PISM POLSKI INSTYTUT SPRAW MIĘDZYNARODOWYCH
THE POLISH INSTITUTE OF INTERNATIONAL AFFAIRS

BULLETIN

No. 10 (605), 28 January 2014 © PISM

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The EU on Ukraine: Opportunities for Liberalisation of the Visa Regime

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The undemocratic changes in Ukraine's laws and particularly the dramatic events in Kiev indicate the urgent need for an EU response, both for security reasons and because of the need to support pro-EU changes in the country. One current issue is the liberalisation of the visa regime between the bloc and Ukraine, which has met many of the technical requirements but has run into an EU sceptical of opening its borders. For Poland, leading an open immigration policy with Ukraine would demonstrate credible support for reform there. At the moment, and despite current events, Poland should not expect a large influx of Ukrainians, but the authorities should be ready for that possibility.

Progress in the Liberalisation of the EU Visa Regime with Ukraine. Since 2008, the EU has had a dialogue with Ukraine about the abolition of visas for visitors. A primary condition is the introduction of compliance requirements in Ukraine (as well as other countries of the Eastern Partnership) to ensure effective border controls and combat illegal migration, all of which are specified in detail in the action plan on visa liberalisation adopted by Ukraine and the European Commission (EC) in 2010. The liberalisation process involves two stages: the first includes a review of legislation and institutions for technical compliance with EU standards, while the second is to demonstrate that the solutions adopted guarantee control of migration.

In 2013, the EC agreed with Ukraine that to complete the first stage of negotiations it is necessary to implement a system for issuing biometric passports, intensify anti-corruption measures and make changes in anti-discrimination legislation. In December last year, Ukrainian Prime Minister Mykola Azarov confirmed the country's readiness to meet these requirements. The fulfilment of the biometric documents condition, though, seems to be difficult due to the high cost of the system and the need for Ukrainian institutions to operate transparently. Controversies in the Supreme Council and among Ukrainian society are delaying the adoption of anti-discrimination legislation. In this context, an important role is played by the Orthodox Church, which in the public debate offers its interpretation of EU requirements as a step towards the recognition of same-sex marriages. The Ukrainian government, however, has offered assurances that these concerns are unfounded, and it has been confirmed that in February this year the Ukrainian parliament will vote on compromise provisions negotiated in consultation with the European Commission.

Controversy Surrounding Visa-Free Travel. Commission reports and Frontex, the agency charged with managing the EU's external borders, indicate that the EU's eastern neighbours, including Ukraine, are not a source of dangerous illegal migration. The eastern section of the external border of the European Union (including the borders with Russia) accounted for only 2% of all recorded illegal crossings in 2012. The percentage of Schengen visas denied to Ukrainians was 3.3%, which is considered to be a safe level. Ukraine ranks second (after Russia) in terms of the number of applications for Schengen visas. Supporters for visa liberalisation argue that the 45 million people who live in Ukraine generate a relatively small stream of long-term migration to the EU, with 632,000 lawfully living in the EU Member States. According to forecasts, a higher influx of Ukrainians to the Union in connection with the liberalisation of the visa regime should not be expected.

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The fulfilment of technical conditions alone does not, however, guarantee the lifting of the visa requirement. Both the completion of the first stage as well as the final decision on liberalisation require approval of all of the EU Member States. During the EaP Summit in Vilnius, only Moldova gained approval for the implementation of the second phase of the negotiations. Ukraine must take into account the concerns of various EU countries about the risks stemming from the liberalisation of the visa with such a large and politically unstable neighbour. The example of the EU negotiations with Bulgaria and Romania, which, despite fulfilment of the technical criteria, are still awaiting EU approval for full integration into the Schengen area, and the threat of the re-imposition of re-entry visas for certain countries in the Western Balkans (because of an increase in asylum applications) comprise a serious warning.

Polish–Ukrainian Border Traffic. Poland has traditionally been interested in maintaining the high growth in border traffic with Ukraine. The proximity of the country to Ukraine and its liberal visa policy and immigration policy makes Poland the main destination for Ukrainian citizens. This resulted in a high number of entries, including during the second quarter of 2013 when the Polish–Ukrainian border accounted for the majority (more than 53%) of Poland's external land border crossings. Almost half of these travellers benefited from the opportunities offered by small border traffic (SBT) agreements. Under the current bilateral agreement from September 2012, no fee is charged to Ukrainians for a visa to enter Poland. The majority of foreign students in Poland come from Ukraine, and the amended law on granting protection to foreigners simplifies the application process for residence permits, so students can even stay for a year after graduation and seek employment.

According to information from the Polish Office for Foreigners, 15,000 people requested refugee status in Poland in 2013, which is almost twice as many as in previous years, but Ukrainians were one of the smaller groups of people represented in these statistics (from 30 to 70 people per year). At the same time applications for refugee status filed by Ukrainian citizens in the EU Member States represented just 0.3% of the total (or, 1,095 of 355,000 applications in 2012). Given the current events in Ukraine, the Polish authorities, including President Bronisław Komorowski, has declared Poland's openness to citizens from its neighbour. Due to this possibility to cross the Polish border, many Ukrainians probably would use the existing permissions and facilities. Therefore, even if migration increases due to the dynamic political situation in Ukraine it is likely to be predominantly legal.. Currently, the Foreigners' Office has 700 seats in its border centres and has the ability to rent additional facilities to accommodate up to 1,500 people. At the same time, difficulties with protection of the border or the operation of border crossings should not be expected as the Polish Border Guard and other agencies have sufficient resources at hand. Still, the queues at the border because of a lack of efficient border infrastructure (despite opening another crossing point at Budomierz-Hruszew and plans for one more at Dołhobyczów), in particular, the lack of adequate roads, remains a problem.

Conclusions and Recommendations for the EU itself and for Poland. The political crisis in Ukraine affects the strategic direction of EU policy issues in terms of the movement of people and migration policy. The EU may determine the pace of liberalisation based on the condition of relations with the Ukrainian authorities, or it may take into account the pro-EU aspirations of the country's population, granting them the freedom to travel to the EU as part of the bloc's pro-democratisation actions. The main problem with enacting a visa-free regime has been the implementation of the biometric system, which is a requirement *sine qua non*. Poland and the other Member States that are substantially interested in maintaining Ukraine's pro-EU orientation may influence Union policy, which could add further visa facilitations for various categories of travellers. This is supported in part by Poland's positive experience with its border crossing regime for Ukrainian citizens. Concerns about an increase in illegal migration may be dispelled based on SBT statistics or facilitation of access to the Polish labour market.

Notwithstanding the previously noted medium-and long-term solutions, Poland should take urgent steps to respond to the consequences of the political crisis in Ukraine. At present, it is important to monitor the traffic on the Polish–Ukrainian border. In the event of an increased number of asylum applications in Poland, coordinated action (in particular, the Border Guard, Ministry of Interior and the Office for Foreigners) by competent services and institutions will be necessary. A good flow of information and cooperation from the governors of Podlaskie and Lublin, as well as local government authorities in the towns that support border movement, must be provided. Due to the dynamic situation in Ukraine, Poland should consider creating a specific fund for solidarity with Ukraine operated from the special reserve of the Ministry of Foreign Affairs. In case there is an increase in the number of people seeking to cross the border, one possibility would be to expedite national visas (type D) for reasons of political asylum, and to propose to simplify the procedure for applying for a Schengen visa (e.g., waiving the requirement regarding confirmation of residence).