



ANALYTICAL REPORT

VISA LIBERALIZATION FOR UKRAINE. WHICH IS MORE DIFFICULT: TO GET IT OR TO KEEP IT?

Ukraine is at the finishing stage of the dialog on visa-free regime with the EU countries. The final positive decision is expected to happen in the first half of 2017. However, that way did not pass the pitfalls by. Granting a visa-free regime to Ukraine and Georgia has been tied up by the European institutions to **the adoption of a new mechanism of the visa-free regime revocation**, which comes into force in case of:

- A significant and sudden increase in number of citizens who are refused in entry,
- An increase in number of citizens illegally residing or over staying on the territory of the EU member states.
- An increase in number of asylum seekers from the country being granted a visa-free regime.
- A cooperation reduction in the sphere of readmission.
- An influence on state policy or internal security of the EU member states.
- Significant risks for state policy or internal security of the EU member states.

Under significant and sudden increase it is meant to be **an increase of at least one of the above indicators for over 50% for the period of two months** in comparison with the same period last year or in comparison with the period of two months before implementation of the visa-free regime.

Just to give an example, the reason to start the mechanism of revocation is the situation, in which three thousands of Ukrainians were refused in entry for the period of 2 months before the visa-free regime was granted and in the following 2 months after its implementation – the number of such citizens increased up to five thousands.

Honestly speaking, the mechanism might be applicable not only in relation to Ukraine, but also to any other country, which has been granted with the visa-free regime with the EU member states¹. However, apart from the control over migration flows, for keeping visa-free regime, as same refers Moldova and Georgia, Ukraine will have to continue to work on the implementation of reforms launched in the framework of Visa Liberalization Action Plan (VLAP). During the following at least 7 years, once the visa-free regime is granted, the Euro commission will closely look after the deployment of anti-corruption institutions, reform of documents identification, migration management and observance of human rights. In case of regress of key reforms, such as combating corruption, the European institutions will have the right to revoke the visa-free regime for Ukrainians.

2



So how will it be difficult for Ukrainians to keep the visa-free regime and how will it impact the migration flows from Ukraine to EU? To search for answers on these questions, we have done the analysis in the **Migration Security Map of Ukraine for 2016**² on the recent migration tendency of every above mentioned indicator and identified the utmost risks.

Risk № 1 Refusal of Entry

Even after the visa-free regime implementation some Ukrainians might be refused in entry to the EU countries. According to the EU Legislation³, the third country nationals **are being refused in entry on the external border, if they meet at least one of the following criteria:**

- Non-availability of the valid external passport, or valid visa or residence permit;
- Impossibility to justify the purpose and terms of the planned stay, absence of

¹ European Parliament legislative resolution of 15 December 2016 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (revision of the suspension mechanism)

² The Migration Security Map of Ukraine-2016. <http://english.europeweb.org.ua/the-migration-security-map-of-ukraine-2016/>

³ REGULATION (EC) No 562/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)

sufficient financial means, not only for the period of the planned stay in EU member state, but also for the return back to Ukraine or for the transit purpose to the third country;

- In case the Schengen Information System (VIS) contains the warnings with regards to this person. The warnings concern those, who are recognized to be guilty by committing a crime on the territory of EU member states, convicted and sentenced to a prison term of up to 1 year; there are reasons to assume that these people might commit a criminal offense or attend to commit a crime on the territory of any EU member state; persons who were deported from EU member states; persons who were refused in entry or were prohibited to reside in EU member states due to the violation of the national regulations on entry or residence⁴;
- Persons who carry a threat to the public peace, internal security, public health or international relations of any of the EU member states.

3



What is the current status of the refusal entry for Ukrainians? In 2015, Ukrainian citizens were refused in entry 25 283 times when entering the EU member-states, which was 1.5 times more than in 2014 (16 160 times)⁵. **Nearly 80% of all refusals were observed on the border between Ukraine and Poland**, precisely there the utmost yearly growth was recorded: in 2014 - 11 185 refusals, and in 2015 - 19 020. Hypothetically, the observed situation of the mentioned two years with regards to refusal entry for Ukrainians on the Polish border could have become a reason to revoke the visa-free regime.

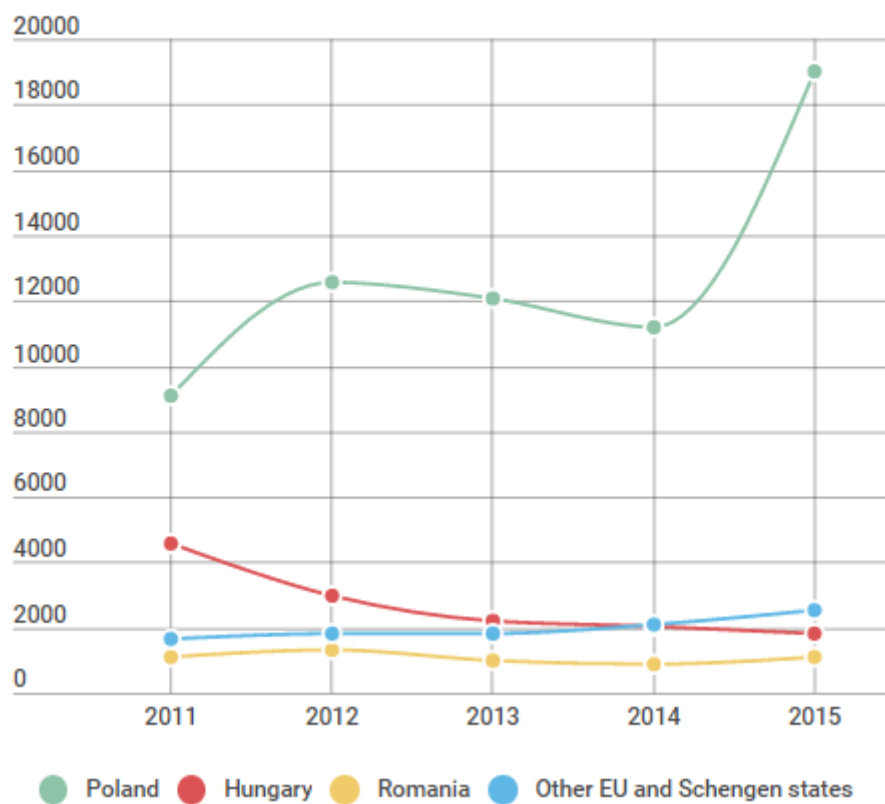
The trinity of countries in the number of refusals also includes neighbouring countries as Hungary and Romania. However, the indicators of refusal entries on these segments of the border are less than on the border with Poland.

Almost the half of the refusal number obtained by Ukrainians was due to the missing documents confirming the purpose of travel and the conditions of stay in the EU member state (12 367 times). The second widespread reason was non-availability to present a valid visa or a valid residence permit (6 582 times).

⁴REGULATION (EC) No 1987/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II)

⁵ Risk analysis for 2016. http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf

Ukrainians refused entry at the external borders of the EU member states and Schengen states, 2011-2015



4



It is expected that, once Ukraine is granted with the visa liberalization, the number of refusals in entry might increase, as the Consulates will no longer check the supporting documents and filter the travellers' flow holding the biometric passports. For example, in 2015 the average visa refusal rate for Ukrainian citizens was 3,4%, in total the Consulates of EU member states met the negative decision on visas for Ukrainians 41 855 times⁶. Once the visa-free regime enters into force, the document check will be conducted only by the Border Guard Services of Ukraine and EU member states, by refusing in entry to all those who won't be able to prove the intended purpose of travel. The risk of refusals is one of the largest acute for Ukrainians.

Risk №2 Illegal "over stayers"

Most of the Ukrainians, traveling to EU countries and within the Schengen zone, choose the legal ways of obtaining the relevant residence permits. Therefore, **Ukrainians,**

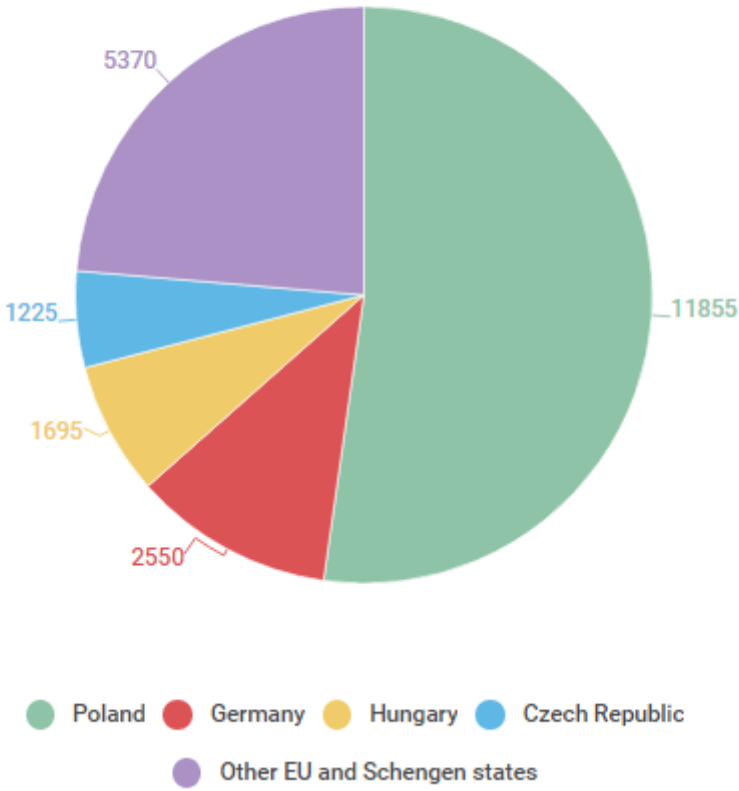
⁶ Visa policy. Migration and home affairs. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm

illegally staying in the EU countries and the Schengen zone, are mostly revealed due to the fact of expired visa validity or expired period of the residence permit. In 2015, there were 23 850 Ukrainian citizens, holding an unregulated status of their residence, identified on the territory of EU, which is 42% more than in 2014⁷.

According to the European Agency of the Border Guard Service and the Coast Guard (Frontex), a **significant number of Ukrainian citizens was detained during the voluntary return to Ukraine on the borders with EU member states**. Most of the cases were revealed on the territory of the EU countries which issued the most significant number of visas and residence permits to Ukrainian nationals: Poland (11 885 persons), Hungary (2 820), Germany (2 550) and the Czech Republic (1 225).

Ukrainians found to be illegally present in the EU member states and Schengen states, 2015

5



⁷ Third country nationals found to be illegally present - annual data (rounded). http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_eipre&lang=en

After the implementation of a visa-free regime, the list of the so-called "illegal" migrants will be extended and will include not only those who have expired visas/residence permits but also who exceed the limit of short-term stay in the EU country without a relevant visa, which is 90 days during the period of 180 days. It is expected that the indicator of Ukrainian migrants being detained with unregulated status in the EU countries will continue to grow, as it was in 2013-2015, especially by means of the labour migrants, trying to use visa-free regime for the simplified process of the border crossing and with further intention of employment in the EU member states.

Risk № 3 Asylum seekers from Ukraine

The military Russia's aggression in the East of Ukraine and the annexation of Crimea has become one of the main reasons of increased flows of asylum seekers from Ukraine to the EU member states. Polish Foreign Offices, based on the periodical surveys taken from Ukrainians, intending to gain international support, have identified 5 profiles of Ukrainian applicants willing to obtain asylum status⁸:

6



- Profile of the citizen from the Eastern Part of Ukraine (Donetsk and Luhansk regions);
- Political profile;
- Profile of Crimea resident;
- Conscripts, who don't want to serve in the army and participate in the combat operations;
- Profile of economic migrants.

In 2016, for the first time since the beginning of the conflict, the increased number of Ukrainian asylum seekers in the EU countries was decreased: in the first half - 7 030 applications were registered, which is 39% less than in the first half of 2015⁹. The part of applications in the EU countries for the first six months in 2016 was only 1.14% (which is 7 030 out of 617 200 applications). The most popular countries of asylum applications registered were the countries with large Ukrainian Diaspora: Italy, Spain, Germany and Poland.

The decreased number of asylum seekers from Ukraine could be influenced by an existing

⁸ Raport na temat obywateli Ukrainy. <http://udsc.gov.pl/wp-content/uploads/2014/12/Raport-na-temat-obywateli-Ukrainy-30.10.2016.pdf>

⁹ Asylum and first time asylum applicants by citizenship, age and sex Monthly data (rounded). http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctzm&lang=en

fragile but still regime of peace and gradual improvements of the economic situation in Ukraine and the fact that the majority of Ukrainian nationals are refused in the asylum status and asked to leave the territory of the EU Member States. In the first half of 2016, the partial part of asylum refusals increased from 70 to 73% (4,135 in 5670)¹⁰. The least loyalty to Ukrainian applicants was observed from the migration services of Bulgaria, Denmark, Ireland, Spain, Croatia, Latvia and Luxembourg, which refused 100% of applications in 2015. The migration services of Poland and the Netherlands have refused Ukrainians in 99% cases, UK - 98%, Sweden - 97%.

One of the key reasons of refusals to Ukrainians is “possible internal escape”. It means that, Ukrainian citizens who were persecuted on the temporarily occupied territories, have the possibility to live safely on the the rest of the territory of Ukraine, as it is done by over half of a million of internally displaced persons (IDPs).

However, some citizens of Ukraine were able to justify their request for asylum in the EU countries. In 2015, 2810 Ukrainian citizens received various types of protection: 415 persons were granted with refugee status, 1150 persons obtained humanitarian support, 1245 - a subsidiary support. More than half of all positive decisions for Ukrainian asylum seekers in the EU countries in 2015 was issued in Italy (1635 decisions). The same tendency persisted in the first half of 2016 as well.

Visa-free regime can positively impact on the reduction of the number of the asylum seekers' applications, as the status of an asylum seeker is less used by economic migrants, which serves to be an opportunity to legally stay in the EU for up to three months. On the other hand, the introduction of the visa-free regime will create more favourable conditions to arrive to EU countries and to apply for asylum status for those internally displaced persons who were not able to integrate on the territory of Ukraine. Currently IDPs are not demonstrating a serious readiness to go abroad, despite financial difficulties and problems with access to social protection in the new places of residence, which is also proved by the study conducted by "Europe without Barriers" with Ukrainian, Polish, Slovakian, and Czech Republic partners¹¹. However, if the economic status of IDPs gets worse, then it will be increasingly pushing them out from the country in search of a better life.

¹⁰ First instance decisions on applications by citizenship, age and sex Quarterly data (rounded).

http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asydcfstq&lang=en

¹¹ Ukrainian Migration in Time of Crisis: Forced and Labour Mobility. <http://europewb.org.ua/anglomovna-versiya-doslidzhennya-ukrayinskoyi-migratsiyi-do-krayin-vyshegradu/>

Risk №4 Reduction of cooperation in the sphere of readmission

This is to remind that in 2008 the Agreement between Ukraine and the European Union on Readmission of Persons was ratified, in the framework of which, Ukrainians are obliged to accept all citizens of Ukraine, who violate the entry and residence conditions on the territory of EU member states or stopped to follow the regulated conditions. Besides, Ukraine under the same conditions, undertook the responsibility to take on its territory the third country nationals and stateless persons who illegally moved to the territory of the member states directly from the territory of Ukraine or at the time of entry had a valid visa or a residence permit issued by Ukraine. The agreement is bilateral and provides identical conditions for the return of citizens into the EU member states.

According to the latest estimates, Ukraine's fulfilment of the Agreement on readmission is considered to be one of the exemplary. According to the Ministry of Foreign Affairs and the State Border Guard Service statistics, during 2010 - 2015 there were 3081 persons taken back from the EU member-states out of which are: Ukraine - 1869 persons (61%), citizens of the former Soviet Union - 626 (20%), other countries - 586 (19%). Persons were taken back on the border with: Poland - 1776 persons (58%), Slovakia - 709 (23%), Romania - 425 (14%), and Hungary - 171 (5%). At the same time, 353 persons were transferred back to EU countries.

There is no reason to believe that the level of cooperation between Ukraine and the EU countries in terms of Agreement on Readmission of Persons – will significantly decrease once the visa-free regime comes. Thus, it's hardly likely that the visa-free regime might be revoked due to this reason.

Risk № 5 Influence on state policy or internal security of the EU member states

Internal security questions in the EU countries have become more acute after the series of bloody terrorist attacks in European cities as Paris, Nice, Berlin. Therefore an armed aggression of Russia and a military conflict in the Eastern part of Ukraine, which potentially might become a source of terrorism and weapons penetration to the EU countries, also raise serious concerns as with European politicians so with ordinary citizens. Russian mass media in the EU countries must also not be underestimated which strengthens fears within Europeans by presenting propagandist topics.

Objective look at the situation allows us to understand that **despite the protracted**

8



conflict Ukraine has not become a supplier of terrorism but also made the concrete steps to avoid it in getting such status also once the visa-free regime is granted.

Thanks to the execution of Visa Liberalization Action Plan Ukrainian **the integrated border management system** gained new tools that enabled more efficient control on the risks of illegal migration, arms smuggling, goods and addictive substance. For example, the Ukrainian border crossing points were connected to the database of Interpol, and the State Border Guard Service of Ukraine started to carry out joint border patrols on the Polish, Moldavian, Slovak and Hungarian segments of the border.

Step forward is the fact that **the Ukrainian external biometric passport meets the newest standards of the documents protection of the International Organization for Civil Aviation (IOCA)**. For Ukraine it was fundamentally important, because under favourable circumstances the holders of the new passports may use the advantages of the visa-free regime with EU countries. At the time of biometric external passport application and its issuance one of the protectors for violators of the law is used: at the time of application procedure the applicant is going through automatic check on possible ban exit out of the country. To use someone else's passport will also be barely possible due to the equipment started to be used at all BCPs on the border between Ukraine and EU neighbouring countries, which allows reading biometric information: fingerprints and digital image face.

9



Another objective evidence of the control over the security situation in Ukraine is a **quite low rate of illegal border crossing**. In 2015 there was 1255 of Ukrainian citizens detained who illegally crossed the border between border crossing points. For example, the citizens of Kosovo, who also claim for visa liberalization, illegally crossed the border between the checkpoints 19 times more than the Ukrainians (23 793 times) in 2015.

After the introduction of visa-free regime, the State Border Service and the State Migration Service should be prepared for the foreseeable increased pressure on its units, unfortunately, not only due to law-abiding citizens. The number of people willing to obtain an external biometric passport and cross the border between Ukraine and Poland, Hungary, Slovakia and Romania will grow significantly, and among them the violators can be also identified. The State Border Guard Service needs to broaden infrastructure of the Border Crossing Points (BCP) which should be in line with the growth of the travellers' flows and crossing vehicles across the border, as well as to introduce the practice of "Single Window". Improvements are required also in the data collection method in terms of

the border crossing and methods of risk assessment.

Conclusion

Once the visa liberalization is granted, Ukrainians will have to pass a test on their human decency, accountability and responsiveness to European values: starting from behaviour of certain individuals while crossing the border till being already inside the EU country on which the destiny of the visa-free regime will depend for the whole country. In case of any of the statistically controlled indicators, for example refusal in entry or illegal stay of Ukrainians in EU member states for the period of 2 months, will show a significant increase, the visa-free regime will be revoked.

To avoid such an unpleasant situation Ukrainians must remember the following:

- Obtain an external biometric passport;
- Plan the travel so that it does not exceed the period of stay for more than 90 days. The visa-free regime gives the right to stay in EU country up to 90 days in a period of 180 days;
- Remember that the visa liberalization does not give the right to be employed in EU member state;
- Take all supporting documents which prove the purpose of the travel and willingness to return back to Ukraine.

Ukrainians have been looking forward to the visa liberalization for too long already in order to lose it after several months.

10



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