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Questionable Achievement: EC-Ukraine Visa Facilitation Agreement

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**e The Enlarged
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New Relations

Introduction

After nearly one year of negotiations, the European Community and the Ukraine have agreed on a draft agreement with regard to the facilitation of the issuance of visas. It was initialled at the 10th EU–Ukraine Summit in Helsinki on 27 October 2006 by the EC Commissioner Benita Ferrero-Waldner and the Foreign Minister of the Ukraine Boris Tarasyuk. The agreement is far from being ideal but can certainly be seen as a first step in the right direction. Of particular importance is the recognition by the EC, as referred to in the Preamble, of the ‘introduction of a visa free travel regime for the citizens of the Ukraine as a long term perspective’. As a result, it opens up the possibility of the gradual easing and eventual abolishment of visa requirements for Ukrainian citizens.

It should be noted here that the agreement has been negotiated at a time when the EC is working on amendments to the Schengen *acquis*, needed in relation to the planned introduction of Visa Information System and biometric data requirements. However, at this stage it is difficult to say whether the changes included in the Proposal for Regulation of the European Parliament, and the Council amending the Common Consular Instructions (COM(2006)269) and provided for under the Community Code of the Visas Project, will constitute a further facilitation, as compared to the one envisaged by the agreement, or rather they will make the visa application process more troublesome for the Ukrainians.

1. Assessment of the agreement

1.1. Advantages

The agreement offers several advantages. Firstly, fixes the fee for the processing of a visa application at EUR 35. This means that this fee will not be changed even though in June 2006 the Council amended the Common Consular Instructions and the Common Manual introducing a EUR 60 fee. Though in general, fixing this fee at EUR 35 is a positive achievement, from the point of view of the Ukrainian citizen, it does not constitute a positive change but only the continuation of the existing situation. In addition, in the cases of certain categories of persons (including minors) this fee can be waived.

Secondly, the agreement fixes the length of the procedure for the processing of visa applications at 10 calendar days from the date of receipt of the application and documents required. However, it should be noted that in individual cases, this time limit may be extended to up to 30 calendar days (Article 7). Our monitoring¹ of the consulates of the EU Member States in Belarus, Moldova,

¹ EU Visa Policy Monitoring survey aimed at the evaluation of the practice of the visa system of eight selected EU Member States in four Eastern European Countries was conducted in the years 2005/2006. The Report produced as a result of the survey can be downloaded from the Reports sections of the Friendly EU Border website www.openborders.pl

Russia, and the Ukraine showed that in the majority of cases the length of the visa procedure already takes less than 10 days, but that most time consuming is the process leading to the submission of the application and documents required. Therefore, the time limit laid down by the agreement should begin to run from the day of the establishment of the first contact between the visa applicant and the consulate concerned (whenever the whole process cannot be completed on the very same day).

Thirdly, it provides for the issuance of multiple-entry visas to certain categories of applicants and for a shorter list of documents required with their visa application.

Finally, the agreement provides for the introduction of a Joint Committee of experts that is to be responsible for, *inter alia*, the monitoring of the implementation of the agreement and suggesting amendments and additions. This is of particular importance when we look at the agreement as a first step towards the establishment of a visa free travel regime.

1.2. Disadvantages

The agreement divides Ukrainian society into two groups, namely the privileged few who can get a multiple-entry visa, benefit from a simplified procedure (a shorter list of documents required to submit visa application), or profit from the waiving of the application fee for the visa, and as to the remainder: the vast majority of ordinary citizens who cannot enjoy such advantages. This can create a feeling of discrimination and lead to the conclusion that the European Union is interested only in the Ukrainian elite. This in turn can lead to the EU being seen in a negative light. In addition, the privileged categories are to include journalists, business people and drivers, and that favouritism might easily lead to corruption (tempting some to submit counterfeit confirmation of their journalist or driver status). Should such practice become widespread, the mutual trust between the EU and the Ukraine will suffer.

2. Visa Policies of the new EU Member States towards Ukraine

2.1. Situation in respect of the new Member States

The Member States neighbouring the Ukraine annually issue enormous numbers of visas to its citizens, as compared to the Schengen States. Poland alone issues over 560,000 annually. Taken together, Hungary, Poland, and Slovakia issue over 820,000 such visas annually, this is nearly three times as many as all the Schengen States combined (290,000). For the neighbours of the Ukraine such volumes are indispensable as regards maintaining normal human traffic and fostering people-to-people contact. The land border between the new Mem-

ber States (Hungary, Poland, and Slovakia) and the Ukraine is 728 km long, and following the accession of Romania to the EU in 2007, it will reach 1414 km. By then the EU-Ukraine border will be the second longest EU land border, after the one with Russia. However, the volume of human traffic at the former is significantly higher than at the latter. For example, there are 12 border-crossing points on the Polish-Ukrainian border alone. There were 17,824,836 (!) recorded border crossings (in either direction) during the year 2005 (46% more than in 2004).

Before their accession to the EU, Hungary, Poland, and Slovakia did not require visas from citizens of their Eastern neighbours. Having to impose on them visa requirements, these countries adopted relatively liberal visa regimes. Comparing these provisions to those of the new visa facilitation agreement and of the Schengen practice one can see several significant differences. In the case of the former:

- Visa applications are processed free of charge or for a low fee;
- The procedures are simpler (with shorter lists of documents required) and the waiting time is shorter (often the entire process is completed within only one day);
- Rejection rates are significantly lower (1.2% for the three neighbouring countries) than in the case of the Schengen States (11.5%).

Unfortunately, the Visa Facilitation Agreement does not take into account the experiences of these countries.

Paradoxically, though in principle the agreement is to ease the situation, after the New Member States accession to the Schengen area, it will worsen. There is also a danger of the strict interpretation of the agreement as far as new Member States are concerned. Should its provisions take precedence over those of the bilateral agreements between these countries and the Ukraine, the former will have to stop issuing visas free of charge or against a low fee and instead charge Ukrainian citizens EUR 35 even before they enter the Schengen zone.

In addition, when analysing the situation of the new Member States and their Neighbours, of importance is the recent adoption in October 2006, by the Council of the European Union (Justice and Home Affairs), of the Regulation (PE-CONS 3607/06) 'laying down rules on local border traffic at the external land borders of the Member States'. In particular, its introduction of a 'local border traffic permit' should be recognised as an achievement as it will facilitate further the flow of human traffic. However, it should be remembered that it can be issued only to inhabitants within a 50 km border zone and will authorise to move only within the border area, as a result, will benefit only a small number of potential travellers. For example, there are no large towns (except from Uzhhorod) on the Ukrainian side of the EU-Ukraine border, i.e. no towns with more than 100,000 inhabitants.

2.2. Accession of the new Member States into the Schengen area as a serious test of the consistency of the EU visa policy towards Ukraine

The new Member States are likely to enter the Schengen area in the next few years. This may lead to a serious deterioration in the situation for the Ukrainian citizens wishing to visit these countries, resulting from the introduction of procedures that are more restrictive and time consuming. Furthermore, political pressure from the current Schengen zone members may lead to an increase in the volume of rejections. All this is likely to diminish human traffic between the Ukraine and these countries, thus increasing among Ukrainian citizenry the sense of exclusion and isolation from Europe.

It is obvious that any visa policy must reflect foreign policy principles. However, the situation following the enlargement of the Schengen area could make the political aims of the EU towards the Ukraine more difficult to achieve. Therefore, the fostering of closer cooperation between the EU and the Ukraine and their gradual integration, as provided for under the EU-Ukraine Action Plan², could well be jeopardised.

In any case, the facilitation affecting Ukrainian citizens should go further than the one envisaged in the agreement. Otherwise, the EU visa policy towards them would contradict its underlying principles, as it would not lead to the declared facilitation and liberalisation but instead place on them unnecessary burdens. This would be especially true for those wishing to travel to the new Schengen States.

3. What is necessary to ensure the further liberalisation of the EU visa policy towards the Ukraine?

It is clear that in the near future, the majority of visas for Ukrainians wishing to travel to the EU will be issued by Hungary, Poland, Romania, and Slovakia. Recognising this, the EU should act wisely and work in earnest on the real facilitation and liberalisation of the visa regime affecting them.

3.1. Short-term solution (to be applied following the entry into force of the agreement)

We expect that before their accession to the Schengen area the new Member States will continue to issue visas, as they do today, cheaply or free of charge to Ukrainian citizens.

² 'The Neighbourhood Policy opens new partnership, economic integration and cooperation perspectives'. One of them is 'the perspective of moving beyond cooperation to a significant degree of integration, including through a stake in the EU's Internal Market, and the possibility for the Ukraine to participate progressively in key aspects of EU policies and programmes'.

3.2 Medium-term solutions (to be applied following the accession of the new Member States to the Schengen area)

The procedures followed should guarantee the issuance by the new Schengen States visas to Ukrainian citizens with at least the same ease as today. Such arrangements should become applicable on the date of their accession to the Schengen area, and provide for the following in particular:

- The issuance **multiple-entry visas** for longer-term of validity as standard practice for those who, in the last one to three years, have received a Schengen visa at least twice and who during the same time period have not violated the provisions applicable with regard to their entry and stay;
- The reliance on a **positive visa history**, instead of certain categories of persons. This would facilitate the issuance of multiple-entry visas and the application of the simplified procedure, namely the limited number of documents required and no interviews. The issuance of multiple-entry visas with a longer period of validity would also help to reduce the workload of the Consulates;
- A **lower fee** for the visa or no fee at all. This would not affect internal security and at the same time would constitute a positive signal to the Ukraine which unilaterally eliminated the visa requirements on the citizens of all the Member States;
- The **time limit** for the processing of a visa application (10 calendar days) that begins to run from the establishment by the applicant of the first contact with the Consulate concerned;
- The facilitation of the applicable procedures through the adoption of **better methods of communication and information** for applicants and especially the wider use of the Internet at all stages, that is, the gathering of information, registration and submission.

These arrangements could be introduced without the signing of the new agreement as it already provides for the possibility to amend it through the written consent of the Parties (Article 14).

The introduction of any measures that would aim at further facilitation (medium-term solutions) should be synchronised with the accession of the new Member States to the Schengen area. Until then, an extensive interpretation of the agreement should suffice for the continuation of the existing fee arrangements. As for the long-term perspective, what is needed is a Road Map laying down the specific conditions and criteria to be met by the Ukraine for the introduction of a visa free travel regime.

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