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It's Georgia's time

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Introduction

On 28th April 2014 Republic of Moldova became the first Eastern Partnership country to break through the Schengen paper wall. The citizens of the Republic of Moldova can now travel to the European Union without needing a visa and going through the humiliating process of obtaining one.

This sets a precedent for other Eastern Partnership (EaP) countries, Armenia, Azerbaijan, Belarus, Georgia and Ukraine that visa-free travel is achievable if they manage to implement respective reforms and establish a secure environment for migration. It also shows that the “political aspect” of the liberalisation, namely the decision to waive visa obligation for the respective third country, taken by the European Parliament and the Council, is not impossible and should not be considered as an insurmountable obstacle that disables the visa liberalisation with the EU's Eastern neighbours.

The Government of Georgia (GoG) has stated that it is committed to implement the reforms envisaged by the EU/Georgia Visa Liberalisation Action Plan. The GoG aimed to accomplish the first phase of VLAP by the summer of 2014 (however this deadline already passed), to finalise the second (implementation) phase of the VLAP by the end of 2015 and to achieve visa free travel from the start of 2016.

The aim of this policy paper is to discuss the progress made by Georgia in achieving a visa-free regime with the EU, to analyse the main challenges faced in the reform process and issue recommendations for further actions by both the Georgian and EU authorities.

Georgia and the visa liberalisation

According to Council regulation 539/2001¹ Georgia belongs to the list of states whose citizens need a visa to enter Schengen zone. The Georgian government, on the other hand, took a unilateral decision on 1st June 2006 to abolish visa requirements for citizens of the European Union Member States. Furthermore, they do not need passports to travel but can even use their identity card to enter Georgia, while citizens of the USA, Republic of Lithuania, Swiss Confederation, Federal Republic of Germany, Republic of Korea, Czech Republic, Republic of Hungary, Republic of Poland, Republic of Slovenia, Kingdom of Denmark, Iceland, Kingdom of Norway, Kingdom of Sweden, Kingdom of Spain, Republic of Bulgaria, Slovak Republic, Republic of Romania, Republic of Estonia and Republic of Latvia who possess a document certifying their permanent

residence in one of these countries, did not need visa to enter and stay in the territory of Georgia for up to 360 days² (since September 2014: 90 days in any 180 days period). In addition, Georgia is in 67th place on the Henley & Partnerships Visa Restriction Index 2013 Georgia takes 67th place and its citizens are able to travel visa free for up to 60 countries around the world³.

Georgia has signed the Visa Facilitation Agreement (VFA)⁴ and the Readmission Agreement (RA)⁵ with the European Union, which both came into force on 1st March, 2011. The visa facilitation agreement, that is has already been in place for three years, has reduced the visa fee from EUR 60 to EUR 35, facilitated the issue of visas for up to 10 categories of Georgian citizens, reduced the length of procedures and eased the issue of multiple-entry visas with a long validity term. However, Georgia still remains #1 in terms of visa refusal rate among all six Eastern Partnership states with the total visa refusal rate of 12% in 2013. However, in contrast to Armenia, Azerbaijan, Belarus and Russia, the refusal rate in Georgia declined from 2012 to 2013.

VISA REFUSAL RATE AS A PERCENTAGE FOR EAP COUNTRIES & RUSSIA

Country	2011	2012	2013
Armenia	8.8%	8.0%	11.5%
Azerbaijan	5.5%	4.0%	4.2%
Belarus	0.5%	0.5%	0.8%
Georgia	14.8%	13.3%	12.0%
Moldova	9.5%	6.5%	4.8%
Ukraine	3.3%	2.0%	1.9%
Russia	1.5%	0.9%	1.0%

In 2013, the EU member states consulates in Georgia received 82,156 visa applications for C category visas (valid for the whole Schengen area) and issued 72,702 visas (including multi-entry visas). 9845 applications were turned down⁶. The top five EU Member States consulates on the visa refusal list are: Lithuania – 22.5%; Estonia – 17.1%; Greece – 13.8%; Netherlands – 12.2%; Germany – 11.5%.

Experts, among others from EI-LAT think tank⁷, give a number of explanations for the afore mentioned high refusal rate for visa applications lodged by Georgian citizens. One reason is the high rate of asylum requests made by Georgians upon arrival to the EU compared to the other EaP countries. Another possible explanation is that Georgians, unlike Armenians and Azerbaijanis, require visas to travel to Russia which in practice excludes them from this popular migration destination and makes illegal migration to Europe more likely in their case.

The number of asylum seekers from Georgia is the highest of all EaP states. The good news is that compared to 2012 the number of asylum seekers from Georgia has decreased from 10,830 to 9,110 (Georgia ranks 16th among the countries whose citizens applied for asylum to the EU). There were 8,020 new applicants - a decrease from 9,785 in 2012. Georgian applicants are spread over a large number of Member States. They rank in the top 5 of the following Member States: Latvia (145 applications), Slovakia (35), Poland (1240), Lithuania (120), Estonia (10) and Greece (535). Despite the high number of asylum seekers the recognition rate was relatively low and stood at -5%⁸.

The number of Georgian citizens denied entry to the territory of Schengen Member States still remains very high. According to the Annual Risk Analysis done by FRONTEX⁹, Georgia lies in fifth place after the Russian Federation, Ukraine, Albania and Serbia. In 2013, 8,100 Georgian citizens were refused entry to the Schengen zone, most of them (7,761 cases) due to lack of a valid visa or residence permit.

On the other hand, the number of Georgian citizens who were refused border crossing at the entry point of EU member states has dramatically increased from 2,801 in 2011 to 8,884 in 2012.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:081:0001:0007:EN:PDF>

² http://www.mfa.gov.ge/index.php?lang_id=ENG&sec_id=96

³ <https://www.henleyglobal.com/visa-restrictions/> - in comparison: 1st place Finland (visa-free travel to 173 countries), 2nd Germany (172), 13th Poland (153), 37th Serbia (104) and (before visa liberalisation with the EU) 68th Moldova (59)

⁴ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22011A0225%2802%29&qid=1395934620569>

⁵ <http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=14561>

⁶ European Commission, DG Home Affairs; Complete statistics on short-stay visas issued by Schengen States; Visa statistics for 2013 available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm

⁷ <http://www.ei-lat.ge>

⁸ "Annual report – Situation of Asylum in the European Union 2013"; European Asylum Support Office; Available at <http://easo.europa.eu/wp-content/uploads/EASO-AR-final1.pdf>

NUMBER OF GEORGIAN CITIZENS REFUSED ENTRY TO THE SCHENGEN ZONE

2010	2011	2012	2013
3,328	2,801	8,846	8,100

The visa liberalisation process gained fresh momentum back in September 2011 when, in Warsaw, the EU Member states adopted the Eastern Partnership declaration that stressed: "EU and partner countries will take gradual steps towards visa-free regimes in due course on a case-by-case basis, provided that the conditions for well-managed and secure mobility set out in the two-phase action plans for visa liberalisation are in place"¹⁰.

Due to the positive evaluation of the implementation of the VFA and RA, the European Commission (EC) launched a visa dialogue with Georgia soon afterwards, in June 2012. In February 2013, it was followed by a visit from the European Commissioner for Internal Affairs Cecilia Malmström, who delivered Visa Liberalisation Action Plan (VLAP) to the Georgian authorities¹¹. The document is similar to the ones previously received by Ukraine and Moldova, has 13 pages and consists of four main blocks:

- Document security including biometrics;
- Irregular migration including readmission;
- Public security and order;
- External relations and fundamental rights.

The EC regularly assesses the process in the implementation of the Action Plan. In its reports, it evaluates the fulfilment of the first (legislative) phase criteria and only after it has officially decided to move the subject country to the second (implementation) phase, assesses of the progress in executing the previously adopted legislation. The first progress report on implementation by Georgia regarding the VLAP was issued on 15th November, 2013. It covered all four blocks of the VLAP, although Block 1 and Block 2 were analysed in depth, while the assessment of Block 3 and Block 4 were just preliminary and will be continued. The report acknowledged significant progress made in creating of a legislative framework in the first two Blocks:

*"Georgia has made very good progress in the implementation of the first phase of the VLAP benchmarks. The legislative and policy framework required by benchmarks on document security, including biometrics, and benchmarks concerning integrated border management are already at an advanced stage of fulfilment."*¹²

The progress report takes note of several achievements made by the government of Georgia towards implementing the VLAP, namely the fact that the legal framework for fighting corruption document security is largely in place; Georgia managed to transform its former military-based system for border protection into a law enforcement system based on the European model, while an institutional and legal framework for border and migration management is in place; The institutional framework for coordinating migration policy is well developed. However the progress report makes 42 recommendations covering all four blocks of the visa liberalisation action plan. Particular emphasis is placed on the technical collaboration at the border with neighbouring countries; accelerating the work at the temporary accommodation centre for irregular migrants and the development of a Unified Migration Analytical System; strengthening efforts to establish the legal and institutional framework for preventing and fighting money laundering and financing terrorism.

Apart from the European Commission's reports, the implementation of the Action Plan is also closely monitored by civil society organisations from both Georgia and the EU. In October 2013, Transparency International Georgia presented a mid-term monitoring report that positively assessed the achievements in the first two blocks of the VLAP¹³. Meanwhile, the Visa-free Europe Coalition, which comprises nearly 50 influential European think tanks and foundations, has been issuing a quarterly assessment about the visa facilitation and liberalisation processes between the EU and all six EaP countries, including Georgia, since 2011 as part of the: Eastern Partnership Visa Liberalisation Index project¹⁴. A significant level of approximation of Georgian legislation and policy to the EU standards has been observed for a long time, even before official granting of the VLAP by the EU.

⁹ FRONTEX Annual Risk Analysis 2014 available at http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2014.pdf

¹⁰ Joint Declaration on the Eastern Partnershipship, Warsaw, 28-29 September, 2011 available at http://ec.europa.eu/europeaid/where/neighbourhood/eastern_partnership/documents/warsaw_summit_declaration_en.pdf

¹¹ http://www.mfa.gov.ge/files/459_16273_945386_ActionPlanonVisaLiberalisation.pdf

¹² report from the commission to the european parliament and the council First Progress Report on the implementation by Georgia of the Action Plan on Visa Liberalisation; November 15, 2013 available at http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131115_1st_progress_report_on_the_implementation_by_georgia_of_the_apvl_en.pdf

¹³ <http://transparency.ge/en/node/347414> <http://monitoring.visa-free-europe.eu/>

¹⁴ <http://monitoring.visa-free-europe.eu/>

Although the progress made by Georgia in fulfilling of the European standards in the areas outlined by the Action Plan is impressive and a large number of reforms were introduced even before the official launch of the visa dialogue (some of them, like a period of visa-free stay in Georgia were more liberal than required by the EU), significant efforts are still required to accomplish the process. This not only refers to the two latter Blocks, but also to a number of activities in the first two.

Institutional framework for the implementation of the VLAP

Despite the similarities regarding structure and approximated number of reforms to be made, observed in all the VLAPs issued up to date, i.e. Ukrainian, Moldovan and Georgian, their implementation varies from country to country. In Moldova and Ukraine a dedicated administrative body, the Centre for the Implementation of an Action Plan, was created. In Moldova, the head of the centre reported on the progress in implementation process weekly to the government, as finalising visa liberalisation was considered as crucial for the country. In Ukraine, the National Coordination Centre for the Implementation of the VLAP was not functioning in practice until the end of protests on Maidan square in February 2014. Due to the political earthquake in Kyiv, the National Centre has been re-launched. Although independent experts are not included in the decision-making process, the activity of the Centre is monitored by them.

In Georgia, the implementation of the Visa Liberalisation Action Plan is coordinated by Ministry of Foreign Affairs. Upon receiving the VLAP, the government of Georgia elaborated the Visa Liberalisation Action Plan Implementation Plan to reflect the detailed activities and responsible state agencies. A group of representatives of state institutions, led by the Deputy Foreign Minister, was created to deal with the implementation of the VLAP on a daily basis. The interagency group meets regularly to evaluate the progress and to set up a plan for future activities. This model on the one hand enables the reform process to be coordinated by the real decision centre and avoids the creation of an additional administrative structure. On the other hand, it may cause responsibility for the process to be blurred, the reforms to be subject to current political interests, etc. Also, it does not provide a non-governmental organisation with an opportunity to share their expertise in the respective policy areas linked to visa liberalisation – NGOs are practically excluded from policy-making at governmental level. Moreover, Civil Society Organisations also do not have an opportunity to take part in the EU-Georgia Visa Facilitation Committee meetings with observer status (since the VFA does not provide the grounds for NGOs to be named as “participants”).

Assessment of Georgian reforms by the VLAP Blocks

1. DOCUMENT SECURITY INCLUDING BIOMETRICS

Georgia initiated the process of issuing biometric passports in 2010, long before receiving the Visa Liberalisation Action Plan. The biometric passports issued fully comply with ICAO standards, although the existing non-biometric passports still remain valid. The government of Georgia still lacks a plan to roll-out biometric passports and phase-out non-biometric ones (which are still issued in consular offices), a respective law for this should be adopted. Detailed provisions for obtaining a second passport (in extraordinary cases) need to be incorporated into the legislation – in general, the „one person one document” principle should be adopted as well as the prohibition of passport extension.

The code of conduct for officials working in the Public Service Development Agency (PSDA) should also be adopted, since the most sensitive personal data is processed there. Authorities should establish a plan for the complete digitalisation of civil status registries with an indicative timeframe since this will improve the efficiency and security of personal data processing while issuing identity documents. Data security also refers to the biometric information collected while applying for a passport; Georgia should therefore provide all the relevant legal instruments for the collection and storage of

fingerprints. Anti-corruption training courses for officials dealing with the issuing of identity documents should be conducted on a regular, institutionalised basis, as to date this has only been financed by foreign donors.

2. IRREGULAR MIGRATION INCLUDING READMISSION

Georgia is very slow with the demarcation of its state borders. The GoG established the State Border Demarcation Commission under the auspices of the Ministry of Foreign Affairs. Only the Georgian-Turkish border is fully demarcated at this stage. 71% of the border with Armenia and 66% of the border with Azerbaijan have been agreed. In the case of Russia, 86% of the border has been agreed but the work stopped as a result of the 2008 military conflict. Georgia continues to modernize its border infrastructure, although the situation at green border sectors (border lines between Georgia and other states that exclude official crossing points) is pretty tough. Due to the lack of financial resources some sectors of the Georgia-Azerbaijan and Georgia-Armenia border are in dire conditions.

In March 2014, the government of Georgia approved the updated National Border Management Strategy. Together with the complete legal framework (Georgian law on State Borders, Georgian Law on Police, Georgian Tax Code, Georgian Law on Public Health, etc) for border management, this brings Tbilisi close to fulfilling of all the requirements in this field. Training courses are regularly held for officials working in this area, although it is recommended to extend and intensify them. Cooperation on border issues should be established with all neighbouring countries and the process of demarcation of borders with Armenia, Azerbaijan and Russia ought to be completed.

Georgia and its bordering states already have a good basis for cross-border cooperation. Georgia and Armenia share 224 kilometres of land border with five border crossings and customs points in operation – four for vehicles and one for trains. Georgia and Armenia came to an agreement about border management in 2011. In January 2013 Georgia and Armenia signed an agreement on joint management of four customs point.

Georgia shares 446 kilometres of its land border with Azerbaijan and there are five border crossing and custom points, one of which is for trains. An agreement about the joint management of custom points has been initialled between Georgia and Azerbaijan. Georgia and Azerbaijan are also benefiting from the EU-funded border management capacity building project.

Georgia and Turkey share a land border of 275 kilometres. Turkey is the only neighbouring state Georgia has delimited and demarcated its state with borders. There are two border crossing and customs points between Turkey and Georgia (both for vehicles). Currently Georgia and Turkey, with generous support from Azerbaijan, are building an additional border crossing point for use by vehicles as well as trains.

Georgia shares its longest land border with Russia (894 kilometres) but due to the military conflict and Russia's occupation of Georgian territory the countries have no diplomatic relations. There are three border crossing points between Georgia and Russia, of which only one is operational (Kazbegi). The other two (Gantiadi and Roki) are located in the occupied territories and are not controlled by Georgian authorities. In line with Russia joining the World Trade Organization thanks to Swiss mediation, Georgia and Russia signed an agreement on the " Basic Principles for a Mechanism of customs Administration and Monitoring of Trade in Goods ", although no progress has been made with the implementation of this agreement.

The overall coordination of migration policy in the country is carried out by the State Commission for Migration Issues that was set up in 2010. The State Commission for Migration Issues is composed of 13 Ministries (Ministry of Education and Science; Office of the State Minister for Diaspora Issues; Office of the State; Minister on European and Euro-Atlantic Integration; Ministry of Economy and Sustainable Development; Ministry of Justice (chair); Ministry of Internally Displaced persons from the Occupied Territories of Georgia, Refugees and Accommodation; Ministry of Regional Development and Infrastructure; Ministry of Foreign Affairs; National Statistics Office; Ministry of



Finance; Ministry of Internal Affairs (co-chair); Ministry of Labour, Health and Social Affairs).

The European Union provided support to Georgia to elaborate the Migration Strategy covering the period of 2013-2015. Its implementation is supported by the Action Plan that lists specific activities, sets deadlines and designates the implementing partners. The Unified Migration Analytical System, a mechanism for monitoring migration stocks and flows (the creation of which is required by the VLAP), is in an initial phase of development. It is recommended to accelerate work on its completion in order to make the state's migration policy complete. The relevant ministries and agencies are already gathering information and data concerning persons crossing the border, residence permits, visas and their duration, foreigners in the country, expelled foreigners from the country as well as legal entities established by foreigners. An electronic database for irregular migrants has been set up within the MoIA. It became operational as of 1st September, 2014 once the law "On the Status of Foreigners and Stateless Persons" came into force.

The Georgian Police Code of Ethics (adopted by the Ministerial Order on 17th May 2013) has been issued and applies to all the Ministry of Internal Affairs' units, including the border services (the Border Police). At the same time it constitutes the ethical code for the Border Police. The nine page document (available on the website of the Ministry of Internal Affairs)¹⁵ was prepared in 2013 by the Ministry of Internal Affairs and serves as a blueprint regulating the principles of policing, the conduct of police officers, the relationship with society and colleagues, the use of force and firearms, the holding of investigations and the treatment of detainees. A violation of the provisions of the Code of Ethics leads to disciplinary actions for police officers. In line with FRONTEX standards, the anti-corruption trainings are being conducted (Common Core Curriculum) for officials working in border management and customs.

The adoption of the law "On the Legal Status of Foreigners and Stateless Persons" on 5th March 2014 (which came into force on 1st September 2014) was an important step in creating a legal environment for migration management, which is required by the EU. All the necessary by-laws have already been adopted. State's visa policy was tightened – number of countries whose citizens were able to enter Georgia and stay in the country up to 360 days without the need of visa was significantly decreased – it used to be more than 100 countries from all over the world, now nationals of 94 countries can enter Georgia without a visa, for (likewise in EU regulations) up to 90 days in any 180 day period¹⁶.

Georgia should establish a Migration Service as part of the Ministry of Interior (MoIA). The Readmission Agreement with the European Union has generally been implemented well; in the period from 1st March 2011 – 26th September 2012, 1125 out of 1326 cases submitted by EU member states were approved (92.4%). In 2013, the approval rate for readmission applications was over 90%, according to the Georgian Ministry of Internal Affairs. However, no effective measures for the reintegration of returned Georgian citizens have been introduced.

The process of negotiating and concluding Implementing Protocols for readmission with EU Member States is on going. Protocols have been signed with: Bulgaria, Estonia, Hungary, Austria, Belgium, Netherlands, and Luxembourg; while they have been negotiated with: Slovakia, Czech Republic, Lithuania, Poland, and Portugal. Negotiations have been initiated with: Cyprus, France, German, Greece Italy, Spain, Sweden and Denmark..

A Mobility Centre has been established with EU support as a part of the Mobility Partnership, assisting returning migrants by developing a personal reintegration plan and providing medical assistance, as well as temporary accommodation. It is recommended to continue institutionalisation of this centre.

The implementation of the Migration Management Strategy for 2013-2015 has been positively assessed, among others by the European Commission' progress report

¹⁵ Georgian Police Code of Ethics available at <http://police.ge/files/pdf/etikis%20kodeqsi/Georgian%20Police%20Code%20of%20Ethics%20English%20final.pdf>

¹⁶ https://www.geoconsul.gov.ge/en/non-visa_en.html

of 15th November 2013, and this should be continued. Work on a new document, covering the period after 2015, has already begun.

Georgia's regulations regarding the issue of asylum can be described as being generally in line with international standards – asylum seekers have access to medical care, may appeal against negative decisions and enjoy access to a number of services, including language courses. However, it is recommended to amend the legislation to improve the protection of refugees by issuing them with relevant documents at the beginning of the asylum procedure and by softening the requirements of applying for asylum within 24 hours of arrival in Georgia. At the moment, if asylum applications are lodged after this deadline they are automatically refused. According to official statistics, over the past few years Georgia has seen an increase in the number of asylum seekers from Iraq, Syria, Egypt, Nigeria, Tunisia and Iran. The Ministry of Internally Displaced Persons From Occupied Territories, Accommodation and Refugees of Georgia reviews each application individually. 599 asylum seekers applied to the Ministry in 2011. This number decreased to 469 in 2012. The ministry reviews each application on a case by case basis. While their case is being reviewed, accommodation is provided to the asylum seeker at the asylum seeker centre in the village of Martkopi (close to Tbilisi), which can accommodate 60 asylum seekers. The asylum seeker acceptance rate is very low, 24 out of all the applications made in 2012 resulted in refugee status being granted, while only 29 individuals received humanitarian status.

3. PUBLIC SECURITY AND ORDER

Georgia has made significant progress in this section. Georgia adopted the new law "On Police" which has been operational since 1st January, 2014. The government approved the new strategy on the Fight against Organized Crime covering the period of 2013-2014. This strategy covers a range of issues including cybercrime and the fight against so-called "thieves in law". The Georgian government also adopted the Action Plan on the Fight against Organized Crime. According to this document, the Georgian government established an Inter-Agency Council on the Fight against Organized Crime. The agency brings together representatives of the relevant ministries and is responsible for implementing the Action Plan.

Georgia has engaged in a comprehensive anti-corruption reform process and put in place a legal and institutional framework which has brought about tangible results in the prevention of and fight against corruption. Georgia has also made significant progress in criminalising corruption. Offences of active and passive bribery in the Criminal Code of Georgia include the offering and promise of a bribe, bribery in favour of a third person and bribery through an intermediary. In Transparency International's Global Corruption Barometer 2013 survey, only 4 percent of Georgian respondents reported paying a bribe, while 70 percent said that the level of corruption has decreased in the country over the preceding two years. Nevertheless, in 2013 Freedom House noted, in its 2013 Nations in Transit report, that the relationship between government and business remained "largely opaque" and the widespread off-shore ownership of major companies was believed to mask the links between these companies and people from former President Saakashvili's entourage. One of the biggest concerns is the lack of transparency of the remuneration system in public administration. This particularly applies to the allocation of bonuses to public officials and public sector employees. A 2013 study prepared by the Georgian Young Lawyers Association found that the majority of public institutions have no formal guidelines for the allocation of bonuses and that decisions to award bonuses are not supported by any explanatory notes, while the share of bonuses in the total remuneration is well above the average for developed countries.

Personal data protection still remains one of the toughest issues in Georgia and civil society organizations have been demanding the adoption of relevant legislation to protect citizens from illegal surveillance. Recently the parliament of Georgia approved amendments introducing changes to the law "On Personal Data Protection". The legal amendment came into force as per 1st September, 2014, extending the mandate of the Personal Data Protection Inspector to cover the law enforcement sector. In addition, the Inspector will also supervise data processing in the private sector from 1st November, 2014. The legislation on personal data protection in the fields of education,



health protection and social issues needs to be elaborated, adopted and implemented by the government of Georgia. Currently, personal data about the individual's health condition can be exchanged between the health insurance providers operating in Georgia and can easily be leaked. There is also a lack of clear cut regulations that would restrict access to the personal data collected in the field of education. The office of the Personal Data Protection Inspector was established and has been operational since 2013. The government of Georgia should allocate additional resources to strengthen the capabilities of the Personal Data Protection Inspector's Office. Relevant human resources should be assigned to the office of Personal Data Protection Officer's Office to guarantee its efficiency.

In this part of the Visa Liberalisation Action Plan regarding the protection of personal data, particular attention needs to be paid to Georgian legislation on monitoring mechanisms for government surveillance practices. At the time of writing this policy brief, the Parliament of Georgia was discussing a package of legislative amendments increasing the monitoring mechanisms for government surveillance practices, but the proposal leaves out a clause tackling the long-standing problem of security agencies' 'black box' spy devices on telecommunications service providers' networks. The Interior Ministry wanted to remove a provision from the bill which curbs the unrestricted, direct access to telecommunication companies' server infrastructure – this reportedly allows law enforcers to monitor over twenty thousand mobile phone numbers simultaneously. According to this disputed clause, law enforcement agencies would only be able to carry out surveillance and get requested data from telecommunications service providers after obtaining a court order authorizing eavesdropping. But the Interior Ministry argued that it should not be necessary to notify the operators because this would increase the risk of leaking sensitive information and undermining the operative activities of the law enforcement agencies.

Another challenge that Georgia has been facing is related to the fight against human trafficking. According to the US State Department's report of 2013 on Human trafficking, Georgia was downgraded to the second tier due to the fact that "Women from Uzbekistan and possibly other countries are subjected to forced prostitution in Georgia's commercial sex trade in the tourist areas of Batumi and Gonio. Experts report that foreign women are engaged in prostitution in saunas, strip clubs, hotels, and that escort services are vulnerable to forced prostitution. Georgian men and women are subjected to forced labor within Georgia, as well as in Turkey, Russia and other countries"¹⁷.

Georgia still remains in the second tier of countries according to the recently published US State Department's report of 2014 on Human trafficking. According to this document "Women and girls from Georgia are subjected to sex trafficking within the country, as well as in Turkey and, to a lesser extent, the United Arab Emirates and Russia. Women from Azerbaijan, Uzbekistan, Kyrgyzstan, and other countries are subjected to forced prostitution in Georgia's commercial sex trade in the tourist areas of Batumi and Gonio in the Adjara province. In May 2013, an Uzbek sex trafficking victim was murdered in western Georgia by a man believed to be acting on behalf of her trafficker."¹⁸

External relations and fundamental rights

This is the most controversial part of the Visa Liberalisation Action Plan. One of the toughest requirements is the adoption and implementation of the anti-discrimination legislation. In May 2014, despite staunch opposition from the Georgian Orthodox Church and nationalistic groups, the parliament of Georgia managed to adopt an anti-discrimination law. Although the law was watered down compared to its initial draft it still included "sexual orientation" and "gender identity" as prohibited grounds of discrimination. The law prohibits multiple discrimination, defines direct and indirect discrimination. It applies to all areas of activity of public institutions, natural and legal persons and private sector. Georgia has also ratified a number of international treaties on the protection of minorities and the elimination of various forms of discrimination, including the UN Convention on the Elimination of all Forms of Racial Discrimination and the Council of Europe's Framework Convention on the Protection of National Minorities.

¹⁷ US State Department's Trafficking in Persons Report 2013 available at <http://www.state.gov/j/tip/rls/tiprpt/2013/>

¹⁸ US State Department's Trafficking in Persons Report 2014 available at http://www.state.gov/j/tip/rls/tiprpt/2014/?utm_source=NEW+RESOURCE%3A+Trafficking+in+Persons+Report+2014&utm_campaign=2014.07.16+NEW+RESOURCE%3A+Trafficking+in+Persons+Report+2014+&utm_medium=email

An important step is the adoption of the new, modern law “On Citizenship”, which introduced international standards regarding the granting of Georgian citizenship. This law was adopted in April 2014. The new law also introduced the notion of naturalisation. The President has right to grant Georgian citizenship with no need of counter signing by the Prime Minister. Furthermore, according to the new law a person can become a citizen of Georgia upon his/her birth if one of the parents is a Georgian citizen, even if he/she does not reside permanently in the territory of Georgia.

Visa liberalisation is considered an important factor contributing to the peace process between the people residing in the occupied regions of Abkhazia and South Ossetia and the rest of Georgia. However, in order to have the opportunity of visa-free travel, they need to obtain biometric passports issued by Georgian authorities. Currently Georgia issues identity cards and travel documents with a neutral status for persons residing in Abkhazia and South Ossetia. According to the latest information, 233 people have neutral status identity cards. It should be noted that these documents are not biometric and are not recognised by nine EU member states. Russian military forces are in the process of marking the borders of the breakaway regions and putting up barbed wire alongside the administrative border lines, thereby hampering, if not fully limiting, the access of people residing in those territories to other parts of Georgia. Considering this, it would be extremely difficult for the people residing in Abkhazia and South Ossetia to obtain Georgian biometric passports.

One of the important commitments in the first phase of VLAP that Georgia has already completed is “signing, ratification and implementation into national legislation of relevant UN and Council of Europe instruments in the fight against discrimination, including taking into account the UN Convention on Reduction of Statelessness (1961) and the standing recommendations of the Council of Europe on the European Charter”. According to the progress report, Georgia has also been preparing for the ratification of the European Charter for Regional or Minority Languages. To this end, in June 2013 the Government established a high-level inter-agency commission responsible for the formulation of policy in this matter. The Commission has been working closely with governmental authorities, civil society and minority community groups, as well as Council of Europe experts. However, so far the Georgian government was not able to ratify the Charter and it might be an obstacle in accomplishing the first phase of visa liberalisation in 2014.

Way ahead

Georgia has made significant progress in implementing of the first (legislative) phase of the Visa Liberalisation Action Plan. It is expected that the European Commission will assess the progress and that Georgia will move to the second (implementation) phase of the VLAP by the end of 2014. This period will be more challenging since the actual implementation of the adopted legislation has stronger efforts than its adoption.

The Government of Georgia has to launch an information campaign stressing that visa liberalisation does not automatically grant the citizens of Georgia access to the EU labour market. Furthermore, despite the visa liberalisation, the previously imposed requirements are still valid and, for example the documents confirming the purpose of the visit, proof of sufficient funds and return tickets etc. might be checked while crossing the Schengen states’ borders. Meanwhile, authorities and non-governmental organisations, as well as EU diplomatic missions, should inform Georgians about the visa application procedures under current regulations, including the conditions for appealing against a visa refusal. This may help to reduce the high rate of visa refusals in Georgia.

Despite the significant improvement in fighting trafficking in human beings (THB), Georgia still faces a significant amount of work in this field in order to come close to European standards.

One of the most acute challenges that might lie ahead in the visa liberalisation process is the number of citizens of Georgia seeking asylum in EU member states. Georgian



authorities should take action in various areas – from migration management and labour policy, to appropriate measures for the reintegration of internally displaced persons, in order to reduce the number of Georgians seeking asylum abroad.

Summary

The afore-mentioned arguments show that despite the impressive progress with the modernisation and the implementation of the Visa Liberalisation Action Plan by Georgia, Tbilisi still faces a significant amount of work before visa liberalisation is possible. Although the 1st phase of the VLAP is very close to completion, important legislative acts and national strategies (with action plans) still await adoption or amendment. This includes anti-corruption and anti-trafficking policies, asylum procedures and more. On the other hand, the time has come for the government to launch a nationwide campaign informing people about the conditions of a visa-free regime.

RECOMMENDATIONS TO GEORGIAN AUTHORITIES:

- Improve the protection of personal data within the process of issuing biometric passports, including: the adoption of code of conduct for Public Service Development Agency (PSDA) employees, the digitalisation of databases and the establishment of rules for collecting fingerprints
- Adopt an Action Plan(s) for the complete roll-out of biometric passports and the phasing out of old-style documents
- Complete demarcation of the borders with Armenia, Azerbaijan and Russia
- Set up proper border control infrastructure along the country's green border
- Intensify training courses for officials responsible for migration and asylum issues
- Establish a Migration Service within the Ministry of Internal Affairs
- Intensify work on new National Migration Management Strategy for post-2015 and a Unified Migration Analytical System (established but not yet fully operational)
- Align the asylum granting procedures with international standards, including the softening of the "24-hour rule"
- Provide enough human resources for the efficient functioning of the Personal Data Protection Officer's office
- Describe the surveillance powers of administrative bodies in detail, at legislative level.
- Commence a nationwide campaign informing people about visas and visa-free regime in order to reduce the number of visa and entry refusals and unjustified asylum requests.
- Carry out a public awareness campaign to inform people that visa free travel does not guarantee the access to the EU labour market.

RECOMMENDATIONS TO THE EUROPEAN UNION:

- Intensify the local Schengen cooperation of EU Member States' consular offices in Georgia to examine the steps that need to be taken in order to reduce the number of visa refusals for Georgian citizens, including: preparing an exhaustive list of supporting documents, providing information for applicants, etc.
- Give a Georgian civil society organisation the opportunity to attend the EU-Georgia Visa Facilitation Committee meetings with an observer status.
- Maintain strict conditionality and do not ease the requirements envisaged by the VLAP