



# Achieving visa free regime for Ukraine - Overview

There are no legally binding criteria in EU law, which would stipulate why Ukraine should be on the so-called positive (“white list”) list of countries, which citizens may travel without short term visas and not in the negative list of countries (“black list”), which citizens should obtain visas, or vice versa.

The Action Plan on Visa Liberalisation for Ukraine is a political, not a legally binding document. However it sets the benchmarks, the achievement of which will be evaluated in order to assess the overall progress of Ukraine towards visa liberalisation.

The Action Plan includes division into two phases (levels): legislative and strategic planning mechanisms (including legal harmonisation) and the practical implementation of these national laws and other governmental policy planning and strategy documents

In total the basic EU imposed conditions for the achievement of the visa free regime are very broad:

- approximation of Ukrainian laws in the area of migration, border control, asylum, fighting the organised crime and corruption, data protection with EU law and the obligations of the international law,
- maintaining the democracy and rule of law,
- strengthening of the institutional and technical capacities of Ukrainian public service (as well as the law enforcement agencies and courts) in all above mentioned areas, including implementation and enforcement of this legislation in line with EU law requirements
- existence of the adopted ENP Action Plan or similar planning document,
- proper implementation and enforcement of the readmission agreement and visa facilitation agreement, which were concluded with the European Union.
- Rate of refusals of visas to Ukrainian citizens should be not higher than 3 per cent.

However it shall be also stressed that no exhaustive list of conditions for visa liberalisation that have to be met exists, although detailed list of benchmarks exists in the form of the Action Plan on Visa Liberalisation.

At the end the decision to establish visa free regime with Ukraine is still political and has to be adopted by the qualified majority voting of the EU Member States.

The EIPA Project supports Ukrainian Government to develop the mechanism for closer European Cooperation and good governance.

The material presented in the brochure is the opinion of the experts only.  
The project is funded by the UK Government's Strategic Programme Fund



## EIPA Briefing Note on Achieving Visa Free Regime for Ukraine - Overview in parallel with EU-Ukraine Association Agreement 2011

Any Ukrainian strategic and policy document will be assessed by the European Union on the basis of its compliance with the following criteria:

- Action plan for the implementation of the strategy was adopted,
- All the necessary legislation, including bylaws and/or administrative acts were adopted and entered into force,
- The necessary human and financial resources were allocated,
- The implementation of the measures, which form the strategic priorities, is ongoing.

It is therefore recommended:

- that Ukraine properly reflects on these criteria in its progress reports to the European Commission and the Member States on the implementation of the action plan (for example, using such criteria as collection of statistics on the cases of corruption, money laundering and others, which were examined by the police, prosecutor's office and the courts, number of the judgments etc.).
- that proper attention should be paid to the reflection of the human resource capacity of the existing and newly established institutions (number of staff, their professional qualifications, numbers of the trainings undergone by the staff, turnover of staff, gender balance and other relevant subjects).

Ukraine has chosen an efficient approach to the Action plan for Visa Liberalisation by establishing a high level monitoring authority - the Coordinating Centre for implementation of the EU – Ukraine Action Plan on visa liberalisation and by adopting a special planning document - the National Plan for the Implementation of the EU-Ukraine Visa liberalisation action plan.

In this regard it is recommended that:

- the results of the implementation of this plan and activities of the Coordinating Centre should be examined by the Council of Ministers on a monthly or at least a quarterly basis.
- The Verkhovna Rada should be regularly and fully informed on the results of the implementation of the National Plan for the Implementation of the EU-Ukraine Visa liberalisation action plan, especially in relation to the legislative programme and any problems/delays arising in regards to the legislation to be adopted in accordance with this document.

The Action Plan for Ukraine is very detailed and specific measure-oriented, therefore there is no need of repeating its provisions in this document. The areas, which are covered by this Plan are so diverse and important that it is impossible to single out „higher” or „less important” priorities.

The biggest challenge for Ukraine will be implementation of the benchmarks of the 2nd phase: these priorities include a lot of issues of institutional development and capacity building, which will inevitably have a large budgetary impact.

However some of its activities may be particularly highlighted:



## EIPA Briefing Note on Achieving Visa Free Regime for Ukraine - Overview in parallel with EU-Ukraine Association Agreement 2011

- It is recommended to start the introduction of biometric passports, as they are one of the first preconditions for travelling without visas in the Schengen zone. This includes elaboration of necessary legislation (the law "On documents, which confirm identity of a person and the citizenship of Ukraine" and the related bylaws) as well as technical solution for the new biometric passports should be approved.
- Currently there is a large number of laws and strategic/policy planning documents in the process of adoption: the draft Law of Ukraine on Introduction of Amendments to Certain Legislative Acts of Ukraine for Migration, nr.2232 of January 13, 2011 (among these acts are the Law on Legal Status of Foreigners and Stateless Persons and the Code of Ukraine for Administrative Offences), elaborated the draft Law of Ukraine on Refugees and Persons who Need Complementary or Temporary Protection in Ukraine, the Draft Law On Combating Trafficking in Human Beings, the draft Action Plan for implementing of the National Integrated Border Management Strategy, the draft concept of migration policy of Ukraine, the Draft new Anti-corruption law. Moreover some of the laws such the Law On Protection of Personal Data need additional implementing measures. The start of the reform of the criminal justice system of Ukraine was also announced (without yet specifying the necessary legislative changes). The State Migration Service should become fully operational, but the State Service of Ukraine on the Protection of Personal Data and the single and independent anti-corruption agency should yet be established.

All the above-mentioned documents and activities form a very significant part of the measures of the Action Plan Therefore it is recommended to speed up the process of adoption of the above-mentioned laws and strategic/policy planning documents in order to proceed with the 2<sup>nd</sup> phase measures of the Action Plan - their proper implementation and enforcement.

The decision on the moving of Ukraine from "negative" to "positive" visa list will be taken by the Council and European Parliament by means of the ordinary legislative procedure. Ordinary legislative procedure means that the Council will vote by the qualified majority voting. It is recommended that Ukraine should actively use both the diplomatic channels and the NGOs for the promotion of the country's efforts to achieve the visa free regime and of the right image of the Ukrainian population in this respect in the European Union.

*Further information on the Association Agreement can be found at: [www.nrdevelopment.com/eipa.html](http://www.nrdevelopment.com/eipa.html)*