

**ALMOST THERE:
THE CARROTS
OF VISA
LIBERALIZATION
AS AN IMPETUS
FOR DOMESTIC
REFORM
IN UKRAINE**
POLICY BRIEF

Ukraine, Kyiv, 2016

EXECUTIVE SUMMARY

Though Ukraine has never been so close to getting a visa-free regime with the EU, the process can still be delayed or even disrupted. The EU will take the final decision not only basing on technical criteria envisaged by the Visa Liberalization Action Plan (VLAP)¹ but also taking into account the factors of security and migration risks, raised from the latest refugee crisis in the European Union and due to the conflict in the east of Ukraine.

The VLAP appeared to be one of the most effective stimuli for Ukraine to advance reforms in the sphere of fight against corruption, security of documents and migration management. The result of an independent survey, conducted by the Civic Organization "Europe without Barriers" (EWB) revealed that the mentioned three issues appeared to be in the focus for German policy makers and NGOs with regard to the abolition of the visa regime with Ukraine.

Overall, interviewees saw corruption as the key problem, acknowledging that it is much harder to fight corruption than introduce new laws or passports. Corruption is seen as undermining successes in many different parts of the VLAP: "The best border control does not help if the guards are not earning enough money or view their service as something they can sell."²

The armed conflict in the east of Ukraine brought to the focus the issue of document security. EU countries, Germany in particular, express their concern on entry of terrorist and armed radical groups to the territories of EU with Ukrainian passports³. The visa liberalization mechanism gives the opportunity to enhance documents' security by introduction biometric data to the travel and identification documents.

As it was found out during EWB external survey⁴, some migration stereotypes about Ukraine circulating in Germany could come up as a threat to the political support of visa liberalisation to Ukraine. It is thought that this would lead to more poverty and increasing number of internally displaced persons (IDPs) in Ukraine, motivating more Ukrainians to try to get to Germany. Also, the high number of approximately 1.78 million IDPs may lead to the conclusion that they will not be able to return to their homes anytime soon, making emigration an interesting option for them.

In this context Ukraine's progress in reforms within the visa liberalization process appeared to be un-der the close look of the EU. Ukraine needs to demonstrate real steps towards in fighting corruption as well as regulating the security situation and migration flows

¹ On 22 November 2010, Ukraine received from the European Union an Action Plan on visa Liberalization (VLAP). The document is divided into the "legislative" and "implementation".

² Results of EWB's in-depth interviews in Germany

³ Ibid

⁴ Results of EWB's in-depth interviews in Germany

UKRAINE'S CURRENT PROGRESS

The visa liberalization process has created an ideal policy environment where the public visibility of the reward produced significant pressure on Ukraine's decision-makers to implement a series of difficult reforms. The government has succeeded in introducing major legislative changes and setting up key institutional mechanisms to tackle corruption. Their practical implementation is the next challenge that requires careful monitoring from civil society, the media, and the international community. Having finally introduced a proper system for issuing passports and other ID documents, Ukraine now has to ensure its smooth operation on a nationwide scale. Finally, the government has shown a good grip on the IDP crisis, though movements between the occupied territories and the rest of the country remain a weak spot.

ANTI-CORRUPTION ACTIVITIES

Ukraine's implementation of key anti-corruption activities has intensified since the Revolution of Dignity in February 2014. The considerable progress has been achieved in establishment of the anti-corruption legislative and institutional frame, at the same time Ukraine ensure operability of institutions, responsible for the implementation of anti-corruption legislation. The Ukrainian parliament approved the State Program on Anti-Corruption Strategy Implementation for 2015-2017, which is the guiding document for government efforts in this area, and a set of critical anti-corruption legislation, such as the laws on access to public information, financing of political parties, and establishment of an asset recovery and management office. On December 18, 2015, the European Commission's Final Report on Ukraine's progress in VLAP implementation classified this legislation as being in line with EU standards and requirements⁵.

On October 2014, the Verkhovna Rada of Ukraine adopted Law «On the National Anti-corruption Bureau of Ukraine». The law determines status and goals of **the National Anti-corruption Bureau (NABU)**, rights and duties of its employees and other issues concerning its operation. After competitive selection process, on April 16, 2015 the President of Ukraine appointed Artem Sytnyk⁶, Director of the National Anti-Corruption Bureau (NABU).

Since June, 2015 the NABU has been carrying out an open competition to fill vacancies for detectives and administrative staff. There were hired 242 detectives and 211 employees of operational and technical department and department of special operations. Selection process has been conducted with participation of **the Civil Control Council**, approved by the Presidential Decree⁷. The Civil Control Council aims at carrying out civic control over the activities of the Bureau, facilitation its interaction with civic organization, participation in the formation of the competition Commission for selection of candidates to fill in vacant positions in the Bureau. There is a separate budget line set for the NABU activities in the State Budget 2016.

The example of NABU's effectiveness is the arrest of 11 persons (including high-ranked authorities) suspected in involvement in corrupt schemes of the gas resale which caused approximately 3 billion UAH loss⁸. The total bail amount is about 1 billion 600 thousand UAH. The main suspect in this high-profile case is the incumbent MP. At the moment there is an active investigation into the so-called "black accounts" of the party of former President Victor Yanukovich⁹. NABU has already announced the suspicion in the crimes to the 6 judges¹⁰.

⁵ The Report is available at the web:

<http://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-905-EN-F1-1.PDF>

⁶ See his bio at the web: <http://nabu.gov.ua/en/kerivnyctvo/artem-sytnyk>

⁷ The Decree of the President of Ukraine from May, 2015, #272. The Civil Council

⁸ The NABU report is available at the web: <https://nabu.gov.ua/novyny/detektyvy-nabu-zatrymaly-shche-odnogo-uchasnyka-shemy-rozkradannya-gazu>

⁹ The NABU report is available at the web: <https://nabu.gov.ua/novyny/chastyna-osib-zi-spyshiv-chornoyi-buhgalteriyi-pr-vstanovlena-tryvayut-dopyty-asytnyk>

¹⁰ The interview with the head of NABU is available at the web:

<http://www.pravda.com.ua/news/2016/06/25/7112859/>

The National Agency for Prevention of Corruption (NAPC) was created by a Directive of the CMU dated March 18, 2015. 4 of 5 members of the NAPC have been selected. Despite understaffing, NAPC has already started active work. In particular, the system of reporting on political parties financing in Ukraine was launched. Since July 1, 2016 according to the new law "On the state financing of political parties" parties must open sources of funding and may qualify for state funding¹¹. From August 15, 2016 it is planned to launch the system of electronic declaration of incomes of officials in Ukraine¹². Top officials are obliged to submit electronic declarations by mid-October 2016. There is also a separate budget line for the NAPC in the State Budget 2016.

The Specialized Anti-Corruption Prosecutor's Office (SAP) was established in December 2015, the General Prosecutor appointed the SAP Head and its two deputies¹³. The recently hired anti-corruption prosecutors have started their activities on cases initiated by the NABU. Currently NABU and SAP are investigating 148 criminal proceedings against acting or former officials, judges, prosecutors¹⁴. On November 11, 2015 the Parliament adopted a package of the draft laws on creating of a **special Agency for Assets Recovery** and introducing necessary changes into Civil, Criminal and Criminal Procedure Codes regarding seizure, confiscation and management of stolen assets. This legislative package will make it possible to return disclosed and confiscated illicit assets back to Ukraine.

ANTI-CORRUPTION AGENCIES AND THEIR MANDATES IN UKRAINE

National Anti-Corruption Bureau of Ukraine (NABU)	Specialized Anti-Corruption Prosecutor's Office (SAP)	National Agency for Prevention of Corruption (NAPC)
<p>Conducts pre-trial investigation of corruption and corruption-related crimes committed by senior officials</p> <ul style="list-style-type: none"> • <p>Identifies and returns the assets diverted by corrupt officials</p>	<p>Monitors legal compliance during the pre-trial investigation carried out by NABU</p> <ul style="list-style-type: none"> • Provides public prosecution for the cases initiated by NABU • Represents citizens or the state in court cases on corruption-related offenses 	<p>Coordinates the development and implementation of anti-corruption programs by state bodies</p> <ul style="list-style-type: none"> • Ensures observance by civil servants of legislation on prevention and settlement of conflicts of interest, ethical norms • Takes measures of financial control

One of the main achievements in the corruption prevention was the establishment of **public e-procurement system – "ProZorro"** which functioning since 12 February, 2015. The system was used by 5,740 government commissioners who called for 113,712 bids with the expected cost of 37.4 billion UAH¹⁵. Potential savings from the system are UAH 1.67 billion (or 13.85% over competitive procedures). From 1 August 2016 all public procurement will take place in the system. In 2016 "ProZorro" became a winner of World Procurement Award¹⁶.

Together with anti-corruption reforms, reform of judiciary system was launched. Particularly, in October 2015 Constitutional Commission approved the final version of the draft amendments to the Constitution in terms of justice. On June 2, 2016 Ukrainian Parliament adopted the reformative law on judicial system and status of judges. This new law significantly changes the structure of the judicial system of Ukraine, the procedure of appointment, dismissal and prosecution of judges¹⁷.

¹¹ The law is available at the web: <http://zakon5.rada.gov.ua/laws/show/2365-14>

¹² The interview with the head of NAPC is available at the web: <http://www.5.ua/suspilstvo/ahentstvo-z-pytan-zapobihannia-koruptsii-zapustyt-elektronne-deklaruvannia-z-15-serpnia-116490.html>

¹³ <http://www.gp.gov.ua/#> (but web is under construction, there are just links)

¹⁴ The report is available at the web: <https://nabu.gov.ua/novyny/nabu-razom-z-sap-skeruvalo-do-sudu-obvynuvalni-akty-shchodo-8-sluzhyteliv-femidy-infografika>

¹⁵ <http://rpr.org.ua/en/news/top-twelve-biggest-achievements-of-the-ukrainian-reforms/>

¹⁶ The law is available at the web: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59259

¹⁷ The report is available at the web: <https://www.procurementleaders.com/world-procurement-awards/winners>

DOCUMENT SECURITY IMPROVEMENTS

The visa liberalization process prodded much needed reforms in Ukraine's system of document identification. In the past, passports issued by Ukraine did not meet the international industry requirements set out by the International Civil Aviation Organization (ICAO) as they were not suitable for the most common systems of electronic reading and did not provide protection against counterfeit and fraudulent use. The system of document identification was not transparent and well integrated into other national databases.

The situation changed for the better after Euromaidan. Ukraine started the issuance of a new type of biometric passport. Both types of passports in Ukraine: ID card and biometric passport being currently issued. The e-passport contains a contactless chip that stores the photo, two fingerprints and the signature of the holder. According to the technical analysis conducted by the French border police laboratory¹⁸, the security features of this new model of passport comply with the ICAO recommendations. Hence, Ukraine fulfilled the VLAP document security requirements by introducing biometric foreign passports in May 2015 and national ID cards in January 2016. 1.3 mln Ukrainians have already received biometrical passports as for June 2016. Experts believe the new ID documents are well protected and prevent abuse of personal data¹⁹.

MIGRATION MANAGEMENT

Ukraine has made progress toward reorganizing its migration management authorities. **The State Migration Service** streamlined its human resources by establishment a unit for combating irregular migration and new contact informational and analytical center for monitoring of migration²⁰. The work of the mentioned center bases on the intergovernmental cooperation between State Migration Service, State Border Guard Service, Ministry of Social Policy and Ministry of Interior and Ministry of Foreign Affairs of Ukraine in organizing analytical and prognostic maintenance of migration processes in Ukraine.

The State Border Guard Service (SBGS) of Ukraine was assigned to detect and investigate cross-border crime. In 2015, the SBGS exposed 63 organized crime groups and arrested 66 organizers and accomplices²¹. Worth noting that the SBGS was granted access to Interpol databases at 39 priority border crossing points and developed cooperation in border checks at crossing points with neighbouring countries²².

On 5 November 2015 the parliament adopted a new **law on labor migration** that stipulates the legal and organizational principles of state regulation of labor migration and social protection of citizens Ukraine abroad (migrant workers) and their families. The recently voted legislation on refugees and individuals who need temporary or additional protection is a step in the right direction as it improves the process of issuing documents to such persons. However, a lot of work is still ahead as the parliament needs to bring additional laws and regulations²³ into compliance with the newly adopted legislation.

Despite the complicated economic situation, Crimea annexation, and Russian hybrid warfare in the east, over the last two years the government has been successful in keeping the situation around **internally displaced persons** (IDPs) under control. This is no small feat. According to the Ministry of Social Policy of Ukraine, more than 1.7 million people are considered to be IDPs as of June 2016. Their registration is managed by local authorities and coordinated by the Ministry of Social Policy of Ukraine. The Interagency Coordination Office on IDPs, created by the Cabinet of Ministries, deals with documentation and social security for Ukrainian citizens who were forced to move from Crimea and the occupied territories in Donetsk and Luhansk regions.

¹⁸ Visa liberalisation dialogue Ukraine closed Expert Report on document security (Block 1, on document security)

¹⁹ Interview with experts is available at the web: http://24tv.ua/biometrichni_pasporti_chi_mozhna_yih_zlamati_n604352

²⁰ The report is available at the web: <http://dmsu.gov.ua/yevropeiska-intehratsiia/3399-stan-realizatsiji-planu-dij-z-liberalizatsiji-es-vizovogo-rezhimu-dlya-ukrajini>

²¹ The report is available at the web: <http://dmsu.gov.ua/images/files/MP2015.pdf> (page 62)

²² The report is available at the web: <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-905-EN-F1-1.PDF>

²³ This list includes the labor and tax codes, laws on social insurance, disability benefits, and pensions

Technical assistance programs supported by the United Nations and other foreign donors have helped the government address IDPs' resettlement and livelihood. Although the parliament adopted the Law on the Legal Regime on the Temporarily Occupied Territory of Ukraine in April 2014, the entry and exit procedures on the line of conflict between the Ukrainian government and pro-Russian separatists are far from being well established.

Fears in the EU that the conflict in the east would produce a large wave of Ukrainian refugees to the Union have proven entirely unfounded. Given the high scale of internal displacement, the number of Ukrainians who applied for asylum in the EU remains very low. At 22,415 people in 2015, it accounted only for 1.7 percent all asylum seekers in the EU (1.32 million). Only 4,660 Ukrainians applied for the asylum status in Germany in 2015, which accounts for 1 percent of all applications (476,510)²⁴. In the first quarter of 2016 the situation became more optimistic with 765 asylum applications from Ukraine, which accounts for 0,4 percent of all applications (179,760).

HOW GERMANY CAN SUPPORT UKRAINE IN ITS REFORMS

Since last summer, the European Union has been gripped by an unprecedented influx of refugees from Syria, Afghanistan and Iraq. In addition to these war-torn spots, the number of refugees from the Western Balkans, in particular Kosovo has picked up substantially. Germany has been at the fore-front of a responsible response to this humanitarian tragedy by welcoming refugees from the Middle East. However, the tide does not appear to be ebbing²⁵.

This situation negatively affects the prospects of visa liberalization with Ukraine. First, as our survey shows, German society and decision makers as well, see the high number of asylum seekers from the Western Balkans as a direct consequence of visa liberalization²⁶. Second, this feeds into the general public perception that "the boat is full"²⁷ with more voices demanding "new fences" than liberal visa policies. On the background of the refugee crisis in the European Union, it is seen as by risk that Ukraine currently does not control large parts of its border with Russia.

At the same time, some high-level German officials noted that the eastern border does not matter if the western border is under control²⁸. Our survey also indicated that the vast majority of EU decision-makers, including those in Germany, believe that if Ukraine implements all the benchmarks within the visa liberalization process, it would obtain a positive decision²⁹. The most relevant area where they expect measurable progress is the fight against corruption.

We believe that Germany has a lot to deliver in helping Ukraine to become truly safe and secure nation, and Ukraine will be receptive to this kind of assistance. In its turn, it may help to address the issue of the legitimate concerns of the German society when it comes to migration issue. Given the fact that migration concerns are likely to be increasingly important in the forthcoming years, EWB may suggest the following measures to be undertaken.

Germany may identify, in cooperation with Ukrainian side, involving the civil society, the relevant policy areas where the assistance should be strengthened, and the formats of such assistance may be revised and diversified. EWB may suggest the following policy areas: asylum policy including asylum seekers assistance, policy towards the third countries nationals looking for protection, transport and communication, policing, border management, dealing with IDPs.

¹² The data is available at the web:

<http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>

¹³ <http://mishtalk.com/2016/02/25/refugee-crisis-escalates-greece-pulls-ambassador-to-austria-15000-trapped-in-greece/>

¹⁴ Results of in-depth interviews with high-ranking officials in Germany. The interviews were held in the frame of the EWB project: "The last steps toward visa liberalization: The communication of reforms and consolidation of support in the EU countries"

¹⁵ Ibid

¹⁶ Ibid

¹⁷ The outcomes results of the EWB's In-depth interviews in 11th European Union Member States

IN PARTICULAR, EWB PUTS FORWARD THE FOLLOWING RECOMMENDATIONS

Interior ministries of both countries may launch permanent cooperation programme, to share best practices, and build mutual trust. This programme may cover the following policy areas: policy process and communication in the Interior ministry, integrated police management (for central bodies and regional/local branches), external border protection (for the border police), local policing (for municipal police), dealing with the refugees and asylum seekers, countering illegal migration, international police cooperation. This kind of programme should envisage involving of the civil society organisations at the various levels, and include strong public communication component.

Germany may join current efforts by USA, the EU, Canada and Japan aimed at comprehensive police reform in Ukraine assistance. That may include training, providing equipment, a kind of twinning (German specialists temporarily working in Ukraine), stipends and fellowships.

German and Ukrainian NGOs in cooperation with the government should address the issue of populism and xenophobia when it comes to the migration perception. Manipulation by the "migration threat" is a mutual challenge, which misleads the part of society, cooperation and knowledge exchange is needed to avoid the risk of wrong perceptions followed by the wrong solutions.

Ukrainian and German NGOs and media may start working together to monitor and communicate the outcomes of the visa liberalisation as soon as it introduced. The aim is to help legitimate travelers with reliable information concerning their rights, prevent misuse of free travel and address wrong perceptions/stereotypes (both travelers and local population). In particular, the issues to communicate: dynamics of the travels, legitimate opportunities of stay, typical and specific cases connected to the visa free travel, misuse cases of visa free travel rules, if they detected, and their prevention.

Experts on both sides should draft an approach the future bilateral labour agreement between Ukraine and Germany that will regulate the labor migration and strengthen labour circulation management.

Advocacy for cheaper and safe travel opportunities is needed. Currently only German Lufthansa and Ukraine International operate daily direct flights between Germany and Ukraine. German low-cost airlines are welcomed to open new flights to the Ukrainian cities. In particular, Odessa and Lviv international airports have introduced open-sky policy for the EU-based air companies, which decrease operational costs for potential vendors. Train connection, as non-existent now, could be revived as well.

Strengthening communication by involving Ukrainian field experts and non-governmental organizations to familiarize the larger public in Germany with Ukraine's cultural heritage, national identity, touristic values, relations with EU countries and business opportunities may motivate wider German people to learn and visit Ukraine, which will contribute for mutual understanding and trust. In particular, NGOs from Germany and Ukraine may elaborate a guidebook dedicated to the German cultural heritage in Ukraine, as well as Ukrainian legacy in Germany.

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