

## **Reforms of the Border Management System: Implementation of Action Plan on EU Visa Regime Liberalization for Ukraine**

### **Main prerequisites of successful border management reforms**

State Border Guard Service of Ukraine is the most proactive agency in comparison to other defense and law enforcement structures and it resolves from the military structure into law enforcement (police-type) body.

The main incentive for agency's development was its real depoliticization, institutional stability and large lobbying capacities. Since the end of 2001 till now M.M. Lytvyn, brother of speaker Ukrainian parliament V.M. Lytvyn, has been working as a head of State border guard service of Ukraine. During all this time there were no substantial personnel convulsions concerning heads of departments – deputies Head that made provision for stable management and consistency in decisions implementation. Proximity to politicians, responsible for state decision-making let lobby all important legislative and budget initiatives that served as an impetus for reforms.

Besides, active international cooperation and interest of the EU and the USA in secure Ukrainian borders has become another precondition for reforms. Regular successful contacts and experience transfer among state officials of State Border Guard Service of Ukraine and their European colleagues has changed the attitudes to the system and practices of border defense. Great interest of the EU in reliable system of Ukrainian border defense across all its territory let foreign donors fully implement all the technical assistance programs.

### **Implementation of Action Plan on Liberalization of EU Visa Regime for Ukraine as it pertains to border management in 2011**

*Implementation of first stage assignments (legislation and political grounds):*

#### **Plan on Visa Regime Liberalization envisaged implementation of the following events:**

- ⤴ Adoption of the required regulations for the realization of Program on State Border Development and Reconstruction till 2015 and development of Concept of State Border Guard Service of Ukraine, which includes legal founding for inter-agency cooperation of State Border Service with law-enforcement agencies and other agencies that take part in border management and also giving an opportunity to State Border Guard Service of Ukraine to participate in identifying and investigating border-related crimes in coordination with all the law-enforcement agencies concerned;
- ⤴ Adoption of National Integrated Border Management Strategy and Action Plan on its Implementation;
- ⤴ Introduction of training programs and anti-corruption ethical codes pertaining to officials dealing with border management.

The Concept of National Integrated Border Management was adopted by the Cabinet of Ministers on October, 27, 2010. Action Plan for its Implementation was adopted by the Cabinet of Ministers on January 5, 2011. According to the self-review data provided by Border Guard Service of Ukraine 29 % of targets were accomplished during 2011.

Within the framework of this concept implementation and other development programs a series of regulations and bills were adopted in 2011:

- ⤴ “On refugees and persons who are in need of additional or temporary asylum” from 08.07.2011

- № 3671-VI (came into force 04.08.2011);
- ▲ “On amending some legislative regulations of Ukraine concerning preliminary documents control at the crossing point of customs border of Ukraine” from 03.02.2011 № 2973-VI (came into force 31.05.2011);
- ▲ № 03018-VI “On amending the Law of Ukraine “On Ukraine’s Accession to the Protocol on Amending the International Convention on Simplification and Harmonization of Custom Procedures” from 15.02.2011;
- ▲ № 3748-VI “On amending the Law of Ukraine “On Telecommunications” from 20.09.2011 (came to force 15.10.2011). *This bill regulates the procedure of terminating equipment cut-off and priority provision of telecommunications services to the departments of State Custom Agency.*

The following regulations should be taken into account while considering legal groundings for inter-agency cooperation with law-enforcement bodies:

- ▲ Within the framework of information exchange system improvement of the subjects of integrated border management an order of State Border Guard Service Administration, Ministry of Infrastructure of Ukraine, Ministry of Internal Affairs of Ukraine, Ministry of Foreign Affairs of Ukraine, Ministry of Finance of Ukraine, Security Service of Ukraine, National Agency of Public Service from 12.10.2011 № 753/423/737/288/1283/392/30 (registration in the Ministry of Justice of Ukraine on October, 19, 2011) regulated the practice of data exchange among the subjects of integrated border management which defines the procedures of Concept of Integrated Border Management and State Border Security implementation and the processing practices of common information, analytical and strategic bulletins on integrated border management.

Unfortunately, State Border Guard Service is still not authorized to identify and investigate border-related crimes in coordination with all the law-enforcement agencies concerned.

Concerning the introduction of training programs and anti-corruption ethical codes the following achievements should be noted:

- ▲ Code of Conduct for Officials whose functional duties include border management was adopted by the order of Ministry of Internal Affairs of Ukraine, Ministry of Foreign Affairs of Ukraine, Ministry of Finance of Ukraine, State Border Service Administration from 05.07.2011 № 330/151/809/434/146;
- ▲ State Border Service adopted Program on Prevention and Counter-Action to Corruption in 2011-2015;
- ▲ A distant learning training course for mid-tier heads of Border Service, animated system for training of Border Service personnel were implemented; common training events are implemented in cooperation with Border Service of Poland; a new department on integrated border management was created in the National academy of State border guard service; a series of trainings on integrated border management were organized, as well as attended by Border Service officials; a new system of language training of personnel was implemented in the border and custom offices.

So, we can conclude that the lawmakers were quite active at adoption of required for border service reforms bills and regulations. Still some problems remain unresolved, for instance the role of State Border Service in investigating border-related crimes.

*Accomplishment of second, implementation stage assignments:*

Action Plan envisages the following assignments:

- ▲ Effective implementation of law “On Border Control” from 2009: proper border control and border surveillance; state of affairs estimation on national, regional and local levels, including risks analysis; intelligence service and data flow management; direct access and comparative checks with national and international databases.
- ▲ Making provisions for appropriate infrastructure, technical equipment; IT-technologies; sufficient financial and human resources in accordance with Strategy on Integrated Border

Management, that still has to be adopted; effective implementation of training programs and anti-corruption measures.

- ⤴ Improvement of inter-agency cooperation (including information exchange of Border Service with law-enforcement agencies); international cooperation, including implementation of working arrangements with FRONTEX.

The following improvements should be noted concerning effective border surveillance:

- ⤴ The acts of Cabinet of Ministers of Ukraine “On approving the Rules of visa processing for admission to Ukraine and transit through its territory” (01.06.2011 p., № 567), “On amending the Rules of visa processing for admission to Ukraine and transit through its territory and claiming invalidity of the act of Cabinet of Ministers of Ukraine from October, 8, 1997 № 1125” (26.12.2011 p., № 1340) were developed by the Ministry for Foreign Affairs in the framework of four-level control system on admission and lodgment of foreigners and stateless people in Ukraine;
- ⤴ State Border Service in cooperation with State Custom service set up virtual analytical centre that produces common analytical reports which create the ground for additional measures on minimizing threats on the borders;
- ⤴ In the framework of Euro 2012 championship a new model of border crossing/admission was built that substantially lessened the formal criteria to be fulfilled and envisages a series of technological innovations. Special Euro passage-ways were created in airports and terrestrial crossing points, electronic cards system was established; preliminary check-in of the passengers was set up in the airports of Ukraine and Poland; as well as aboard and ladder control, common control at the four Polish crossing points, tickets issuance at the start and final points of route for direct trains (for instance trains from Kyiv and Kharkov to Moscow). 162 more passport control points were added in the airports (“Boryspil” – 62, “Zhulyany” – 20, “Lviv” – 24, “Donetsk” - 42) were introduced.

The infrastructure objects were developing thanks to active partaking of State Border Guard Service in various international technical assistance programs and also through redirecting budgetary funds to the more professional technical equipments of borders on the eve of EURO 2012:

- ⤴ Four international technical assistance projects were implemented in the sphere of counteraction to illicit border trafficking of nuclear and radioactive materials within the framework of “Counteraction to Dissemination of Weapons of Mass Destruction”, “Second Line of Defense”, “Export Control and Border Security” programs;
- ⤴ “Eastern Partnership - Key Initiative of Training Project on Comprehensive Border Management” – a project of European Commission for border and custom agencies of 6 member-states of Eastern Partnership was launched;
- ⤴ Other international technical assistance projects are continuously implemented: on implementing Agreements on Readmission, on establishing agencies for detention and temporary arrest of illegal migrants in Ukraine, on improvement of State Border Guard Service departments management;
- ⤴ The process of launching large infrastructure projects on trans-border cooperation such as “Ukraine – Poland - Belorussia”, “Ukraine – Slovakia – Hungary - Romania”. “Ukraine – Romania - Moldova” is still going on, (*the start of the practical stage is planned for second half of 2012*);
- ⤴ 11 “Inspector” working areas with the functions of biometrical control were set up (air - 3, terrestrial – 7, ferry - 1). Special electronic cards were introduced in order to speed up the border crossing;
- ⤴ “Krakivets”, “Yahodyn”, “Chop (Tysa)”, “Novi Yarylovychi”, “Vystupovychi”, “Potrubne”, “Shehyni” crossing points were reequipped in the framework of State Target Program on Preparation and Conduct in Ukraine of EURO 2012 Championship Final Part implementation.

There has been quite active international cooperation on the following issues:

- ⤴ A series of important agreements with the Ministry of Civic Security of People’s Republic of

China (**On cooperation on border issues**), with the Government of Republic of Moldova (**On common patrolling of Ukrainian – Moldovan state border**), with the Border Agency of Great Britain (Declaration on Cooperation in the sphere of integrated border and migration management), with the Government of Russian Federation on the procedure of crossing Ukrainian – Russian state border by near-border residents and on cooperation during common control of persons, vehicles and goods at the Ukrainian- Russian state border were signed, as well as Protocol on Conduct of experiment on common control at “Rososhany - Brychen” crossing point (partaking parts: border and custom services of Ukraine and Republic of Moldova),

- ⤴ Contact points on the border with Poland, Romania and Russia were set up **for 24h data exchange**; certain arrangements for setting up such points on the border with Moldova and Hungary.
- ⤴ **Active cooperation with FRONTEX, EUBAM:**
  - ⤴ Participation in FRONTEX “Jove – 2011”, “Focal points”, “Minerva” international operations and personnel trainings programs “Identifying stolen cars”, “Identifying fake passports”, “Dog handlers training”;
  - ⤴ Data exchange in the sphere of risks analysis was introduced in accordance with “Data Exchange Mechanism”, signed between Authority of State Border Guard Service of Ukraine and FRONTEX;
  - ⤴ First outside the EU “Coordination points” project was launched on Ukrainian-Moldovan border;
  - ⤴ Cooperation of experts and analysts of Border Services of Ukraine and Poland was launched. In December, 2011, a common report on threats analysis on Ukrainian-Polish border was presented;
  - ⤴ The agreements on establishment of common groups on risks analysis, elaboration of proposals concerning border security were reached with border agencies of Russian Federation, Germany, Republic of Moldova and Republic of Belorussia;
  - ⤴ It was agreed to exchange data on identified fake documents for state border crossing, on risks profiles on illegal activities on the state border with the border agencies of Republic of Moldova, Republic of Belorussia, Republic of Poland, Germany and Slovakia;
  - ⤴ Processing of common report on threats analysis on Ukrainian-Polish border within the framework of preparation and conduct in Ukraine of EURO 2012 championship final part was finalized together with the experts of Border Service of Poland for the implementation of Point 8 of Cooperation Development Plan between State Border Guard Service of Ukraine and Border Service of Poland for 2011 and within the framework of “ARKA - 2” international technical assistance program.

### **Recommendations concerning further developments of border management in Ukraine**

Further reforms of border management system in Ukraine should be implemented counting on the following recommendations:

- ⤴ Some scenarios of further administrative reforms in Ukraine envisage the unification of State Border Guard Service with the Ministry of Internal Affairs. In our opinion, such unification should happen only after reforms of Ministry of Internal Affairs (it should be transformed from purely law-enforcement agency to a political agency). Mechanical unification of these two agencies will put back the reforms of the State Border Guard Service and implementation of integrated border management;
- ⤴ Some complications of EU-Ukraine relations should not affect the amount and quality of international technical assistance which Ukraine is provided with on border management from the EU and USA, as far as this assistance is an important milestone in the creation of modern infrastructure on the Ukrainian border;
- ⤴ Fighting corruption should be one of the priorities in border management; the importance of this priority in the activities of State Border Guard Service should be increased.

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