

EASTERN MONITOR

Visa-free travels for Ukraine and Georgia: “Are we there yet?”

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- **The Eastern Partnership countries, Ukraine and Georgia have taken major steps towards visa liberalisation with the EU and completed both phases of the Visa Liberalisation Action Plan at the end of 2015. The EU promised to draw draft legislation in early 2016 for both countries to be granted visa-free regime. Due to the spillover political effects of the pressure the EU members faced with the refugee crisis and the sceptical approach of some EU members towards moving forward on visa liberalisation, it took almost a whole year and a succession of tedious meetings and uncertain and vague promises to finally open the negotiations on this issue at the beginning of December 2016.**



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Visa liberalisation towards European Union neighbourhood countries has been one of the highest priorities for the EU. The visa liberalisation dialogues with its southern and eastern neighbour countries, based on the Roadmaps and Visa Liberalisation Action Plans (VLAP), started as a political and technical process and were launched alongside the partnership and cooperation agreements. The implementation of the Roadmaps and the VLAPs is central to a successful political association and economic integration process of candidate countries within the EU, but it is independent from the association process. The association agreements¹ stress the need for full implementation of the existing agreements on visa liberalisation, however, do not condition the ratification process to the fulfilment of visa liberalisation requirements.

The visa policy methodology of the Roadmap and VLAP sets several benchmarks, based on four blocks, that each country should adopt and implement in order to achieve visa-free travel. The negotiation blocks encompass reforms in the judiciary system, security policies, judicial cooperation with the EU on criminal matters, asylum policy, (illegal) migration policy, preventing and fighting organised crime, money laundering, terrorism and corruption, and also human rights and freedoms, and reforms in public order. The Roadmaps which applied to the Western Balkans, are based on a single phase process, while action plans, for Ukraine and Georgia on a two-phased approach. The two phases of the VLAP are defined as two levels of benchmarks, one "preliminary" that includes a calendar of planned legislation and reforms, and the second, "continuous" phase which monitors the actual implementation of agreed-upon provisions.

The European Commission regularly monitors the implementation of the conditions. It issues reports on visa

liberalisation progress that are the result of regular meetings between European Commission officials and representatives of the monitored countries. Once the required legislation is adopted, the European Commission, the European Parliament and the Council decide whether a partner country deserves to be upgraded to the next phase of the implementation process. This "political" process, which comes in addition to the technical one, means that once the European Commission recommends the launch of visa-free regime negotiations, the European Parliament and the Council should decide of the opportunity to do so based on political relations with the partner country. EU member states therefore control the political side of any decision-making in the field.

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Visa policy has proven to be an effective tool of leverage in providing support for the necessary reforms. It has achieved numerous developments since the first dialogue was launched in 2007 with Russia. The main milestones of the visa liberalisation process so far are visa-free travels for the Western Balkans (apart from Kosovo) and the Republic of Moldova, the frontrunner among the Eastern Partnership (EaP) countries in visa-free regime, who was granted the status in April 2014². Two other EaP countries³, Ukraine and Georgia who have taken major

¹ The EU-Georgia and EU-Moldova association agreements already entered into force in July 2016. The EU-Ukraine association agreement was rejected in a referendum by the Netherlands in April 2016 and is now pending final decision from the Dutch Government.

² According to EU Border Assistance Mission to Moldova and Ukraine (EUBAM), there is a 99% increase in the use of biometric passports in Moldova and 35% increase in entries/exits in the two

years after visa liberalisation compared to the previous two years. A year after liberalisation, travel to the EU increased by 13 %.

³ The EaP countries were among the first signatories of the Mobility Partnership, covering issues such as mobility, migration and asylum policy. So far, only three out of six EaP countries have been granted the VLAP. With Armenia and Azerbaijan, the EU works within the visa facilitation process and readmission agreements that simplify the visa application and readmission process. The EU-Armenia visa

steps towards visa-free travels and completed all benchmarks of the VLAP at the end of 2015, impatiently remained on the waiting list, expecting the EU institutions and member states to finally end a dispute over the full visa-free regimes.

The importance of (not) setting a precedent, or two.

Although the visa liberalisation dialogues are at the core of the EU common visa policy, the approach towards the states of the European Neighbourhood Policy (ENP) has been perceptibly different, and in this case far from following the “differentiated” and “merit-based” approaches enshrined in the ENP. Following the example of the Western Balkans countries, the EU was expected to take the same approach towards the EaP countries: visa-free travel Roadmaps specifying the exact departure and destination point (a full visa-free regime). However, in order not to set a precedent based on the promise of a full visa-free regime under the association process included in the Western Balkans Roadmaps, the EU has instead put in place visa liberalisation *action plans* for EaP countries. Same intention, different wording.

“With a two-phased process for the VLAP compared to one phase in the Roadmaps, the EaP action plans are also in nature much more complex, specific and far-reaching than the Roadmaps for the Western Balkans have ever been.”

In general, the visa liberalisation Roadmaps and action plans are similar, since both lead the partner countries through the visa liberalisation process toward visa-free regime travel. Nevertheless, unlike the EaP action plans, the Western Balkans Roadmaps are structured as a part of the overall EU policy towards the *candidate* and *potential candidate* that started visa liberalisation dialogues within the framework of accession negotiations under the stabilisation and association process. The action plans are also in nature much more complex (with a two-phased process for the VLAP compared to one phase in the Roadmaps), specific and far-reaching⁴ than the Roadmaps for the Western Balkans have ever been. The VLAPs suggest the possibility of obtaining a visa-free regime, rather than a 100% assurance of full visa liberalisation (e.g. “setting out all the conditions to be met ... before the possible establishment of a visa-free travel regime” or “initial impact assessment of possible future visa liberalisation”)⁵. No possibility of obtaining a possibility to visa-free regime upon completion of benchmarks can be found in the Roadmaps.

“Obtaining the visa-free regime for Moldova in 2014 was crucial for all the eastern neighbour countries, as it finally set a precedent and made more credible the technical approach of the European Commission toward the fulfilment of criteria.”

The questions of visa liberalisation and freedom of movement have been crucial for all EaP countries, especially Ukraine and Moldova which both neighbour EU member states and both depend on the border crossing

liberalisation negotiations were expected to be started in 2016, however, they will start not sooner than the next EaP summit in 2017. With Belarus, the negotiations on visa facilitation and readmission agreements started in 2014.

⁴ E.g. effective implementation of the readmission agreements remains “an underlying condition for the continuation of the visa dialogue and is of paramount importance for the establishment of a sustainable visa-free regime” in the VLAP compared to Roadmaps

that takes into consideration “the conclusion by all countries in the region of a Community readmission agreement” when “setting up the methodology for the visa liberalisation process”. See Visa Liberalisation with Serbia, Roadmap. [online]. Available at <http://www.esiweb.org/pdf/White%20List%20Project%20Paper%20-%20Roadmap%20Serbia.pdf>, p. 1.

⁵ The Action Plan on Visa Liberalisation, EU-Republic of Moldova Visa Dialogue. Date of Issue: 16 December 2010, p. 1-2.

scheme with the EU members. Having been granted the VLAP in 2011, Moldova fulfilled all necessary requirements and had already completed the second phase of the process in mid-2012. Obtaining the visa-free regime for Moldova in 2014 was crucial for all the eastern neighbour countries, as it finally set a precedent and made more credible the technical approach of the European Commission toward the fulfilment of criteria.

Nevertheless, the joy of setting a (Moldovan) precedent did not last for long. When the Western Balkan countries were later granted the visa-free regime, a lot of attention regarding this impact was focused on the increase of unfounded asylum applications, rather than the benefits of visa liberalisation for both sides. This rhetoric was also at play in the Moldovan case. The migration risk of Moldovans in the EU was and remains low and the number of asylum applications lodged by Moldova citizens is insignificant compared to other nationalities. Yet, Germany, France and Italy blocked the decision to lift the visas⁶ for the other two EaP countries for almost a year after the proposal of the European Commission, until the keenly awaited agreement on a suspension mechanism was finally found on December 8 2016.

Yes but No. Two steps forward, one step back.

Whereas the EU promised the possibility of visa liberalisation to the EaP countries upon completion of agreed benchmarks, which both Ukraine and Georgia already did⁷, adding these two countries to the list

of visa-free countries remained a problem for some EU member states. Since completing the VLAP benchmarks, Ukraine and Georgia had heard “Yes, but no” many times from Brussels. The European Commission and the European Parliament have been in general supportive of visa-free regime travel for both countries, but it was difficult for them to push negotiations if there was a lack of full consensus in the Council.

The European Commission proposed, already in April 2016, to the Council and the European Parliament to establish the visa-free regime. Later in the year, however, the Presidency of the European Commission stated at the Justice and Home Affairs Council meeting that there was “not yet enough support for adopting a mandate to start the negotiations with the European Parliament on the proposal regarding the visa liberalisation”⁸. The main concerns of Germany, France and Italy focused on the high level of corruption, illegal “tourists” traveling and working in the EU and organized crime. Given the current migration crisis, Berlin claimed that EU’s security could not be ensured and that an emergency brake, allowing member states to fight illegal migration, should be implemented. The latest data shows a 50 % decrease in the number of reported detections of illegal border-crossing at the EU border⁹. Moreover, detections of illegal border-crossing of Ukrainians reported by the countries on Eastern borders, decreased by 37 % compared to the data from 2015. Applications for asylum have decreased by 38 %¹⁰ and therefore represent only 2 %¹¹ of total applications for asylum in all of Europe.

⁶ Germany, France and Italy account for more than 50 % of all target countries for asylum applications.

⁷ Unlike Georgia, which started the visa liberalisation dialogue in the summer of 2012 and was presented the VLAP in only half a year later (February 2013), it took Ukraine eight years since the visa liberalisation dialogue was launched and six years since the VLAP was presented to get to the final progress report. Both EaP countries have met all proposed benchmarks at the end of 2015.

⁸ Council of the European Union. Justice and Home Affairs Council, 09-10/06/2016. [online]. Available at <http://www.consilium.europa.eu/en/meetings/jha/2016/06/9-10/>.

⁹ European Border and Coast Guard Agency, Frontex. FRAN Quarterly, April-June 2016. ISSN 2363-0566. [online]. Available at http://frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_2016_Q2.pdf, p. 10.

¹⁰ Ibid, p. 14.

¹¹ Ibid, p. 16.

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"The requested revision of the suspension mechanism was subject to further voting and thus delayed implementation of negotiations on visa liberalisation. The Permanent Representatives Committee meeting in November decided that the visa-free regime would enter into force only with a revised suspension mechanism attached to it."

In September, the MEPs voted in favour of Ukraine's visa-free travel in the Parliamentary Committee on Civil Liberties, Justice and Home Affairs; such initiative must however receive approval from the European Parliament in plenary. Another "Yes, but no" came in mid-November, when the Permanent Representatives Committee, on behalf of the Council, agreed to start a negotiation on visa liberalisation but with an additional condition: a new visa suspension mechanism. The visa suspension mechanism was already in force with the countries having a visa-free regime, but due to the migration crisis the EU members were calling for its revision¹². The requested revision of the suspension mechanism was subject to further voting and thus delayed implementation of negotiations on visa liberalisation. The Permanent Representatives Committee meeting in November decided that the visa-free regime would enter into force only with a revised suspension mechanism attached to it.

Even the Ukraine-EU Summit held on November 24, which was anticipated to touch visa liberalisation issue, did not at all discuss visa liberalisation with Ukraine. As many times before, the EU congratulated Ukraine for the progress it had made on its ambitious reform process and limited itself to largely general wording, stating

its happiness "that all EU Member States decided Ukraine is ready for a visa-free regime"¹³.

"The question is to what extent a delay in agreeing on an emergency brake or suspension mechanism was worth threatening relations with EU eastern neighbours. Blocking the implementation of the visa-free regime only increased the frustration and mistrust of candidate countries towards the EU, its decision-making process and its commitment to deliver on promises."

The final and promising "Yes" came with the latest inter-institutional consultations held on December 8, which concluded with a compromise on a visa suspension mechanism and ended the internal EU dispute over visa liberalisation. It is clear that amid the refugee crisis the EU must deal with – and any future prospects of a worsening of this situation, all kind of measures that seem to increase the security of its members are desirable. But the question is to what extent a delay in agreeing on an emergency brake or suspension mechanism was worth threatening relations with EU eastern neighbours, and even the internal stability and European orientation of these countries. Blocking the implementation of the visa-free regime on the basis of concerns that were already addressed in the VLAP conditions (in particular anti-corruption reforms or fighting organised crime) only increased the frustration and mistrust of candidate countries towards the EU, its decision-making process and its commitment to deliver on promises.

¹² The EU proposed to strengthen the existing suspension mechanism "by making it easier for member states to notify circumstances leading to a possible suspension, by enabling the Commission to trigger the mechanism on its own initiative and by tasking the Commission to send a yearly report to the European Parliament and Council on the continuous fulfilment of the criteria of visa-exempt third countries." More on Council of the European

Union. Regulation of the European Parliament and of the Council. 19 May 2016. [online]. Available at <http://data.consilium.europa.eu/doc/document/ST-9117-2016-INIT/en/pdf>.

¹³ Council of the European Union. EU-Ukraine summit, Brussels, 24/11/2016. [online]. Available at <http://www.consilium.europa.eu/en/meetings/international-summit/2016/11/24/>.

Conclusion: Almost there!

On the one hand, the visa liberalisation process with the Western Balkan countries and Moldova inspired and motivated Ukraine and Georgia to dutifully work on visa liberalisation, in order to meet the required criteria as soon as possible, as the promised carrot really seemed to be at the end of the EU stick. On the other hand, it also inspired a sluggish attitude in some EU member states, based on the experience of a number of asylum applications from Balkan countries and long queues at the EU-Moldova border.

Both Ukraine and Georgia have been at the heart of international tensions (annexation of Crimea, Russia-backed military unrest in the Eastern Ukraine, a five-day war between Tbilisi and Moscow) and of a geopolitical fight with Russia. Due to the uncertain future the EU is headed towards, its attractiveness has been substantially fading in neighbouring countries. The EU's vague approach to visa liberalisation has been feeding Eurosceptic and populist sentiments in partner countries, leaving them at the risk of an increase of pro-Russian sentiments.

The latest agreement on visa suspension mechanism came at the eleventh hour, as a further delay in visa liberalisation for both EaP countries would most likely have had a serious political impact on EU-Georgia and EU-Ukraine relations. It would have sent the wrong message to both countries, and could have been recuperated by Russia in order to further decouple these countries from the EU and foster doubts about the value of a close association with the EU.

The formal approval¹⁴ is still to come, but the EU should stay true to its final word and stick to it, especially given the real challenge that it faces in establishing cooperative security structures.

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¹⁴ The regulation is still to be submitted to the European Parliament for a vote at the plenary session this week and to the Council for adoption. More on European Union External Action. Visa Suspension Mechanism: Council confirms agreement with Parliament. [online]. Available at

https://eeas.europa.eu/headquarters/headquarters-homepage_en/16746/Visa%20suspension%20mechanism:%20Council%20confirms%20agreement%20with%20Parliament.

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