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JOINT STAFF WORKING PAPER

**First progress report of the implementation by the Ukraine of the Action Plan on Visa
Liberalisation**

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I. Background

The EU-Ukraine Visa Dialogue examining the conditions for visa-free travel of citizens of Ukraine to the EU was launched on 29 October 2008. In its Conclusions on the Eastern Partnership of 25 October 2010, the Council invited the Commission to prepare a draft Action Plan setting out all technical conditions to be met by Ukraine before the possible establishment of a visa-free travel regime. The Action Plan on Visa Liberalisation (hereafter VLAP) was endorsed by the Council on 10 November 2010 and welcomed by the leaders of the EU and Ukraine at the EU-Ukraine Summit on 22 November 2010.

The methodology contained in the VLAP distinguishes between two phases and four blocks. The four blocks are the following groups of issues relevant to the visa dialogue: (i) document security, including biometrics; (ii) irregular migration, including readmission; (iii) public order and security; and (iv) external relations and fundamental rights. Regarding the two phases, the Action Plan refers to two tiers of benchmarks: preliminary benchmarks concerning the policy framework (legislation and planning), which should pave the way for meeting more specific benchmarks (effective and sustainable implementation of relevant measures).

In line with this methodology, the Commission services are to regularly report to the European Parliament and to the Council on the implementation of the VLAP.

At the meeting of the Senior Officials overseeing the visa dialogue on 5 April 2011, the Ukrainian authorities presented the draft National Plan for implementation of the VLAP, as approved by the Government. The plan was subsequently approved by the President of Ukraine on 22 April 2011. During the Senior Officials meeting, the Ukrainian authorities presented the measures taken to date as well as the next steps; they indicated that a Coordination Committee had been established on 7 February 2011. The state of play of implementation of the VLAP and the next steps in the dialogue were also discussed at the Justice and Home Affairs (JHA) Subcommittee on 26 May 2011 and at the EU - Ukraine JHA Ministerial meeting on 16 June 2011.

Ukraine provided a first progress report on implementation of the VLAP on 6 June 2011. Subsequent updates on legislative developments up to 8 July 2011 were provided, as well as factual clarifications, in the course of June and July 2011. Regarding the measures under the 1st phase of the VLAP (legislative and policy framework), the due date for sending the legislative framework to the Commission was 30 June 2011. Legislation which has been adopted and translated into English was taken into account.

The EU-Ukraine Visa Facilitation and Readmission Joint Committees met back to back on 5 May 2011. The Commission services took note of the overall satisfactory implementation of the EU-Ukraine Readmission and Visa Facilitation Agreements. Both sides exchanged experiences concerning the implementation of the Readmission Agreement. However, certain issues, including the situation of third-country nationals readmitted to Ukraine under the agreement, remain subject to further examination. As

regards implementation of the EU-Ukraine Visa Facilitation Agreement, the Commission services have regularly raised at the meetings of the Joint Committee the issue of fraud regarding supporting documents. Ukraine has declared its willingness to cooperate with Member States in this regard.

II. Assessment of measures under the four blocks of the Action Plan on Visa Liberalisation

Block 1: Document security, including biometrics

General assessment

The legal framework for the issuing of machine-readable biometric international passports, in full compliance with the highest International Civil Aviation Authority (ICAO) standards regarding secure identity management, **is under preparation**. The Action Plan and the Programme for the complete roll-out of ICAO-compliant biometric passports and the complete phasing out of non-ICAO-compliant passports are yet to be adopted. A **first important step** has been taken regarding breeder documents, with the adoption of the Regulation on the State Registration Service of Ukraine. A specific ethical code has recently been approved; further analysis is needed to determine whether it contains adequate anti-corruption provisions.

Detailed comments

- **Adoption of a legal framework for the issuing of machine readable biometric international passports in full compliance with the highest ICAO standards on the basis of secure identity management (civil registry and breeder documents) and taking into account adequate protection of personal data**

The legal framework is under preparation. The draft 'Law on Documents Identifying a Person and Confirming Citizenship of Ukraine' and the corresponding Action Plan have not been adopted yet. The draft Law was approved by Parliament in first reading on 5 July 2011 and is awaiting its second reading, possibly taking place in September 2011. The Action Plan is under preparation and will be submitted to the Government for approval after adoption of the draft law. The 'Regulation on the State Registration Service of Ukraine' was approved on 6 April 2011. It describes the tasks of this body and its Director, in particular the management of civil registration regarding breeder documents. The State Registration Service of Ukraine is under the responsibility of the Ministry of Justice.

- **Adoption of an Action Plan containing a timeframe for the complete roll-out of ICAO-compliant biometric international passports, including at Ukrainian consulates abroad, and the complete phasing out of non-ICAO compliant passports**

The Action Plan containing a timeframe for the complete roll-out of ICAO-compliant biometric international passports is being prepared. A separate Programme for the complete phasing out of non-ICAO-compliant passports is also under preparation.

- **Establishment of training programmes and adoption of ethical codes on anti-corruption targeting the officials of any public authority that deals with international passports, as well as domestic passports and other breeder documents**

The 'Law on Basic Principles of Preventing and Fighting Corruption in Ukraine' has been in force since 1 July 2011 (see below under Block 3). The 1996 'Code of Ethics for officials of all Home Affairs bodies' does not include specific provisions on integrity matters (for example it does not refer to conflict of interest, incompatibilities, accepting gifts, the reporting of irregularities, the obligation to do so, the protection of whistleblowers and sanctions in the event of breaches). Such elements should be an integral part of any ethical code on anti-corruption. A specific ethical code ('Code of conduct for employees authorised to produce and issue documents identifying a person') was approved on 24 June 2011.

The Ukrainian report contains information on the past and current training measures for staff on preventing and fighting corruption. The Ukrainian authorities should address in more detail the planning of the relevant training programmes. Clear figures should be provided specifically on the public officials who deal with international passports, domestic passports and other breeder documents.

Further information is required on:

- the timetable for the adoption (i) of the 'Law on Documents Identifying a Person and Confirming Citizenship of Ukraine', (ii) of the Action Plan, and (iii) of the Programme containing a timeframe for the complete roll-out of ICAO-compliant biometric international passports, including at Ukrainian consulates abroad, and the complete phasing out of non-ICAO-compliant passports;
- specific anti-corruption measures targeting officials dealing with international passports, domestic passports and other breeder documents under the Ethical Code ('Code of conduct for employees authorised to produce and issue documents identifying a person');
- the planning of relevant training programmes as well as statistics on and updated numbers of employees trained, focusing on public officials who deal with international passports, domestic passports and other breeder documents.

Block 2: Irregular immigration, including readmission

General assessment

Ukraine has made **very good progress** in adopting the legislative framework in the area of **border management**. With regard to **migration management**, several elements of the relevant legislative and institutional framework **are in place**. The 'Law on the legal status of foreigners and stateless persons' is before the Ukrainian Parliament pending approval. The State Migration Service had been set up but has not yet reached its full capacities.

As regards **legislative measures** taken in the area of **asylum** falling under the first phase of the Action Plan, **steps** have been taken to **start aligning** Ukraine's asylum legislation with international and European standards, in particular through the introduction of the subsidiary protection status. However, additional efforts are needed to further improve Ukraine's legislative framework in this important area, to make it fully compatible with international and EU standards. In this context, the serious concerns raised by international organisations and NGOs should be fully addressed.

Detailed comments by policy area

1. Border management

- **Adoption of all necessary measures for the implementation of the law-enforcement programme on State Border Development and Reconstruction for the period till 2015 and the State Border Guard Service of Ukraine development concept for the period up to the year 2015, including a legal framework for inter-agency cooperation between the Border Guard Service, law enforcement agencies and other agencies involved in border management and allowing the Border Guard Service to participate in the detection and investigation of cross-border crime in coordination with all competent law enforcement authorities**

The 'Law on Border Control' was adopted in 2009 and amended on 2 December 2010. A number of implementing regulations were adopted. Amendments to several legal acts entered into force on 6 April 2011 to strengthen the responsibility of international carriers. The Concept for the Maritime Border Guard and the aviation branch of the State Border Guard Service, and programmes for the reform of these services were adopted.

Ukraine signed a working arrangement with FRONTEX in June 2007. Protocols on cooperation between law enforcement bodies with the border services of neighbouring countries have been signed to allow for the exchange of statistical and analytical information to counter organised crime activities within border areas.

The Joint Order of 4 January 2011 of the State Customs Service and the Administration of the State Border Guard Service of Ukraine defined the procedure for the exchange of public statistical and analytical information to combat illegal transit of drugs, psychotropic medications, their derivatives, precursors, weapons, ammunition and explosive substances across Ukrainian borders.

The capacities of the Border Guard Service were further strengthened and its effectiveness, staff qualifications and equipment improved.

- **Adoption of a National Integrated Border Management Strategy and an Action Plan for its effective implementation, containing a timeframe and specific objectives for the further development of legislation, organisation, infrastructure, equipment, as well as sufficient financial and human resources in the area of border management**

The Concept for Integrated Border Management and the accompanying Action Plan for implementing the Concept were approved by the Government on 27 October 2010 and 5 January 2011, respectively.

- **Establishment of training programmes and adoption of ethical codes on anti-corruption specifically targeting border guards, customs and any other officials involved in border management**

The 'Code of Ethics of the Personnel of the State Border Guard Service', laying down the general rules of conduct for personnel and defining moral and ethical principles for professional activities, was approved in April 2008. In addition, a practical code of conduct to avoid corruption and internal ethical standards is in place. The specific ethical code ('Code of Conduct of personnel responsible for border management') was approved on 24 June 2011.

As mentioned above regarding the 1996 Code of Ethics for officials of Home Affairs bodies, the provisions on conflict of interest, incompatibilities, accepting gifts, reporting of irregularities, the obligation to do so, protection of whistleblowers and sanctions in the event of breaches should be part of any ethical code for anti-corruption.

Moreover, to combat corruption amongst border guards, a protocol has been signed on cooperation between the internal security units between the Border Guard Service of Ukraine and that of Poland. Similar draft protocols are being prepared with the border guard services of Slovakia, Romania, Belarus and Russia.

Further information is required on:

- the specific anti-corruption measures targeting officials involved in border management in the codes mentioned above (2011 Code of Conduct, 2008 Code of Ethics, practical code of conduct to avoid corruption and internal ethical standards) and how their provisions interact;
- the planning of relevant training programmes and the numbers of border management officials trained.

2. Migration management

- **Adoption of a legal framework for migration policy providing for an effective institutional structure for migration management, rules for entry and stay of foreigners, measures for the reintegration of Ukrainian citizens (returning voluntarily or under the EU-Ukraine readmission agreement), monitoring of migration flows, the fight against illegal migration (including return procedures, rights of persons being subject thereto, detention conditions, efforts to conclude readmission agreements with main countries of origin, inland detection of irregular migrants)**

Regarding the status of foreigners in Ukraine, the draft 'Law on the legal status of foreigners and stateless persons' has been submitted to Parliament. It was approved in first reading on 5 July 2011, a second reading is planned for September 2011. The draft law regulates conditions for the entry and stay of foreigners and stateless persons, their rights and obligations as well as return and detention procedures. The draft 'Law amending the Code of Administrative Legal Procedures' which contains provisions on administrative lawsuit procedures on expulsion of foreigners and stateless persons and certain elements of the refugee status determination procedure was submitted to Parliament on 6 July 2011.

With regard to institutional reform, the State Migration Service of Ukraine was established by a Presidential decree of 9 December 2010. The regulation defining its basic tasks, functions and organisation was adopted on 8 April 2011. The State Migration Service is gradually taking up its functions and building up its resources, including the establishment of territorial bodies at regional level. A number of legal and administrative provisions on the accommodation and detention of irregular migrants have been adopted, dealing mainly with their transfer under the responsibility of the National Migration Service. A draft Regulation has been prepared on maintenance and medical assistance for persons detained in temporary detention centres and special premises of the border guard bodies.

The Action Plan on Integration of Migrants in Ukraine and the Reintegration of Ukrainian Migrants up to 2015 has been prepared and is before the government pending approval. The objective of the Action Plan is to set out measures to improve policy and legislation regarding integration of migrants. It is also expected to contain provisions for the reintegration of Ukrainian citizens (e.g. a mechanism for the assessment and confirmation of professional skills of migrants, recognition of diplomas on education, preparation of training programmes, etc.).

In addition to the readmission agreement with the EU, Ukraine has concluded several readmission agreements with neighbouring countries (Russia, Republic of Moldova) and with countries further afield such as Turkey, Turkmenistan, Uzbekistan and Vietnam. Ukraine is also pursuing negotiations for further readmission agreements Belarus, with several countries in Central Asia, and with countries of origin such as Afghanistan, China, India, Iraq and Sri Lanka. These efforts should be further pursued towards timely completion of outstanding negotiations and conclusion of further agreements with other third countries.

Ukraine is also negotiating Implementing Protocols to the EU-Ukraine readmission agreement with several Member States. Such efforts are welcome, even if no bilateral Implementing Protocols have been concluded so far. The Ukrainian authorities are encouraged to intensify efforts towards this end with the Member States that so wish.

- **Adoption of a National Migration Management Strategy for effective implementation of the legal framework for migration policy and an Action Plan, containing a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources**

The Concept for State Migration Policy was adopted on 30 May 2011. The purpose of the Concept is to outline the principles of migration and asylum management in Ukraine. If implemented appropriately, it would provide a good basis for developing migration and asylum policies. The draft Action Plan for its implementation has been prepared and is due to be soon submitted to the Government.

- **Establishment of a mechanism for monitoring migration flows, defining a regularly updated migration profile for Ukraine, with data both on illegal and legal migration, and establishing bodies responsible for the collection and analysis of data on migration stocks and flows**

Ukraine has started preparations for the development and establishment of a unified national database for migration management. A migration profile has been prepared as part of the EU-funded project implementing the Prague Declaration on Building

Migration Partnerships. No mechanism has yet been established to update the profile and ensure that it is used in developing migration policy and in related policies, such as policies on economic development, employment, education and social policy.

3. Asylum policy

- **Adoption of legislation in the area of asylum in line with international standards (1951 Geneva Convention with New York Protocol) and EU standards, providing grounds for international protection (including subsidiary forms of protection), procedural rules for examination of applications for international protection, as well as the rights of asylum seekers and refugees**

Under the first phase of the Action Plan, **steps** have been taken to start aligning Ukraine's asylum legislation with international and European standards, in particular through the introduction of subsidiary protection status. The 'Law on Refugees and Persons in Need of Subsidiary and Temporary Protection' introducing the concept of subsidiary protection in the Ukrainian asylum system was adopted on 8 July 2011. The law includes provisions for establishing identification of a procedure for the acquisition (or loss and deprivation) of the status of refugee or person in need of subsidiary and temporary protection by foreigners and stateless persons, the provision and suspension of temporary protection in Ukraine and the legal status of persons applying for and granted different forms of protection. **Additional efforts** are needed to **further improve** the new legislative framework in this important area.

Block 3: Public order and security

General assessment

Ukraine has made **good progress** in adopting the required legislative framework. In certain areas (combating money laundering and the financing of terrorism, anti-drug policy) the work is almost finalised. In other areas the legislative framework is at an advanced stage (data protection) whereas other elements are still in a preparatory phase (combating trafficking in human beings, combating organised crime).

Regarding the fight against corruption, a significant first step has been taken with the adoption of the anti-corruption law. Considerable efforts need to be undertaken to ensure its correct implementation, including through elaboration of a relevant Strategy and its Action Plan. The institutional framework needs to be put in place as a matter of urgency and proper coordination between anti-corruption bodies needs to be ensured.

Work is advancing at a good pace towards the completion of the legislative framework on judicial cooperation in criminal matters.

More efforts are required on law enforcement cooperation, in particular for the establishment of a coordination mechanism and a common database for law enforcement agencies.

Ukraine has acceded to all but one UN and Council of Europe conventions that are relevant to the area of public order and security. It has also acceded to the vast majority of UN and Council of Europe conventions on the fight against terrorism. Further steps

need to be taken to negotiate agreements with Europol and Eurojust, and in this respect the required data protection standards, including the effective implementation of Council of Europe Convention 108 and its Additional Protocol, have to be ensured.

The reform of institutional structures to ensure their effective functioning is fundamental in this area. Therefore, further information should be provided on the structure and functioning of all relevant institutions and authorities, especially regarding the establishment of the Anti-Corruption Agency and measures taken to ensure the full independence of the newly-established Data protection Supervisory Authority.

Detailed comments by policy area

1. Preventing and fighting organised crime, terrorism and corruption

- **Adoption of a comprehensive strategy to fight organised crime, together with an action plan containing a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources**

The 'Law on the organisational and legislative framework for fighting organised crime' was adopted on 30 June 1993 and subsequently modified, most recently in 2011.

The strategy (concept) to fight organised crime is under preparation. It was endorsed by the Government on 15 June 2011 and is pending approval by the President. Such a strategy should be comprehensive and address the impact of the entry into force for Ukraine of the UN Convention against Transnational Organised Crime in 2004 as well as relevant Council of Europe conventions and guidelines.

- **Adoption of a law on trafficking in human beings, adoption of an action plan to effectively implement the State Programme for Combating Trafficking in human beings, containing a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources**

The law on combating trafficking in human beings is under preparation. The draft law was approved by the Government on 15 December 2010. The draft was approved by the Parliament in first reading on 5 July 2011 and is now in second reading.

The National Programme on combating trafficking in human beings up to 2015 had been prepared and was due to be submitted to the Government.

The law amending certain legislative acts on the responsibility of carriers providing international passenger transportation to strengthen the responsibility of carriers (see also above under Block 2), also containing measures on fighting trafficking in human beings, was adopted by Parliament on 2 December 2010 and entered into force on 6 April 2011.

- **Adoption of legislation on preventing and fighting corruption and establishment of a single and independent anti-corruption agency; strengthening of coordination and information exchange between authorities responsible for the fight against corruption**

The 'Law on the principles of preventing and fighting corruption' was adopted by Parliament on 7 April 2011 and entered into force on 1 July 2011, except for Articles 11

(special check of persons seeking appointment to government and local self-government positions) and 12 (financial control), which will enter into force on 1 January 2012.

The addendum to the Compliance Report of the Council of Europe's Group of States Against Corruption (GRECO) on Ukraine on the first and second evaluation round, issued in May 2011 and public since 30 June 2011,¹ concluded that only 12 out of 25 recommendations have been dealt with satisfactorily².

Since January 2004, Ukraine has also been reviewed under the Istanbul Anti-Corruption Action Plan, a regional initiative of the Organisation for Economic Cooperation and Development (OECD) Anti-Corruption Network for Eastern Europe and Central Asia; 24 recommendations were endorsed in this framework³.

According to the initial general assessment by the Commission services, the new law follows some of the GRECO and OECD recommendations, but still has a number of substantial loopholes, such as:

- the criminalisation of corruption still does not follow GRECO recommendations, notably as regards the distinction between administrative and criminal liability for corruption offences;
- as pointed out by OECD, the promise of a bribe and the acceptance of a proposal or promise of a bribe are not fully criminalised as offences, nor is receiving a bribe on behalf of third persons or through third persons or proposing or promising a bribe through third persons;
- it does not define 'bribe' as such and therefore does not include immaterial benefits;
- it does not include provisions on the liability of legal persons;
- it does not consider the specialisation of law enforcement in corruption offences;
- although it contains some basic provisions on conflict of interest, it does not provide for rules for a monitoring and sanctioning system;
- although it contains an obligation for public officials to submit asset declarations, it does not provide for any checking and supervision system thereof or for adequate sanctions in the event of irregularities;

¹ [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2\(2009\)1_Add_Ukraine_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2009)1_Add_Ukraine_EN.pdf)

² Some of the remaining recommendations where little or no progress was found refer to key issues, such as the setting up of an independent body overseeing the implementation of the national anti-corruption strategies; making a clear-cut distinction between criminal and administrative procedures and ensuring that all corruption offences are treated as a rule as criminal offences; enhancing the independence of the prosecution services, ensuring a clearer mandate for leading criminal investigations; improving the legal framework for seizures and confiscation; ensuring that the reform process also covers also those public servants who are not civil servants; introducing criminal liability for legal persons for corruption offences; ensuring a legal framework on public procurement in line with European standards, etc.

³ The Second Round Monitoring report adopted on 8 December 2010 included updated compliance ratings: 1 recommendation is fully implemented, 4 recommendations are largely implemented, 7 recommendations are partly implemented and 12 are not implemented. It showed that very little progress was made by Ukraine in a number of key areas, including the legislative framework; regarding the criminalisation of corruption, confiscations and immunities (immunity regime for judges and Members of Parliament), specialisation of the law enforcement system, financing of political parties and electoral campaigns, etc.

- there is no clarity as to how illicit enrichment is defined and sanctioned.

The draft National Strategy on preventing and fighting corruption up to 2015 is under consideration. The information provided by the Ukrainian authorities in the progress report does not mention anything about the necessary human and financial resources or about plans to adopt a detailed Action Plan for implementation of the Strategy.

Moreover, important efforts are needed to set up an independent anti-corruption agency. The 'Law on preventing and fighting corruption' envisages the creation of an anti-corruption agency, but no information has been provided on its establishment. The addendum to the GRECO Compliance Report on Ukraine mentioned above found that the National Anti-Corruption Committee, established on 26 February 2010, does not have all the guarantees necessary for it to operate as an independent and effective monitoring body, as requested by GRECO. Moreover, the December 2010 OECD assessment under the Istanbul Anti-Corruption Action Plan also concluded that the institutional framework in place did not produce tangible results.⁴ It appears that these recommendations have not been fully addressed by the current law, which does not provide a clear indication of the status and role of the anti-corruption agency.

Furthermore, major efforts are needed to strengthen coordination and information exchange between authorities responsible for the fight against corruption.

- **Adoption of a national strategy for the prevention and fighting of money laundering and the financing of terrorism; adoption of a law on the prevention of financing of terrorism**

The legal framework for preventing and combating money laundering and the financing of terrorism appears to be in place. A 'Law on Preventing and Counteracting of the Legalisation (Laundering) of the Proceeds of Crime as well as Terrorist Financing', replacing the 2003 'Law on prevention and counteracting of the legalisation (laundering) of proceeds from crime', was adopted on 18 May 2010 and entered into force on 21 August 2010. Both the Strategy for preventing and combating money laundering and the financing of terrorism up to 2015 and the accompanying Action Plan for 2011 were approved on 9 March 2010.

Three additional statutes have been enacted with a view to complying with the Financial Action Task Force (FATF) Action Plan: the 'Law on amendments to certain legislative acts of Ukraine on prevention and counteraction to legalisation (laundering) of proceeds from crime (regarding criminalisation of manipulation on the stock exchange)' and the 'Law on amendments to certain legislative acts on seizure of assets related to terrorism financing and financial operations stopped in accordance with the decision taken on the basis of Resolutions of the UN Security Council and establishing a procedure for access to such assets', which entered into force on 19 May 2011, as well as the 'Law on amendments to some legislative acts of Ukraine on insider information' which entered into force on 25 May 2011. The results of the planned on-site inspection by the FATF will have to be taken into account in this context.

⁴ <http://www.oecd.org/dataoecd/31/55/46832397.pdf>.

- **Adoption of a new National Strategic Programme on drugs and its related action plan; ratifying the Memorandum of Understanding with EMCDDA**

The required legislative framework appears to be in place: the National Strategic Programme (Concept for the implementation of state policy for preventing the spread of drug abuse and combating the illegal circulation of drugs, psychotropic substances and precursors) for 2011-2015 was adopted on 13 September 2010 and the accompanying Action Plan for its implementation during 2011-2015 was adopted on 22 November 2010. The institutional framework has also been in place since 13 April 2011, when the National Service for Drugs Control was established by presidential decree.

With regard to cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), a Memorandum of Understanding with EMCDDA was signed and entered into force on 28 January 2010.

- **Adoption of relevant UN and Council of Europe conventions in the areas listed above and the fight against terrorism.**

Ukraine has acceded to all UN and Council of Europe conventions relevant for the above-mentioned areas, with the exception of the 2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime. Regarding the fight against terrorism, the vast majority of UN and Council of Europe conventions have been ratified and have entered into force in Ukraine.

Further information is required on:

- the timetable for adoption of the Strategy (Concept) to fight organised crime and the timetable for adoption of the accompanying Action Plan containing a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources;
- the timetable for adoption of an Action Plan on combating trafficking in human beings containing a timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources;
- the timetable for adoption of the Draft National Strategy on preventing and fighting corruption up to 2015, including information about the necessary human and financial resources, as well as the accompanying Action Plan for implementing the Strategy;
- the measures taken to establish an independent Anti-Corruption Agency;
- how the outstanding GRECO recommendations are followed up in the development of the legislative and institutional framework on anti-corruption as well as the follow-up to the recommendations of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (Istanbul Anti-Corruption Action Plan);
- the measures taken to strengthen coordination and information exchange between authorities responsible for the fight against corruption.

2. Judicial co-operation in criminal matters

- **Adoption of a legal framework on mutual legal assistance**
- **Ratification of the 2nd Protocol to the European Convention on mutual legal assistance**
- **Conclusion of an agreement with Eurojust**

The legislative framework in the area of mutual legal assistance is generally in place. Ukraine has acceded to the relevant Council of Europe conventions (Convention on Mutual Assistance in Criminal Matters; Convention on Extradition; conventions on other forms of judicial cooperation). The 2nd Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters was ratified on 1 June 2011 and is awaiting the completion of the ratification procedures to enter into force. The draft 'Law on Amendments to Certain Legislative Acts of Ukraine for Ratification of the 2nd Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters' aiming to incorporate in national law the provisions of the 2nd Additional Protocol, was approved by Parliament in first reading on 2 June 2011.

Negotiations have resumed with Eurojust with a view to concluding an agreement with Eurojust, provided that the relevant data protection standards are ensured (see also below under 4. Data protection).

Further information is required on:

- the timetable of entry into force for Ukraine of the 2nd Additional Protocol to the European Convention on mutual legal assistance as well as the timetable of the adoption of the draft 'Law on Amendments to a Certain Legislative Acts of Ukraine for Ratification of the 2nd Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters'.

3. Law enforcement co-operation

- **Establishment of an adequate coordination mechanism between relevant national agencies and a common database guaranteeing direct access in the entire territory of Ukraine**

Regarding the establishment of an adequate coordination mechanism between relevant national agencies and a common database guaranteeing direct access in the entire territory of Ukraine, the 'Law on the organisational and legislative framework for the fight against organised crime' sets out the rules on the cooperation between bodies responsible for fighting organised crime.

In addition, the Ministry of the Interior in cooperation with the Security Service and with the participation of the General Prosecutor's Office has drafted the 'Joint instruction on cooperation of law enforcement bodies in the fight against organised crime' which is awaiting registration.

A 'Regulation on exchange of public statistical information and analytical information on the fight against the illegal circulation of drugs, psychotropic substances, analogues, precursors, weapon, ammunition, and explosive substances via the territory of Ukraine' was adopted by Joint Order of the State Customs Service of Ukraine and the State Border Guard Service of Ukraine on 4 January 2011. Information exchange is done via the

Virtual Contact and Analysis Centre. Information is exchanged by the relevant services on a monthly basis and meetings take place in principle every trimester.

- **Conclusion of an operational cooperation agreement with Europol with special emphasis on data protection provisions**

The conclusion of an operational agreement with Europol is conditional upon assessment by Europol of the relevant data protection standards (see also below under 4. Data protection).

Further information is required on:

- the coordination mechanisms in place, along with more detailed information on their functioning and on the establishment of a common database guaranteeing direct access to relevant officers;
- the structure of the Virtual Contact and Analysis Centre and how information is exchanged in practice between the relevant services.

4. Data protection

- **Adoption of adequate legislation on the protection of personal data and establishment of an independent data protection supervisory authority**

Ukraine ratified the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and its 2001 Protocol, entering into force on 1 January 2011.

Ukraine's first law on data protection, adopted in June 2010, likewise entered into force on 1 January 2011. The law aims at aligning Ukrainian standards with the European ones in the area of data protection. Achieving an adequate level of data protection is a precondition for the conclusion of operational agreements with Eurojust and Europol (see above under 2 Judicial co-operation in criminal matters and 3 Law enforcement co-operation).

A Law 'On amendments to certain legislative acts of Ukraine on the violation of legislation on personal data protection' was adopted by Parliament on 2 June 2011. The law introduces administrative (in some cases also criminal) sanctions for the violation of data protection legislation and will enter into force on 1 January 2012.

The State Service of Ukraine on the Protection of Personal Data (data protection supervisory authority) was established by a Presidential Decree on 9 December 2010. A further Presidential decree, adopted on 6 April 2011, sets out the tasks and functioning of the State Service of Ukraine on the Protection of Personal Data. The Service began its operations in July 2011, although its effective functioning has yet to be evaluated. The full independence of the newly-established data protection supervisory authority is of particular importance and this likewise has to be evaluated further.

- **Ratification of relevant international conventions, such as the Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data and its 2001 Protocol**

Ukraine has ratified the 1981 Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data and its 2001 Protocol which entered into force on 1 January 2011.

Block 4: External relations and fundamental rights

General assessment

Ukraine has carried out an evaluation of the existing legal and regulatory framework to identify those pieces of legislation which would require revision in order to meet the benchmarks under Block 4, in particular with regard to ensuring freedom of movement within Ukraine. Based on this evaluation, **work on drafting amendments to the legislation is under way**. Ukraine should pursue the adoption of a comprehensive anti-discrimination law to ensure effective protection against all forms of discrimination.

Detailed comments

1. Freedom of movement within Ukraine

- **Revision of the legal and regulatory framework on registration and de-registration procedures for Ukrainian citizens and legally staying foreigners or stateless persons with a view to avoiding unjustified restrictions or obligations to their freedom of movement within Ukraine in particular with respect to the conditions for legal stay without residence registration and the measures taken in case of failing to register as well as on the liability of tenants**

The Government carried out an evaluation of the legal and regulatory framework on registration and de-registration procedures for Ukrainian citizens and legally staying foreigners or stateless persons with a view to avoiding unjustified restrictions or obligations on their freedom of movement within Ukraine. It has identified the need to amend the 'Law on freedom of movement and free choice of residence in Ukraine' in order to improve the mechanism for the registration of residence/stay and to define this mechanism for individual categories of persons (foreigners who reside temporarily on the territory of Ukraine, refugees, etc.). The Government is considering the proposed amendments.

2. Conditions and procedures for the issue of identity documents

- **Revision of the legal and regulatory framework so as to ensure effective access to travel and identity documentation without discrimination, and in particular as regards vulnerable groups**

Ukraine has also evaluated its legal framework on access to travel documents and documents identifying a person (see also above under Block 1). The draft 'Law on Documents Identifying a Person and Confirming Citizenship of Ukraine' was approved by Parliament on 5 July 2011 in first reading; the second reading is expected in September 2011. This law is expected to contain clear provisions to ensure effective access to travel and identity documentation without discrimination, in particular for vulnerable groups.

3. Citizens' rights including protection of minorities

- **Adoption of comprehensive anti-discrimination legislation, as recommended by UN and Council of Europe monitoring bodies, to ensure effective protection against discrimination**
- **Actively pursue the specific recommendations of UN bodies, OSCE/ODIHR, the Council of Europe/ECRI and international human rights organisations in implementing anti-discrimination policies, protecting minorities and combating hate crimes**
- **Ratification of relevant UN and Council of Europe instruments in the fight against discrimination**

Comprehensive anti-discrimination legislation, as recommended by UN and Council of Europe monitoring bodies, to ensure effective protection against discrimination has not yet been adopted. A Strategy on anti-discrimination is being drafted aiming to ensure proper implementation of constitutional and national legislation as well as the international obligations of Ukraine in the area of anti-discrimination. The Strategy will be complemented by an Action Plan.

Regarding the institutional framework, the Security Service and the Ministry of Interior have special subdivisions tasked with combating xenophobia, anti-semitism and ethnic crimes. The position of a 'Special Ambassador-at-Large' for counteracting xenophobia, anti-semitism and ethnic crimes has been created at the Ministry of Foreign Affairs. There is ongoing cooperation with the UN Committee on elimination of race discrimination and the OSCE Office for democratic institutions and human rights⁵. OSCE plenipotentiary representatives on tolerance and antidiscrimination are expected in Ukraine in order to discuss measures to counter intolerance and discrimination. A Memorandum of Understanding is being negotiated between the Ministry of Interior and ODIHR in order to provide training for representatives of law enforcement bodies regarding the fight against hate crimes. Representatives of the European Commission against Racism and Intolerance (ECRI)⁶ visited Ukraine on 4-8 April 2011. Following this visit, a report containing recommendations will be adopted.⁷

Ukraine has ratified the main international instruments on the protection of human rights and the fight against discrimination.

- **Specify conditions and circumstances for the acquisition of Ukrainian citizenship**

The conditions to acquire Ukrainian citizenship are contained in the 'Law on citizenship of Ukraine' adopted on 18 January 2001. Information regarding this law is available on the websites of relevant institutions and information agencies.

⁵ Organisation for Security and Cooperation in Europe <http://www.osce.org/odihr> .

⁶ http://www.coe.int/t/dghl/monitoring/ecri/library/PressReleases/84-12_04_2011_Ukraine_en.asp#TopOfPage

⁷ Not yet available

Further information is required on:

- the timetable for the adoption of a comprehensive anti-discrimination legislation and for the adoption of the Anti-Discrimination Strategy and accompanying Action Plan.

III. Overall assessment and next steps

The present progress report reflects the state of play until **8 July 2011**, even though information and legislation were provided afterwards. It indicates that work is still under way on several pieces of draft legislation, strategies and action plans. The work of the Ukrainian Government to date shows that the Action Plan on Visa Liberalisation is an important tool for advancing reforms in the JHA area and beyond.

A **second report** will therefore be made by the end of 2011 after the adoption and translation into English of this further legislation. An **evaluation mission** will be organised in autumn 2011 involving officials of the Commission services and the EEAS accompanied by experts from EU Member States.