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### The European Vector of Ukrainian Migration Policy

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## The European Vector of Ukrainian Migration Policy

**Abstract:** The subject of this paper is how cooperation with the European Union (EU) influences the formation of Ukraine's migration policy. It gives a brief overview of the initial period of this cooperation, which started with the signing of the Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine (PCA). This paper closely examines the current state of Ukraine's policy towards migration. It shows how the 2010 Action Plan on Visa Liberalization with the EU (VLAP) influenced the reform of migration management policies in Ukraine. It analyzes in greater detail the Concept of State Migration Policy of Ukraine (2011), the Law on External Labor Migration (2015) and the newly adopted Strategy of State Migration Policy of Ukraine for the Period up to 2025 (2017). The final part of this paper determines the major problems of Ukraine's migration policy and prospects for its further development. This paper also contains recommendations how to improve the Action Plan on the Strategy of State Migration Policy implementation, currently in the process of elaboration.

**Keywords:** Ukraine, European Union, cooperation, migration policy, reform, legislation, Strategy of State Migration Policy

### Introduction

The issue of migration is a very difficult one for the EU today, especially in the context of security in the region, overcoming the threat of terrorism and avoiding humanitarian catastrophe as a result of a large influx of mixed migratory flows from the Middle East and North Africa. Since 2013, the number of people from outside the EU seeking asylum within the bloc has risen at a rapid pace. There were 435,000 applications in 2013,<sup>1</sup> 626,000 in 2014,<sup>2</sup> 1.26 million in 2015 and 1.2 million in

1 A. Bitoulas, 'Asylum applicants and first instance decisions on asylum applications: 2013', *EUROSTAT Data in focus*, no. 3/2014, March 2014, p. 1, [https://emnbelgium.be/sites/default/files/publications/eurostat\\_2013\\_data\\_in\\_focus.pdf](https://emnbelgium.be/sites/default/files/publications/eurostat_2013_data_in_focus.pdf) [2017-09-02].

2 Idem, 'Asylum applicants and first instance decisions on asylum applications: 2014', *EUROSTAT Data in focus*, no. 3/2015, March 2015, p. 6, <http://ec.europa.eu/eurostat/documents/4168041/6742650/>

2016.<sup>3</sup> As such, the number of asylum applications within the EU-28 in 2015 and 2016 was approximately double the number recorded within the EU-15 during the previous peak of 1992 (672,000 applications).<sup>4</sup> Available surveys show a mixed picture of public attitudes towards refugees and migrants. Generally speaking, Nordic societies have a more positive attitude towards immigration. More than the 50% of respondents from Germany, Switzerland and Denmark value immigrants as enriching the culture of the country they live in. This is even higher in Finland and Sweden (80%). At the same time, people in Southern Europe (for example, Greece and Cyprus) and Central and Eastern Europe (such as Czechia, Slovakia, Poland and Latvia) display relatively negative attitudes towards immigrants. Less than 30% of respondents from these countries see the cultural impact of immigrants in the host country as positive. As for the economic evaluation of immigrants, one can observe the same picture. About 50% of respondents in Nordic countries value the presence of immigrants as good for the country's economy, as opposed to less than 10% of the populations of Southern and Central European countries.<sup>5</sup>

Such tendencies are extremely unfavorable for Ukraine, as it is essentially one of the main origin countries of migrants, and has been especially so during the last four years. In Poland alone, there are about 1.3 million Ukrainians who arrived for work in 2016 and will probably stay permanently.<sup>6</sup> Migratory moods among the Ukrainian people have certainly increased since the introduction of the visa-free regime

KS-QA-15-003-EN-N.pdf/b7786ec9-1ad6-4720-8a1d-430fcfc55018 [2017-09-02].

- 3 'Asylum in the EU Member States. 1.2 million first time asylum seekers registered in 2016', *EUROSTAT Newsrelease*, no. 46/2017, 16 March 2017, p. 1, <http://ec.europa.eu/eurostat/documents/2995521/7921609/3-16032017-BP-EN.pdf/e5fa98bb-5d9d-4297-9168-d07c67d1c9e1> [2017-09-02].
- 4 'EUROSTAT Statistics Explained: Asylum statistics', [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics) [2017-07-17].
- 5 M. Bordignon, P. Góis and S. Moriconi, 'Vision of Europe—The EU and The Refugee Crisis', in: *Vision Europe Summit 2016. Improving the Responses to the Migration and Refugee Crisis in Europe*, Lisbon, 21-22 November 2016, p. 82, <http://bruegel.org/wp-content/uploads/2017/02/VisionEurope-PolicyPapersweb.pdf> [2017-07-17].
- 6 A. Fandrejewska, 'Milion trzysta Ukraińców pracuje w Polsce' [A Million Three Hundred Ukrainians Work in Poland], *Polska 2041*, 20 stycznia 2017, <http://www.polska2041.pl/spoleczenstwo/news-milion-trzysta-ukraincow-pracuje-w-polsce,nld,2340288> [2017-09-19].

between the EU and Ukraine on 11 June 2017.<sup>7</sup> According to the latest survey (conducted in September 2017), 35% of Ukrainians stated they would like to move abroad for permanent residence. Thus, the number of those who would like to move to another country has increased slightly compared to the previous year (30%). The destination country most often mentioned by those who wish to work abroad is Germany (37%). 26% of Ukrainians would like to work in Poland, 22% in the United States, 21% in Canada, 16% in Czechia, 15% in Italy, 14% in the United Kingdom, 12% each in France or Sweden, 11% in Israel, 9% in Spain, 7% in the Netherlands and 6% in Russia.<sup>8</sup>

The subject of this paper is how cooperation with the EU influences the formation of Ukraine's migration policy. It gives a brief overview of the initial period of this cooperation, and examines the current state of Ukraine's policy towards migration. This paper shows how the VLAP influenced the reform of migration management policies in Ukraine. In particular, it analyzes the Concept of State Migration Policy of Ukraine, the Law on External Labor Migration and the newly adopted Strategy of State Migration Policy of Ukraine for the Period up to 2025. The final part of the article determines the major problems of Ukraine's migration policy and prospects for its further development.

## 1. Ukraine's Policy on Migration and Cooperation with the EU: First Steps

The political dialog between Ukraine and the EU in the field of migration started in the mid-1990s, when negotiations on the PCA began. Ukraine ratified this agreement on 10 November 1994, and it came into force on 1 March 1998.<sup>9</sup> Article 24 of the PCA commits Member States to preventing discrimination against Ukrainian citizens who legally work on their territory. Article 25 states that the parties should enter

7 'EU visa-free travel for Ukraine comes into force June 11', *Unian Information Agency*, 11 June 2017, <https://www.unian.info/politics/1969116-eu-visa-free-travel-for-ukraine-comes-into-force-jun-11.html> [2017-09-02].

8 'Migration Moods of the Ukrainians in Dynamics', *Соціологічна група «Рейтинг»* [Sociological Group 'Rating'], [http://ratinggroup.ua/en/research/ukraine/dinamika\\_migracijnnyh\\_nastroeniy\\_ukraincev.html](http://ratinggroup.ua/en/research/ukraine/dinamika_migracijnnyh_nastroeniy_ukraincev.html) [2017-10-15].

9 'Ukraine-EU Relations', *Mission of Ukraine to the European Union*, <http://ukraine-eu.mfa.gov.ua/en/ukraine-eu/relations> [2017-09-03].

into social security agreements for Ukrainians who work legally in the EU. Such agreements should allow for the aggregation of the workers' insurance periods when calculating pensions, the provision of medical care and the transfer of pensions from one country to another.<sup>10</sup>

On 11 June 1998, the Strategy of Integration of Ukraine into the EU was approved.<sup>11</sup> It included, inter alia, the preparation of a detailed integration program. This document was approved by a presidential decree of 14 September 2000.<sup>12</sup> The program reflected the content of the PCA and covered various areas of public life, including migration. It anticipated that these issues should be resolved through the development of Ukraine's capacity to solve migration problems and the strengthening of the relevant authorities. Among the priorities were the improvement of Ukrainian legislation on citizenship, the introduction of a state register of individuals (to replace the residence permit), the creation of conditions for Ukraine's accession to the 1951 UN Convention relating to the Status of Refugees, and Ukraine's accession to the European Social Charter in respect of labor migrants. The program paid considerable attention to the strengthening of border and immigration control, to the prevention of illegal migration and to the issue of simplifying the visa regime between Ukraine and the EU.

On 12 December 2001, Ukraine and the EU agreed on the Action Plan on Justice and Home Affairs.<sup>13</sup> Addressing the issues of migration and asylum, it proposed adapting Ukrainian legislation and governance to EU norms and standards, implementing a more intensive integration policy, assisting in the establishment of the state migration service, monitoring migration processes (especially illegal mi-

10 О.А. Малиновська [O.A. Malynovs'ka], *Міграційна політика Європейського союзу: виклики та уроки для України* [European Union's Migration Policy: Challenges and Lessons for Ukraine], Київ [Kyiv]: НІСД [NISS], 2014, pp. 36-37; *Ensuring Social Security Benefits for Ukrainian Migrant Workers: Policy Development and Future Challenges*, Kyiv: ILO, 2012, p. 25.

11 «Про затвердження Стратегії інтеграції України до Європейського Союзу». Указ Президента України від 11.06.1998 N 615/98 [‘On Approval of the Strategy of Integration of Ukraine into the European Union’. The Decree of the President of Ukraine N 615/98 from 11.06.1998], <http://zakon3.rada.gov.ua/laws/show/615/98> [2017-09-03].

12 Програма інтеграції України до Європейського Союзу [The Program of Ukraine's Integration into the European Union], <http://zakon2.rada.gov.ua/laws/show/n0001100-00> [2017-09-04].

13 План дій Європейського Союзу в галузі юстиції та внутрішніх справ [EU Action Plan on Justice and Home Affairs], [http://zakon2.rada.gov.ua/laws/show/994\\_494](http://zakon2.rada.gov.ua/laws/show/994_494) [2017-09-04].

gration), cooperation in the field of readmission, and continuation of dialog on visa issues.

These documents stimulated the enactment of the new legislation on Ukrainian citizenship in 2001, Ukraine's accession to the United Nations Refugee Convention in 2002, the legislative guarantees of the right to freedom of movement in 2003, and the ratification of the Revised European Social Charter in 2006, including Article 18, which grants citizens the right to engage in gainful activity on the territory of other parties.

The next phase of cooperation between Ukraine and the EU after the enlargement of the EU and the implementation of the European Neighborhood Policy was the approval of the joint Ukraine-European Union Action Plan in February 2005. This plan contained a list of priorities for cooperation both within and outside the scope of the PCA. Among these priorities are negotiations concerning the simplification of the visa regime between Ukraine and the EU and readmission agreements. The parties also agreed that priority should be given to promoting a dialog on employment issues and ensuring a non-discriminatory attitude towards migrant workers, as well as to full implementation of the respective obligations provided for in the PCA.<sup>14</sup>

As part of the implementation of this plan, Ukraine and the EU signed visa facilitation and readmission agreements on 18 June 2007. These entered into force on 1 January and 15 January 2008, respectively.<sup>15</sup> The Visa Facilitation Agreement provided for the unification of the procedure for issuing visas to Ukrainian citizens by the consular agencies of EU Member States, and reduced the number of documents required for the process. It is important to emphasize that the preamble of the agreement mentions the prospect of introducing a visa-free travel regime for Ukrainian citizens.<sup>16</sup>

14 O.A. Малиновська [O.A. Malynovs'ka], *Міграційна політика Європейського союзу* [European Union's Migration Policy], pp. 37-38.

15 'Visa Facilitation Agreement', *Mission of Ukraine to the European Union*, <http://ukraine-eu.mfa.gov.ua/en/ukraine-eu/justice/visa-agreement> [2017-09-03]; 'Agreement on Readmission of Persons', *Mission of Ukraine to the European Union*, <http://ukraine-eu.mfa.gov.ua/en/ukraine-eu/justice/readmission> [2017-09-03].

16 Agreement between the European Community and Ukraine on the Facilitation of the Issuance of Visas, *Official Journal of the European Union*, L 332, 18 December 2007, p. 68, [http://mfa.gov.ua/mediafiles/sites/ukraine-eu/files/on\\_the\\_facilitation\\_of\\_the\\_issuance\\_of\\_visas.pdf](http://mfa.gov.ua/mediafiles/sites/ukraine-eu/files/on_the_facilitation_of_the_issuance_of_visas.pdf) [2017-09-03].

The EU-Ukraine Readmission Agreement was an important step in strengthening the fight against irregular migration. The agreement provides for the returning procedure in relation to parties' citizens who are abroad illegally. A special accelerated procedure is provided for such people detained in border areas. The application of provisions for the readmission of third-country citizens was postponed by two years. During this period, the EU helped Ukraine to create the necessary infrastructure to process and return such people to their countries of origin. The agreement entered into force in January 2010.<sup>17</sup>

While discussing the issue of cooperation between Ukraine and the EU, one should also mention the Eastern Partnership (EaP) policy initiative, which was launched at the Prague Eastern Partnership Summit on 7 May 2009. This initiative applies to Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine, and primarily aims to reinforce the political association and economic integration of these countries with the EU. The EaP is implemented through two parallel tracks of bilateral and multilateral cooperation. The EU views the EaP as an integral part of the European Neighborhood Policy, the bloc's framework policy towards neighboring countries. Thus, in the view of EU, all bilateral relations with Ukraine (and other Eastern Partners) is a bilateral dimension of the EaP. Ukraine, however, doesn't consider the EaP to be a framework policy, viewing it as one based on the major achievements which, at the time of its establishment, had already been accomplished by Ukraine in its relations with the EU (negotiations on the Association Agreement, visa dialog, etc.). As a result, the country perceives the EaP as an addition to its more ambitious bilateral relations with the EU. Thereby, the development of bilateral relations with the EU is a priority for Ukraine, while the EaP is seen primarily as a forum for multilateral dialog on the implementation of reforms and cooperation with the EU.<sup>18</sup>

17 O.A. Малиновська [O.A. Malynovs'ka], *Міграційна політика Європейського союзу* [European Union's Migration Policy], p. 38.

18 'Eastern Partnership', *Mission of Ukraine to the European Union*, <http://ukraine-eu.mfa.gov.ua/en/ukraine-eu/eu-policy/east-partnership> [2017-09-19]. See more: M. Pachocka, 'The Foundations and the Institutional Framework of the EU and EAP States' Relations in the Field of Migration and Asylum', in: C.E.P. Amaral, V. Cucerescu, G. Gabrichidze, I. Horga, A. Kruglashov, E. Latoszek and M. Pachocka, *EU Relations with Eastern Partners: Strategy, Opportunities and Challenges*, Chisinau-Chernivtsi-Tbilisi, 2016, pp.226-244; Eadem, 'The Eastern Partnership in Times of the Migrant

## 2. The EU-Ukraine Action Plan on Visa Liberalization and Migration Policy Reform

The evolution of Ukraine's migration policy since independence has been uneven. Although one can observe significant progress in the development of legislation, the state has been lacking an overall migration policy concept for a long time. The National Security and Defense Council drew attention to this problem in June 2007, concluding that Ukraine's migration policy was conceptually uncertain and that its principles, strategic tasks, objectives and standards of human rights protection needed to be made clear. As a consequence of this decision, the comprehensive Concept of State Migration Policy was to be worked out by the Government.

The first attempt at this was undertaken in 2009 by a group of members of parliament. The document was kept at a general level and merely reiterated some of the declarations made earlier. With regard to external migration, it called on the government to develop programs to facilitate the return of Ukrainian migrants and to create such conditions that would reduce the emigration flow and be conducive to the return of migrants. This proposal was deemed insufficiently elaborated, and was not considered by the parliament.<sup>19</sup>

Reform of migration policy became more important only after Ukraine was granted the VLAP during the Ukraine-EU summit in Brussels on 22 November 2010. It was developed by the European Commission, taking into consideration the positive and efficient experience of similar "road maps" for the Balkan countries. The VLAP covered four blocks of visa-free dialog issues: document security (including biometrics), illegal migration (including readmission), public order and security, and external relations and fundamental rights. VLAP implementation involved two basic phases. During the first phase, Ukraine had to adopt the necessary legislation and state programs in the fields covered by the visa dialog. During the second phase,

and Refugee Crisis in the European Union', in: C.E.P. Amaral, V. Cucerescu, G. Gabrichidze, I. Horga, A. Latoszek and M. Pachocka, *EU Association Agreements with Georgia, Moldova and Ukraine: Through Cooperation Towards Integration*, Chisinau-Chernivtsi-Tbilisi, 2017, pp. 17-31.

<sup>19</sup> M. Jaroszewicz and P. Kaźmierkiewicz, 'Does Ukraine Have a Policy on Emigration? Transcending the State-Centered Approach', *Central and Eastern European Migration Review*, vol. 3, no. 1, June 2014, p. 17.

the country needed to implement legislation and other related documents, and ensure that national practices met European standards.<sup>20</sup> Thus, the VLAP provided an overall framework for the Ukraine's implementation of modern migration management policies. According to the terms of the VLAP, Ukraine's policies of migration management, integrated border management, asylum and state control over legal and irregular migration had to be changed.<sup>21</sup> Presidential approval of the National Plan on Implementation of the Action Plan on Visa Liberalization for Ukraine was granted on 22 April 2011.<sup>22</sup>

In late 2010, Ukraine established the State Migration Service (SMS), a single central executive body for migration. In addition to that, in accordance with the new Law on the Employment of the Population (5 July 2012), a "central executive body implementing state policy in the field of employment of the population and labor migration" was founded in Ukraine to replace the State Employment Service.<sup>23</sup> Other government bodies responsible for the implementation of Ukraine's migration policy are the State Border Guard Service of Ukraine, the Ministry of Social Policy of Ukraine, the Ministry of Foreign Affairs of Ukraine, and the Human Rights Commissioner of the Verkhovna Rada of Ukraine.<sup>24</sup>

- 20 EU-Ukraine Visa Dialogue. Action Plan on Visa Liberalisation, *Урядовий портал* [Government Portal], pp. 1-12, [http://www.kmu.gov.ua/control/publish/article?art\\_id=244813273](http://www.kmu.gov.ua/control/publish/article?art_id=244813273) [2017-09-04]; І. Сушко [I. Sushko], 'Реформи в обмін на безвізовий режим: як Україна виконує План дій з візової лібералізації?' [Reforms in Exchange for Visa-Free Travel: How Ukraine Pursues the Action Plan on Visa Liberalisation?], *Інститут економічних досліджень та політичних консультацій* [Institute for Economic Research and Policy Consulting], Аналітична записка М2/2014 [Analytical note M2/2014], pp. 4-5, [http://www.ier.com.ua/files/publications/Policy\\_Briefing\\_Series/PB\\_M02\\_2014.pdf](http://www.ier.com.ua/files/publications/Policy_Briefing_Series/PB_M02_2014.pdf) [2017-10-24].
- 21 К. Kulchytska, I. Sushko, A. Solodko, 'Ukrainian Migration Policy Reform: Paving the Way for the EU-Ukraine Cooperation', *CEDOS Think Tank*, 4 July 2016, Kyiv-Brussels, p. 3, <http://english.europewb.org.ua/wp-content/uploads/2017/02/Ukrainian-Migration-Policy-Reform.pdf> [2017-09-19].
- 22 «Про Національний план з виконання Плану дій щодо лібералізації Європейським Союзом візового режиму для України». Указ Президента України від 22.04.2011 N 494/2011 [On the National Plan for the Implementation of the Action Plan on Visa Liberalization for Ukraine]. The Decree of the President of Ukraine N 494/2011 from 22.04.2011, <http://zakon2.rada.gov.ua/laws/show/494/2011> [2017-09-04].
- 23 «Про зайнятість населення». Закон України від 5.07.2012 N 5067-VI [On the Employment of the Population]. The Law of Ukraine no 5067-VI from 5.07.2012, <http://zakon3.rada.gov.ua/laws/show/5067-17?test=4/UMfPEGznhhHIM.ZiLDpGgCHl4Xzs8omsh8le6> [2017-09-05].
- 24 More on the institutional framework for migration management in Ukraine see in: *Regional Gaps Analysis of Institutional Migration Management Capacities (Ukraine)*, Kyiv 2015, <http://europewb.org.ua/wp-content/uploads/2015/12/RGA-NEW2.pdf> [2017-10-23].

The first phase of VLAP implementation provided for the adoption of the National Migration Management Strategy.<sup>25</sup> The president signed the Concept of State Migration Policy of Ukraine on 30 May 2011<sup>26</sup> and subsequently the Action Plan on its implementation.<sup>27</sup> The Concept focused on the areas of immigration, border control and asylum, giving relatively little consideration to the reintegration and return of Ukrainian migrants. Among the document's objectives in the area of emigration were the creation of conditions for the reduction of emigration, return and reintegration of labor migrants, repatriation of Ukrainians and other people born in Ukraine and strengthening of social and legal protection of Ukrainian citizens who live and work abroad.<sup>28</sup>

By signing the Concept of the State Migration Policy, Ukraine formally fulfilled the obligations assumed at the dialog on visa liberalization. However, this document was almost unnoticed by the public and strongly criticized by experts.<sup>29</sup> The long-awaited Concept resembled a consolidated plan of measures by various ministries and departments rather than a strategic document. It lacked the general idea and definition of the specifics of the migration situation in Ukraine and the challenges it presented. Moreover, the objectives of the migration policy were unintelligible. There was no connection between migration policy and other spheres of country's activity, that play key roles in the development of migration processes and their administration, namely, the strategies of socio-economic and demographic development.<sup>30</sup>

25 EU-Ukraine Visa Dialogue. Action Plan, p. 6.

26 «Про Концепцію Державної міграційної політики». Указ Президента України N 622/2011 від 30.05.2011 [‘On the Concept of State Migration Policy’. The Decree of the President of Ukraine no 622/2011 from 30.05.2011], <http://zakon2.rada.gov.ua/laws/show/622/2011> [2017-09-05].

27 «Про затвердження Плану заходів з реалізації Концепції державної міграційної політики». Розпорядження Кабінету Міністрів України від 12.10.2011 N 1058-р [‘On Approval of the Action Plan on the Implementation of the Concept of State Migration Policy’. The Decree of the Cabinet of Ministers of Ukraine no 1058-p from 12.10.2011], <http://zakon2.rada.gov.ua/laws/show/1058-2011-p> [2017-09-05].

28 M. Jaroszewicz and P. Kaźmierkiewicz, *op.cit.*, p. 17.

29 І. Марков [I. Markov], ‘Концепція міграційної політики України: гол у власні ворота’ [The Concept of Migration Policy of Ukraine: Own Goal], *Радіо свобода* [Radio Svoboda], 20 September 2011, <https://www.radiosvoboda.org/a/24332368.html> [2017-09-05].

30 О.О. Малиновська [O.O. Malynov's'ka], ‘Щодо необхідності розробки і затвердження нової редакції Концепції державної міграційної політики України». Аналітична записка [‘Concerning the Necessity to Develop and Approve a New Edition of the Concept of State Migration Policy of Ukraine’. Analytical note], *Національний інститут стратегічних досліджень, Відділ*

The VLAP also drew attention to the need to improve the rules for entry and stay of the foreigners, the fight against illegal migration, including return procedures, rights of persons being subject thereto, their detention conditions, etc. This requirement was fulfilled by a new version of the Law on the Legal Status of Foreigners and Stateless Persons (22 September 2011). Another requirement of the VLAP touched on the issue of the reintegration of Ukrainian citizens returning to the country voluntarily or under the EU—Ukraine readmission agreement. The government answered this requirement by adopting the Action Plan on the Integration of Migrants into Ukrainian Society for 2011-2015 (15 June 2011) and the Action Plan on the Integration of Refugees and Persons in Need of Additional Protection into Ukrainian Society for the Period up to 2020 (22 August 2012).<sup>31</sup>

The next step of VLAP implementation was the agreement amending the EU-Ukraine Visa Facilitation Agreement, which was signed on 23 July 2012 and entered into force on 1 July 2013. In particular, it provides for the broadening of the category of citizens of Ukraine who can receive free and multiple Schengen visas and who will be entitled to a simplified registration procedure of free, multiple-entry visas (representatives of non-governmental organizations, religious communities, professional associations, undergraduate and postgraduate students and participants of official cross-border cooperation programs). The agreement improved the procedure of visa issuance for international carriers and media representatives. A stable increase in the number of Schengen visas issued was a result of the gradual liberalization of the visa regime for Ukrainians. It is worth noting that Ukraine unilaterally cancelled entry visas for EU citizens in 2005.

A new instrument that regulated Ukraine's integration with the EU was the Association Agenda signed in 2009 and updated in 2013.

*соціальної та демографічної безпеки* [National Institute for Strategic Studies, Department of Social and Demographic Security], Серія «Соціальна політика» [Series 'Social Policy'], no. 13, 2012, <http://www.niss.gov.ua/articles/1762/> [2017-09-05].

31 EU-Ukraine Visa Dialogue. Action Plan on Visa Liberalisation, p. 4, 6; O.A. Малиновська [O.A. Malynovska], *Міграційна політика Європейського союзу* [European Union's Migration Policy], pp. 41-42; MPC—Migration Profile: Ukraine. The Demographic-Economic Framework of Migration. The Legal Framework of Migration. The Socio-Political Framework of Migration. Report, *Migration Policy Centre*, June 2013, p. 5, [http://www.migrationpolicycentre.eu/docs/migration\\_profiles/Ukraine.pdf](http://www.migrationpolicycentre.eu/docs/migration_profiles/Ukraine.pdf) [2017-10-24].

It replaced the Ukraine-EU Action Plan. The new document contained a separate section on cooperation in the fields of justice, freedom and security, which included migration issues. In particular, the preparation and promotion of the implementation of the Association Agreement was to include the development of effective migration management with the view of combating illegal migration, smuggling and human trafficking with the support from the EU, the practical implementation of the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol on the Status of Refugees, the continuation of the visa dialog with a view to introducing a visa-free regime between Ukraine and the EU on the basis of the VLAP and the National Plan on its implementation, encouragement for EU Member States to reduce or eliminate visa fees in individual cases, and securing full implementation of the visa facilitation and readmission agreements.<sup>32</sup>

Migration issues are also reflected in several articles of the Ukraine-EU Association Agreement, in particular in its political part, signed on 21 March 2014. The parties reaffirmed the importance of the joint management of migration flows and comprehensive dialog in this area based on the fundamental principles of solidarity, mutual trust, joint responsibility and partnership. Cooperation focuses on tackling the causes of migration, establishing effective and preventive policy against illegal migration, smuggling of migrants and trafficking in human beings, practical implementation of the 1951 UN Convention and the 1967 Protocol on the Status of Refugees and ensuring respect for the principle of non-refoulement, ensuring the fair treatment and integration of lawfully-residing non-nationals, further developing operational measures in the field of border management, enhancing document security, and developing an effective return policy. According to the Association Agreement, the attitude towards workers who are Ukrainian nationals and who are legally employed in the territory of a Member State of the EU shall be free of any discrimination based on nationality as regards working conditions, remuneration or dismissal, compared to the nationals of that Member State. Ukraine

32 O.A. Малиновська [O.A. Malynovs'ka], *Міграційна політика Європейського союзу* [European Union's Migration Policy], pp. 38-39.

is obliged to provide the same treatment for workers who are citizens of EU countries.<sup>33</sup>

### 3. The Law on External Labor Migration and the New Strategy of State Migration Policy of Ukraine

One of the last stages of the visa-free dialog was the adoption of the Law on External Labor Migration and the Strategy of State Migration Policy of Ukraine for the Period up to 2025. On 5 November 2015, the Verkhovna Rada approved the draft Law on External Labor Migration, which came into force on 1 January 2016. The law defines the legal and organizational principles of the state regulation of external labor migration and social protection of labor migrants and members of their families. It applies to migrants (Ukrainian citizens abroad), who work under a labor contract, work independently, provide paid services or carry out other paid activities not prohibited by the legislation of the receiving state. It also applies to members of the families of labor migrants. The law does not apply to diplomats, Ukrainians who seek or have been granted asylum in the country of residence, or those who are studying or improving qualifications abroad.

The law provides rights and social guarantees for labor migrants and members of their families. According to this law, labor migrants and their family members may voluntarily participate in the system of compulsory state social insurance, in accordance with Ukrainian legislation, and their pension provision is in accordance with relevant laws and international treaties. Labor migrants and their family members are entitled to education and confirmation of the results of informal vocational training, as well as to satisfaction of their national and cultural, educational, spiritual and language needs.<sup>34</sup>

33 Association Agreement between the European Union and its Member States, of the One Part, and Ukraine, of the Other Part, *Official Journal of the European Union*, L 161, 29 May 2014, pp. 10-11, [http://trade.ec.europa.eu/doclib/docs/2016/november/tradoc\\_155103.pdf](http://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155103.pdf) [2017-09-19].

34 'Рада прийняла ще один «безвізовий» закон—про зовнішню трудову міграцію' [The Rada Adopted Another 'Visa-Free' Law—On External Labor Migration], *Сьогодні* [Siogodni], 5 November 2015, <http://ukr.segodnya.ua/politics/pnews/rada-prinyala-eshche-odin-bezvizovyy-zakon-o-vneshney-trudovoy-migracii-664691.html> [2017-09-05]; M. Lendel, 'Migration of Ukrainians to Central European countries in the context of the Postmaidan internal and international crisis', *Public Policy and Administration*, vol. 15, no. 4, 2016, p. 559, [https://www.mruni.eu/upload/iblock/f83/03\\_VPA\\_2016-15-4\\_LENDEL-Migration.pdf](https://www.mruni.eu/upload/iblock/f83/03_VPA_2016-15-4_LENDEL-Migration.pdf) [2017-10-24].

Regarding the taxation of income of labor migrants, residents of Ukraine have the right to consider taxes and fees paid outside Ukraine in the calculation of taxes and fees in Ukraine, in accordance with the norms established by the Tax Code of Ukraine and taking into account the norms of international treaties. In addition, a labor migrant abroad is obliged to pay taxes and fees for property located in Ukraine, owned or leased, in particular by appointing an authorized person.<sup>35</sup>

The adopted Law on External Labor Migration was severely criticized, both in parliament and beyond. The main points of dispute were that the text is largely declarative, it does not propose direct action rules, but mainly contains references to the existent Ukrainian legislation or international treaties, there are no mechanisms for the implementation of the declared rules, which makes their implementation dependent on the adoption of subordinate legislation in the future, and that the declarative character and lack of specificity manifests an attempt to formally fulfill the relevant requirement of the VLAP rather than to introduce concrete regulations concerning social and legal relations.

Nevertheless, the importance of the Law on External Labor Migration cannot be underestimated. In fact, the state signaled for the first time to its citizens abroad that it is ready to defend their interests, and assured its citizens that it is interested in cooperating with them and in their return to the homeland. After lengthy discussions, the law included a number of provisions put forward by the associations of migrants and experts. As a result, it applies to all labor migrants, including those who work without permission, and not just to those who work on a labor contract. According to the document, the country is obliged to assist in the reintegration of migrant workers and their families into society upon their return to Ukraine by providing social services. Prior to the adoption of this law, this issue was not mentioned in Ukrainian legislation at all.

Despite the positive innovations, some important issues are mentioned only briefly in the Law on External Labor Migration, while oth-

35 «Про зовнішню трудову міграцію». Закон України від 5.11.2015 N 761-VIII [On External Labor Migration: The Law of Ukraine no 761-VIII from 5.11.2015], <http://zakon3.rada.gov.ua/laws/show/761-19?test=4/UMfPEGzhhhHIM.ZiLDpGgCHl4X2s8omsh8le6> [2017-09-19].

ers are totally absent. Therefore, this law should be considered as an important step, but only the first one on the path to the settlement of legal relationships arising from the labor migration of citizens abroad and their return. The declarative character of the law implies the need for intensive legislative work to bring the existing legislation into line, and to develop new legal acts necessary for the implementation of the law. It is obvious that the text of the adopted law will also be amended and extended.<sup>36</sup>

In 2015, the Ukrainian government developed the Strategy of State Migration Policy of Ukraine for the Period up to 2025. The existing Concept of State Migration Policy had been unsuited to the prevailing requirements and needed to be updated as a result of ongoing global and local developments. Labor migration, mass emigration and forced large-scale internal displacement from the temporarily occupied territory and the zone of the anti-terrorist operation called for a radical revision of approaches to the state management of migration flows and the development of effective instruments for its implementation. The International Organization for Migration in Ukraine, the EU and the National Institute for Strategic Studies participated in the development of the new document. The government adopted the Strategy of State Migration Policy on 12 July 2017.<sup>37</sup>

This document highlights the issues relating to migration that require regulation. They include the problem of labor migration of Ukrainians, in particular the emigration of highly qualified specialists, the problem of internal migration in Ukraine, the repatriation of Ukrainians abroad, natives of Ukraine and their descendants, the integration of migrants, the problem of stateless persons with unregulated status on the territory of Ukraine, in particular citizens of the former

36 О.А. Малиновська [O.A. Malynovs'ka], 'Щодо подальшого удосконалення законодавства України у сфері трудової міграції'. Аналітична записка' ['Regarding the Further Improvement of Ukrainian Legislation in the Field of Labor Migration'. Analytical note], *Національний інститут стратегічних досліджень, Відділ соціальної політики* [National Institute for Strategic Studies, Department of Social Policy], Серія «Соціальна політика» [Series 'Social Policy'], no. 21, <http://www.niss.gov.ua/articles/2123/> [2017-07-19].

37 «Про схвалення Стратегії державної міграційної політики України на період до 2025 року». Розпорядження Кабінету Міністрів України від 12.07.2017 N 482-р ['On Approval of the Strategy of State Migration Policy of Ukraine for the Period up to 2025'. The Decree of the Cabinet of Ministers of Ukraine no 482-p from 12.07.2017], <http://zakon2.rada.gov.ua/laws/show/482-2017-p/page#n10> [2017-09-05].

Soviet Union, and the problem of illegal migrants. Having a significant number of citizens who are internally displaced from the temporarily occupied territory and the zone of anti-terrorist operation exerts significant influence on the migration situation in Ukraine. However, the adopted document points out that this issue requires separate legal regulation.

The new policy sets 13 main goals in four basic spheres, including migration and mobility of the population of Ukraine, legal migration to Ukraine, the prevention of illegal migration, and international protection. The first group of goals aims to remove administrative barriers for the freedom of movement of the population of Ukraine, reduce the negative consequences of emigration from Ukraine and increase its positive impact on the development of the state, and create the necessary conditions for the return and reintegration of Ukrainian migrants into Ukrainian society. The policy also emphasizes the need to create suitable systems for registering residence and issuing documents that identify a person, confirming their Ukrainian citizenship or special status. The document also stresses the need to further develop the migration management information and communication systems, which will support personal identification and document security, simplify the provision of administrative services and ensure the effective exchange of information with the appropriate executive authorities and its transfer to Interpol, the Public Register of Authentic Documents Online (PRADO) and False and Authentic Documents Online (FADO).

The second group of goals aims to promote legal migration to Ukraine, consistent with the social policy and economic development of the state, and to ensure the successful integration of foreigners and stateless persons who are in Ukraine legally. The third group of goals aims to ensure the effective use of the visa issuance system and the ability of consular offices to manage migration, to strengthen control over observance of migration legislation within the state, to ensure respect for the human dignity of returning persons, and to encourage them to return voluntarily.

In the sphere of international protection, the document provides the possibility for foreigners and stateless persons to apply to the relevant migration service with an application for recognition as a refugee or a person who needs additional protection. It will ensure that

the procedures for processing such applications will be effective and fair. The document also aims to provide the necessary infrastructure and conditions for the residence of people who have applied for recognition as a refugee or who needs additional protection, as well as those who have been recognized as refugees or persons requiring additional protection. In addition, it foresees the integration of refugees and people who need additional protection into Ukrainian society, as well as the satisfaction of the integration needs of individuals who have applied for recognition as a refugee or a person who needs additional protection.<sup>38</sup>

## **4. Problems and Prospects of Ukraine's Migration Policy**

The timeline of the adoption of the new Ukrainian legislation in the sphere of migration clearly shows that the VLAP provided a strong impulse for more active reform. In the course of VLAP implementation, the existing legislation was finalized and the new one was passed and unregulated legal relations became regulated, especially concerning external labor migration and the reintegration of returning migrants. At the same time, not all problematic issues have been completely resolved.

For example, while analyzing the new Strategy of State Migration Policy, one can notice its declarative style. As before, the document fails to identify clear ways of implementing migration policy, but rather reduces it to a process of informing and registering. It shows that the Ukrainian authorities do not understand that the success of the migration policy (a positive balance of migration) depends on the success of state reforms and socio-economic development of the country, as well as on the improvement of the investment climate. The Implementation Stages and Funding Sources of the Strategy, which establishes the basis for the development of an action plan for the implementation of the 2025 strategy only confirms this conclusion. The document gives the SMS and other concerned central executive authorities just three months to work out a draft plan for 2018-2021.<sup>39</sup>

38 Ibid.

39 Ibid.

The other things missing from the Strategy of State Migration Policy of Ukraine for the Period up to 2025 are comprehensive and targeted migration policies. It lists goals which are not always interconnected and mutually conditioned goals, where it would be better to focus on describing the issues and targeted approaches for different categories of subjects that fall within the scope of this regulation. Among these subjects could be different categories of migrants (Ukrainian and non-Ukrainian), Ukraine's local and central public authorities, Crimea and Donbas and other states. Focus on targeted approaches to the regulation of problematic issues connected with migration, such as illegal migration, multiple citizenship, legalization of financial assets and more, would be better.

The strategy also lacks any plans for coordination of migration policy issues with the EU. There are no provisions for the coordination of policies and individual actions, including the exchange of information with the EU institutions. Taking into account the current problems and global migration issues, in particular illegal migration from Africa and Asia, terrorism and smuggling, the role of international coordination is very significant for the national security of Ukraine and neighboring EU countries, such as Poland, Slovakia, Hungary and Romania.

All of these issues should be taken into account in the final Action Plan of Ukraine on the Strategy of State Migration Policy 2025 implementation. In addition, it is hoped that this paper will draw the attention of EU institutions to the need to work with Ukraine in order to ensure that these issues will be addressed in such an Action Plan, since they concern both the national security of Ukraine and the EU.

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