systems.

### 4.3.2. The Ministry of Social Policy

The Ministry of Social Policy (MSP) is responsible for a limited number of migration issues. These are primarily related to labour migration and the protection of migrants' labour rights.

The state policy on labour migration aims to adopt international standards in the area of migration legislation in order to ensure an effective management of migration flows. This would also help to safeguard the social and legal rights of migrant workers, as well as to protect other rights, freedoms and legitimate interests. The policy framework on labour migration is seen as an area of state policy on employment that aims to create a modern and flexible domestic labour market.

In order to enhance the legal and social protection of citizens of Ukraine who work in Council of Europe member states, the European Convention on the Legal Status of Migrant Workers was ratified in March 2007. Ukraine is a party in a number of bilateral agreements on labour and employment with various countries, such as the Russian Federation, Azerbaijan, Belarus, Armenia, Latvia, Moldova, Poland, Portugal, the Czech Republic and several other countries.

**Legislation.** In recent years there has been a debate on how to resolve issues related to labour migration through legislation. The first draft law on the matter, which was signed by Deputy Prime Minister Tihipko, was sent to the International Labour Organization (ILO) in July 2011. The law was quite comprehensive, and it was designed to solve problems of all labour migrants, both immigrants who work in Ukraine, and emigrants (Ukrainian workers abroad).

After a new government was installed in late 2012, a different law "On foreign labour migration"<sup>91</sup> was drafted. This law was derived from paragraph 27 of the Action Plan for implementation of State Migration Policy, which was approved by the decree of the Cabinet of Ministers No. 1345 of 28.12.2012. According to the Ministry, the development of this law "was motivated by the need to improve mechanisms of state regulation in the field of labour migration in order to meet current demands of social and economic development, as well as to align Ukrainian legislation on migration with international norms".

The main purpose of the law was to introduce legal norms and an institutional framework for movement, employment and social protection of Ukrainian citizens working abroad, as well as their families. The bill proposes to legally secure the rights of migrant workers and their families. According to the authors of the law, it provides needed definitions of the terms 'migrant worker' and 'external labour migration' and their variations. It also introduces specific standards of social security for different categories of persons who have worked or will work abroad.

An expert working group was established to revise the bill. Representatives of central bodies of executive power, social partners, research institutions, civil society and international organizations comprise this working group.

The bill has already received critical comments from international organizations and independent experts. According to the ILO representative T. Minenko, this document has nothing to do with the bill that was sent to the ILO headquarters in July 2011. According to the expert on migration law V. Subotenko, "the bill in its current form is unable to solve any problem of labour emigrants. The

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<sup>91</sup>Draft law of Ukraine "On external labour migration" – [http://www.mlsp.gov.ua/labour/control/uk/publish/article?art\\_id=156583&cat\\_id=34946](http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=156583&cat_id=34946)

document does not look consistent, its articles are not related to each other, half of them are declarative, while others are just referential”<sup>92</sup>.

Yet another version of the bill was proposed in 2013 by profile NGOs. In this draft law, in addition to the term ‘migrant worker’, such terms as ‘seasonal worker’ (whose period of employment is restricted in time) and ‘cross-border migrant worker’ (a Ukrainian earning money abroad, but who simultaneously runs a business at home) were introduced.

G. Seleschuk, one of the authors of the draft law, explained that once the law was implemented it would provide ‘economic reintegration’ assistance to migrants who have returned to Ukraine. It would also assist them in finding accommodation and employment. Exemptions from taxation on the workers’ property, as well as on money transfers to Ukraine, have been proposed.

This draft law enables migrant workers to vote not only in person, but also via email. It also obliges the authorities to take the employment history of the migrant into account, and allows for them to remotely contribute to the pension fund. An agreement on childcare has been proposed for migrant workers, whose children remain in Ukraine. This document will allow for a third party in Ukraine to represent the interests of the parents. In particular this concerns issues where the children are travelling abroad<sup>93</sup>.

Issues of legislative support in this policy domain remain unsolved, and the bills are still negotiated on. The Ministry has established a working group to finalize the bills, which included representatives of the Ministries, as well as those civil society experts who introduced the alternative bill<sup>94</sup>.

**Planning of measures.** The MSP is one of the central bodies of executive power in charge of implementing the Action Plan for integration of migrants into the Ukrainian society for 2011-2015, adopted through the decree of the Cabinet of Ministers No. 653-p of 15.06.2011<sup>95</sup>, as well as the Action Plan for integration of refugees and persons in need of subsidiary protection into the Ukrainian society for the period up to 2020 of 22.08.2012<sup>96</sup>.

The measures envisaged in the documents are the following: To provide employment assistance, as well as job training, retraining and advanced training (including via the Internet) of Ukrainian migrants who have returned to Ukraine. This training touches on issues such as employment, entrepreneurship, social security and health care. The document also aims to provide psychological support to Ukrainian migrants who have returned to Ukraine.

The MSP is also in charge of administering the labour rights of refugees, asylum seekers and persons in need of subsidiary protection. The measures undertaken in this sphere are outlined in the Action Plan for integration of refugees and persons in need of subsidiary protection into the Ukrainian society for the period up to 2020.

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<sup>92</sup>Rakurs, 01.04.2013. (in Ukrainian) - <http://ua.racurs.ua/news/8873-zakonoproekt-pro-trudovu-migraciu-ne-zdatnyy-vyrishyty-problemy-emigrantiv-uryst>

<sup>93</sup>The MSP and international experts have prepared two draft laws on labour migration. (in Ukrainian) -

<http://www.rbc.ua/ukr/news/society/minsotspolitiki-i-eksperty-podgotovili-dva-zakonoproekta-11072013083500>

<sup>94</sup>The establishment of an expert working group that work on a draft for the law of Ukraine “On external labour migration” - [http://www.mlsp.gov.ua/labour/control/uk/publish/article?art\\_id=144327&cat\\_id=135355](http://www.mlsp.gov.ua/labour/control/uk/publish/article?art_id=144327&cat_id=135355)

<sup>95</sup>Order of the Cabinet of Ministers No. 653-p of 15 June 2011. -<http://zakon2.rada.gov.ua/laws/show/653-2011-%D1%80>

<sup>96</sup>Order of the Cabinet of Ministers No. 605-p of 22 August 2012.-<http://zakon2.rada.gov.ua/laws/show/605-2012-%D1%80>

According to this Action Plan, the MSP along with the SMS and the State Employment Office of Ukraine must establish cooperation between the TRAC administrations and the relevant employment centers on the launching of mobile employment centers. These are aimed to inform refugees and persons in need of subsidiary protection about available jobs in the region.

It is also stipulated that the MSP along with other agencies in 2014 will develop a program of integration of persons awaiting recognition as refugees or who have applied for subsidiary protection, into the Ukrainian society. This program provides explanations of the Ukrainian society's basic norms, rules of culture. It also includes a basic course of spoken Ukrainian language.

The current legislation equates people with refugee status with citizens of Ukraine when it comes to labour rights. However, asylum seekers whose cases are under consideration are not fully granted all labour and social rights. It has also proven problematic to amend legislation in order to ensure full employment and social rights for asylum seekers and persons in need of subsidiary protection from the moment they apply to migration authorities of Ukraine. Representatives in the Ministry recognize this problem.

**Cooperation with the EU.** The MSP has supported the EU propositions to implement the Global Approach to Migration "Mobility Partnership". This approach aims to normalize and simplify regulated labour migration processes concerning citizens of Ukraine in EU member states. The results of a module sample survey on migration conducted by the State Statistics Service and the M.V. Ptukha Institute for Demography and Social Studies of the NAS of Ukraine were presented in May 2013. This survey was conducted within the framework of the EU-ILO project "Effective Governance of Labour Migration and its Skills Dimensions"<sup>97</sup>, and in the context of the implementation of the Strategy of State Policy on Labour Migration 2012-2015.

**Institutional capacity.** The Department of labour market and employment is the unit responsible for labour migration within the MSP. This means that it addresses issues related to the employment of foreigners and stateless persons, hereunder refugees and asylum seekers. It is also responsible for the adaptation of returning Ukrainian migrants. Issues of migration are also partially assigned of the Department of International Relations and Information Technology. The total number of staff within the Ministry working on issues related to the employment of foreigners and stateless persons is too low. The professional competence of these employees does not always live up to international standards in terms of human rights protection of refugees, asylum seekers and persons in need of subsidiary protection.

In order to establish interagency collaboration and cooperation with the public, the Council of labour migration of citizens of Ukraine under the Cabinet of Ministers was established in 2010. In addition to representatives from the MSP, the Council includes departmental officials who are competent in labour migration, as well as several representatives of various academic institutions and NGOs. However, the representation of NGOs in the Council is disproportionately low. Some organizations that have made real achievements within the field of protecting rights of migrant workers were left out. Even though the current Provision on the Council (amended on 13.10.2011) gives public organizations of migrant workers the right to take part in its sessions regardless of membership, this limited involvement is inadequate. This, in turn, reduces the legitimacy of the Council and restricts its potential.

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<sup>97</sup>The MSP web-site - [http://www.mlsp.gov.ua/control/uk/publish/article?art\\_id=129431](http://www.mlsp.gov.ua/control/uk/publish/article?art_id=129431)

Institutional support in relevant areas of migration policy remains incomplete without the involvement of the other government agencies, whose activities are directed and coordinated by the Cabinet of Ministers via the MSP. This is particularly relevant for the State Employment Office, which is responsible for issuing work permits to foreigners and stateless persons in Ukraine. It also concerns the State Inspection of labour affairs Ukraine, which supervises and controls the employment of foreign nationals by domestic employers.

**Recommendations:**

- Having considered arguments made in the public debate, we recommend that a consolidated law on labour migration that would incorporate internationally recognized advantages of the first version of this project (2011) be sent to the Cabinet of Ministers. It should include major innovations presented in the alternative draft law, which was proposed by civil society organizations in 2013.
- Amendments to the regulatory and legal framework that would grant labour and social rights to asylum seekers and persons applying for subsidiary protection should be made. They should be equivalent to those granted to refugees. We recommend that control procedures that safeguard the labour rights of refugees and people in need of subsidiary protection be introduced.
- The number of personnel working with labour rights of foreign nationals and stateless persons, hereunder refugees and asylum seekers should be increased. Regular training of these employees should be conducted with a special emphasis on compliance with international standards.
- Membership of the Council on Labour Migration of Ukrainian citizens under the Cabinet of Ministers should be offered to a wider range of think-tanks and civil society organizations, in particular to those who have proven their expert potential through their work on a draft law on labour migration.

## 5. INTERAGENCY COOPERATION, COORDINATION AND COLLABORATION

An integrated migration policy has been enabled through new approaches to internal policy. This is a dominating trend in European policy-making. It focuses on systematic coordination and cooperation, as opposed to strictly focusing on the institutional capacity of dispersed individual agencies.

To provide quality management of migration processes was declared an area of priority, and this is now widely seen as an important element in the further development of relations between Ukraine and the European Union. This involves a further development of international cooperation in countering illegal migration, preventing illegal trafficking of arms and drugs, countering terrorism, crime and human trafficking, as well as to protect the human rights of refugees and asylum seekers.

Ukraine has already adopted horizontal cooperation and coordination, which is reflected in its current approach to migration policy. However, at the moment the implementation of these practices is on a basic level. The legal and institutional frame work regulating this cooperation should be improved.

### 5.1. Legal and regulatory framework

The legal and regulatory framework for interagency cooperation on migration is generally limited to acts with lower legal status, such as departmental orders.

The main body of interagency cooperation on migration is the Temporary Interdepartmental Commission, which was formed by the Order of the SBGS No. 142 of 23.12.11.

Furthermore, the order of the SMS No. 143 of 23.12.2011 established a Coordination Council on processing the Institutional Reform Plan for Migration Policy. The order of the SMS No. 144 of 23.12.2011 established a working group on the implementation of the Comprehensive Institution Building Program.

To ensure the coordination of central executive bodies operating under the jurisdiction of the MIA, the Order of interaction between the MIA and the central executive bodies was introduced (the Order of the MIA No. 304 of 28.03.13, registered by the Ministry of Justice on 18.04.13, No. 627/23159). This document describes how the MIA, the SBGS and the SMS cooperate when they draft and implement public policy in their respective areas.

The information exchange is regulated by the Joint Decree of the SBGS, the MIA, the MFA, the Ministry of Infrastructure, the Ministry of Finance, the SSU and the National Agency of Ukraine on Civil Service No. 753/423/737/288/1283/392/30 of 12.10.2011 (The decree "On approval of the Order of information exchange between the subjects of integrated border management"<sup>98</sup>).

On 26 September 2013 the Order of the MIA No. 920 "On approval of the Procedure of arranging access to information resources during information interaction between the Ministry of Internal Affairs of Ukraine, the SMS and the SBGS of Ukraine"<sup>99</sup> was issued.

In 2012, the Cabinet of Ministers approved the Concept of creating a unified information and analytical system of migration management<sup>100</sup>.

<sup>98</sup> <http://zakon3.rada.gov.ua/laws/show/z1209-11>

<sup>99</sup> <http://zakon4.rada.gov.ua/laws/show/z1771-13>

<sup>100</sup> The decree of the Cabinet of Ministers of Ukraine No. 870 of 07.11.2012.

The aim of this concept is to design and establish an information-processing system, which would simplify processes in the SMS. Such a system would also facilitate efficient information exchange with other government agencies implementing state migration policy (immigration and emigration).

**Recommendations:**

- We recommend that the status of legal acts that regulate interagency communication, coordination and cooperation in the field of migration policy be raised. The adoption of a comprehensive Decree of the Cabinet of Ministers on interagency coordination and cooperation in the field of migration policy, which covers all the essentials of such an interaction, should be considered. This decree could be an integrated part of a new Action Plan on the implementation of the State Migration Policy Concept.
- We recommend that an inventory count of existing orders be conducted. This should help optimize cooperation and coordination between all involved agencies. It will also help to avoid a duplication of functions between coordinating bodies.

## 5.2. Institutional framework and current practice

The Temporary Interdepartmental Commission was established by the Order of the SMS No. 142 of 23.12.11. It is responsible for defining and implementing state migration policy, and is comprised of 13 senior officials from the executive branch.

This Commission is not able to effectively monitor, evaluate, implement and control migration policy. In fact, it is difficult to consider it an institution per se given its scope of responsibility and the procedures and practices by which it functions. Moreover, non-governmental organizations are not represented in the body.

To strengthen the status and authority of the Commission may facilitate a more active participation of the responsible authorities, in particular the MSP, the Ministry of Health and the Ministry of Education. This status upgrade is necessary as the Commission primarily was designed as a consultative/advisory body subjected to a central executive authority as stipulated in the Law of Ukraine "On the central bodies of executive power".

In order to organize the work of the Interdepartmental Commission, a Coordinating Council on processing the Institutional Reform Plan for Migration Policy was established through the order of the SMS No. 143 of 23.12.2011<sup>101</sup>. An implementation working group<sup>102</sup> was set up for the Comprehensive Institution Building Program.

The Coordinating Council and the implementation working group were created in order to support the implementation of the Memorandum of Understanding between Ukraine and the European Commission on the Framework Document of the Comprehensive Institution Building Program, which was signed on 13.10.2010.

The coordination tasks within the sphere of migration policy are today not fully attended to. The existence of three interagency bodies with an almost identical status of 'a consultative, advisory or other subsidiary body formed by the central body of executive power' is particularly problematic. This leaves the mechanisms of interaction between the Temporary Commission and the Coordinating Council unregulated and unclear.

The Cabinet of Ministers established the Interagency Coordinating Council on Migration in 2005. It was then chaired by the Deputy Prime Minister, and functioned as a permanent advisory body. This council was composed of Deputy Heads of the competent state agencies.

Considering the above mentioned problems regarding the implementation of inter-institutional coordination processes, the authors of this study find it necessary to rearrange this council. It should not only be given a new design, it should be made a permanent body chaired by the Head of the SMS or the profile Deputy Minister of Interior. The Cabinet of Ministers should approve a topical Decree on its provision, structure at the appropriate level (not lower than Heads of Departments), and appoint the SMS as its secretariat. The principles and main tasks of this body should focus on interagency collaboration, as well as the planning and coordination of development and implementation of a coherent policy in this domain.

Sector budget support from the EU in this area could possibly be an effective complementary mechanism in the implementation and monitoring of border management policy. This is supported through the Agreement on financing of the program "Support for Border Management

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<sup>101</sup>The Action Plan for institutional capacity development of the SMS (order of the SMS No. 11 of 30.05.11).

<sup>102</sup>This working group also included representatives of the concerned state institutions, the EU Delegation to Ukraine and international organizations (the International Organization for Migration, UNHCR and the Danish Refugee Council).

Sector Policy in Ukraine” and the planned program on migration, which was signed in December 2013<sup>103</sup>.

According to the program “Support for Border Management Sector Policy in Ukraine”<sup>104</sup>, regular monitoring of the program performance in accordance with program indicators will be carried out by the Joint Monitoring Group (JMG). This group will be created by the SBGS and the SMS. The JMG will hold meetings on a regular basis in order to develop reforms in border management, and to monitor results in accordance with performance indicators. The JMG must meet at least once a year in order to develop policies, and at least once every three months in order to address technical issues. The SBGSU and the SMSU will jointly chair the meetings of the JMG. The JMG will include representatives of the following institutions: The SBGS, the Ministry of Economic Development and Trade, the MFA, the Ministry of Finance, the Ministry of Justice, the MIA, the SMS, the Ministry of Infrastructure, the Secretariat of the Cabinet of Ministers, the European Business Association, the EU Border Assistance Mission to Moldova and Ukraine (EUBAM), the concerned donor organizations, and civil society representatives when found appropriate. The European Commission will co-chair the JMG meetings.

The authors of this study expect that a mechanism of sector budget support will be established in the area of migration<sup>105</sup>.

However, the participation of civil society actors in the development and evaluation of migration policy should be more systematic. Human rights organizations, think-tanks and organizations that provide consulting and advocacy services, contribute to combating human trafficking and other crimes, as well as to monitoring migration and foreign trade.

The current composition of the Public Council under the SMS largely excludes NGOs that perform independent quality assessments. This shortcoming should be corrected by updating the membership lists of the PC SMS<sup>106</sup>.

Having considered the deficit of expertise in the Public Council, the authors of this study propose to change the composition of the Scientific-Expert Council by including more human rights activists and experts on international law and migration management.

Practices for coordination, collaboration and cooperation in migration policy are only at an initial stage of implementation. In recent years progress has been made, particularly within the framework of the VLAP, but it is premature to speak of an effective interagency cooperation in the field of migration policy.

#### *Interaction and cooperation with the MIA*

As already mentioned, the order of interaction of the MIA with central bodies of executive power subordinate to the Cabinet of Ministers, prescribes the Minister of Internal Affairs to coordinate central bodies of executive power (the Order of the MIA No. 304 of 28.03.13 No. 304).

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<sup>103</sup> On 18.12.13, the Government adopted the order “On signing the Agreement on financial support for the program “Support to Ukraine in managing migration processes and granting asylum” (No. 1023). The agreement was signed on the 24th of December the same year.

<sup>104</sup> The Agreement on financial support for the program “Support for border management sector policy in Ukraine” [http://zakon4.rada.gov.ua/laws/show/994\\_a71](http://zakon4.rada.gov.ua/laws/show/994_a71)

<sup>105</sup> Similarly, one can envisage a corresponding Oversight Committee, which would include representatives of all concerned parties, including the project’s executives and civil society organizations. A separate Committee may be created in order to implement Twinning projects and technical assistance programs.

<sup>106</sup> <http://dmsu.gov.ua/zv-iazky-z-hromadskistiu/hromadska-rada>

The provisions of the order aim at ensuring coherence and integrity in the planning of migration policy.

The authors of this study believe that it is important to more clearly delegate authority, tasks and functions between the MIA and the SMS, as the MIA consistently direct the work of the SMS. It is therefore highly advisable to reinforce the autonomy of the SMS in its operational activities, as well as to reduce the excessive control of on-going activities in the SMS by the MIA.

Administrative reforms introduced by the President of Ukraine (on the ministry as a policy-making body and civil services as a body for policy implementation), should be fully implemented in order to reach the goal of a more autonomous SMS. The Order of interaction should be complemented with these conceptual approaches.

This also means that there is a need to strengthen the institutional capacity of the respective structural units that supervise the Minister's work in the sphere of migration within the framework of the Order of interaction. In particular, it has been proposed to strengthen the policy-making capacity. This calls for technical methods and effective approaches to data collection, policy analysis, shaping priorities, performance evaluation capacity, and to monitor performance indicators. However, this should be based not exclusively on a staff increase. New approaches and methods should be nested in the ministry as a policy-making body.

This specific problem is horizontal in its nature. To a large extent it applies to the development of public administration in Ukraine in general.

#### **Recommendations:**

- The implementation of the Order on access to information resources in the interaction between the MIA, the SMS and the SBGS should be ensured. This includes the appointment of authorized officials to the MIA, the SMS and the SBGS and their territorial bodies. User access should correspond with the respective professional duty. Requests to access the information resources should be logged.
- Powers, tasks, functions and instruments should be clearly divided between the MIA and the SMS. The Order of interaction should be further developed. One option would be to introduce a separate unit in the MIA that focuses exclusively on this function.
- Duplication of functions between coordinating bodies should be eliminated. Either merging or clearly separating them will fulfil this function. In particular, the objectives and functions of the existing bodies should be reconciled. The operation of the Interagency Coordinating Council on Migration, which was chaired by the Head of the SMS or the profile Deputy Minister of Interior, should be restored in a slightly modified form. This can be achieved through the approval of a government resolution on its composition. The SMS should be the secretariat of this body.
- We recommend that representation of leading NGOs in the Public Council under the SMS be ensured. This should be NGOs with experience in independent assessment of migration policy.
- The Scientific-Expert Councils under the SMS should be restructured. Broadening the participation of human rights activists, and experts on migration management practices that meet international standards, would contribute to this.

### 5.3. Administrative procedures, hereunder information exchange

It is important to clarify procedures of interaction and information exchange in order to ensure proper interagency cooperation.

Inter-institutional cooperation between bodies of executive power is often characterized as weak in this sphere. So is coordination and policy implementation assessment.

#### *Information exchange, Migration profile and the 'Arkan' system*

As already mentioned, the Cabinet of Ministers approved<sup>107</sup> the Concept of establishing a unified information-analytical system of migration management. This concept will be implemented in three stages from 2013-2015. As the first implementation phase continues, the terms of reference for such a system are being designed.

The methodology of risk analysis for combating illegal migration<sup>108</sup> determines how statistical and analytical information exchange between the different working units should be carried out. These units are the MIA, the MSP, the MFA, the SBGS, the SMS, the Foreign Intelligence Service and the Security Service of Ukraine. This methodology facilitates joint analytical studies of illegal migration in Ukraine. Such information exchange should according to this methodology have been carried out by a newly established think-tank (established in 2011). However, coordinating functions were passed to the police department of migration control<sup>109</sup>.

The joint decree of the Administration of the SBGS, the MIA, the MFA, the Ministry of Infrastructure, the Ministry of Finance, the SSU and the National Agency of Ukraine on Civil Service No. 753/423/737/288/1283/392/30 of 12.10.2011 "On approval of the Order of information exchange between the subjects of integrated border management" also proposes to establish an analytical center. Some of the responsibilities of involved agencies are identical. There should be a clear division of responsibility, mechanisms of interaction and cooperation between the responsible bodies.

The SMS updates the Migration Profile of Ukraine based on information provided by public authorities. This information is published on the official site of the SMS after it has been approved.

However, further steps in legislation regulation should be taken in this area. Work within this information-analytical system, hereunder the work of the contact center, should be better regulated.

In order to improve the quality of data collection for the Migration Profile, intradepartmental procedures in the SMS should be studied in detail. Effective interaction mechanisms between the SMS and other state institutions should be facilitated. This includes strengthening the coordinating role of the SMS in this sphere. Detailed requirements and standards should be established to ensure reliability, analytical accuracy of data, consistency in data collection, as well as transparency and adequacy of methodology (see Section 2.1.).

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<sup>107</sup>The order of the Cabinet of Ministers of Ukraine No. 870 of 07.11.2012.

<sup>108</sup>The joint order of the MIA, MFA, MSP, the Administration of the SBGS, The Foreign Intelligence Service and the SSU No. 362/156/269/463/170/261 of 30.06.2011, registered by the Ministry of Justice on 19 July 2011, No. 891/19629.

<sup>109</sup>See separate comment on the Militia Unit for Migration Control above (Ch. 4).

### *Using the 'Arkan' system*

The interagency information and telecommunication system 'Arkan', which controls persons, vehicles and goods that cross the state border, has been introduced. This system links agencies such as the SBGS, the SMS, the SSU, the MIA, the MFA, the Ministry of Revenue<sup>110</sup>, the FISU<sup>111</sup> and the MSP together.

This system is designed to provide information to the central bodies of executive power on how to prevent persons who are not legally sanctioned to enter the country from entering the territory of Ukraine. It also applies to persons who are temporarily restricted to leave Ukraine, hereunder those restricted by a law enforcement agency. The system also helps to detect people who are fleeing from inquiry, investigation and trial, or who try to avoid criminal prosecution. The system is also designed to stop activities related to illegal trafficking of migrants to Ukraine or transit through its territory. The system also aims to ensure compliance with migration legislation for foreigners and stateless persons, as well as to perform other law enforcement tasks.

The 'Arkan' system contributes to updating databases of the central bodies of executive power. It provides information, assists bilateral communication between agencies, ensures an electronic workflow and provides differentiated information access. Although the system is operative, it is today mainly used by high-ranking officials in the responsible central bodies of executive power. It is true that the information entered into the system is available also to regional and local units, but there are some restrictions. This information is locked within a single executive agency. For instance, this means that the information entered into the system by the SSU remains unavailable to structures within the Customs, even if they belong to the same local unit.

### *Administrative supervision and control of public policy implementation*

In order to establish interagency communication on the enforcement of migration legislation in accordance with the Action Plan for implementation, a Procedure document has been approved<sup>112</sup>. This document grants the SMS a coordinating role in preparing information on the implementation process of the state migration policy, as well as in the protection of national security and national interests of Ukraine in the field of migration. It also grants the SMS a role in complying with legislation in this area, and in executing effective migration management and combating illegal migration. Action programs such as 'Migrant' (the SMS), 'Border' (the SBGS), 'Student' (the MES) and 'Labour Migration' (State Inspection of Ukraine in Labour Affairs) etc. are in focus<sup>113</sup>. According to the Procedure document, the involved agencies must submit information to the SMS on completed actions and programs. The SMS summarizes this information and submits a report to the Cabinet of Ministers.

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<sup>110</sup>The State Tax Service and the State Customs Service used to be connected to the system.

<sup>111</sup>The Foreign Intelligence Service of Ukraine

<sup>112</sup>The joint order of the MIA, the MSP and the Ministry of Education and Science No. 850/536/1226 of 04.09.2013 "On approval of measures for supervising and enforcing migration legislation".

<sup>113</sup>The aforementioned measures essentially involve the Ministry of Interior, the SMS, and the Security Service of Ukraine. Depending on the initiative of the central body of executive authority responsible for carrying out the measures, any other concerned central bodies of executive power can be involved in it (upon consent).

Since these measures are currently at an implementation stage, it is necessary to monitor their adequacy and effectiveness, as well as to perform quality and operational capacity assessment. This should be done in autumn 2014. Changes and amendments to the Procedure and the Action Plan should be made if found necessary.

#### *Horizontal problems in management*

In the opinion of the authors of this study, the current problems are largely a direct outcome of the existing system of interaction between the central bodies of executive power.

It is necessary to make improvements in such areas as administrative and procedural legislation, which implies the adoption and enforcement of the Administrative Procedural Code of Ukraine and other related legislation in accordance with EU principles and international 'best practices'. Public service is also an area with large potential for improvements. This implies the adoption and enforcement of the new Law of Ukraine "On Civil Service", which would introduce a system guaranteeing professional civil service. This would coincide with European practices.

In order to solve current problems, it is necessary to ensure the full implementation of the administrative reform and the reform of civil service. This includes the adoption of the Administrative Procedure Code and a further improvement of civil service legislation. The recommendations of the SIGMA Program<sup>114</sup> should be taken into account.

In this context, it is recommended that the EU Sector Budget Support Program for civil service and administrative and procedural legislation<sup>115</sup> for Ukraine be renewed.

#### *Horizontal issues in funding*

The funding in state migration policy should be analyzed not only based on the size of these funds, but also in light of medium-term budget planning in government agencies. This should include the identification of a conceptual framework, as well as the use of a program-oriented method of strategic planning at the ministerial level and in other financial managing units. It is necessary to ensure a full fledged, efficient and fast implementation of the Strategy for Improvement of Public Finance Management, as well as the Action Plan for its implementation. These documents were approved through the order of the Cabinet of Ministers No. 774 of 01.08.2013.

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<sup>114</sup>See: <http://www.center.gov.ua/pro-tsentr/proekti/sigma>

<sup>115</sup>Ukraine has lost its right to use 70 million Euro, which the EU has provided for reforms. - <http://dt.ua/economics/ukrayina-vtratila-pravo-vikoristovuvati-70-mln-yevro-vidilenih-yes-na-reformi-124970.html>

## Recommendations:

- We recommend that laws and amendments to existing laws be further developed in order to define and refine the scope and structure of collected data, the suppliers (sources) and consumers of this information, the control of data access, as well as measures to implement requirements to the protection of personal data. In particular, this concerns personally sensitive information.
- Research on the optimization of a single interaction information system, its structure, procedures of interaction between institutions, compatibility and links to other databases and registries, should be conducted.
- Results and achievements should be evaluated. Further steps in regulating legislation and the work of the contact analytical centers should be taken in order to ensure the exchange of statistical and analytical information on how to combat illegal migration in Ukraine.
- The implementation of the Joint Order of the MIA, the MSP and the Ministry of Education No. 850/536/1226 of 04.09.2013 'On approval of the measures for supervision and enforcement of legislation on migration' should be evaluated. Any needs for further actions and practical steps must be identified.
- The renewal of the Program for Sector Budget Support to the civil service and the administrative and procedural legislation in Ukraine should be guaranteed.
- The implementation of the Strategy for Improvement of Public Finance Management and the Action Plan for its implementation, which were approved by the Cabinet of Ministers on 08.01.2013(Order No. 774), should be ensured.

*In order to improve the data collection for the migration profile, we recommend to:*

- Establish effective communication procedures within the SMS (among its structural units),as well as with other state institutions;
- Ensure reliability, analytical validity of the data, consistent data collection, transparency and adequacy of the methodology;
- Strengthen the coordinating role of the SMS in the preparation of the annual migration profile;
- Look to recommendations offered in the study conducted by the IOM on how to increase the capacity of collection, dissemination, storage, and analysis of migration data in Ukraine.

## 6. CONCLUSIONS: GAPS IN THE MIGRATION POLICY OF UKRAINE AND RECOMMENDATIONS ON HOW TO OVERCOME THEM

### Gap 1.

**Asystematic approach to the analysis of various migration processes in Ukraine, and their dynamics, is lacking. Modern assessment methodologies are introduced slowly. As a result, Ukraine is overloaded with unsubstantiated estimates and wrong conclusions on the social consequences of migration. This has the potential to provoke growing hostility towards migrants.**

#### **How to overcome:**

The scope of illegal migration should be calculated through the use of modern methodologies. More specifically, it is recommended to take modern approaches developed by European professionals in this field. Such methods as the estimation of the 'hidden population', the evaluation of sedentarization and multiplication of international migrants through multiplier estimation techniques, have long been used in the EU and should be introduced also in Ukraine.

It is important to differentiate between the calculation of illegal migration based on border crossing statistics, and illegal labour migration and illegal employment. This is rigorously described in a study conducted by Michael Jandl.

Effective methods of analysis concerning hate crime and aggression, particularly towards migrants, should be introduced. The frequency of such crimes should be estimated using internationally recognized methodologies, such as those developed by OSCE/ODIHR<sup>116</sup>. Reference is here made to their annual topical reports 'Hate Crimes in the OSCE Region', and the National Center for Victims of Crime (US)<sup>117</sup>.

### Gap 2.

**The modernization of agencies responsible for the implementation of migration policy, as well as modern practices that meet European standards, is incomplete. The institutional capacity is too low to provide required services, and the quality of those offered is poor. Ukraine does in this field not live up to its international commitments. This is particularly evident in their policy on refugees, asylum seekers, etc.**

#### **How to overcome?**

*The SMS:*

The institutional transformation of the SMS into a body responsible for designing and implementing a comprehensive state migration policy must be completed. In particular, the Concept of State Migration Policy should be reviewed and a new Action Plan drafted. This should envisage the organizational development needed in order to detect shortcomings and organizational gaps. This is particularly important in processes related to refugees, asylum seekers

<sup>116</sup> The latest published report: "Hate crimes in the OSCE Region – Incidents and Responses. Annual Report for 2012 -

<http://www.osce.org/odihr/108395>

<sup>117</sup> <http://www.victimsofcrime.org/>

and return policies. It should also lie as a foundation for strategic planning, as well as to introduce monitoring and controlling procedures.

The number of officials who work with the implementation of migration legislation should be increased. More specifically, the number officials assessing applications for refugee status, asylum and subsidiary protection, should be raised.

The number of employees in territorial bodies should also be raised in order to ensure that the SMS fulfils all of its functions.

Fixed prices for administrative services in Ukraine regardless of area of residence (including passports issuance) should be ensured. The 'one-stop shop' principle should also be broadly introduced.

#### *The SBGS:*

A continued reformation of the SBGS in order to consolidate it fully as a non-military law enforcement body should be ensured. However, it is also necessary to ensure that the service meets demands to carry out effective anti-terrorist operations along the border when needed. Such a scenario has materialized through the on-going military conflict in Eastern Ukraine.

Border guard service divisions should be reformed into local law enforcement agencies with certain responsibilities in public administration. They should be granted more autonomy in terms of decision-making and some powers should be transferred from higher authorities to a local level. This will result in a further decentralization of the governing structures in the SBGS. It will also provide bigger opportunities for interagency coordination and international cooperation, which will ensure effective law enforcement operations at the border.

The infrastructure at state border checkpoints should be further developed in order to efficiently handle the increasing movement of people and vehicles across the border. The policy in this area should aim at balancing between effective control and maximal simplification of procedures.

Best practices that significantly reduce border crossing time should be adopted. The 'one-stop shop' practice should be implemented. This implementation should be based on experiences gained at the Ukraine-Poland border during the Euro-2012.

SBGS units should be provided with better and updated technical equipment. Lessons learned during the on-going military conflict in Eastern Ukraine should be taken into careful consideration. The infrastructure and available equipment at stationary units along the border should be strengthened. First and foremost this concerns the border crossing points to Russia.

However, additional efforts should also be made to establish mobile SBGS units. These efforts should target the SBGS operation management systems. Additionally, modern technical tools should be provided for these mobile units.

With focus on certain migration policy components:

- *Concerning voluntary return, immigration amnesty and integration of migrants:*

The regulatory, procedural, organizational and financial components of the relevant policies should be reviewed in order to make voluntary return an option available to the highest possible number of people. More specifically, information about voluntary return should be provided to the target

audience. This information should touch upon all relevant procedures, as well as their financial and organizational aspects. More professionals should be trained in order to spread this information. Sufficient funding for this migration policy area should be ensured over the state budget.

The Action Plan for integration of immigrants and reintegration of Ukrainian migrants in Ukraine for the period 2011-2015 should be revised and amended. This should be done in order to better facilitate the reintegration of Ukrainian citizens. A clear delimitation of authority should be carried out, and the coordination between the SMS and the MSP in this domain should be improved. We recommend that measurable indicators of achievements in reintegration be introduced. Priorities on national and regional levels should be more clearly identified, and the necessary funding should be provided.

Mechanisms developed on the basis of international experience should be introduced. We also suggest that migration amnesty be offered in Ukraine, and draft projects on its implementation should be drafted. This particularly concerns regular migration amnesty.

- *Concerning involuntary return:*

We recommend that requirements to the information collection concerning the overall situation in countries of origin of refugees and asylum seekers be made stricter. Special emphasis should be put on protection of basic human rights. Staff training in this field should meet international standards.

Effective safeguards that preventun warranted forced returns of refugees to their countries of origin should be created. Procedures that facilitate voluntary return of refugees to their countries of origin, or resettlement in countries that have granted them asylum, should be established.

- *Concerning applicants for refugee status, asylum or subsidiary protection:*

We suggest that necessary amendments be made to the current legislation in order to ensure that decisions in refugee status applications is made on the basis of accurate and up-to-date information on the situation in the applicant's country of origin. A designated government body should be assigned the responsibility for this data collection task.

Health care regulations should be brought in accord with the Law of Ukraine "On refugees and persons in need of temporary protection" in order to ensure that refugees and asylum seekers receive free medical care in Ukraine, equal to that available to citizens of Ukraine.

The recommendations presented in the UNHCR report 'Ukraine as a country of asylum' should be implemented. Observations on the situation of asylum-seekers and refugees in Ukraine', which was published in July 2013<sup>118</sup>, should be adopted by Ukraine.

- *Concerning internally displaced persons (IDPs):*

A timely implementation of the Law "On providing rights and freedoms for the internally displaced persons", which was adopted by the Verkhovna Rada on 20 October 2014, should be ensured. Sufficient funding should be provided over the 2015 state budget in order to implement this law.

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<sup>118</sup>"Ukraine as a country of asylum. Observations on the situation of asylum-seekers and refugees in Ukraine", UNHCR, Geneva, 2013 –

[http://unhcr.org.ua/attachments/article/338/2013%20Ukraine\\_country\\_paper\\_UKR.pdf](http://unhcr.org.ua/attachments/article/338/2013%20Ukraine_country_paper_UKR.pdf)

Relevant legal acts aimed to implement the aforementioned law should be passed. In particular, the relevant responsibilities in this domain should be distributed between the Ministry of Social Policy, the SMS and the MIA.

We recommend that instruments of partnership between official and private actors be introduced within the sphere of providing temporary housing and other forms of help to internally displaced persons.

- *Concerning readmission:*

The work on developing implementation protocols and readmission agreements should be continued. Special emphasis should be put on migration risk countries.

A comprehensive assessment of the implementation of existing agreements on readmission should be conducted. 'Readmission chains' used to return a migrant to his or her country of origin should be an area of special focus, and attempts should be made to trace these chains. Based on the conclusions of such an assessment, amendments to the agreements in question should be made in those cases where the proposed provisions and mechanisms do not fully respond to the outlined objectives.

The regular work of the Joint Committee of Experts on readmission between the EU and Ukraine should be renewed. This Committee should draft and adopt amendments and additions to the Agreement on the readmission of persons between the European Community and Ukraine.

- *Concerning visa issuance:*

The document requirements for obtaining a Ukrainian visa should be simplified. In particular; we recommend that registered Ukrainian legal entities should be allowed to issue visa invitations to low- or medium migration risk foreign citizens without certification of an SMS territorial unit. The visa application process for citizens with high migration risks should also be simplified through the introduction of an online electronic application form.

The cost of entry visas to Ukraine should be lowered. Consular fees should reflect European practices and cost from 35-60 Euros regardless of visa duration and number of entries.

We recommend that the legal status of the long-term visa (type D) be altered by giving its holders the right to enter and exit the territory of Ukraine freely throughout the entire duration of its validity. This visa should be issued not for 45 days, but for the entire period of stay.

### **Gap 3.**

**Instruments of effective policy planning, control of policy implementation, monitoring and accountability are lacking. The implementation of planned measures does not always achieve its goals. The state budget does not sufficiently take into account all measures and goals that have been laid out in medium-term concept notes.**

#### **How to overcome?**

A new Concept of state migration policy should be drafted. The flaws of the current document should be carefully considered, and the new one should take previous experiences into consideration. The current Concept is largely declarative, and is insufficiently linked to problems, goals and policy planning (particularly budget planning). We recommend that an interagency work

group be established to draft a new version of the document. This should include representatives from the MIA, the SMS, the SBGS, the MSP, the MFA, the Presidential Administration, the NSDCU Secretariat, the SSU and, possibly, other government bodies. Non-governmental representatives should also be included.

Based on implementation results of the Action Plan on implementation of the Concept of State Migration Policy in 2013, we recommend that a new Action Plan be developed already in 2014. This document should carefully take into consideration the achievements and failures of previous planning documents. It should aim to minimize formalism, and to focus on specificity and consistency, as well as attainability and measurability of the actual results.

The institutional level of policy planning in the domain of migration policy should be raised to the National Security and Defence Council of Ukraine. We recommend that the function of drafting strategic action plans in migration policy be transferred to the NSDCU. This particularly concerns drafting of amendments to both framework and target legislation in migration policy.

Issues of financial and institutional support should be solved. This needs to be done in order to ensure a smooth operation of those systems designated to detecting illegal migrants. A clear division and coordination of functions between the SMS and the MIA (militia) should be made.

Approaches to budget planning in the SMS should be reviewed. More specifically, we recommend that a more detailed list of the state budget expenses be introduced. Separate budget programs that provide financial support to policies on refugees, asylum seekers, subsidiary protection, integration and reintegration of migrants, health care and counter human trafficking should be established. We also recommend that the planning of relevant articles in the state budget be more interconnected with international aid programs.

Priorities, activities and expected results related to the use of the Program of sector budget support for migration, should be identified in order to provide potential technical assistance and to strengthen the capacity of the SMS.

It is important that the SMS takes active part in the implementation of the Strategy for Development of the Public Financial Management System and the Action Plan for its implementation.

The current Concept of integrated border management and its corresponding Action Plan should be evaluated. The conclusions of this evaluation should lead to the introduction of necessary amendments. Experiences gained and lessons learned should also help to develop a new action plan. Special attention should be paid to the creation of 'virtual centers' that collect and analyze information. This was envisaged in the Action Plan. The issue of creating a coordinating body for the implementation of IBM should be put on the agenda.

We recommend that cost optimization methods previously analyzed and adapted to the SBGS's needs in poor financing conditions be applied more widely. These methods are based on a complex 'cost – utility' index.

#### Gap 4.

**There is a lack of qualified personnel. The relation between staff recruitment, training and retraining practices on the one hand, and the current tasks and standards of migration policy on the other, is too weak. This primarily concerns the SMS and SBGS staff. There are high levels of staff corruption. The systems that handle feedback (such as corruption allegations) from people who receive state services are poorly organized.**

#### How to overcome?

Additional training courses and materials should be introduced in the following areas:

- International standards (hereunder EU standards) in migration management (for mid-level civil servants who work with foreigners).
- Safe handling of biometric documents and detection of forged documents required for passport issuance (for junior staff who issue travel documents).

Trainings in these fields should comply with international standards, and not only with the legislation of Ukraine.

The qualification requirements for personnel should be strengthened. Decisive weight should be put on communication experience with foreign partners, international experience and experience with human rights protection, and knowledge of foreign languages.

Additional training courses and corresponding training material should be introduced in the following areas:

- International standards (hereunder EU standards) in migration management (for mid-level civil servants who work with foreigners).
- Safe handling of biometric documents and detection of forged documents required for passport issuance (for junior staff who issue travel documents).

The practical coordination between relevant government programs and possible educational projects under programs of international aid should be strengthened.

Criteria and objectives of the third block of the EU-Ukraine Action Plan for Visa Liberalisation should be fully implemented. The recommendations of the Group of States against Corruption and the Istanbul Action Plan of the Organization for Economic Cooperation and Development must also be taken into account.

We recommend that the training period for mid-level personnel on modern principles, terms and procedures of international cooperation be extended.

International cooperation tools (training, education) should be adopted more widely. There should also be a bigger focus on human rights issues in the implementation of migration policy. Corresponding changes need to be made in training programs and courses.

Staff instructions should be updated, and special emphasis should be put on clear terms of reference, transparent criteria for evaluation and career advancement.

We recommend that online learning system for all categories of military personnel be established by applying the 'training for trainers' methodology, cartoon approaches to teaching and learning in the workplace. It is necessary to differentiate between junior staff, 'mid-carrier' and 'advanced' training.

#### *The SBGS:*

The training program for the SBGS military departments should be expanded, and special emphasis should be put on working with local communities, local media and public relations.

It is important to develop and implement new criteria that define professional competence of candidates for service and training. It is also important to optimize professional and psychological selection procedures when selecting new candidates. A competence-based human resources management system should be implemented, and this should include recruitment, training, career guidance and assessment.

The professional training component of the SBGS staff should be strengthened in order to meet international standards, as well as to comply with the Ukrainian legislation on refugees, asylum seekers and persons in need of subsidiary protection. Specialists in human rights protection and experts in international best practices should be involved in this training.

Border control culture should be continuously improved and brought into strict compliance with departmental standards. A system of independent border control culture audit should be established for this purpose.

Feedback practices that collect and systemize comments on the SBGS's work by people who cross the border and by the local communities should be introduced. It is necessary to modify practices based on these comments.

We recommend that methods developed by international professionals be applied more widely. This particularly concerns the classification of corruption categories in the border services. It should be divided into categories such as 'organized crime related corruption', 'petty corruption' and 'administrative/bureaucratic corruption'. This practice is outlined in a study by the European agency for management of external borders of the EU member states FRONTEX. Training programs for target groups of public officials should be adjusted accordingly.

We recommend that modern technologies aimed at reducing corruption in border guard services be applied more widely. FRONTEX has made several proposals in this regard, such as 'integrity tests', electronic surveillance (video-monitoring), and rotation of personnel.

It is necessary to work more actively with civil society organizations and the Office of the Ukrainian Parliament Commissioner for Human Rights on the whole spectrum of human rights issues that arise at the border. A system of independent audit procedures of border control should be introduced.

#### *The MFA and visa issuing staff:*

Training for visa issuing staff that would essentially include training in European practices and information systems (Schengen Information System, the EU Visa Information System, national systems) should be introduced.

Personnel training that meets international standards in the sphere of information collection about refugees' and asylum seekers' countries of origin should be conducted. Special emphasis should be put on the protection of basic human rights.

## Gap 5.

**International coordination and cooperation is insufficient among key agencies responsible for migration policy.**

### How to overcome?

#### *All involved bodies:*

The training of mid-level personnel should be extended in time, and sufficient funding must be provided. Modern principles, terms and procedures of international cooperation should be an essential part of it.

We recommend that qualification requirements for personnel be raised. Emphasis should be put on communication experience with foreign partners, international experience, experience in human rights protection, and, finally, knowledge of foreign languages.

A regular training program involving migration services of the EU and the Western Balkans (which have recent experience in implementing best practices in migration management), as well as the EU member states that borders to Ukraine, should be introduced.

#### *The SBGS:*

Joint patrolling of the Ukraine-Hungary, Ukraine-Romania and Ukraine-Slovakia borders should be established. Positive experiences of border cooperation with Hungary and Slovakia should be used also in the border cooperation with Romania. Coordinated patrolling of the Ukraine-Belarus border should be implemented.

We recommend that the effectiveness of counselling centers at the borders with neighbouring countries (the Russian Federation, Slovakia, Hungary, Belarus and Moldova) be evaluated in order to increase the task range for the information exchange between law enforcement agencies.

The intensity and involvement of personnel in international operations, risk assessment and joint analytical work coordinated by FRONTEX should be increased.

The open exchange of statistical and analytical information between border agencies of neighbouring and partner countries should be extended. Furthermore, the mechanisms of joint border risk analysis should be enhanced in accordance with reached agreements. Experiences from the Ukraine-Moldova joint reports on cooperation with the EUBAM, as well as the Ukraine-Poland joint risk assessments prior to the Euro-2012, should be employed.

We recommend that various forms of international cooperation be more widely employed, such as the introduction of SMS Liaison Offices in diplomatic missions abroad. It is important to actively cooperate with EU officials in Kyiv who work with migration issues and border security.

The 'one-stop shop' practice should be permanently introduced along the border. It should be made a priority in international cooperation in order to create trust and ensure an effective use of resources (see section 2.2).

## **Gap 6.**

**The policies on preventing illegal migration and on regulating legal labour migration are not sufficiently linked together. A labour rights protection system for migrants is lacking.**

### **How to overcome?**

Based on arguments promoted in the public debate, we recommend that a consolidated law on labour migration be submitted to the Cabinet of Ministers. This should take into account the internationally recognized advantages of the first governmental version of this project (2011). It should also include major positive innovations of the alternative draft law proposed by civil society organizations in 2013.

Amendments to the regulatory and legal framework should be prepared. These amendments should ensure that the same labour and social rights that are offered to refugees also are provided to asylum seekers and persons applying for subsidiary protection. Control procedures that ensure the protection of the labour rights of refugees and people who need subsidiary protection should be implemented.

We recommend that the number of staff involved in ensuring the labour rights of foreign nationals and stateless persons, hereunder refugees and asylum seekers, be increased. Regular training should be conducted with special emphasis on international best practices.

The Council on Labour Migration of Ukrainian Citizens under the Cabinet of Ministers should be expanded. It should involve a wider range of think-tanks and civil society organizations, particularly those that have shown their potential through participation in preparing the law on labour migration.

## **Gap 7.**

**The interagency cooperation and coordination is not good enough. The quality of policies that rely on horizontal and inter-institutional cooperation between different government agencies is poor.**

### **How to overcome?**

The status of legal acts that regulate interagency communication, coordination and cooperation in the field of migration policy should be raised. One should consider adopting a comprehensive Decree of the Cabinet of Ministers on interagency coordination and cooperation in the field of migration policy. This should cover all the essentials of such interaction. This may become an integrated part of a new Action Plan on the implementation of the State Migration Policy Concept.

We recommend that an inventory count of existing ministerial and departmental orders be carried out in order to optimize the established formats of cooperation and coordination between them. It is particularly important to avoid a duplication of functions between these bodies.

The further implementation of the Order "On access to information resources in information interaction between the MIA, the SMS and the SBGS, including appointment of the authorized officials in the MIA, the SMS and the SBGS and their territorial bodies who will be the users of information resources" should be ensured. An order that grants users access and determine the scope of access for users of information resources should be issued. The access granted should correspond to their professional duties. The database holders should give information access. Electronic request forms should be introduced.

We recommend that a clear separation of powers, tasks, functions and instruments of cooperation between the MIA and the SMS be conducted. The Order of interaction of the MIA with bodies of executive power, whose activities are directed and coordinated by the Cabinet of Ministers via the MIA, should be improved. A separate unit in the MIA, which focuses exclusively on this function, should be established

The status of coordinating bodies should be raised. Any duplication of functions between them should be eliminated by either merging them or clearly separating their powers. The objectives and functions of the existing bodies should be reconciled, and the operation of the Interagency Coordinating Council on Migration should be restored in a slightly modified form. The Cabinet of Ministers should approve a resolution on this Council and its composition. The SMS should be set up as the secretariat of this body.

*The development and implementation of a unified information-analytical system of migration management:*

Laws and amendments to existing laws should be developed in order to define and refine the scope and structure of collected data, as well as the suppliers (sources) and the consumers of information, the control of data access and the implementation of personal data protection, in particular personally sensitive information.

We recommend that research on the optimization of a single interaction information system be conducted. This research should also assess its architecture; the procedural interaction between institutions, compatibility and links to other databases and registers.

The results of this research should be thoroughly evaluated. Further steps in legislative regulation should be taken and the practical work of the contact analytical center should be adjusted in order to exchange statistical and analytical information on how to combat illegal migration in Ukraine.

A year after the Joint Order of the MIA, the MSP and the Ministry of Education No. 850/536/1226 of 04.09.2013 "On approval of the measures for supervision and enforcement of legislation on migration" came into force it should be evaluated. The effectiveness of the implemented measures should be assessed and needs for further actions and practical steps should be identified.

A renewal of the Sector Budget Support Program on civil service and administrative and procedural legislation in Ukraine should be guaranteed.

We recommend that the implementation of the Strategy for Improvement of Public Finance Management and its corresponding Action Plan be ensured. These documents were approved by the Cabinet of Ministers on 08.01.2013, order No. 774.

*The quality of data collected for the Migration Profile:*

Effective interaction procedures within the SMS (between its structural units) and with other state institutions should be established.

Reliability and validity of collected data must be ensured. So should consistent data collection, as well as transparency and adequacy of the methodology.

The coordinating role of the SMS in the preparation of the annual migration profile should be strengthened.

We recommend that assessments and recommendations made by the IOM in its study on how to increase the capacity in the collection, dissemination, storage, and analysis of migration data in Ukraine be taken into account in future work. The mentioned study was carried out under the MIGRECO project and presented in May 2014.

## 7. GENERAL CONCLUSIONS AND RECOMMENDATIONS (on all three national cases)

Ukraine, Belarus and the Republic of Moldova share a common historical heritage. This has led to certain similarities in organizational, legal and social aspects in the three countries' respective migration policies. However, they do follow their own historical paths, which in turn have resulted in distinct differences between them.

Due to the geographical proximity there are certain similarities in the challenges, risks and objective trends that the three countries face. This is particularly evident in relation to the dominant migration flows. The internationalization of migration processes and policies calls for interoperable strategies and tools in order to achieve goals.

As a consequence of recent political trends, the Republic of Moldova has made the most substantial progress in adapting European standards in its migration policy. In the Moldovan case relevant institutions have been created and are today functioning. The legislative framework has been brought in line with international standards. Moldova was therefore the first country to implement the VLAP. It achieved a visa-free regime with the Schengen states in April 2014. Ukraine's backlogging in this sphere is moderate and can be overcome within a year, should there be a consistent political will. The trends in Belarus largely depend on the general political situation. The EU's influence over this country is currently too low in order to effectively establish a harmonized European approach to migration policy in the country.

The proximity to the European Union stimulates the adoption of international approaches in both legislative and institutional spheres. Regional instruments, such as the Eastern Partnership, as well as bilateral mechanisms of cooperation with the EU, do not only increasingly impact the formation of certain cultural values of a modern migration policy framework, but also change the practical content of this policy.

Having examined the achievements and gaps in migration policy in Ukraine, Belarus and the Republic of Moldova, the authors of this study were able to identify a common horizon. We also identified differences between these three countries that constitute one region of Europe. We highlighted both the current practical potential as well as existing limitations in the EU's influence over these countries. They are at the orbit of a privileged partnership, but have not yet been included to the EU enlargement strategy.

*The following findings should be taken into account by the European Union, its institutions and member states that provide assistance to Ukraine, the Republic of Moldova and Belarus in the context of migration policy, and assess this policy:*

Migration policy (including the relevant sectors of border policy) is one of those policy areas where the potential for policy reception by partner countries is *relatively high*. The need for collective, harmonized, coordinated action at the regional level is here rationally justified and understandable. All involved countries, including the Eastern Partnership countries, favourably perceive movement towards deeper regional cooperation.

However, the lack of qualitative communication creates a *deficit of trust* to the EU's approaches to migration policy among the partner countries in terms of mutual benefit from harmonization and enhanced cooperation. Migration policy is still socially sensitive; suspicions of 'national egoism' are still sometimes evident in the partners' evaluation of each other. Sometimes a vision prevails that the 'real' migration policy is aimed at solving somebody's own migration problems at the expense of partners/neighbours.

The instruments that achieve the greatest results are associated with significant incentives for the partner. An example of such an approach is the *policy of visa liberalisation*, the ultimate goal of

which is to abolish visas for short-term travel, which is a task of high social importance for the Eastern Partnership countries. The most successful and far-reaching reforms in the area of migration policy in the partner countries have been implemented within the framework of the *Action Plan for Visa Liberalisation*, granted to Ukraine (2010) and Moldova (2011). The lack of such a tool in relations with Belarus significantly reduces the potential impact of the EU on the state's migration policy. However, this fact is a part of a broader political problem arising from the characteristics of the political regime in Belarus.

*The Eastern Partnership* gave an impulse to multilateral efforts, including the ones on migration policy. Within the framework of the Eastern Partnership, the EU has employed a regional approach to cooperation for the first time, stimulating multilateral cooperation between partner countries, the European institutions and the EU member states. This is the way that the partner countries acquire new practices to communicate with each on the basis of the European standards. This practice creates added value, in particular, due to simultaneous inclusion of countries that are at different levels of cooperation with the EU, which is particularly relevant for Belarus, the bilateral relations of which with the EU are practically frozen due to political circumstances.

Among the *flagship initiatives* of the Eastern Partnership, the most notable initiative is "Integrated Border Management", which helped test multilateral cooperation mechanisms. Many modern methods and approaches to border management were introduced as a regular practice at the relevant agencies of the partner countries. At the same time, this initiative lacks connection to the broader context of migration policy and management of migration flows. The initiative is narrowly aimed at protecting borders, which is only a part of the problem.

An important organizing element, which the EU has proposed to the partner states, was the introduction of a multi-tier system of legislative support to migration policy, which builds on conceptual and strategic documents (concepts, strategies), complemented by detailed action plans/activity plans, and followed by the relevant specialized laws and by-laws. This practice is fully implemented in Ukraine and Moldova. Belarus introduces only some of the elements of this approach because of little commitment and political will.

To a certain extent, the partner countries embraced the modern European approaches and practices in planning (including budget planning), implementation, monitoring and reporting. In Ukraine and Moldova, there is an obvious improvement in the quality of planning documents. At the same time, the signs of formalism in planning and reporting are still present, as well as other specific features of post-bureaucratic culture, which is not always clearly identified in formal evaluations.

The general trend in all the surveyed countries is strengthening of the institutions that are responsible for migration policy. At the same time, the question of quality and horizontal coordination in interagency cooperation is important, because it is a part of the broader problem of implementing advanced models of bureaucratic culture.

## Recommendations for the European Union:

- To develop and implement a communication strategy for the Eastern Partnership countries on the nature and content of the EU migration policy. In its framework, this strategy should focus on overcoming stereotypes about the EU migration policy as one that strives to satisfy EU's selfish interests and contradicts with public interests of the partner countries. To explain to the political and social elites of the partner states the benefits from migration policy harmonization which would be based on shared values and interests and would overcome shared challenges and risks.
- To expand the first Eastern Partnership flagship initiative and to define it as following: *"Migration policy and integrated border management"*, in order to replace the current "integrated border management".
- To initiate the establishment of structural units on migration policy in the newly established bilateral bodies - the Councils of the Association and the Committees of the Association that will be formed under the Association Agreements (with Ukraine, Moldova, Georgia).
- To offer more actively expert assistance to the partner countries at the document planning stage (action/activities plan), in order to reduce formalism, and to strengthen the link between conceptual objectives, planned activities and budget support.
- To propose expert support to the partner countries on regular audit/revision of planning documents, by assessing successes and shortcomings (no less than once in two years).
- To review the existing assistance programs for the Eastern Partnership countries, to introduce a wider exchange of positive experiences with countries that have recent successful experience in implementing migration reforms. In particular, to support the training programs, which would involve not only experts from the EU member states, but also the ones from the Western Balkans, who have broad experience in implementing the Visa Liberalisation Roadmaps (2008-2010).
- To identify 'best practices' in partner countries and to support the exchange of such practices among countries belonging to the same region. In particular, to support and promote positive experience of Moldova in implementing the VLAP criteria.