

Center for Peace, Conversion and Foreign Policy of Ukraine

## Expansion and Modernization of the Schengen: Consequences and Perspectives for Ukraine

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## FOREWORD

This publication is another contribution of Center for Peace, Conversion and Foreign Policy of Ukraine into its monitoring of visa policy and practice conducted by EU Member States. Previous publications, in particular “Ukrainian View on Visa Policy of the European Union Member States” (2006) and “Ukraine-EU: on the Way to Visa Free Regime” (2007) caused significant resonance and were the subject for broad discussions inside expert and public circles.

In our new project “Expansion and Modernization of the Schengen: Perspectives for Ukraine” we put an emphasis on those aspects of visa policy that have not been previously discussed in CPCFPU publications. Novelty of the research relates to currently important issues, namely:

- *Introduction of official intermediary services in EU visa practice (launching “Visa Centers”);*
- *Expansion of the Schengen zone since December 21st, 2007 resulting in its direct bordering on Western part of Ukraine;*
- *Entering into force of the Agreement of Facilitation of Visa Issuance between the EU and Ukraine after January 1st, 2008.*

This publication contains full results of monitoring the activities of Visa Centers that provide intermediary services for citizens of Ukraine. These data were first presented during the round table “Expansion of the Schengen – Consequences for Ukraine” organized by CPCFPU on February 15th, 2008 in Kyiv.

In addition, preliminary assessment of Schengen zone expansion impact on visa issuance for the citizens of Ukraine was made, as well as first implementation evaluation of the Agreement on Facilitation of Visa Issuance between Ukraine and EU.

The publication presents prognosis assessment and recommendations concerning the content and format of the future “visa dialogue” between Ukraine and EU.

A consortium of non governmental organizations and think tanks representing different regions of Ukraine was created as a result of CPCFPU research efforts in terms of visa migration problems and with a support of European Program of International Renaissance Foundation. The consortium was created in order to hold systematic examination of the situation in terms of ensuring human rights for free movement, detect problems and obstacles to liberalization of visa relations with EU and lifting visa obligations for the citizens of Ukraine as a final aim. Consortium conducts regular activity monitoring of EU Member States consulates in Ukraine. The next publication will cover these issues.

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## ***EXPANSION OF THE SCHENGEN ZONE – IMPACT ON UKRAINE***

On December 21st, 2008 Schengen zone was extended at the expense of 9 countries that had joined European Union on May 1st 2004, namely: Estonia, Latvia, Lithuania, Poland, Hungary, Czech Republic, Slovak Republic, Slovenia and Malta. From this point on the zone of free movement of people includes 22 out of 27 EU Member States (excluding Great Britain, Ireland, Cyprus, Bulgaria and Romania), as well as Norway and Iceland that are not members of European Union.

There were official celebrations with the participation of heads of the states organized in German Zittau, situated on the border between Poland, Germany and Czech Republic, in Hungarian Hegyeshalom, on the border between Austria, Hungary and Slovak Republic and on the check point Skofije/Rabuiese, dividing Italy and Slovenia. On this occasion Mr. José Manuel Barroso, President of the European Commission visited Tallinn in order to participate in the similar border farewell solemnities.

According to Barroso, “As from today people can travel hassle-free between 24 countries of the Schengen area ... from Portugal to Poland and from Greece to Finland”. The President of the European Commission emphasized that “Together we have overcome border controls as man-made obstacles to peace, freedom and unity in Europe”.

As the web site of the European Commission’s Delegation to Ukraine states, “Expansion of the Schengen zone is an unprecedented event in the history of Europe. As from today border controls between the countries previously separated by “iron curtain” are lifted as the last obstacles to creation of European space for free movement of persons. Citizens of new Eastern and Central EU Member States will enjoy the possibility of traveling to countries of Western Europe or visiting their Central European neighbors free from time consuming and complicated border controls”. The same site states: “Schengen zone expansion will mean significant benefits for Ukrainian citizens. From now on Ukrainian citizens receiving Schengen visa in the consulates of one Eastern or Central European EU Member State will be able to visit not only this particular state but freely travel on the territory of all countries belonging to the Schengen zone”.

Not completely challenging this optimistic outlook mentioned above we should however state that together with benefits Ukrainian citizens faced considerable disappointments and complications caused by the fact that neighboring countries apply completely different, tougher rules and regulations in terms of visa issuance.

During the first four months a considerable decrease (by 2,6 times) in the number of the trips made by Ukrainian citizens to EU Member States is noticed (this situation is described

in more detail in the chapter “Preliminary Assessments of Implementation of the Agreement on Facilitation of Visa Issuance between Ukraine and the EU”).

Regardless the lack of official data there are all grounds to explain such considerable reduction in the statistics of human contacts and visits abroad by the fact that “new” Schengen states made visa issuance unavailable for a great number of Ukrainian citizens who previously visited neighboring countries on a regular basis. In fact, the statistics of visits to “old” Schengen states practically has not changed as the rapid reduction is noticed in the number of trips to “new” Schengen countries.

New numerous requirements, such as bank statements, salary statements and real estate certificates, request for official invitation from hosting organization, increased financial requirements turned into unfeasible obstacles for millions of Ukrainian citizens.

The case of visa issuance to Republic of Poland is particularly sensitive. According to the previous years’ statistics, about 35-40% of all trips made by Ukrainian citizens to EU Member States were visits to Poland.

Poland continues to issue the biggest number of visas among all EU Member States and it has the biggest network of consular establishments – 5 Consulates in Kyiv, Lviv, Odessa, Lutsk and Kharkiv. Currently the possibility of establishing the 6th Consulate in Ivano-Frankivsk is being discussed. Operation capacities of General Consulate in Lviv were significantly enhanced after the opening of new Consulate building. Nevertheless after Schengen accession the situation with visa issuance for Ukrainian citizens became noticeably more complicated. This is attested by visa issuance and border crossing statistics.

According to our sources in the Republic of Poland during the first four months of 2008 all five Polish Consulates issued about 92 thousand visas while during the same period of the previous year about 221 thousand visas were issued. Thus a considerable decrease by 2,4 times is observed in the number of visas issued by Polish agencies.

Polish representatives explain such situation by decrease in the general number of applicants as many citizens traditionally traveling to Poland are able to visit Poland with visas issued by other Schengen Member States. However, we consider such explanation to be insufficient as in conjunction with decrease in the number of issued visas a rapid decrease in the number of visits made by Ukrainian citizens to EU in general and to Poland in particular is noticed and recorded by border services on both sides of the border.

Stating the decrease in the number of issued visas we should also take into account the changes in the quantitative proportions of single and multi entry visas. There are no relevant official data, however, comparative monitoring of the work of Polish General Consulate in Kyiv shows that over the previous year overall majority of the issued visas were multi entry and long term while currently the situation is the opposite – mostly single entry visas are being issued.

Such negative tendency is entirely corroborated by border data. According to Polish border service during the first half of 2008 the people flow through the border of Ukraine decreased by 18,9% and the movement of private and passenger traffic decreased by 20%. Only the number of truck transportation slightly increased – by 8%. Such data should be completed with the considerable change of proportions of border crossings in terms of the citizenship. Relevantly low indicator of decrease in the number of border crossings (18,9%) can be explained by the fact that the flow of citizens of Poland and other EU Member States crossing land Ukrainian-Polish border is rapidly increasing, while the number of Ukrainian citizens crossing the border is rapidly falling down by 2 and more times.

Introduction of local border traffic regime was supposed to become the instrument aimed at softening the outcomes of Schengen zone expansion. Local border traffic is a special regime for border area residents that gives them the possibility to cross the border with a special multi entry document permitting intended stay on the border territories of neighboring countries over the limited period of time. However, only Hungary out of three neighboring countries introduced this regime on time concurrently with Schengen accession while the negotiations with Slovak Republic and Poland were prolonged. (The instrument of local border traffic is discussed in detail in the chapter “Schengen Expansion – the view from Transcarpathia region” provided by Svitlana Mitryayeva)

Agreement on Local Border Traffic between Ukraine and Slovak Republic is expected to enter into force in September 2008 and the situation with Poland remains undefined as European Commission made serious comments on the Agreement signed in March 2008. The most important remark is the demand for the parties to limit the Agreement validity only on the border area of 30 km, while in case of Slovak Republic and Hungary the exclusive border area of 50 km was applied and such norm did not provoke any remarks on behalf of EU.

Nevertheless, as of summer 2008 the instrument of local border traffic has not started its proper functioning. Accordingly, taking into account the facts mentioned above, negative outcomes of Schengen zone expansion were experienced by Ukrainian citizens to the maximum extent.

Apart from social and humanitarian outcomes of freedom of movement restriction, Schengen enlargement has economic impact as well, due to full devolution of practically all types of traditional cross border business management to the competence of citizens of EU Member States. Over the previous years even after introduction of national visas by neighboring countries the majority of border trade was run by Ukrainians. Regardless outdated and half legal type of such “employment” it benefited to the leveling of social and economic situation on the common border to some extent. Currently practically all border trade, at least on the borders with Poland and Slovak Republic, is taken over by neighbors (the EU citizens)

and it deepened crises on the local employment market and increases the distance between life standards for citizens of Ukraine and EU Member States in border areas.

The temporary solution for such situation may be the full fledged introduction of local border traffic on the Ukrainian-Schengen border which is expected in the second half of 2008.

As of summer 2008 we may state the Schengen zone expansion positively influenced only a small (1-2%) percentage of Ukrainian citizens who previously had access to Schengen visas traveling to countries of Western and Central Europe. Now these citizens are exempted from the necessity of receiving national visas of Central European countries – one visa is valid for visiting any of 24 Schengen states.

Certainly, tourist groups and tourist agencies experienced a certain positive impact as now they can organize and carry out complex tours to several EU countries at once. It will speed up the process of following popular European tour routes by Ukrainian citizens such as Krakow-Prague-Vienna, Vilnius-Riga-Tallinn or Budapest-Bratislava-Vienna as now tourists need only one visa instead of three.

At the same time the number of Ukrainian citizens who experienced negative outcomes of Schengen zone expansion is much bigger than of those who benefited from it. In absolute figures the decrease in the number of trips made by Ukrainian citizens to EU countries is rather significant. Negative tendency is even worse than it was in 2000-2004 when visa free regime was substituted by introduction of national visas by candidate countries that became EU members in 2004.

Social impact of Schengen zone expansion on Ukraine lies in deepening the gap between the elite and the rest of the society.

Representatives of elites previously having access to Schengen visas have mostly benefited from Schengen zone expansion as they do not need to receive national visas to the countries of Central Europe.

Bearers of diplomatic passports (diplomats, members of Parliament, state officials) were fully exempted from visa requirements and they currently enjoy the advantage of visa free entry on the territory of EU Member States.

At the same time vast majority of Ukrainian citizens who previously traveled to neighboring EU countries on business, with purpose of employment, education, visiting relatives or friends and for personal touring trips faced significant obstacles in terms of new Schengen requirements. Most of them had to refuse from such visits or minimize their number. This problem is especially noticeable in border regions.

Taking into account the level of social culture in Ukraine such situation may provoke deepening the distance between different social classes (according to their social and wealth status). In addition, lifting visa obligation for one social minority and facilitating visa access

for another may serve as a certain “bribe”. It will decrease the motivation of “privileged” categories for further lobbying of full-fledged visa regime elimination by the EU as such problem will not be important for them or its importance will be considerably lower.

Such distance may touch upon international relations as well, as the situation concerning the right for border crossing is absolutely asymmetric and discriminating for Ukrainian citizens. As a result, Euro-skepticism is becoming more popular in Ukraine as well as demands to reestablish visa regime for EU Member States abolished in 2005.

Current situation with human contacts between Ukraine and EU did not develop all of a sudden. The perspective of current negative outcomes was foreseen in the researches of our partners and in CPCFPU studies, in particular in the analytical report “Visas with “human face”? Negotiations between Ukraine and EU on Visa Regime Liberalization” published in 2006 by Stefan Batory Foundation in cooperation with CPCFPU<sup>1</sup>. The parties did not take into account potential outcomes to the full extent; expert recommendations were only partially and selectively realized.

Nevertheless, the lessons of the first months that passed since Schengen zone expansion should be carefully studied. The parties should at least admit that the activities aimed at prevention current problems were not sufficient and such situation had an impact on fundamental interests of the citizens.

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<sup>1</sup>Web site of Stefan Batory Foundation <http://www.batory.org.pl/doc/wizy-ukr.pdf>

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## ***SCHENGEN BORDER: A VIEW FROM TRANSCARPATHIA<sup>2</sup>***

The last big enlargement of European Union (on May 1st, 2004) with the accession of 10 new members, including neighbors of Ukraine, has essentially changed the function of Western border of Ukraine as thus it has become the external border of EU as well. Over this period countries neighboring Ukraine (Hungary, Slovak Republic and Poland) made important steps on the way to their full-fledged integration into European structures.

Accession of these countries to the Schengen zone (on December 22nd 2007) was one of the outcomes of such steps. The accession presupposes elimination of internal borders between these countries and with other members of Schengen Convention, zone expansion, guaranteed freedom and free movement of people, products, services and funds. It also means that external EU border (Western border of Ukraine) has become an external border of the Schengen zone as well. It demands from our neighbors – Hungary, Slovak Republic and Poland to fully obey Schengen acquis, laid down in Schengen Action plan in terms of obligations for secure protection of their national and external EU land borders, for the benefit of national, regional and international security. Actually this border area has become a part of EU “front defense line” in fighting illegal migration and cross border crime.

Implementing the declared strategy of Euro Atlantic integration Ukraine also positively perceives free movement regime expansion on the territory of EU Member States. At the same time shifting main regime and control measures to our state land border fairly raises concerns among citizens of Ukraine concerning appearance of certain features of “iron curtain” on the land border which has served as an example of good neighborhood relations for many years. [New Schengen border equipment exclusively between Slovak Republic and Ukraine with new special border control gadgets (sensor cameras, special scanners, computer SiSone 4 all system, etc.) costs more than 3,5 million Euro; number of personnel has increased by almost three times].

Slovak Republic has already introduced new infrastructure and disposition of border units. State border guard line has been substantially expanded and it gave the possibility for active force maneuvers; border orders are not located at the state border exclusively. Practically the following system of stationary units has been introduced: in terms of their responsibility areas they extend as far as 15 kilometers inside the country. With this purpose the border police have been reformed according to specific standards; its functions include not just border protection but extra checks of foreigners on the main road routes of Slovak Republic as well.

Modern technical equipment has been installed at checkpoints including the territory of “green border” of the countries that have joined Schengen visa system since the end of the year; various movement detectors are already functioning as well as detectors of hidden

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<sup>2</sup>The author of this chapter is Svitlana Mityrayeva, Director of Regional Branch of NISS in Uzhgorod

objects, detectors of active electronic and other types of radiation, stationary thermo tracking cameras and bio locators have been set and are in function. Slovak Republic, Hungary and Poland are already applying such equipment and Romania is actively working on installment of such equipment. It requires considerable financing. For example, European Union has allocated 560 million Euros for Romania's preparation to EU accession and equipment of Romanian borders. Slovak Republic received 44 million Euros for this purpose regardless the fact that its border area with Ukraine is considerably smaller. More than 250 million Euros were received and spent by Hungary for these purposes.

Ukraine expects that raising security level of EU external border (Schengen border since the end of December 2007) of countries neighboring Ukraine will not hinder the development of good neighborhood relations; introduction of local border traffic Institution as demonstrated in the Agreement between Ukraine and Hungary which is unique on EU territory ( 384 Ukrainian and 244 Hungarian administrative districts have been included into the Agreement, about 750 thousand of Transcarpathian residents of border areas will enjoy the possibility of free movement).

*Table 1.*

According to the Agreement of May 28th, 1993	According to the Agreement of September 19th, 2007
Duration of stay-10 days	Duration of stay -90 days
Entry on the territory of Hungary for the citizens permanently residing in the regions of Szabolcs-Szatmár-Bereg and Hajdú-Bihar in Hungary and Transcarpathian region.	Entry on the territory of Hungary for the citizens of Ukraine residing for at least 3 years in Szabolcs-Szatmár-Bereg and Hajdú-Bihar and a part of Borsod-Abaúj-Zemplén -244 administrative units. The list of administrative units of border area on the territory of Ukraine (border districts of Transcarpathian region - 384 administrative units).
Points of facilitated entry: 1. Dzvinkove – Lónya 2. Kosyny – Barabás 3. Luzhanka – Beregsurány 4. Vylok – Tiszabecs	Border residents may cross the border at border entry points opened for international connection of persons as well as entry points opened for local border traffic 1. Čop – Záhony 2. Salovka - Eperjeske 3. Dzvinkove – Lónya 4. Kosyny – Barabás 5. Luzhanka – Beregsurány 6. Vylok – Tiszabecs New entry points: VelykaPalad-Mala Palad; Solomonovo- Dierecke.
Документи на право перетинання Documents permitting facilitated state border crossing are issued by competent bodies of the Parties (passport department).	Competent agencies entitled to receive and process applications for facilitated border crossing permit: General Consulate of Ukraine in Niredgaza. General Consulate of Hungary in Uzhgorod. Consulate of Hungary in Beregovo.

According to Consul-General of Hungary in Uzhgorod Mr. Vilmos Sziklavári a certain positive achievement lies in the fact that “taking into account the initiative of Hungary European Union has reviewed the possibilities for inter border cooperation and approved such experience, thus currently local border traffic is one of achievements of European Union” .

At present similar Agreements between Ukraine and Poland, Ukraine and Slovak Republic which are to be signed shortly may be considered as feasible conditions for regional development and new idle reserve for inter border cooperation.

At the same time Ukraine expects unified position of neighboring countries in terms of admeasuring local border traffic territorial zone (up to 50 km) which will definitely promote strategic aims of border cooperation on the territory of new Eastern EU borders, at least in terms of Carpathian Euro region (border territories of Ukraine, Hungary, Slovak Republic, Poland and Romania) by facilitating border cooperation challenges for these countries.

Agreements on local border traffic may be considered as the steps and elements on the way to facilitated visa regime for Ukrainian citizens and introduction of visa free travel in future (in terms of implementing Agreement on Visa Regime Facilitation between Ukraine and European Union).

### ***Major elements of local border traffic***

Background. The Agreement on Facilitation of state border crossing for the citizens residing in border administrative units signed by People’s Republic of Hungary and USSR on August 1st, 1985, stated that facilitated border crossing regime could be applied at border crossing points on Soviet-Hungarian border (the Agreement between certain members of European Union was signed in the same year in Schengen). This regime was prolonged by the Agreement on Facilitated state border crossing regime for the citizens residing in border areas signed by Hungary and Ukraine on February 26th, 1993. However, since August 1st, 2003 such regime has been abolished due to integration of Hungary into European Union.

Regulation of Council of the European Union # 1931/2006 “On laying down rules on local border traffic at the external land borders of the EU Member States and amending the provisions of the Schengen Convention” defines the notion of local border traffic, according to which local border traffic is the regular crossing of external border by border residents, for example, in order to stay in border territory for social, cultural or substantiated economic or family reasons, for a period which in case of permanent stay on the territory of relevant country can not exceed the time limit of three months.

The local border traffic permit (facilitated border crossing) is valid for a minimum of one year and a maximum of five years. The fees corresponding to the administrative costs of processing applications for the local border traffic permit can not exceed the fees charged for processing applications for short-term multiple-entry visas. Border resident is a third-country

national who has been lawfully residing in the border area of a country neighbouring an EU Member State for a period of minimum one year.

The given document states that according to bilateral Agreements separate corridors or separate crossings valid only for this category of citizens may be created on current border crossing points for the citizens who are in possession of facilitated border crossing permit. Article 18 presupposes that by January 19th, 2009 EU Commission should submit a report to EU Parliament and Council on implementation of current bilateral agreements on facilitated border crossing.

About 600-750 thousand of Ukrainian citizens reside on the territory of Transcarpathia belonging to local border traffic zone. Taking into account its geopolitical capacities the region is both well conformed and it should serve as a bridge and link between EU and Ukraine. The region plays such special role due to its geographic location, history and national structure of population.

Thus, taking into account the rules laid down in Regulation of Council of the EU and provisions of Agreement on Local border traffic rules signed between the Government of Hungary and the Cabinet of Ministers of Ukraine, the main elements of local border traffic regime are the following:

1. The Agreement Annex contains the list of border administrative units (on both sides of the borders) of Agreement validity. Practically it lists administrative units on both sides of the border expanding in 50 km area.

2. Facilitated border crossing permit may be obtained by any resident permanently residing on this (border) territory for a period of at least 3 years. Permanent residency may be documented by national passport, Ukrainian travel passport or registration certificate of place of residency.

3. The permit entitles multi entry and stay for maximum of 90 days in terms of six months in border area of other country, in particular on social, cultural, family or substantiated economic grounds. The permit is issued by competent bodies of the country of entry, i.e. consular services of General Consulate of Hungary in Uzhgorod and Beregovo and expectedly General Consulate of Ukraine in Niredgaza.

4. Facilitated border crossing permit is valid for minimum of one year and maximum of five years but it can not exceed the validity of travel document (in the given case – validity of travel passport).

5. Permits issued in the form of plastic cards are expected to be introduced for a longer period of stay. Their production will be done according to technology eligible for biometric identification. Until such cards are introduced facilitated cross border permits will be stuck into travel passports likely to visa stickers that are currently being used. Thus a valid travel passport is necessary in order to receive the permit.

6. The permit will be issued within the shortest period of time not exceeding 30 days from the day of receipt of the application. Permit fee will equal to 20 Euros. According to the Agreement on Visa Facilitation Regime for Ukrainian citizens signed between Ukraine and EU Schengen visa fee equals to 35 Euro. Starting January 1st, 2008 the same fee will be applied in issuing Schengen visa by competent bodies of Hungary. At the same time a substantial number of people will be exempted from fee payment requirement both in terms of Schengen visas and local border traffic (for example, disabled people, retired, and children under age of 18).

7. Though in the past certain questions aroused concerning restrictions for local border crossing points functioning, the approved decision does not contain such restrictions. According to the Agreement, all crossing points both on Hungarian and Ukrainian side designated for international movement of persons as well as points designated for local border crossing may be used for local border traffic.

8. Bilateral Agreement comes into force on the 30th day after implementation of national legislative procedures and relevant mutual declaration through diplomatic channels. Implementation of national legislative harmonization, Agreement ratification and executive actions preparation are necessary in this regard.

The Agreement on local border traffic raises the question of potential abuse of the Agreement regulations by the border area residents who are in possession of border crossing permits. That is why it is extremely important that entry is made exclusively on the territory specified in the Agreement on condition that facilitated border crossing permit is issued. In the event of any abuse of the local border traffic regime established under the Agreement a person crossing the zone as specified in the Agreement may be deported from Hungary even for a period of five years.

Experts from European Union believe that free visa regime with Hungary will cause considerable increase in the number of trips made by citizens of EU neighboring countries to EU and they advise to hold informational campaigns clarifying rights of the citizens in the context of visa free regime. Thus raising awareness level concerning rights and obligations of the visitors will help to prevent negative outcomes, for example, exceeding maximum period of stay (90 days), illegal employment, etc., as such numerous cases may cause doubts concerning expediency of introduction of visa free regime with Ukraine.

It should be mentioned that in January 2008 Hungary finalized integration of its border and police bodies. A part of border personnel dismissed on the western part of the border is expected to be regrouped for the so-called deep border check organization. Mutual checks of law enforcement agencies are also expected in the zone exceeding 50 km. Such checks will be carried out by law enforcement agencies of other Member States of the Schengen Convention in terms of their national borders.

As an alternative to Schengen visas local border traffic will help to prevent Schengen zone borders from hindering legal trade and regional cooperation between neighboring countries. Implementation of the local cross border traffic regime between Hungary and Ukraine will promote further development of good neighborhood relations between countries, preserve and support social, cultural, family and economic ties between the residents of border areas.

**Table 2.**

**Visas issued by General Consulates of Hungary and Slovak Republic in Uzhgorod**

Visa type	General Consulate of Hungary in Uzhgorod	General Consulate of Hungary in Beregovo	General Consulate of Slovak Republic in Uzhgorod
Schengen visas December 2007 January-April 2008	183 4190	762 2258	532 1829
Local border traffic permits December 2007 January-April 2008	152 3969	2341 6380	1937 5472

Nevertheless the experts mention that the last expansion of the Schengen zone caused considerable decrease in number of visas issued for Ukrainian citizens which are valid for entry on the territory of European Union.

Analysis of European official statistics shows that:

- number of visas issued by Hungary in January 2008 decreased by 4,6 times comparing to January 2006 and by 3,2 times comparing to January 2007;
- number of visas issued by Hungary in February 2008 decreased by 3, 7 times comparing to February 2006 and by 2,4 times comparing to February 2007;
- number of visas issued by Poland in January 2008 decreased by 2, 8 times comparing to January 2006 and by 3,5 times comparing to January 2007.

At the same time slight changes of similar indicators for countries that entered Schengen zone earlier should be mentioned.

Taking into account that major decrease of number of issued visas relates to the countries directly bordering Ukraine (Hungary, Slovak Republic and Poland), major EU entry restrictions were encountered by the border area residents who were entitled to entry on EU territory before Schengen zone accession of neighboring countries of Ukraine.

According to Western regional department of Border service of Ukraine over the period of January-March 2008 the number of people (all nationals) who crossed Western border of Ukraine decreased by 11% comparing to the same period of the previous year .

Experts explain such tendency by introduction of Schengen visas. It should be mentioned that number of Polish citizens who crossed Ukrainian-Polish border is twice higher than the number of Ukrainians. Only a year ago the number of Ukrainians was bigger than the number of Polish citizens. On the contrary, according to custom data, the traffic flow has increased by 9% over the first 3 months of 2008. Such increase is noticed both on Hungarian and Romanian areas of State border of Ukraine. Experts explain this situation by the fact that traffic flow has improved on account of lack of lines and strikes that used to serve as obstacles on Polish border crossing.

Current information proves that European Union introduces new, tougher rules for movement on the territory of United Europe by enforcing control over departure and entry of foreigners. Changes presuppose introduction of a unique electronic data base of persons crossing borders of European Union in all EU Member States. For this purpose all consular establishments of European countries are to be equipped with automatic points for biometric technology application. A transition to biometric visas will be gradually made in consulates of EU Member States. Foreign experts believe that such transition may serve as an effective means of fighting illegal migration in countries of Europe.

For the next two years in order to protect external EU borders and fight terrorism, illegal migration and organized crime, European system of border control will be introduced as well as new visa informational system which presupposes creation of electronic base of biometric data of people entering EU. The so-called "Frattini Package" is being discussed in European Commission and awaits final approval by European Parliament. The base is to include primarily the data concerning the EU border region residents who will enjoy the benefits of local border traffic and apply to consular establishments for travel documents. [According to data of General Consulate of Hungary in Uzhgorod after the introduction of local border traffic 3 persons from Transcarpathian region were detained and deported on the way to Budapest] .

Moreover, an observation system (Eurosur) will be created and it will apply modern technologies including observation satellites with high division capacity and unmanned airplanes for monitoring distant areas crossing the routes of illegal immigrants. EU border agency Frontex will also be involved into other activities. According to Mr. Frattini these reforms will be implemented during 2010-2015 after their approval by all EU Member States.

## **Conclusions**

Paradoxically, expanding of freedom area for EU citizens limited the freedom area for their neighbors. Elimination of internal borders inside EU is done simultaneously with strengthening of external borders. Strong security and infrastructure is being developed, more severe control is being set, and tougher visa regime is being introduced for third countries including Ukraine.

It cannot be unnoticed that currently free and intensive communication between societies is being violated, namely between Ukrainians and Polish, Ukrainians and Slovaks, Ukrainians and Hungarians. Such communication has been developing for decades and it helped to eliminate numerous stereotypes and resolve many of past historic problems. Relevant results may be noticed in tolerant Transcarpathia (the issue of Verets'ki pass, etc).

The next problem is the issue of numerous national minorities in Ukraine: Polish – 144, 1 thousand, Hungarian – 156,6 thousand, Romanian – 151 thousand (according to the Census of 2001). Residing densely on the border area they are already facing problems in communication with their relatives across the border line. An attempt to resolve this problem is the recognition of such residents, citizens of Ukraine as those possessing a status of ethnic Hungarian, Polish, Slovak, etc. Relevant legislative bodies of these countries approved declarations in this regard. Such status will entitle these groups of citizens to receive Schengen visas on favorable terms, live and work abroad without registration in relevant services, use preferences of public transportation, education and even health care. Such privileges may apply to 2% of Ukrainian population but it fairly raises the question of equality of Ukrainian citizens regardless their nationality. Reaction of Ukrainians to such legal regulations may be inadequate as currently there are discussions concerning 900 thousand of ethnic Polish people.

Agreement on local border traffic laying down the facilitated form of receiving visas is a certain way to settle these issues. Though local border traffic minimizes certain Schengen challenges, generally we see a clear tendency of limiting the entries of Ukrainian citizens on the territory of Europe.

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## ***PRELIMINARY ASSESSMENTS OF IMPLEMENTATION OF THE AGREEMENT ON FACILITATION OF VISA ISSUANCE BETWEEN UKRAINE AND THE EU***

Agreement on the facilitation of the issuance of visas between the European Community and Ukraine (hereinafter – the Agreement) entered into force on January 1st, 2008. On November 29th European Union completed the Agreement ratification procedure during the meeting of EU Council of Ministers as well as the ratification of the Agreement on Readmission. The decision of the Council was based on positive conclusions made by the Committee of Permanent Representatives of the EU Member States (COREPER) which were approved on November 27th. The Agreements were ratified earlier by European Parliament on November 13th.

Verkhovna Rada of Ukraine ratified both Agreements (on Visa Facilitation and on Readmission) only on January 16th, but the Parties agreed to start prior Agreement operation, simultaneously with similar agreements signed with Western Balkan countries and Moldova in the second half of 2007.

It should be mentioned that before the Agreement entered into force there were fierce debates concerning the conditions and terms of expanding on the territory of new EU Member States – Romania and Bulgaria - visa free regime introduced unilaterally by Ukraine for the citizens of EU Member States on May 1st, 2005. By emphasizing the principle of solidarity and demand for equal treatment European Union stated that the Agreement would enter into force only after Ukraine introduced visa free regime for Romania and Bulgaria. Official commentary given by Ministry on Foreign Affairs of Ukraine on September 20th stated that “Ukraine does not divide EU into old and new Member States and that is why it agreed to review the issue of visa free regime for Romania and Bulgaria”. However delay in problem solution caused ultimatum demands on behalf of European Union and even threats to postpone the Agreement implementation. In return, on November 14th Minister of Foreign Affairs Arseniy Yatsenyuk stated that Ukraine did not appreciate the ultimatum attitude concerning implementation and ratification of the Agreement on Visa Facilitation in connection with Romania and Bulgaria. Nevertheless the compromise was finally found – Ukraine lifted visa obligations for citizens of Romania and Bulgaria on January 1st, 2008 and on the same day the Agreement entered into force regardless the fact that at the time it was not been ratified by Verkhovna Rada of Ukraine.

We consider six months that have passed since the Agreement entered into force to be essential period for making preliminary conclusions concerning Agreement implementation. At the same time it should be mentioned that EU representatives believe that public assessment

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of Agreement implementation is premature as practical implementation needs changes and modification of numerous instructions and regulations caused by national legislature of EU Member States and the period between formal implementation of the Agreement and its full-fledged quality implementation needs more time.

Nevertheless, as of July 2008 the Agreement has been a valid regulatory and legal document for half a year, Ukrainian party has all grounds for urgent demand of diligent Agreement's provision adherence taking into account major social significance of the Agreement.

Lack of political will on behalf of EU Member States for public monitoring of Agreement's implementation causes the fact that official statistics of consular establishments of EU Member States on Agreement's influence on the situation with visa issuance for Ukrainian citizens is currently unavailable.

Particular concerns raised the fact that according to Ukrainian State Border Service data published in July, over the last 4 months of 2008 the number of trips made by the citizens of Ukraine to EU Member States decreased by 2,6 times comparing to the relevant period of the previous year. Such statistics is unprecedented for Ukraine as in the past such reduction never took place, even during 2000-2004 when Central European countries abolished visa free regime and introduced national visas for Ukrainian citizens in terms of preparation to EU accession.

Over the last month Ukrainian mass media published a number of articles that include numerous facts concerning violation of Agreement regulations , violation of the rights of Ukrainian citizens during their trips to EU Member States , and facts testifying the existence of powerful shadow market of European visas .

As none of the competent agencies refuted either the data provided by State Border Service and MFA of Ukraine or the facts mentioned in the given publications, there are grounds to make relevant conclusions. The main conclusion is that the Agreement on the facilitation of the issuance of visas currently does not fulfill its function – to facilitate the process of receiving visas for those traveling to “old” Schengen Member States and to soften negative outcomes for visitors of the “new” Schengen Member States.

According to the data stated by Deputy Minister for Foreign Affairs Mr. Oleksandr Kupchyshyn as of May 1st about 150 cases of Agreement violation were documented. As was mentioned by him, “mostly they relate to unjustified visa rejections, delay with visa issuance or visa application processing”. He also pointed out several cases of detention of Ukrainian citizens possessing diplomatic passports. They were detained because of visa absence although visa free entry for bearers of diplomatic passports is stated in the Agreement.

According to EU official position the Agreement is being implemented properly. As Mr. Bernard Bogensperger, Attaché of EC Delegation to Ukraine stated, the Agreement functions well. He testified this statement by the fact that the level of Schengen visa rejections currently equals to 6 % i.e. 94% of applicants receive visas and it demonstrates efficiency of the Agreement.

The statements concerning proper Agreement implementation are supported by other EU official representatives. For example, on July 8th, 2008 at the time of French EU Presidency presentation Ambassador Extraordinary and Plenipotentiary of France to Ukraine Mr. Jean-Paul Veziat expressed his satisfaction with the level of Agreement implementation by declaring that the Embassy of France issues sufficient number of multi entry and long term visas; numerous publications in Ukrainian media concerning unsatisfactory level of visa issuance for Ukrainian citizens he perceived as a “planned informational campaign” aimed at discrediting EU and the Agreement.

At the same time the official of the Embassy of Germany to Ukraine stated in the interview for “Expert” magazine that the visa rejection percentage makes up 8% (in the past it equaled to 20%) and the percentage of free visas is close to the half of the total number of issued visas (in previous years this indicator equaled to 12%).

With all the respect towards the position of official EU representatives we should however mention that such argumentation is not sufficient. Firstly, the Agreement content deals with such parameters as the list of documents necessary for argumentation of visit purpose, limitation of maximum visa fee and visa application processing period as well as setting the list of preferential categories of citizens having facilitated access to multiple entry, long term and free visas. The visa rejection percentage indicator does not reflect the Agreement competence directly, it relates to its efficiency only to a certain extent. Concrete data concerning the dynamics in the number of issued visas was never stated in the full complex of declarations and agreements stating the position of official EU institutions. The same relates to the changes in the parameters regulated by the Agreement, namely:

- *changes in the number of issued multiple entry and long term visas comparing to the previous year;*
- *number of applicants – citizens (in percentage) falling under preferential categories defined by the Agreement who are entitled to obtain multiple entry and long term visas;*
- *adherence to the obligation of maximum visa fee – 35 Euro (70 Euro – in the case of urgent procession);*
- *adherence to the maximum term of 10 days for visa application processing;*
- *adherence to the sufficient list of documents for justification of the visit's purpose;*

Such information could provide the possibility to give competent answers concerning Agreement functioning, the progress made and the components that cause concerns and it could eliminate justified suspicions and doubts among Ukrainian experts and journalists.

While performing this survey and experiencing the lack of official information on May 4th, 2008 CPCFPFU officially addressed the Embassy of Slovenia to Ukraine (the country presiding in EU at that time) asking to assess the Agreement implementation primarily in terms of statistics of long term, multi entry and free visa issuance. We were particularly interested in the percentage of applicants falling under “preferential” categories listed in Articles 4, 5, 6 of the Agreement as well as in the number of applicants receiving free visas and changes in the number of issued long term and multi entry visas, etc.

On June 30th, 2008 we received a response signed by Ambassador Extraordinary and Plenipotentiary of Slovenia to Ukraine Mr. Primoz Seligo which stated that “EU Member States discussed the letter during their working meetings and came to the conclusion that Member States are not competent to provide any response to this letter”. We were offered to address the Joint Expert Committee on Agreement Monitoring which was established in accordance with the Agreement (this Institution will be discussed below) as this body is competent of answering similar requests.

We are not authorized to comment on the official reply of the country presiding in EU. We would just like to mention that Joint Expert Committee held only one meeting and it does not have permanent apparatus. That is why the perspectives of correspondence with this competent body are not certain. Moreover, according to our information Member States are not obliged to provide the Committee with full statistics on the issues that are of interest for Ukrainian society and experts.

Nevertheless, we detect an evident deficit of information on behalf of EU that could help to agree with or disprove assessments existing in information space.

As to concrete data, we may operate only with those provided by Ukrainian party (MFA, State Border Service) and those, received from our partners through non official sources. Part of the data relating to activities of Schengen Consulates in Transcarpathia presented in the chapter “Schengen border: a view from Transcarpathia” was kindly provided by Svitlana Mitryayeva.

On June 3rd, 2008 the situation with the implementation of the Agreement of the Facilitation of Visa Issuance was the subject for discussion during the meeting of the Committee of Vekhovna Rada of Ukraine on European integration. Summarizing the meeting the Committee Chairman Mr. Borys Tarasyuk stated that “Several EU Member States appeared to be not ready to implement the Agreement provisions...citizens of Ukraine do not enjoy the benefits while crossing the border. Ukrainians face unjustified visa rejections

as they did before the Agreement was signed. The Agreement provisions concerning long terms visa issuance are not applied and some consular establishments continue to charge visa fees beyond the terms of the Agreements”.

Based on the conclusions of the meeting the Committee of Vekhovna Rada of Ukraine on European integration plans to organize Committee hearings that will involve state authority and diplomatic missions' representatives in order to analyze the implementation of the provisions of the Agreement on visa regime facilitation between Ukraine and EU.

Joint Committee is currently the single competent body authorized to review any dispute issues concerning overall visa practice and Agreement implementation in particular. This Committee was created in accordance with the Article 12 of the Agreement. The mission of the Committee is aimed at: a) Agreement implementation monitoring; b) developing recommendations concerning changes or amendments to the Agreement; c) regulating disputable issues in terms of interpreting or applying Agreement provisions.

On April 9th, 2008 the Committee held its first meeting. Ukrainian part was headed by Director of the Department of Consular Service Mr. S. Pogoreltsev. European delegation was chaired by the Director of Visa Policy Department of European Commission General Directorate of Justice, Freedom and Security Mr. Johannes de Kester. Representatives of other Ukrainian state authorities also participated. European party was also represented by EC experts, representatives of diplomatic and consular establishments of EU Member States. The exact working rules and procedures of the Committee were approved by both parties during the meeting.

According to official declaration “The meeting of the Joint Committee was devoted to the discussion of the problems of Agreement provisions implementation as well as to sharing the experience of the countries in the given context. As a result of the meeting the parties agreed to maintain open and constructive dialogue on a regular basis in order to timely solve the issues arising in terms of the realization of the Agreements mentioned above”.

The next meeting of the Committee aimed at discussing important content issues including the problems with Agreement implementation mentioned above, was postponed till September although initially it was planned to be held in July.

In our opinion, the main reasons for continuous existence of significant problems in terms of visa issuance for Ukrainian citizens by EU member states are the following:

1. Lack of political will to fully implement the Agreement on behalf of certain EU Member States.

2. Existence of such Agreement provisions that can be ambiguously interpreted. EU generally interprets them not to the benefit of the applicants from Ukraine.

3. Lack of the EU agencies' competences (primarily of European Commission) in order to maintain full fledged Agreement implementation by EU Member States.

Consulates of EU Member States apply rules and instructions of national ministries instead of Agreement provisions or European Commission's recommendations or, moreover, decisions of European Parliament. In case of disagreements between the Agreement and internal legislature or instructions the consulates applied the latter.

Obviously, in the nearest future the parties will follow their own, sometimes mutually excludable assessments of Agreement implementation. The work of Joint Committee will be defined by a great number of practical materials on cases of Agreement violation presented by Ukrainian party. At the same time regardless formal competences of the Committee in terms of the Agreement, it is not authorized to approve any decisions mandatory for Consulates of Member States. Thus the work of the Committee will have only limited impact on the situation.

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## ***INTERMEDIARY SERVICES IN EU VISA PRACTICE IN UKRAINE***

After March 1st, 2007 Embassies of Belgium, Netherlands and partially of Germany introduced new practice of receiving and processing visa applications in Ukraine with the participation of Visa Facilitation Service (VFS) Company. This intermediary company started its operation in Kyiv by establishing the so-called “Visa Centers” as intermediaries between consular establishments and applicants and providing information and primary processing of visa documents.

Appearance of VFS Company on the Ukrainian visa service market provoked numerous questions on behalf of civil society concerning the founders and owners of the company, its business reputation and reasons for acquiring exclusive intermediary rights between Ukrainian citizens and EU Member States.

There is not much information about this intermediary company. It was registered in India and is part of Kuoni Travel Group Company, whose headquarters are located in Zurich. The VFS Company was founded in 2001 in Mumbai (India) as a company specializing on services for diplomatic missions in the world. The company demonstrated its activities mostly in two countries – Ghana and Russia, by providing services on visa application processing.

The very fact concerning intermediary services raises no concerns while there are questions concerning the grounds for company activities.

Firstly, as we know there was no tender procedure for such services in Ukraine. The growing market of visa services of EU Member States equals to the amount of no less than 60-70 billions of Euro annually (taking into account only the consular fees). Considering the size of this market VFS Company received access to its substantial part without any transparent procedures. There is a perspective of VFS competence extension if other EU Member States follow the transition to intermediary services.

Secondly, this company is a monopolist and thus it may administer prices in the given service sphere.

Regardless such warnings, the company continues to conquer the market: since November 2007 similar practice is applied by Consulates of Spain and Italy, and Consulate of Great Britain applies similar services since July 2007.

Thus, as of August 2008 the following “Visa Centers” operate in Kyiv:

1. Visa Center of Embassies of Italy, Spain, the Netherlands and Belgium, located at the address: Frunze Str., 60

2. Visa Center additionally providing services for Consulate of Italy, located at the address: Fedorova Str., 1

3. Visa Center of Great Britain located at the address: Iryninska Str., 5

Introduction of these innovations was followed by declarations concerning the efficiency of such new type of visa services in the form of the so-called outsourcing. Outsourcing means delegation of certain visa service functions to the competence of a certain alien company. According to representatives of diplomatic establishments intermediary company had to ensure the solution of such vital problems as visa queues and lack of required visa application documents; increase the efficiency of primary document processing at the initial stage of visa application procedure; and in such a way to lower the visa refusal risk.

For example, official representatives of the consulates stated that transfer of a part of visa applications competence is aimed at improving and facilitating visa procedure for the citizens of Ukraine. Announcements about introduction of new outsource services stated that applicants will enjoy “fast and first rate service” as well as (in some cases) the possibility to receive visas over the next working day after the documents were submitted to the Visa Center. Generally the services were supposed to receive positive feedback from applicants awaiting the possibility to receive visas over a short period of time (even for an extra fee) and avoid the necessity to wait in queues in front of the consular establishments.

The problems mentioned above were attested and CPCFPU researches confirmed these problems as well. The applicants complained about long queues and uncomfortable waiting conditions for documents submission and visa decision. However, these problems were not defined by Ukrainian applicants as the biggest obstacles. Official representatives of the Embassies did not take into account such vital problems as lack of unified visa requirements among EU Member States, non-transparency of visa refusals, requests for personal (private) documents, long and undefined period for visa processing, etc. The changes projected were superficial as by modifying the initial stage of visa application procedure diplomatic missions did not intend to introduce the changes which are of greatest importance for their clients, applicants from Ukraine.

Speaking about judicial terms of activities of “Visa Centers” official EU representatives referred to Common Consular Instructions that include Chapter VIII “Consular Cooperation on the Local Level”, Paragraph 5.1 “Types of Intermediaries” stating the possibility for consular establishments to address private administrative agencies providing client assistance by presenting original and additional documents on behalf of the client.

By justifying legislative grounds for intermediaries representatives of Embassies referred to examples of VFS cooperation with 46 Embassies of EU Member States in 18 countries in the world, including diplomatic missions of Belgium, the Netherlands and Great Britain to Moscow. In particular, opening of 11 Visa Centers in Russia in 2006 was mentioned. As a

result, citizens of Russia enjoyed the opportunity to fill in the applications on-line and thus efficiency of document checks was increased. As a result the necessity for interviews in the embassies was removed. The main outcome laid in the fact that visa refusal rate decreased. However VFS activities in Russia were criticized because of the monopolization of tourist market.

VFS started the formation of its Visa Centers in Russia in cooperation with Russian tour operator “Star Travel” and as a result joint “Interlink” Company was founded. In such a way a system of double intermediaries was introduced. On the one hand it gave the possibility for certain categories of citizens to avoid difficult trips to the distant capital but on the other hand it meant the monopolization of the given service market. Russian Union of Tour Industry reacted to such situation by addressing Ministry of Foreign Affairs of Russia with the request to change the situation of the given market monopolization.

Clients of Visa Centers in different countries continuously turned attention to the level of VFS responsibility, in particular the responsibility in terms of preserving original documents in Visa Center offices and ensuring confidential information in the documents required by EU Member Consulates. For example, in April 2006 VFS Visa Center together with British High Commission responsible for issuing British visas in India did not ensure personal data protection of people who filled in visa applications via Internet. Personal information was made available for anyone visiting VFS Company web site. As it turned out not only tourists from India but also all VFS clients applying since 2001 were not protected.

The problem of judicial grounds for operation of Visa Centers was raised in Ukraine as well. In 2007 Speaker of Ministry of Foreign Affairs of Ukraine Mr. Andriy Deshchytysya informed about MFA addresses to the Ministry of Interior, Ministry of Finances, Antimonopoly Committee, and Security Service of Ukraine with a request to analyze VFS operation in the sphere of visa services for Ukrainian citizens, and company monopoly state in particular, in compliance with Ukrainian legislature.

The answer to the question concerning VFS responsibility in Ukraine is listed in general information on Visa Center activities clearly stating that RNT Company set as a service partner by VFS (in case of the Embassy of Italy in Kyiv) is responsible for receiving relevant documents from the citizens, transfer of documents to the Embassy and back to the applicant. Company owners emphasize that they take all preventive measures while processing documents of the applicants but “RNT Company is not hold responsible for any documents lost during the transfer, stolen or damaged as a result of force majeure circumstances or any other circumstances not controlled by RNT or created against company’s will”. Representatives of Visa Centers limit their own responsibility in terms of courier document delivery offered to the applicants for an extra fee. All announcements about specifics of Visa Center operation mention that “RNT Company is not in control and does not intrude into the wok of courier companies”.

The idea of Visa Centers introduction working concurrently with consular establishments of numerous EU Member States is not new. Propositions concerning unified requirements and procedures were presented earlier. For example, in 2006 intentions to create “Unified Visa Centers” were stated by European Commissioner Franco Frattini during the meeting of ministers on judicial and internal affairs of European Union in Luxembourg. Visa Centers were supposed to take over the functions of data collection, check and issuance of entry permits (including biometric data, in particular fingerprints) on EU territory. Such changes were planned in order to save the money for EU Member States and raise the security level on the one hand and facilitate the procedure of receiving visas for EU applicants on the other hand.

As the majority of EU Consulates is located in Kyiv, introduction of this innovation could solve the problem of big distances on condition that Visa Centers are opened in the regions. As of now this is not the case.

Thus Visa Centers in Ukraine realized only a part of the constructive idea of “Unified Visa Centers” offered by Frattini and supported by independent experts.

By defining the content of Visa Center activity as a “service partner” Embassies of Belgium, the Netherlands, Italy and Spain preserved the right to request additional documents from the applicants justifying and stating the purpose of the visit; hold and interview in doubtful cases; and what is more important, to approve the decision concerning visa issuance or refusal.

Document processing fee is a touchy issue in the work of Visa Centers. Fee for the visa services provided by centers for processing visa applications from Ukrainian citizens were defined in the following way: application reception and processing costs 170 UAH (~24 Euro), bank services and queue registration – 40 UAH (~6 Euro). Citizens should additionally pay consular fee of 35 Euro. Besides, Ukrainian citizens pay for translation of documents, their certification, insurance, etc. Thus Schengen visa cost considerably increased.

Agreement on the Facilitation of Visa Issuance between Ukraine and EU entered into force on January 1st, 2008. According to Paragraph 1 of Article 6 fee for processing visa applications for Ukrainian citizens shall amount to 35 Euro and some categories of the citizens defined in this Agreement are exempted from visa fees. However, due to mandatory intermediary services actual visa fee equals to 60-65 Euros. Such considerable difference between real practice and international obligations was not unnoticed.

Ukrainian party (both state officials and NGO representatives) repeatedly pointed out the contradictions between the Agreement provisions concerning maximum fee for visa processing procedure and the practice of mandatory intermediary services.

European Union representatives share different views on this issue. European Commission representative Emma Udwin stated that increase of visa fee for Ukrainians

caused by intermediary services of VFS is not in compliance with the spirit of the Agreement on Visa Regime Facilitation between EU and Ukraine. In March 2007 answering the question of UNIAN journalists concerning the decision of Belgium and the Netherlands to cooperate with international VFS Company she emphasized: "You should separate legal provisions and the spirit of the Agreement. Their activities do not contradict with the content of the Agreement, however we believe that increase of fees contradicts with the idea and spirit of the Agreement. Thus speaking about visa fees, actual increase of fee amounting to 60 Euro should be reviewed in terms of the Agreement spirit aimed at elimination of visa fee raise for Ukraine. That is why we do not support such fees".

Governments of those EU Member States that apply intermediary practices have different opinions in this regard. Their opinion was decisive as visa issuance process is in the competence of internal policy of EU Member States. Member States applying the outsource practice stated that applicants have the choice whether to apply to Visa Centers or directly to the Consular establishments.

Taking into account the facts mentioned above numerous questions have aroused: whether the applicants have the declared choice; whether the service in Visa Centers is efficient; whether the procedure is comfortable and understandable; whether visas are issued faster than during the regular procedure in the Consulates. All these questions need thorough investigation and research with regard to their high social significance.

In order to define the service efficiency level provided by Visa Centers and to evaluate the changes and innovations introduced by certain Consulates with the support of European Program of IRF CPCFPU conducted monitoring of Visa Centers' activities presented in the next chapter.

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## **MONITORING OF THE VISA CENTERS' ACTIVITIES**

In December 2007 - January 2008 200 applicants to four consulates (of Belgium, Italy, Spain and the Netherlands) were surveyed. These consulates have partially delegated their authorities to two Visa Centers. The monitoring was aimed at detecting positive and negative aspects in the activities of intermediary agencies and defining the efficiency level of services provided by them.

In order to receive quality results the survey was conducted on the basis of non proportional, systematic and random attempts. The survey applied sample grouping technique based on a random choice of the respondents. Random choice means that all potential respondents (visitors of Visa Centers) had equal chances to be surveyed. The survey applied the method of direct questionnaires and was based on the principles of anonymity and good will.

*The following sets of questions were included into the questionnaire presented to respondents:*

- *The attitude of Visa Center officers towards the applicants;*
- *Whether the visa procedure has become less difficult due to the work of Visa Centers;*
- *Which elements of visa system were defined as "positive" and "negative" by applicants;*
- *The existence of queues in front of Visa Centers;*
- *Whether the visa application system has become more transparent and simple comparing to visa applications to Consular establishments;*
- *Whether visa policy of four Schengen States has become a unified system;*
- *Whether Visa Centers substituted the informal infrastructure of fee-paying visa services and how the applicants evaluate this innovation.*

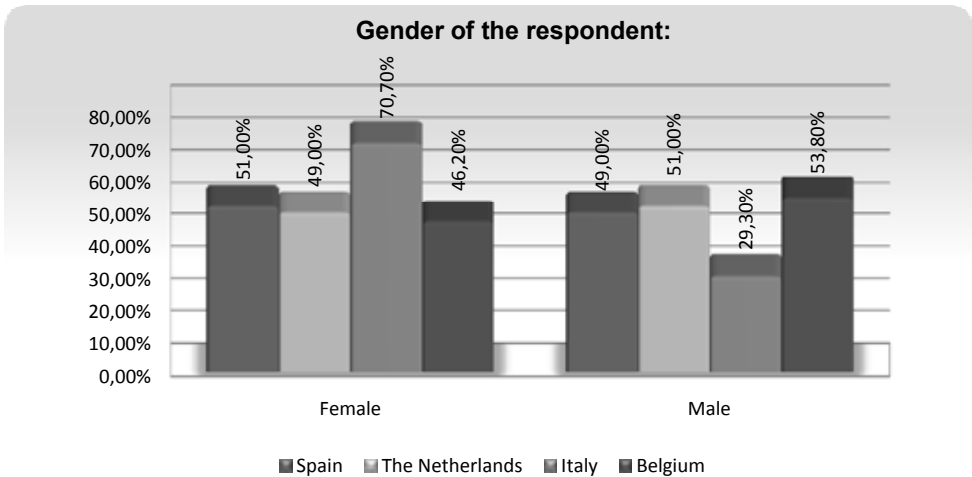
### ***Gender of the Respondents.***

According to gender women prevail among the respondents to some extent (55% and 45% respectively). Correlation of visa applicants corresponds to the structure of Ukrainian population as according to the State Statistics Committee of Ukraine data 21297, 7 men and 24894, 6 women currently reside in Ukraine.

It should be mentioned that there is a nearly equal proportion between males and females in the structure of applicants to three countries (Spain, the Netherlands and Belgium), while in the case of Italy a significant number of females prevails over the number of males (70% and 30% respectively). Such correlation according to gender may serve as the reflection of “female specifics” of Ukrainian labour migration to Italy, as a great part of applicants to the Consulate of Italy is constituted by those who apply for employment visa. (Diagram 1).

A great number of applicants willing to visit Italy in search of employment causes traditionally difficult visa procedures and requirements on behalf of Italian Consulate. In the case of three other Consulates there are slight differences according to the gender. In the case of Consulate of Belgium male applicants prevail by 7%. Traditionally people make business visits to this country and the applicant structure consists mostly of male clerks. Generally there is no gender misbalance in the structure of trips made to Spain and the Netherlands.

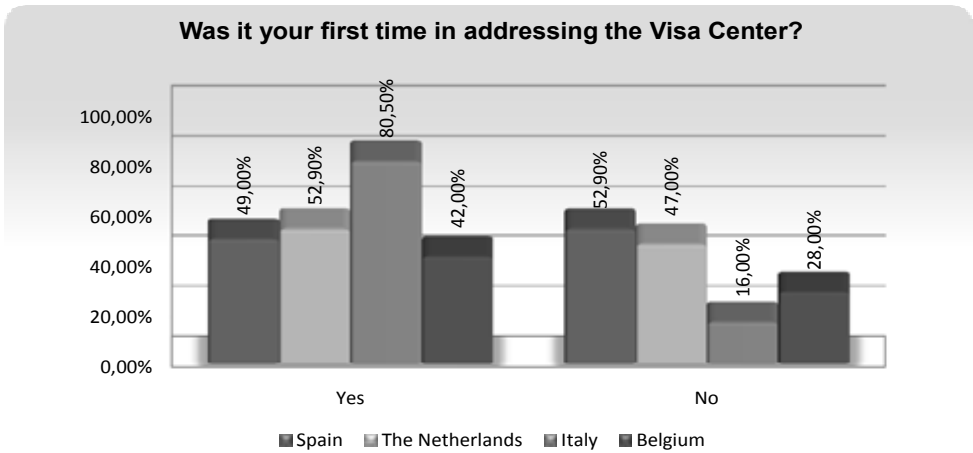
**Diagram 1.**



### ***Experience of Addressing Visa Centers and Experience of Receiving Visas to EU Member States***

As the practice of visa processing with involvement of Visa Centers is generally new to Ukrainian citizens, we consider it to be important to define what part of applicants addressed Visa Centers for the first time and what part has already had similar experience. According to survey results 80% of applicants to Italian Consulate have previously used such services.

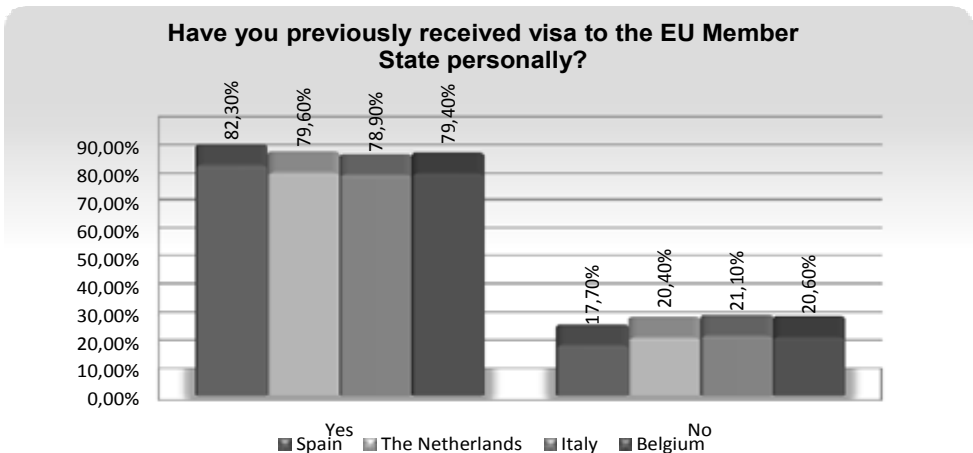
Diagram 2.



*Was it your first time in addressing the Visa Center?*

Based on the next diagram (3) we can make conclusions about the level of experience of Ukrainian citizens in terms of visa procedures and their abilities to compare visa procedures in Consular establishments (previously) and Visa Centers (presently). Previous experience in receiving visas has a positive impact on visa application processing. According to survey results about 80% of citizens (almost equally in all four countries) have had previous experience of receiving visas to EU Member States and only 18-21% of respondents go through visa procedures for the first time (Diagram 3).

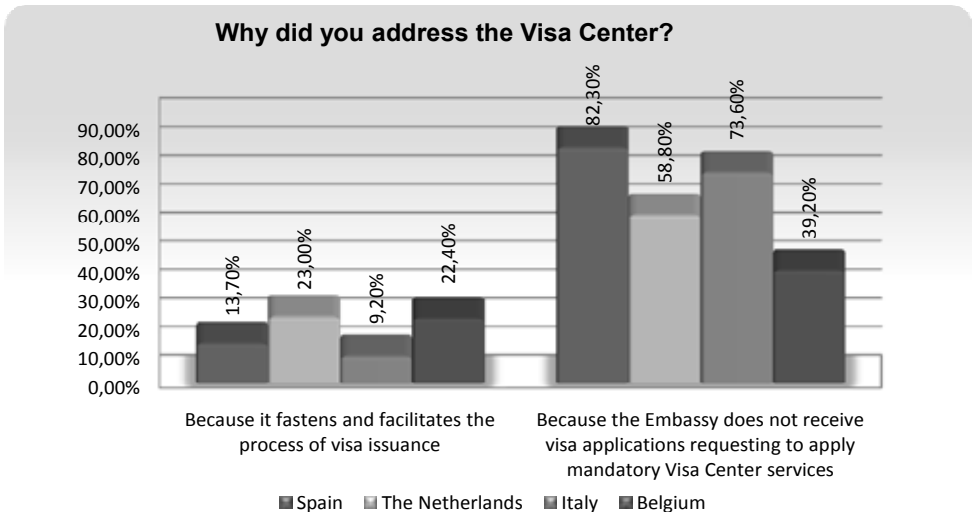
Diagram 3.



## Why Did Applicants Address Visa Centers?

What was the reason for the visits to Visa Centers – personal choice of the applicant or mandatory necessity? 82% of visitors of the Consulate of Spain responded that they addressed Visa Center due to the lack of choice. Consulate of Spain does not accept applications for short term visas; only applications for employment and other types of long term visas are submitted directly to the Consulate. Only the minority (ranging from 13 to 23%) of respondents took into account the procedure facilitation (Diagram 4). The responses allow stating that in practice consular missions do not adhere to the declared freedom of choice (whether to address Visa Center or the Consulate directly).

Diagram 4.



## Organization of Primary Visa Application Processing

Operation of Visa Centers is primarily aimed at facilitating and fastening the processing of the documents submitted by Ukrainian applicants in comparison with the work of Consulates. Visa Centers post numerous tips and materials concerning the specifics of visa applications for Ukrainian applicants in order to organize document processing in the most effective way. Internet pages of Visa Centers contain information about duration and specifics of visa procedure as well as relevant document requirements according to different types of visas

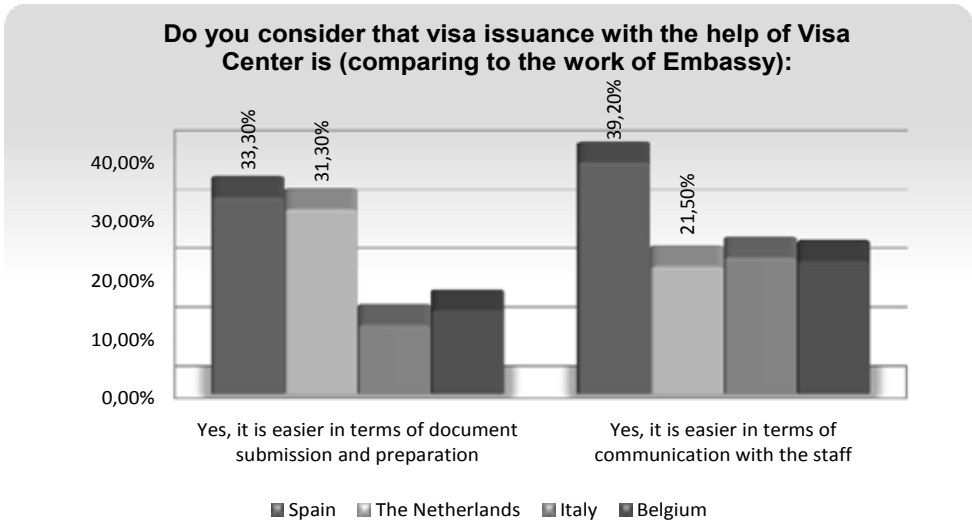
Setting priorities in the center operation as quality information sharing is a logical and necessary step before the document submission. Successful results of visa procedure depend on the level of information acquired by the applicants. However, information sharing is not sufficient in order to define the activities of intermediary services as visa procedure facilitation.

Out of the general number of applicants to Embassies of Spain and Italy the biggest number (33% and 31% respectively) believes that submission of the documents to Visa Centers facilitates document processing (Diagram 5). Low number of positive assessments on behalf of applicants to the Embassies of the Netherlands and Belgium may be explained by two factors.

Firstly, regardless the guaranteed assistance provided for applicants in document set preparation (for example, Visa Centers offer preliminary consultations concerning the list of visa requirements according to different visa types) the Consulates may require additional documents taking into account the criteria which are not clearly stated.

Secondly, the preparation of documents requires their translation into the relevant language of EU Member State, document certification, etc. Existence of “assistants” who represent other commercial agencies and provide translations, fill in the applications or sell insurances for an extra fee in front of Visa Centers, testifies to the fact that visa processing centers did not fully substitute the “informal” infrastructure of fee-paying services.

**Diagram 5.**



**Communication. Language barrier. Attitude towards Applicants.**

A great number of respondents noted that the communication with representatives is easier than with Embassy officers. We include availability of information and readiness to provide assistance in document preparation into communication criteria. 39% of applicants to Spanish Consulate (the biggest number among the respondents) believe that Visa Centers staff corresponds to the criteria mentioned above, while only 20% of applicants to Consulates of other countries confirmed such assessment (Diagram 6).

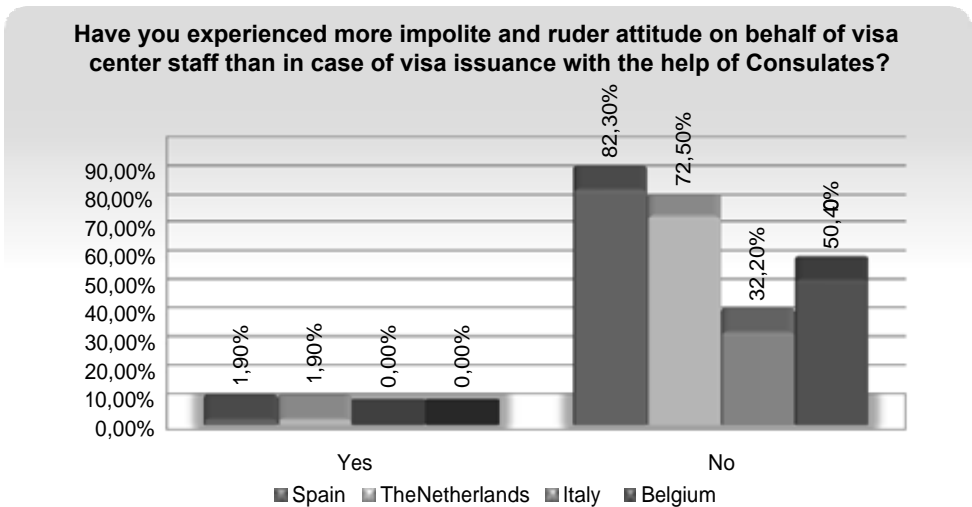
Communication between applicants and representatives of Visa Centers or Consulates is connected with the so-called language barrier. Consular officers may quite often use foreign language in their communication with applicants. As the applicants may not speak these languages it causes extra obstacles in visa procedure.

Survey results let us state that there is a considerable progress in eliminating the language barrier due to the work of Visa Centers. 97% of applicants to Italian Consulate, 78% of applicants to Spanish Consulate, 72% of applicants to Consulate of the Netherlands and 50% of applicants to the Consulate of Belgium stated that they experienced no problems in communication with representatives of Visa Centers (Diagram 6).

During the monitoring of activities of EU Member States consular establishments conducted by CPCFPU in 2006 the issue of attitude of consular officers towards the applicants was defined by the respondents as one of the main factors causing difficulties in visa procedures.

The obtained data shows that the attitude of Visa Center staff receives positive assessment from the majority of respondents. According to survey results 86% of applicants to Consulates of Spain and the Netherlands and about 90% of applicants to Consulates of Italy and Belgium did not experience impolite or rude attitude in their communication with Visa Center staff. According to obtained data only 2% of applicants to Netherlands and Spain believe that impolite or rude attitude in Visa Centers is more noticeable than in Consulates (Diagram 6).

Diagram 6.



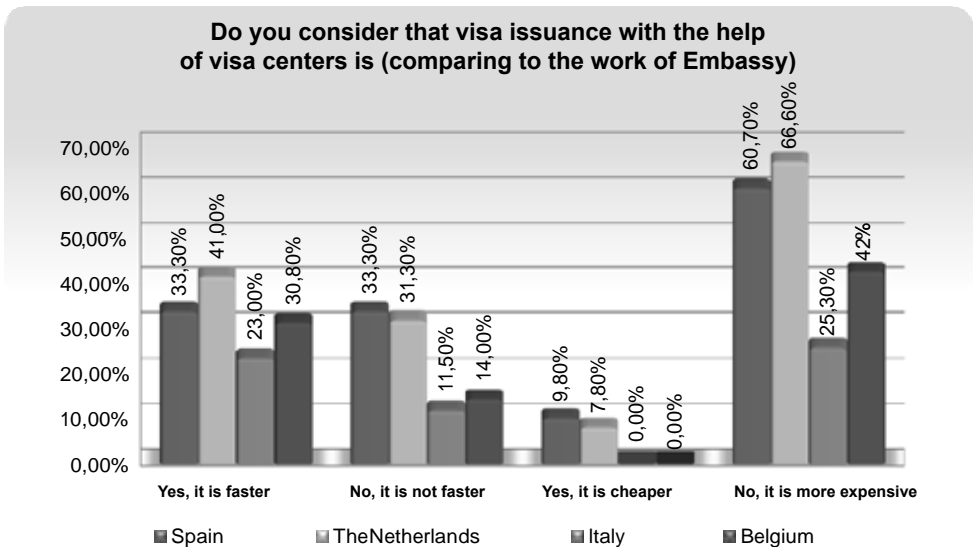
### Duration of Visa Application Procedure

As fastening of visa application processing was one of the main priorities in Visa Center operation, Visa Center managers created a scheme aimed at reducing the

duration of visa application processing. The possibility of preliminary registration was announced, although not earlier than 3 months before the trip. Officially the duration of document processing ranges from 3 to 14 days. The applicant has a possibility to check the application status by phone or via Internet.

According to our survey in fact the majority of applicants state fastening of the procedure (from 41% - to the Netherlands to 23% - to Italy). As we can see positive assessments prevail but they do not comprise the absolute majority. At the same time from 11% to 33% of respondents state that the procedure was not fastened. We should mention that a considerable majority of respondents either hesitated in answering this question or could not compare the procedures (due to the lack of previous experience) – (Diagram 7).

Diagram 7.



The entry permit decision is approved not only by the Consul or other competent person but by other authorities of EU Member States as well. Consulates generally await relevant decisions from Ministries of Interior or other official bodies of their states and it increases the period for decision making and makes it even unpredictable.

In other cases the processing duration may increase due to the requests for additional documents to be presented personally by the applicant as the copies sent by fax and Internet are not reviewed.

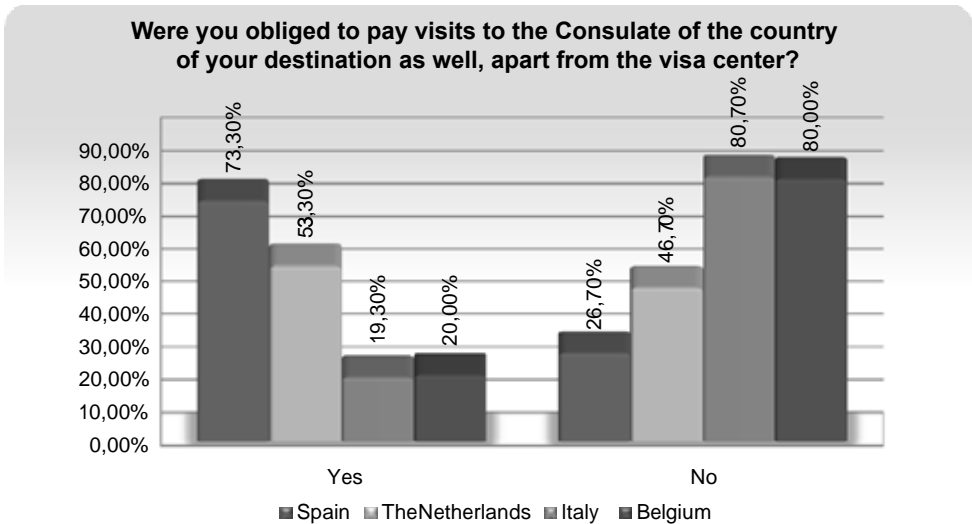
The list of factors causing prolonging in visa processing and complicating visa procedure includes specifics of competence distribution between the Consulates and Visa Centers. For example, the applicants should not only visit Visa Centers but the Embassies or Consulates as well. In particular, the practice of the Consulate of Spain should be

mentioned, when Visa Center collects fees for document processing (intermediary services) and consular fee is paid directly in the Embassy of Spain.

The survey results attest such practice, for example 73% of applicants to Embassy of Spain were obliged to visit both Visa Center and the Embassy. It should be mentioned that these two establishments are located at a great distance from each other that is why the applicants spend extra time and efforts.

Necessary interviews conducted directly in Consulates may also explain processing delay. Most of 20% of applicants to Consulates of Italy and Belgium may have visited the Embassy with such purpose (Diagram 8).

**Diagram 8.**



### **Service Cost**

The answer concerning service cost was rather predictable as services in Visa Centers are not free of charge while the traditional consular fee is paid separately.

Majority of the respondents confirmed increase in visa fees charged for visa procedure. Standard services of Visa Centers cost 170 UAH (~24 Euro), not including consular fees of 35 euro (or 70 Euro for urgent processing).

If the principle of voluntary application of Visa Center services was realized in practice, extra fees would not be considered as a problem. The citizens would have the choice – whether to rely on their own knowledge concerning preparation and submission of a set of necessary documents or address intermediaries for additional money. However, as we have already mentioned, in most cases the applicant is not offered such a choice.

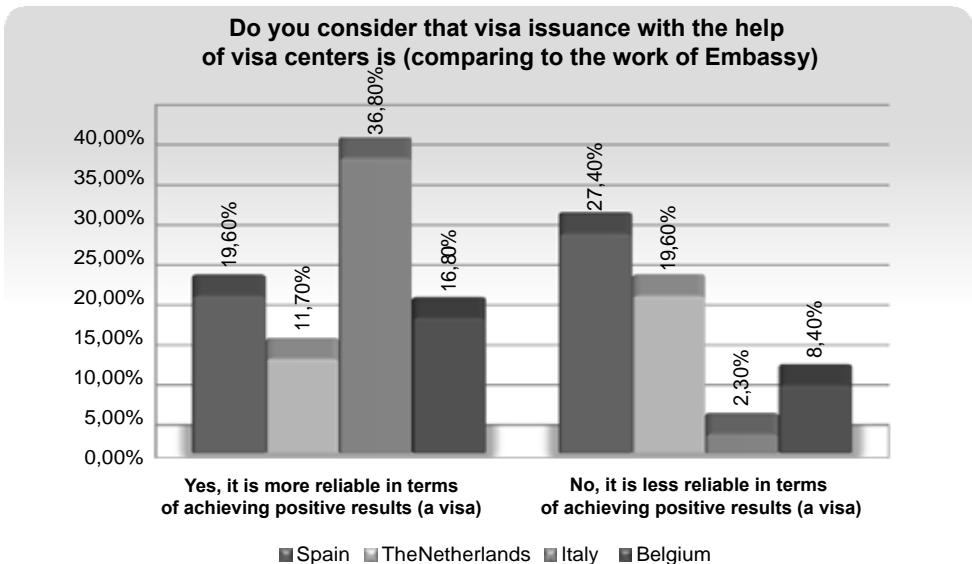
Thus the official fixing of visa processing fees of 35 Euro in the Agreement on Facilitation of Visa Issuance between Ukraine and EU does not have proper results as average applicants from Ukraine addressing Visa Centers pay more for visa application procedure – generally no less than 60 Euro.

### Positive Visa Application Results and the Risk of Refusals

Success of visa application depends on numerous factors, in particular on full and available information and qualitative set of necessary documents. These functions are the essence and “justification” for operation of Visa Centers.

37% of applicants to the Consulate of Italy believe that addressing intermediary centers raises the possibility of positive results, i.e. visa issuance. However, a great part of respondents share the opposite view as persons addressing Visa Centers do not have direct contact with Consulate officers. This peculiarity has a negative impact on chances for successful results and it is reflected in the assessments of 27% of applicants to Spain and about 20% of applicants to the Netherlands (Diagram 9).

Diagram 9.



### Visa Queues

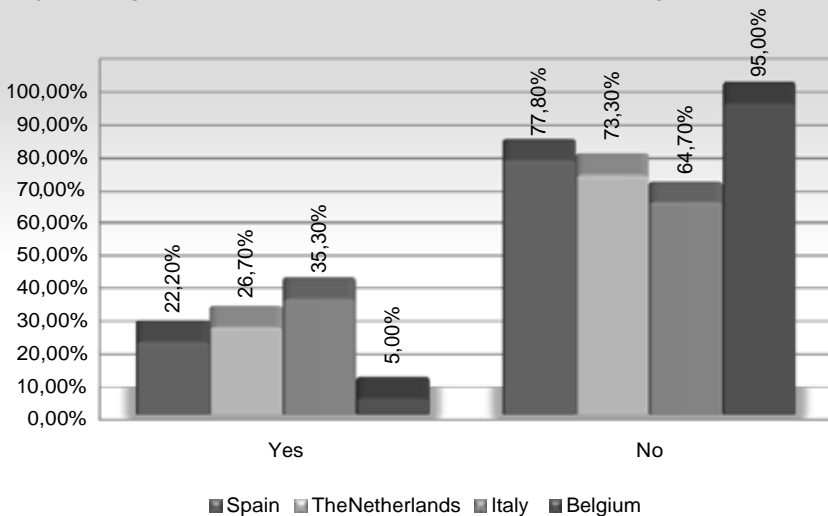
Monitoring of activities of EU Consulates conducted by CPCFPU in 2006 showed that applicants spent mostly from 2 to 12 hours in visa queues.

Over the last year the practice of preliminary registration by phone and via Internet has become more popular. It should be mentioned that queues and waiting period for document submission have not disappeared. They have become “virtual” as the duration of waiting for document submission date may equal to two or even more months.

Analyzing Visa Centers we may state considerable progress in terms of queue elimination. The absolute majority of applicants to all four countries do not have to wait in lines (Diagram 10).

**Diagram 10.**

**Were you obliged to wait in queues for document processing in a visa center?**



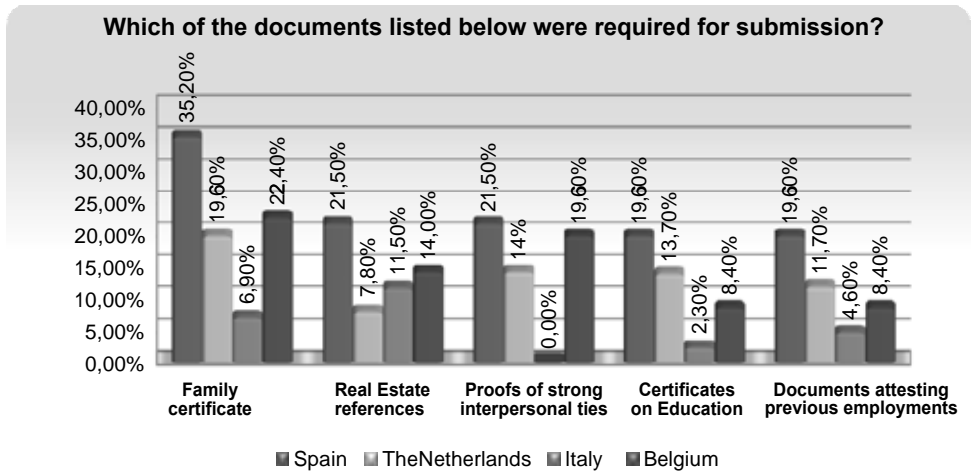
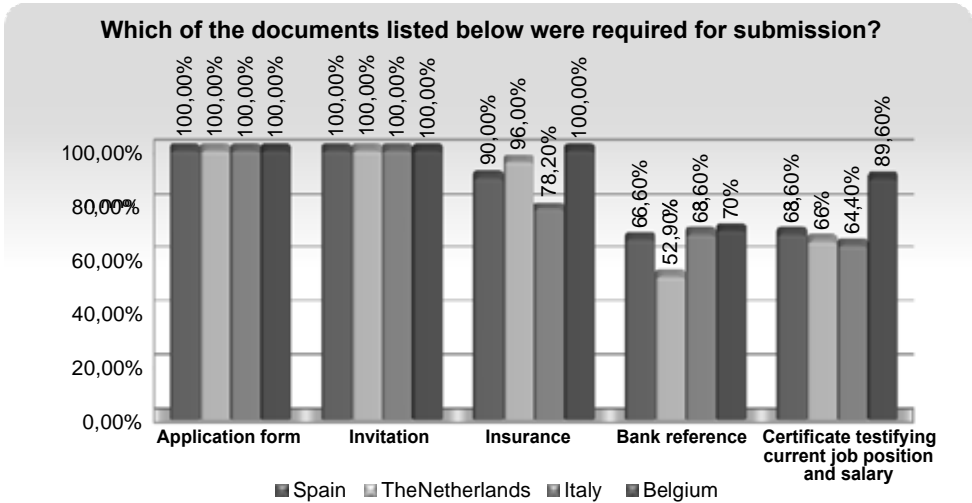
### **Document Requirements**

The list and the content of documents necessary for visa issuance is the main component of visa application. The set of documents include general or necessary documents and additional documents that may be requested by consular officers in doubtful cases concerning the applicant or the purpose of the visit. The research shows that the list of necessary documents includes visa application, official invitation, and insurance. These documents were provided to Visa Centers by 100% of the respondents. Other necessary documents include those testifying financial and material status of the applicant. Bank references were mostly requested from the applicants to Consulate of Belgium – 70%, certificates concerning job position and salary were requested from 90% of applicants to this Consulate.

Documents relating to personal life of the applicants are mostly requested by the Consulates of Spain, Belgium and Italy. In particular, family certificates were presented by applicants to the Consulates of Spain – 36% and Belgium - 22%.

Documents of strictly private character in order to prove personal relations, for example letters, photographs, etc. were requested from 22% of applicants to Consulates of Spain and 20% of Belgium according to our survey (Diagram 11, 12).

Diagram 11, 12.



**Assessment of Visa Center Introduction by Applicants**

Responding to the general question concerning Visa Center activities 69% of applicants to Italian Consulate and 45% of applicants to Spanish consulate positively perceive the introduction of Visa Centers as the mechanisms of visa procedure facilitation. None of the visitors of Visa

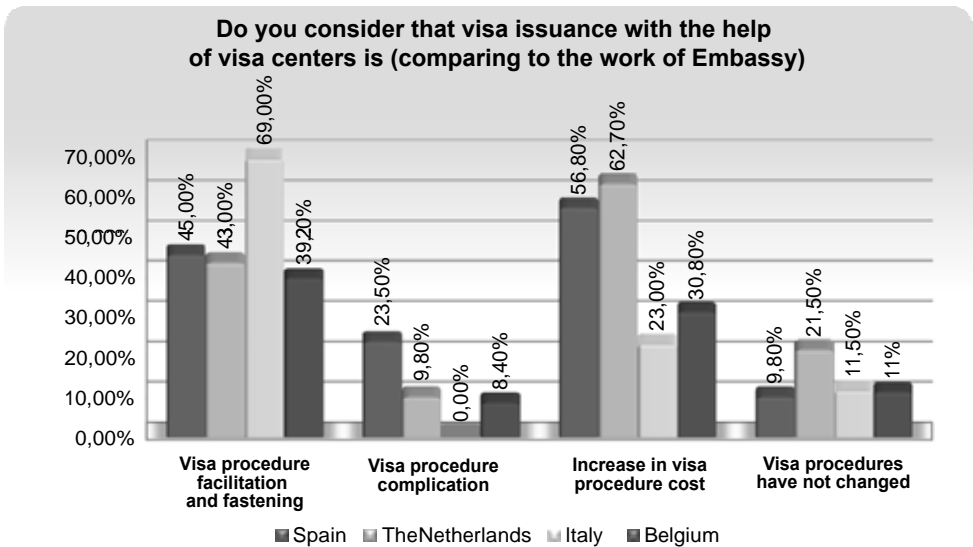
Center of Italy believe that intermediary center operation hinders the application procedure.

Nevertheless at the same time 23% of visitors to Spain mentioned the negative impact of Visa Center on the relevant procedures.

There are negative assessments - 21% of visitors of Visa Center of the Netherlands do not experience significant changes. Such view is shared by 11,5% of clients of Visa Center of Belgium and by 11% - of Italy.

A considerable number of respondents perceive the negative side of Visa Center operation due to the increase in visa fees (Diagram 19).

**Diagram 13.**



## Conclusions

Monitoring of activities of intermediary Visa Centers and their impact on visa issuance by EU for the citizens of Ukraine conducted by CPCFPU revealed both positive and negative sides of this innovation.

Positive outcomes include:

- *Improvement of the situation with visa queues. In most cases the citizens do not have to wait for document submission in uncomfortable conditions as it was traditionally noted in previous monitoring of Consulates' operation. At the same time the problem of "virtual queues" in terms of registration via Internet still exists.*

- *Improvement of the attitude towards applicants – the respondents complain less about impolite, superior or rude attitude in the process of visa procedure than during monitoring of Consulates.*
- *Improvement of “language barrier” issue.*
- *Opportunity to obtain passport with stamped visa via courier delivery (for an extra fee)*

At the same time negative outcomes are documented:

- *Considerable increase in visa fees contradicting to Paragraph 1 of Article 6 of the Agreement on the Facilitation of Visa Issuance between Ukraine and EU where application processing fee is set as amounting to 35 Euro. In practice general payments including intermediary services equal to 60 Euro and more.*
- *In most cases applicants must visit both Visa Centers and Consulates – in case of necessary interview or consular fee payment. Thus general number of visits in terms of visa procedure is increased.*
- *Lack of direct connection with Consulate creates communication gap as information about the application status and potential problems in visa procedure is not available.*

Activities of Visa Centers have not achieved intended changes in certain aspects:

- *Intermediary Visa Centers do not generally influence the results of visa application processing. The possibility of visa refusal stays on the same level with the exception of small number of cases when refusals were caused by incomplete set of documents.*
- *Visa Center services do not deal with needs of Ukrainian citizens in visa application procedures, such as translation of documents, document certification, etc. Thus there is a need in other, additional commercial assistants and intermediaries.*
- *There is no unification in visa requirements and processing criteria set by different EU Member States.*
- *Lack of solution of big distance problems for the applicants from regions of Ukraine. No Visa Center was opened in big cities of Ukraine apart of Kyiv.*

Thus activities of EU Visa Centers need regulations taking into account the contradiction between judicial norms and practice in terms of extra visa fees, elimination of organizational drawbacks, and extension of Visa Center activities to regional centers of Ukraine.

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## *Visa Dialogue between Ukraine and EU: Models and Perspectives*

It is well known that the Agreement on Facilitation of Visa Issuance between Ukraine and EU presupposes “introduction of visa free regime for the citizens of Ukraine as a long term perspective”. In negotiation process in terms of Agreement on Association<sup>13</sup> the parties agreed on launching the so-called “visa dialogue” aimed at introduction of symmetrical visa free regime between Ukraine and EU as a final goal.

Official declaration of visa dialogue launching is expected to be made during Ukraine-EU Summit on September 9th, 2008.

Admitting the perspective for visa free regime is an important fact however it cannot be perceived as an exclusive success of Ukraine: similar dialogues are conducted with Russian Federation (since 2007) as well as with Serbia, Bosnia and Herzegovina, Albania, Macedonia and Montenegro (since Spring of 2008).

The reason that Russia surpassed Ukraine in visa dialogue though it considerably lagged behind Ukraine in terms of developing new basic agreement is the result of the negotiations on migration regime for Kaliningrad region (2003-2004) according to which the parties agreed to launch negotiations on visa free regime. Although Russia has certain experience in conducting “visa dialogue” with EU while Ukraine merely opens such dialogue, Ukrainian party should not be upset as the experience gained by Russia over the last year allows projecting future dialogue format and preventing the risks that may turn visa dialogue between Ukraine and EU into an endless process.

Experience of European Union in terms of launching “visa dialogue” with different countries proves that the content, intensity and applied instruments may differ considerably depending on political motivation. Thus “visa dialogue” may de facto mean different policy leading to different outcomes of the efforts made. **Currently we may speak about at least two different models of “visa dialogue” suggested by EU – extensive one and intensive one.**

### *Russian or “extensive” model*

What is a “Russian model”? The basic document is the “Roadmap on the Common Zone of Freedom, Security and Justice” approved in Moscow on May 10th, 2005 during the Summit Russia-EU. The document presupposes to “intensify the dialogue on visa policy on expert and political levels aimed at exploring the conditions for mutual visa free travel regime

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<sup>13</sup>Such Agreement title was approved by Council of EU Ministers on July 22nd, 2008

as a long-term perspective”.

The dialogue on visa free regime introduction between Russia and EU was launched during the meeting of EU-Russia Permanent Partnership Council on freedom, security and justice on April 23-24, 2007 in Moscow when “The Visa Dialogue Procedure to Examine the Conditions for Visa-free Travel as a Long Term Perspective” was approved. We should pay attention to the fact that this event took place two years after the approval of the “Roadmap”. The document title itself emphasizing “conditions examination” and “long term perspective” demonstrates overall cautiousness of EU and its unwillingness to stimulate any overestimated expectations of Russia. Informal negotiations lasted for the next year and only on April 25th, 2008 (a year after the approval of “The Procedure”) Partnership Council held its official meeting in Saint-Petersburg. According to the Assistant to the President of Russia Mr. Victor Ivanov during this meeting “Russia and EU launched concrete dialogue on visa regime elimination”.

Mr. Ivanov also stated that three main dialogue directions were formulated: document security (raising passport reliability), fighting illegal migration, convergence of criminal and administrative legislature and cooperation between law enforcement agencies.

The dialogue was launched but its intensity is not high and this fact was pointed out by Russian party on the political level. During the Russia-EU Summit in Khanty-Mansiysk on June 26th-27th, 2008 Russian party emphasized that “the quickest transition to visa free regime with European countries is a strategic task for us” (this statement was made by another Assistant to the President of RF – Mr. Sergej Pryhodko).

EU visa dialogue with Russia has its own specifics as Russia is the only country officially negotiating visa free regime with EU on symmetrical terms – EU citizens still need visas in order to enter the territory of Russia while other countries of “visa dialogue” including Ukraine unilaterally lifted visa obligations for EU citizens. Thus the subject of negotiations is considerably wider as European party uses this dialogue in order to solve numerous issues that EU citizens face while entering and staying on the territory of Russia. Besides, the introduction of visa free regime by Russia for “non-citizens” is being discussed. “Non-citizens” are residents of Latvia and Estonia who did not receive national citizenship provoking considerable annoyance inside political circles of these countries.

Thus, the wider negotiations subject - the slower the negotiations process. We should understand that unlike societies in Ukraine or Serbia, citizens of Russia do not demand from their own government to speed up the process of visa free regime introduction by EU and thus political elite is less motivated to fasten this process.

Visa dialogue with RF does not include any specific monitoring instruments apart from those laid down in the Partnership and Cooperation Agreement, i.e. Permanent Partnership Council and dialogue in the framework of expert groups. No permanent progress evaluation on a regular basis is planned.

As for prognoses, only some politicians foresee quick introduction of visa free regime between Russia and EU: for example, Head of International Committee of State Duma of Russia Mr. Konstantin Kosachov assumed that such regime could be introduced in 2-3 years. Both Russian and European experts do not agree with such prognosis – taking into account current intensity of the process negotiations may last 10 years or even longer.

Thus, we may observe an “extensive” model of movement towards visa free regime in the case of Russia. Such model does not include any clear criteria, benchmarks or regular monitoring.

### ***Balkan or “intensive” model***

A completely different model is applied in case of the Western Balkan countries (Serbia, Bosnia and Herzegovina, Albania, Macedonia and Montenegro): it was introduced in the conclusions of EU Council on General Affairs and External Relations. These conclusions were approved on January 28th, 2008 and are based on the Communication from the European Commission on Western Balkans. These documents state that European Union should offer countries of the region detailed roadmaps with detailed priority description and ways of their realization.

In order to implement Council’s conclusions in April-May 2008 the European Commission developed and presented to all the countries relevant “roadmaps towards visa free regime”. The European Commissioner for EU Enlargement Mr. Olli Rehn personally presented these documents in the state capitals, for example, on May 8th the presentation took place in Belgrade.

Structurally “roadmaps”<sup>14</sup> consist of the following priorities:

1. Document security (passports, ID cards) in compliance with European standards including introduction of biometric components and fighting corruption in the system of passport issuance.

2. Fighting illegal migration and implementing agreements on readmission. Border management policy and asylum procedure.

3. Public order and security, fighting organized crime, cooperation in judicial and law enforcement spheres.

4. External relations and fundamental human rights including ensuring the rights of national minorities and refugees.

The final part of the document states that achievement monitoring in the given sphere will be made on a regular basis. The additional criteria concerning the preparedness of the country for the visa free regime is the reduction of visa refusal rate towards 3% of the general

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<sup>14</sup>For example, “Roadmap towards Visa Free Regime” for Republic of Serbia is presented in the Annex on page 108 of this publication

number of applications (for comparison, according to EU data current relevant Ukrainian indicator is 6-8%, and in the past years it equaled to 12-14%).

The plan of European Union includes providing Balkan countries with technical and expert assistance in order to reach the criteria necessary for visa free regime introduction in the quickest way and to the full extent.

European Commission should present a report to the EU Council on the progress achieved in every country and the first report will be published at the end of this year.

The logic and even the content of Balkan “roadmaps” are considerably different from the documents signed with Russia. While in the case of Russia “equality between partners and mutual respect of the interests” is emphasized, “roadmaps” for Balkan countries are more like the list of methodological recommendations and mandatory regulations to be followed by the countries in order to receive visa free regime as soon as possible. Thus the result of the process will be different: Russia is not ready to exchange the status of “equal partner” for freedom of movement and that is why its citizens will await European visas in lines for a long time.

Realization of roadmaps offers much more optimistic time perspectives for Balkan countries and it allows to foresee approval of visa free regime introduction over the next 2-5 years (such countries as Macedonia and Montenegro are in better position and they may receive positive decision faster than Bosnia and Herzegovina, Serbia and Albania, although hypothetically on political grounds European Union may approve the decision concerning all the countries simultaneously).

Thus, “visa dialogue” with Balkan countries was properly structured from the very beginning and it included the instruments allowing starting preparations for visa free regime much more intensively than with Russia.

### *Perspectives of “visa dialogue” for Ukraine*

What model will be offered for Ukraine? Currently there is no final answer to this question. EU countries are in the process of developing common position. There is no doubt that traditional “skeptics”, primarily Germany, Belgium and Spain will oppose to providing better conditions for Ukraine than those Russia is under.

Certainly, Ukraine sends signals concerning its willingness to apply “Balkan model” of visa dialogue. At the same time the position of higher state officials raises concerns as they show interest in demonstrative, external side of the case and not in the content issues. **There is a risk that Ukrainian officials may settle for ceremonial launching of “visa dialogue” and agree to the conduct the process in the direction of “Russian model”.**

The question whether European Union will provide Ukraine with “Roadmap towards Visa Free Regime” or the process will be limited exclusively by starting consultations is a principal one. European Council’s Approval of joint Polish-Swedish EU Eastern Policy Proposal –

“Eastern Partnership” on June 20th testifies to the benefit of “roadmap”. This document relating to Ukraine, Moldova, Georgia, Armenia, Azerbaijan and potentially Belarus states that *“the road map towards visa freedom, with clearly laid down steps and conditions, should be established”*. Thus “Eastern Partnership” support on behalf of EU may be interpreted as its eagerness to follow intensive way in the framework of visa dialogue with Eastern European countries. At the same time there are no relevant guarantees, thus opposition of skeptics is supposed to be a strong one.

It will be wrong to perceive the consent of EU to launch “visa dialogue” with Ukraine as the next “great diplomatic success” of Ukraine without specifying content and procedure issues, defining action plan for a short term perspective and creating efficient instruments for regular monitoring.

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## **CONCLUSIONS AND RECOMMENDATIONS**

Visa issuance practice of EU consulates in Ukraine gradually turned into the most resonant and socially significant component of Ukraine-EU relations. The attention of active part of civil society and media is focused on this issue more than on issues of free trade, Agreement on Association and other items that are on current Ukraine-EU agenda. Any tendency and any decision in this sphere are closely watched by public and the state officials of both parties should pay attention to such situation.

Due to economic growth in Ukraine over the last 8 years there is a large group of people not only willing but also capable to afford visits to EU. However, the needs of Ukrainian “middle class” citizens are only partially met. By trying to realize their intention to “see Europe” representatives of this class faced significant obstacles in the form of visa requirements, which tend to be even stricter. It causes disappointment in classes of Ukrainian society with European orientation and decrease in the level of confidence to the EU as well as increase of certain Euro-skepticism in Ukraine.

During 2000-2007 the actual situation in terms of free movement of Ukrainian citizens had exclusively negative trends: at first (in 2000-2004) visa free regime on all borders of Ukraine was substituted by national visas of candidate countries (the EU Member States since 2004); these visas were mostly available and free of charge. Then in December 2007 “liberal” visa standards of these countries were substituted by the “Schengen regime” which is the toughest in the world in terms of the requirements for visa applicants. As a result of this situation both absolute and relevant statistics of visits made by Ukrainian citizens to EU countries has changed. On the background of such situation post-soviet CIS is the only region for unhindered trips of Ukrainian citizens and it adds up to fixing the stereotypes concerning “close” (CIS) and “far” (the EU) abroad countries.

**Regardless declarations and efforts aimed at minimizing negative outcomes of Schengen zone expansion, the measures taken were not sufficient and it is attested by a considerable (by 2,6 times) decrease in the number of visits made by Ukrainian citizens to EU countries in the first half of 2008 comparing to the same period of 2007.**

According to the data received during previous researches the Agreement on Facilitation of Visa Issuance between Ukraine and EU is being implemented only partially and selectively. The Agreement is not the document of direct operation as consular officers apply national legislature and instructions in their work even if these documents contradict with the Agreement. The process of modification of national visa practices according to the Agreement is obviously being delayed. As the Agreement is actually a “pilot project” and EU has no enough experience in implementing international obligations of this kind, both parties

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should insist on its implementation in a persistent way by referring to the principle of rule of international law over the national.

The majority of trips made by Ukrainian citizens to EU Member States are the visits to the “new” Schengen states (60-70%). That is why introduction of strict Schengen regulations after December, 2007 has had a considerable impact on the possibilities to make such types of visits for Ukrainian citizens. Experts note a great number of refusals to travel after the citizens make themselves familiar with visa requirements, primarily in terms of documents requested by consulates. Numerous publications in Ukrainian media prove the growing unsatisfactory attitude towards EU and its visa policy. The demand to introduce visas for EU citizens on a symmetric basis has become more popular. If no effective ways for improving the situation are found, in the nearest perspective the government of Ukraine will face fierce public demands concerning elimination of asymmetric visa free regime for EU citizens.

Introduction of intermediary services of “Visa Centers” had a contradictory impact on visa procedures. Activities of these establishments should be organized in compliance with the provisions of the Agreement on Facilitation of Visa Issuance (in terms of visa procedure fees). In addition, “Visa Center” offices should be opened in regional centers of Ukraine (more detailed conclusions on this matter are in the chapter “*Monitoring the Activities of Visa Centers*” on page 88)

There are great expectations concerning the work of a Joint Expert Committee authorized to assess the quality of implementation of the Agreement on Facilitation of Visa Issuance and present relevant recommendations. However, it is not clear whether the set of impact tools of Joint Committee is sufficient for updating visa practice of EU consular establishments in case this practice contradicts with the Agreement. The Committee should focus more on developing mechanisms of impact on visa policy of consular establishments rather than on documenting cases of Agreement violation.

The decision to launch “visa dialogue” aimed at visa obligation elimination for the citizens of Ukraine on behalf of EU is a step in the right direction. However, there is a risk that the process will be conducted in the extensive way and will be prolonged for an indefinite perspective. The conditions for efficient “visa dialogue” are the following: development and approval of the “roadmap” in the quickest possible way; ensuring sufficient instruments of technical and expert support on behalf of EU; development and realization of algorithms with the usage of benchmarks; introduction of the practice of progress monitoring and assessment on a regular basis.

Ukrainian party should not only expect diplomatic decisions or assistance provided by EU but also take over the initiative concerning introduction of those relevant standards in the sphere of migration policy, document security, border management, application of criminal and administrative penalties, citizenship acquisition which serve as the admission to visa free regime with EU<sup>15</sup>.

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<sup>15</sup>More details: Ukraine-EU: on the way to visa free regime. Informational-analytical report. – K: CPCFPU, 2006. – 72 p.

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# VISA LIBERALISATION WITH SERBIA

## ROADMAP

### I. INTRODUCTION - GENERAL FRAMEWORK

A. The General Affairs and External Relations Council in its conclusions of 28 January 2008 welcomed the intention of the European Commission to launch a visa dialogue with all Western Balkan countries and expressed its readiness to further discuss this issue, based on the Commission's Communication on the Western Balkans, with a view to define detailed roadmaps setting clear benchmarks to be met by all the countries in the region in order to gradually advance towards visa liberalisation. The whole process will be closely monitored by the Council and the Commission which will assess the progress by each of the countries concerned and follow the adoption and implementation of the necessary reforms towards the abolition of the visa requirement.

The Commission shall regularly report on the implementation of this road map to the Council, for the first time before the end of 2008, notably by taking into account input from experts including Member States' experts in the context of the visa dialogue.

B. When setting up the methodology for the visa liberalisation process, the following elements have to be taken into consideration:

- *the European perspective of the Western Balkan countries ;*
- *the political commitment taken by the European Union on the liberalisation of the short term visa for the citizens of all Western Balkan countries as part of the Thessaloniki agenda, which has been confirmed at political level by a series of Council conclusions since 2003<sup>16</sup>;*
- *the conclusion by all countries in the region of a Community readmission agreement;*
- *the visa exemption granted to all EU citizens by all Western Balkan countries.*

As a first concrete step towards improving people to people contacts, the European Community has concluded in 2007 Visa Facilitation Agreements with Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Serbia. These agreements are in force since 1 January 2008. The preamble of the visa facilitation

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<sup>16</sup>More recently, in the Council conclusions of 18/6/07 and 10/12/07

agreements includes a clear reference to the commitment of the parties to work towards a visa free travel regime in the future.

C. Having in mind the wide range of issues relevant for the visa liberalisation dialogue and the need to establish an adequately secured context for visa free travel, the objective of this exercise is to identify all the measures to be adopted and implemented by the Western Balkan countries and set up clear requirements to be achieved in the near future. The whole process will be divided in four sets of issues to be covered by the dialogue: document security, illegal migration, public order and security as well as external relations items linked to the movement of persons. The dialogue will be tailor-made so as to allow each country to focus reform efforts and address the EU's requirements. The speed of movement towards visa liberalisation will depend on the progress made by each of the countries in fulfilling the conditions set.

Concerning the structure, the whole dialogue as a part of the overall policy of the EU towards the candidate and potential candidate countries of the Western Balkan, will take place within the framework of the structures of the Stabilisation and Association process. The visa liberalisation process will be conducted by senior officials who could decide to organise technical meetings at expert level for specific items. In the absence of a Stabilisation and Association agreement in place with Serbia, reporting on progress made on the issues covered by the visa liberalisation process will be ensured within the framework of the current structures of the enhanced permanent dialogue.

D. The whole process will allow the Commission to make a proposal at the appropriate moment to the Council for the lifting of the visa obligation for Serbian citizens, through an amendment of Council regulation 539/2001. On the basis of the Commission's proposal, the Council, after consultation of the European Parliament will decide acting by qualified majority.

## **ROADMAP TOWARDS A VISA FREE REGIME WITH SERBIA**

### ***I. Requirements related to the correct implementation of the Community Visa Facilitation and Readmission Agreements***

#### ***A. READMISSION AGREEMENT:***

Serbia has to take the necessary measures ensuring effective implementation of the Community Readmission Agreement and in particular, the replacement of the previous bilateral agreements or arrangements by the Community readmission agreement, the conclusion of 'implementing protocols' with Member States, the adoption of the measures ensuring that proper infrastructure is in place, in particular sufficient staff, to deal with readmission applications, the respect of the various deadlines set by the Community Readmission agreement, the refusals of readmission applications only on the grounds provided by the Community Readmission Agreement, the acceptance of the 'EU standard travel document for expulsion purposes', the acceptance of readmission applications for third country nationals/stateless persons

#### ***B. VISA FACILITATION AGREEMENT:***

Serbia shall closely cooperate with the European Commission to support the EU Member States' implementation of the Visa Facilitation Agreement, ensuring in particular continuous monitoring of all institutions, authorities and bodies involved in Serbia with the implementation of this Agreement, as regards the issuing of invitations, certificates and other documents.

### ***II. Requirements on Document Security, Illegal Migration, Public Order and Security and External Relations***

#### ***BLOCK 1: Document Security***

##### ***Passports/travel documents, ID cards and breeder documents***

##### ***Serbia should:***

- issue machine readable biometric travel documents in compliance with ICAO and EC standards; and gradually introduce biometric data, including photo and fingerprints;***
- adopt appropriate administrative measures ensuring the integrity and security of the personalisation and distribution process;***
- establish training programmes and adopt ethical codes on anti-corruption targeting the officials of any public authority that deal with visas, passports;***
- report to Interpol/LASP data base on lost and stolen passports;***

- ensure a high level of security of breeder documents and ID cards and define strict procedures surrounding their issuance.

## **BLOCK 2: Illegal migration, including readmission**

### **Border management**

#### **Serbia should:**

- adopt and implement legislation governing the movement of persons at the external borders, as well as law on the organisation of the border authorities and their functions in accordance with the Serbian National Integrated Border Management Strategy adopted in January 2006;
- take necessary budgetary and other administrative measures ensuring efficient infrastructure, equipments, IT technology at the external borders;
- establish training programmes and adopt ethical codes on anti-corruption targeting the border guards, customs and other officials involved in the border management;
- conclude a working arrangement with FRONTEX.

#### **Carriers' responsibility**

- Serbia should adopt and implement legislation on carriers' responsibility defining sanctions.

### **Asylum policy**

#### **Serbia should:**

- adopt and implement legislation in the area of asylum in line with international standards (1951 Geneva Convention with New York Protocol) and the EU legal framework and standards;
- provide adequate infrastructure and strengthen responsible bodies, in particular in the area of asylum procedures and reception of asylum seekers.

### **Migration management**

#### **Serbia should:**

- set up and start to apply a mechanism for the monitoring of migration flows, defining a regularly updated migration profile for Serbia, with data both on illegal and legal migration, and establishing bodies responsible for collection and analysis of data on migration stocks and flows;
- adopt and implement a National Returnee Reintegration Strategy, including sustainable financial and social support;
- define and apply methodology for inland detection and take measures improving the capacity to investigate cases of organised facilitated illegal migration;

- *adopt and implement a law on the admission and stay of third country nationals, defining rights and obligations for the persons concerned (including family members of third country nationals);*
- *ensure effective expulsion of illegally residing third country nationals from its territory.*

### **BLOCK 3: Public order and security**

#### **Preventing and fighting organised crime, terrorism and corruption**

##### **Serbia should:**

- *implement the strategy to fight organised crime (in particular cross-border aspects) by adopting and implementing an action plan including a timeframe and sufficient human and financial resources;*
- *implement the strategy to combat trafficking in human beings by adopting and implementing an action plan including a timeframe and sufficient human and financial resources;*
- *adopt and implement a national strategy for the prevention and fighting of money laundering and financing of terrorism; adopt and implement a law on the prevention of financing of terrorism; implement relevant legislation on confiscation of assets of criminals (including the provisions addressing cross-border aspects);*
- *adopt and implement a national drug strategy and national drug action plan; make the information on drug seizures and persons involved accessible at border crossing points; further develop cooperation and information exchange with relevant international bodies in the drug field;*
- *implement legislation on preventing and fighting corruption including by establishing an independent anti-corruption agency;*
- *implement relevant UN and Council of Europe conventions, as well as GRECO recommendations and other international standards in the areas listed above and on fight against terrorism.*

#### **Judicial co-operation in criminal matters**

##### **Serbia should:**

- *implement international conventions concerning judicial cooperation in criminal matters (in particular Council of Europe Conventions);*
- *take measures aimed at improving the efficiency of judicial co-operation in criminal matters of judges and prosecutors with the EU Member States and with countries in the region;*

- *develop working relations with Eurojust mainly through the Eurojust contact point.*

#### **Law enforcement co-operation**

##### **Serbia should:**

- *take necessary steps to ensure efficiency of law enforcement co-operation among relevant national agencies - especially border guards, police, customs officers -, as well as cooperation with the judicial authorities;*
- *improve exchange of information between national agencies by setting up an adequate coordination mechanism;*
- *reinforce regional law enforcement co-operation and implement bilateral and multilateral operational cooperation agreements, including by sharing on time relevant information with competent law enforcement authorities of EU Member States;*
- *improve the operational and special investigative capacity of law enforcement services to tackle more efficiently cross-border crime;*
- *take the necessary steps to prepare for the conclusion of an operational cooperation agreement with Europol with special emphasis on data protection provisions.*

#### **Data protection**

##### **Serbia should:**

- *adopt necessary legislation on the protection of personal data and implement its provisions including setting-up of an independent data protection supervisory authority ;*
- *sign, ratify and implement relevant international conventions, such as the Additional protocol of the Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data.*

### **BLOCK 4: External Relations and fundamental rights**

#### **Freedom of movement of Serbian nationals**

##### **[Serbia should:**

- *ensure that freedom of movement of Serbian citizens is not subject to unjustified restrictions, including measures of a discriminatory nature, based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.]*

### ***Conditions and procedures for the issue of identity documents***

#### ***Serbia should:***

- *ensure full and effective access to travel and identity documents for all Serbian citizens including women, children, people with disabilities, people belonging to minorities and other vulnerable groups;*
- *ensure full and effective access to identity documents for IDPs and refugees.*

### ***Citizens' rights including protection of minorities***

#### ***Serbia should:***

- *adopt and enforce legislation to ensure effective protection against discrimination;*
- *specify conditions and circumstances for acquisition of Serbian citizenship;*
- *ensure investigation of ethnically motivated incidents by law enforcement officers in the area of freedom of movement, including cases targeting members of minorities;*
- *ensure that constitutional provisions on protection of minorities are observed;*
- *implement relevant policies regarding minorities, including Roma.*

### ***FINAL REMARK:***

The present roadmap includes a list of measures to be taken by Serbia in view of the lifting of the visa obligation. These measures aim at responding to the needs identified, based on the currently available information. In case of substantial change of the current situation, the Commission could propose a review and re-adaptation of the roadmap.

Based on the achievements by Serbia of the implementation of the requirements set up in the roadmap, the Commission will assess the situation, taking into account inter alia criteria, the visa refusal rate for Serbian applicants and the refusal rate of entry into the common Schengen area for Serbian nationals. In this context, the decreasing trend of the refusal rate, which should progress towards 3% for visas and 1000 persons per year refused for entry into the common Schengen area, will be used as an indicative reference. Serbia should also take the necessary measures to allow an efficient implementation of the EU joint actions on travel ban. As already mentioned before, on this basis the Commission will consider the possibility to present a proposal to the Council for the lifting of the visa obligation, by amending the Council Regulation 539/2001, and, following the procedure laid down in the EC Treaty for these matters, the Council will on the basis of the Commission's proposal, after consultation of the European Parliament, take a decision acting by qualified majority. Such amendment could soon cover the holders of travel documents issued in accordance to ICAO and EC standards.

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## ***CENTER FOR PEACE, CONVERSION AND FOREIGN POLICY OF UKRAINE***

Centre for Peace, Conversion and Foreign Policy of Ukraine (CPCFPU) is an independent, not-for-profit think-tank. Main profiles of the Centre include conducting of policy research and event management in the fields of international relations, Ukrainian integration into Euro-Atlantic structures, security and defence, as well as political, economic and social development of Ukraine. The Centre is committed to making Ukrainian integration work into the European community. The CPCFPU works at the “cutting edge” of Ukrainian and European policy-making providing wide public with rapid, high-quality information and analysis on Ukrainian and the EU policy agenda.

The main activity profile of the organization is research in the field of international politics, security, defense, political, social and cultural development of Ukraine, the ways of its integration in the European and world community.

The activity of the Center is devoted to the idea of European and Euroatlantic integration of Ukraine. While investigating the decision-making processes made by top officials and bodies of Ukraine, countries and institutions of the European Union the Center effectively provides broad public masses with reliable information and professional analysis on the Ukrainian and European subjects. Due to high prestige of experts and membership in public structures under the authorities of Ukraine, namely in Public institutions under the Ministry of Foreign Affairs of Ukraine and Ministry of Defense of Ukraine, the Center has an opportunity to influence the national decision-making process.

Since 1997 many international projects have been created, such as: “Monitoring of the foreign and security policy of Ukraine” (nowadays, “The Ukrainian monitor”), “Furtherance of effective frontier policy of Ukraine” (2001), “Democratic transformations in the process of approaching the membership in NATO: the experience of countries-candidates for Ukraine” (2002), “Expanded European Union and Ukraine: new relationships”(2002-2004), “Information-analytical Internet-resource devoted to the process of integration of Ukraine in the Euroatlantic community and cooperation with NATO and EU ”Euroatlantic UA” (2003), “Monitoring of the eastern frontier of Poland” (2004-2005), “Labour migration regulation – challenges for Ukraine” (2004-2005), “Partnership for European integration of Ukraine: furtherance of public debates concerning EU” (2004-2005), “Consolidation of civil society efforts in the prospects of new vicinity with expanded Europe” (2004), “Proactive position of youth: lessons of election in Ukraine and Romania” (2004), “Growing awareness of Ukrainian citizens on EU member states visa policy” (2006), “Stereotypes Overcoming and Quality Level Rise of Migration Problems Coverage in Ukrainian Mass Media” (2006),

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“Foreign Labour Migration of the Ukrainians, its Influence on the Process of Social and Political Transformations in Ukraine” (2007), “Schengen’s enlargement and modernization: prospects for Ukraine” (2007-2008).

Site “Ukraine Euroatlantic” was created in June 2004 as the first Internet-media of Ukraine, specialized in the issues of European and Euroatlantic integration of Ukraine. The objective of the project is to certify belonging of Ukraine to the European and Euroatlantic information space, to provide a domestic Internet network user with regular access to information concerning economical, social and political processes of Europe and North America, to establish a temporary intellectual connection between the policy process in European capitals and Ukrainian realities and prospectives.

Since 1997 the Center has taken part actively in international scientifically practical events in Kyiv and regions of Ukraine: conferences, seminars, public debates, round-table discussions etc. In 2004-I half of 2005 about 40 events were held. Among the last: public debates “Slovakia, Poland and Ukraine: European integration experience exchange”. The debates were held Kharkiv, Kyiv, Donetsk, Dnipropetrovsk, Odessa, Lviv, Uzhgorod, Ivano-Frankivsk due to support of the Official assistance program of the Slovenian Republic to Ukraine in the frame of the project “Partnership for European integration of Ukraine: fostering of public debates concerning EU”; international conference “Labour migration regulation – challenges for Ukraine” by support of Polish-American-Ukrainian initiative for cooperation (Kyiv), round-table discussion “European integration as a reform instrument in the countries of Black Sea region” by support of the Regional Frederick Ebert Fund representation in Ukraine, Moldova and Byelorussia (Odessa), seminar “Perspectives of negotiations between EU and Ukraine concerning visa system liberalization” by support of the Foundation by Stephan Batory in Poland (Kyiv) etc.