

**The European Neighbourhood Policy and Beyond:  
Facilitating the Free Movement of People within the Framework of EU–Ukraine  
‘Post-Revolutionary’ Relations  
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## 1. Executive summary

On 1 May 2004, Ukraine became an immediate neighbour of the enlarged EU, after Ukraine's western neighbours Poland, Slovakia and Hungary joined the Union. This created new challenges – and new opportunities – for both sides of the new border. The EU responded to these challenges with the European Neighbourhood Policy (ENP), which is concerned primarily with the internal security of the EU through two interconnected strategies: (a) direct encountering and containment of 'soft threats' emanating from the 'European neighbourhood'; and (b) diminishment of these threats by bridging the economic, political and cultural gap between the prosperous and democratic EU member states and their impoverished and authoritarian 'neighbours'. While the EU tends to prioritize the first strategy, the neighbouring countries are obviously more interested in the second. The discrepancy is settled or at least cushioned by negotiations over the action plans, the main instruments of the ENP, prepared by the EU for each neighbouring country.

Ukraine, however, has more reason to be dissatisfied with the ENP. From the Ukrainian point of view, rather than facilitating inclusion, the ENP excludes Ukraine from Europe proper. This stands in contradiction not only to Ukraine's stated strategic goal of full EU membership, but also poses a challenge to Ukraine's identity that has historically evolved under permanent threat of Russification, making the nation's alleged 'Europeanness' a sort of a life belt or means to legitimize and secure its cultural and political emancipation. The Europeans, who tend to ignore this sensitive issue, do not understand its symbolic importance for Ukraine. For many Ukrainians, the denial of Ukraine's European prospects is to deny, or undermine, their identity, an implicit attempt to throw them back into the Russian 'Eurasian' bag and, worse, to cynically settle relations with Russia at Ukraine's expense.

The new Ukrainian government, which replaced a highly corrupt and uncooperative regime in early 2005, is attempting to implement much-needed reforms and expects broad assistance from the EU within the framework of the eventual Association Agreement, similar to those envisaged for the Western Balkans. So far, however, the EU is reluctant to treat Ukraine on par with Albania and Bosnia-Herzegovina, and still insists on cooperation with Ukraine within the ENP. The Ukrainian government, after some wavering, took a pragmatic stance on the issue. While still firmly rejecting the ENP as politically incompatible with Ukraine's EU aspirations, it accepted the Action Plan with 11 amendments to avoid further diplomatic tensions with Brussels and to make a pragmatic use of the (primarily economic) opportunities envisaged in the document.

The three-year Action Plan seems to be a good instrument for preparing Ukraine to fulfil the criteria for EU candidacy, and at the same time, it can be a good test for the new Ukrainian government, of its capability, competence, and commitment to the declared values and policies. The Action Plan, however, pays little attention to the facilitation of movement of persons through the new EU-Ukraine border. The issue is of paramount importance for both sides, and should be tackled regardless of Ukraine's eventual accession to the EU. The EU and Ukraine should cooperate in addressing four major problems.

First, the EU and Ukraine should undertake reciprocal, albeit asymmetrical, steps to facilitate their visa policies towards one another. While Ukraine can lift – and has already lifted – visa requirements for EU nationals altogether, the EU can do this for Ukrainians only in the middle to long term, after Ukraine fulfils some clearly defined conditions. In

the short term, the EU can substantially ease Ukrainians' access to visas by (a) increasing the number of consulates and improving their work; (b) granting more long-term multi-entry visas to all applicants with positive records of previous trips to the EU ('American' model); (c) granting Ukrainians free visas ('Polish' model); and (d) granting visas to second-time visitors at ports of entry after the computerized Schengen Information System (SIS) is fully in place.

Second, both sides should closely cooperate on security issues, fighting transborder crime, illegal migration, document forgery, and so on. Ukraine should pay special attention to its borders with Moldova, Belarus, and especially Russia, which are virtually unprotected. The EU should assist Ukraine in improving its capability to address daunting security issues by (a) providing Ukraine with modern equipment for border surveillance and control of documents; (b) training personnel; (c) sharing databases with law enforcement agencies; (d) assisting government bodies and NGOs that deal with refugees from third countries; and (e) strongly supporting Ukraine's negotiations with third countries on readmission agreements.

Third, the EU and Ukraine should take reasonable steps to provide Ukrainians with limited access to the EU labour market and limited labour migration to the EU. To this end, (a) the appropriate legal steps should be undertaken by both sides; (b) real needs and capacities of both the donor and recipient countries should be estimated and carefully monitored; and (c) the respective governments and NGOs should launch an effective information campaign to dispel unsubstantiated fears of a mass influx of Ukrainian immigrants to the West and promote a rational and informed approach to the sensitive issue.

And fourth, the EU and Ukraine should pay due attention to Sovietophile anti-Western biases in Ukraine and Moscow-centric anti-Ukrainian biases in the West. All these stereotypes have been deeply embedded in respective societies throughout history and may seriously complicate EU-Ukraine cooperation and rapprochement.

## **2. Introduction**

### **2.1 Problem definition**

With the accession of a large group of former Communist states to the EU, and a number queuing for accession, the people of Belarus, Ukraine and Moldova once again find themselves on the wrong side of the border, isolated from their Western neighbours by another curtain, be it 'iron' or 'paper'. They have lost one of the greatest achievements of the postcommunist era – open borders with the West and the opportunity to travel westwards without visas.

This development has two very different but equally important dimensions: an ideological or largely symbolical dimension; and a practical dimension, which is connected to everyday life and the bread-and-butter problems of millions of people. The first aspect captures the serious political, ideological and psychological blow for Western-oriented inhabitants of Ukraine, Belarus and Moldova who find their nations denied any 'European' prospects and left, de facto, at Russia's mercy. The second aspect refers to the dramatic gap between prosperous democratic 'Europe' and impoverished authoritarian 'Eurasia', which is likely to grow, with life in the 'grey zone' of East European outcasts becoming even more arduous.

Such a perception is largely substantiated by the fact that 'for ordinary people living in the region surrounding the EU, the main effects of the enlargement [is] felt

through the visa and border control policies. . . . More stringent controls on the movement of people and goods across the borders of the applicant countries are expensive to implement and disruptive to trade and investment. The applicant countries provide markets for goods from the surrounding region and jobs for migrant workers. Replacing the Iron Curtain with a visa wall further east also has security implications for the whole of Europe if unstable, poor states are isolated on the fringes of an enlarged “Fortress Europe”.’

The Commission’s Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, of 11 March 2003, was a rather timely and reasonable reaction to the daunting challenges of the EU enlargement and emergence of the unpredictable ‘grey zone’ in the east. Despite the numerous flaws and limitations of the document, it at least outlined the general framework for steady cooperation with new eastern neighbours and laid down the foundation for the respective strategy (European Neighbourhood Policy or ENP) endorsed by the Commission on 12 May 2004.

The over-arching objective of the ENP is ‘to share the benefits of the EU’s 2004 enlargement with neighbouring countries in strengthening stability, security and well-being for all concerned’, and ‘to prevent the emergence of new dividing lines between the enlarged EU and its neighbours and to offer them a chance to participate in various EU activities, through greater political, security, economic and cultural co-operation’. With this aim, the ENP strategy calls for the setting of clearly defined priorities with partner countries and incorporating these priorities into jointly agreed Action Plans. The areas of activity include ‘political dialogue and reform, trade and measures preparing partners for gradually obtaining a stake in the EU’s Internal Market, justice and home affairs, energy, transport, information society, environment and research and innovation, social policy and people-to-people contacts’.<sup>1</sup>

The ENP is a product of ‘enlightened self-interest’ and is much more concerned with security issues than with alleged benefits for neighbours, incentives for sharing of common values, or approximation of legislation. Even the vague promises to promote the free movement of people, goods, services and capital in some remote future, and to share with the new neighbours ‘everything but institutions’, made in March 2003, could no longer be heard by May 2004.

The conceptual flaws of the ENP and, consequently, the limitations of the EU-Ukraine Action Plan became especially obvious after the Orange Revolution, at the end of 2004, which marked the nation’s radical break with its Soviet past and neo-Soviet political practices. There are a number of signs that the new Ukrainian government is much more committed than its predecessors to political, economic, judicial, and administrative reforms aimed at democratization and modernization of the country and eventual membership in the EU and NATO. Though reluctant to recognize Ukraine’s European aspirations, the EU would be obliged to do so if Ukraine undergoes the necessary transformation and meets the required criteria for membership. From both a moral and pragmatic standpoint, rather than dissuade Ukraine, the EU should support Ukraine’s ambitions.

The majority of EU member states are however reluctant about the accession of Ukraine – or any other ‘poor relative’ – to the prestigious club for numerous reasons, both objective and subjective. Therefore, regardless of how insistent Ukrainians might be in their reform-making and EU-knocking, they will have to develop their relations with the EU within the framework of the existing programmes and institutions, at least for some time to come. From this it also follows that regardless of how lukewarm Europeans might

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<sup>1</sup> European Commission, European Neighbourhood Policy: Strategy Paper, Communication from the Commission, 12.05.2004, COM(2004) 373 final, Brussels, p. 3.

be about Ukraine's prospective accession to the EU, they will eventually have to reconsider the existing framework of cooperation with their relentless neighbour and, for a start, upgrade the existing programmes, particularly the Action Plan.

## 2.2 Aim and structure of the paper

The present paper pursues a twofold strategy. On the one hand, analysis has been limited to the scope of Realpolitik; that is, the paper examines what can be done within the existing framework of EU-Ukraine relations, as determined not only by a set of specific documents and official arrangements, but also by the mental predispositions of respective elites and societies at large. On the other hand, the paper questions the very framework where appropriate, and suggests how some of its determinants might be changed.

The paper evolves primarily within the framework of the European Neighbourhood Policy, even though the author remains critical of the ENP (not to mention its dubious title) in regard to Ukraine. The ENP provides some – albeit insufficient – room for cooperation. Border management, in particular, is highlighted in the strategy paper as an important area for cooperation, which the strategy observes is 'likely to be a priority in most Action Plans as it is only by working together that the EU and its neighbours can manage common borders more efficiently in order to facilitate legitimate movements . . . whilst maintaining or improving a high level of security'.<sup>2</sup> The present paper therefore addresses issues of 'border management', although in a broad sense that includes migration policies, visa procedures and frontier controls, as well as how such issues are (mis)represented in the respective societies. Therefore, this study will also give consideration to a highly important and sensitive *symbolic* aspect of the explored problem that is often overlooked: the representation of border management issues in the mass media and the way people on both sides of the new border perceive each other and border management issues. In fact, border management is of paramount importance for transborder cooperation in the areas of trade, investment, environment, transportation, energy, telecommunications, tourism, culture, and education.

The ultimate goal of this study is to produce policy recommendations that, in the middle to long term, would ensure the free movement of people (alongside goods, services, and capital) between Ukraine and the EU, and in the short to middle term would mitigate the negative consequences of the new border regime between Ukraine and the neighbouring EU countries. Both practical measures and discursive practices have been considered in the formulation of the policy recommendations. The paper targets both Ukrainian and EU officials, experts, and opinion makers.

The paper consists of three parts. The first part is agent-oriented. It examines the background of EU-Ukraine relations, in particular Ukraine's ambiguous policy vis-à-vis the EU under the presidency of Leonid Kuchma, and the similarly equivocal policy of the EU vis-à-vis Ukraine. In both cases, the policies are recognized as counterproductive and detrimental for the two parties, and for Europe in general. The proactive pro-European policy of the new Ukrainian government is also discussed in this part of the paper, with special attention given to the limited administrative and institutional capacities of the state, and to the EU's lukewarm and often inadequate response to the initiatives of the new government in Ukraine.

The second part of the paper is issue-oriented. It exposes the negative aspects of the EU enlargement and examines to what extent the European Neighbourhood Policy might help to resolve numerous problems. Consideration is given to the experiences of the new

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<sup>2</sup> European Commission, European Neighbourhood Policy: Strategy Paper, p.16.

EU member states and candidate countries in facilitating the free movement of persons with the EU and the relevancy of these experiences for Ukraine and the specific challenges it faces.

The third and main part of the paper elaborates in detail the practical steps that the EU and Ukraine might agree upon and gradually implement in order to ultimately achieve the free movement of people – one of the ‘four freedoms’ that facilitates, and is facilitated by, the other three.

### **2.3 Methodology**

The research methodology applied in this study comprises:

- A. analysis of primary sources, i.e., official Ukrainian and EU documents that determine EU-Ukraine relations in general and the European Neighbourhood Policy in particular;
- B. analysis of the available data on border crossings, legal and illegal migration, visa endorsements (and denials), etc., as well as the relevant sociological surveys;
- C. analysis of secondary sources, i.e., relevant publications including policy papers by the Centre for Peace, Conversion and Foreign Policy of Ukraine;<sup>3</sup> ‘Monitoring of Openness of the Eastern Polish Borders’ and ‘Monitoring of Polish Visa Policy’ by the Batory Foundation and number of Polish and Ukrainian NGOs;<sup>4</sup> ‘More than Neighbours’ by the Batory Foundation (Warsaw) and the Renaissance Foundation (Kyiv); and Olena Malynovska's ‘EU Enlarged, Schengen Implemented – What Next?’;
- D. interviews by officials and others involved in border management, border crossing, and transborder cooperation. This information, obtained from the mass media and through personal communication, is important in cases when research data are not available.

The above analytical materials have been applied synthetically, with substantial cross-referencing, to test the main hypothesis, disprove old and new stereotypes, and elaborate comprehensive and feasible policy recommendations.

### **3. Background of EU-Ukraine relations**

Ukraine is the second largest country in Europe in terms of territory and the fifth largest in terms of population. In 1991, when the Soviet Union collapsed and the newly independent country emerged, it inherited a fair share of Soviet industry, good natural resources, important routes of communication, and a well-educated society with a significant number of students, professionals, skilled workers, scientists, and designers. Civil society, however weak it may have been, was in a position to ensure at least an appearance of political pluralism, free elections, and freedom of media. These early developments led some experts to forecast a successful transition for Ukraine into a full-fledged liberal democracy and market economy.

Within a decade, however, Ukraine came to be the second poorest country in

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<sup>3</sup> See <http://www.foreignpolicy.org.ua/eng/papers/>

<sup>4</sup> For more information on the projects, see [www.batory.org.pl/mnarod/monitor.htm](http://www.batory.org.pl/mnarod/monitor.htm). In 2005, the same research group launched an even more ambitious project, ‘Monitoring polityki wizowej siedmiu państw UE’, that monitored the visa policies of seven EU member states for citizens of Ukraine, Belarus, Moldova and Russia.

Europe in terms of GDP per capita, and became notorious for its rampant corruption, oligarchic omnipotence, and growing authoritarian tendencies. Throughout these years, the West and the EU in particular were not overly concerned about the country's internal developments – partly because they traditionally perceive Ukraine as Russia's backyard and legitimate sphere of influence, and partly because Ukraine successfully avoided internecine wars of the Balkan style and therefore was not privileged with the long-term EU membership prospects through the Stabilization and Association Process.

The need for a more comprehensive, coherent and purposeful EU policy vis-à-vis Ukraine emerged only over the last several years, with the approaching EU enlargement and the prospect of Ukraine sharing a border with the Union – alongside Belarus, Moldova and Russia. The result was the European Neighbourhood Policy (ENP), elaborated by the European Commission, which laid down a set of general principles upon which relations between the EU and each of its neighbours – from the Russian Arctic through the Middle East to North Africa – should be developed.

From its inception the ENP stirred up controversy in Ukraine. After the revolution, the controversy has become even more bitter, as the many flaws of the policy have become more obvious. The Ukrainian government's dissatisfaction with the ENP was reflected in the delay in the finalization of the main ENP instrument, the EU-Ukraine Action Plan. Initially, the Action Plan was to be finalised in spring of 2004 and then later in autumn, due to Ukrainian objections to the plan. However, it was not until 21 February 2005, after the new president of Ukraine took office and summoned up the new government, that the Action Plan was adopted with amendments at Ukraine's request. The new Ukrainian Government seems to be strongly determined to transform the Action Plan into an association agreement with a clear prospect for EU membership. For now, the most reasonable approach is to make the best use of the ENP's existing instruments, while looking for opportunities to advance relations with the EU beyond the ENP.

### **3.1 The EU and Ukraine: ten years of 'diplomatic curtseys'**

Like all the postcommunist countries of Eastern Europe, Ukraine declared 'return to Europe' to be its major strategic goal from the early days of independence. By 1994, Ukraine had signed the Partnership and Cooperation Agreement (PCA) with the EU (ratified however by the EU only in 1998), joined the Council of Europe in 1995, and announced, in 1996, its strategic intention to become a member of the EU. Moreover, in 1997, Ukraine became the first CIS country to establish a special relationship with NATO, and proved to be the most active participant of the Partnership for Peace (PfP) programme. In the same year, the National Agency for Development and European Integration was created, and in January 2003, the agency was supplemented with another bureaucratic body, the State Council on European and Euro-Atlantic Integration. In May 2002, the Ukrainian government announced its aim of becoming a full-fledged member of the alliance. The same year, Ukrainian President Leonid Kuchma delivered his annual message to the parliament under the characteristic title "European Choice". Therein, he envisioned that Ukraine should become an associate member of the EU in 2004–2007, enter a customs union with the EU in 2007, and meet all the criteria for membership by 2011.

The above Ukrainian moves met a very restrained response in Brussels and in most European capitals. European officials expressed their general support for Ukraine's 'European choice' and encouraged Ukrainian authorities to reinvigorate political and economic reforms, and to strengthen democracy and the rule of law in the country. At the same time, they carefully avoided any wording that could be interpreted as a promise,

however slight, remote and conditional, of a prospective membership for Ukraine. If pressed hard, European officials simply answered that it is premature to discuss the issue of membership because it is not yet on the agenda. There is enough room, they suggested, for EU-Ukraine cooperation within the available programmes and bodies: such as the PCA, the EU-Ukraine summits, the EU-Ukraine Commission, the Ukraine Country Strategy with annual Indicative Programmes (adopted in December 2001), and the like.

The ‘virtual policies’ pursued by the EU and Ukraine towards one another resulted mostly in political meetings and statements, which disguised mutual disappointment and dissatisfaction. The Ukrainian government, of course, deserves the majority of blame for its poor implementation of the PCA and other obligations. Yet, on the surface, it appeared as if the EU was quite happy with the current status quo, with all its “confusion, conflicting signals, empty rhetoric and duplicity.”<sup>5</sup>

To understand properly the current state of the EU-Ukraine relations and to outline effective policy, we should take a brief look at the roots of the persistent duplicity and confusion created and/or supported by both parties.

### **3.1.1 Ukrainian ambivalence**

Virtually all independent experts agree that the notorious ambiguity of Ukrainian domestic and international politics largely derives from the general ambivalence of Ukrainian society and the political hybridity of the ruling regime. International factors have also contributed a great deal to this ambiguity, but remain secondary.

#### *a) Society*

Social ambivalence, defined as a simultaneous commitment of people to opposite, mutually exclusive and incompatible values, is a typical feature of a society in transition; that is, a society that no longer endorses the once dominant set of values and has yet to fully acquire a new set in its place. In these terms, Ukrainian society is exposed to a dual psychological pressure that parallels the post-totalitarian and post-colonial nature of the country’s transition. As a result of the psychological pressure, the political attitudes and orientations, and even identities of many Ukrainians are very vague and fickle.

On the surface, Ukraine seems to be split almost equally into ‘Westerners’ and ‘Easterners’, that is the people who want their nation to be modernized in a ‘European’, liberal-democratic way, and those who opt for a ‘Eurasian’, authoritarian way of development within the (neo)Soviet and/or (neo)Slavophile conservative projects promoted by Russia. This split partly correlates with some other divisions – regional, cultural, ethnic, linguistic, religious; and it certainly correlates with age and level of education. The real problem, however, and the real evidence of the profound ambivalence of Ukrainian society is a split within people’s psyches – a sort of ‘post-Soviet schizophrenia’ – that affects a large number of people.

The current ambivalence of Ukrainian society is peculiar but not unique. All societies in transition, to a certain extent, encounter similar problems. Eastern Germany is perhaps the best example of ‘transition complexity’ where, despite the strong support for transition, the difference between the ‘two Germanys’ is still quite visible. Taking into account the conditions of the Ukrainian transition, it is little surprise then that Ukraine lags far behind in the postcommunist transition, especially in light of the following factors: the

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<sup>5</sup> Taras Kuzio, ‘EU and Ukraine: A Turning Point in 2004?’, Occasional Paper no.47 (Paris: EU Institute for Security Studies, November 2003), pp. 32, 10.



much longer and much more brutal process of Russification/Sovietization; the very limited positive impact of international factors; and the very negative impact of local elites (mostly inherited from the Communist past).

*b) Elites*

Independent Ukraine emerged in 1991, largely as a result of political compromise and cooperation between the reformist, pro-independence part of the local Communist nomenklatura ('territorial elite') and the umbrella opposition movement ('national elite') that gained some strength during perestroika but was never par with the Polish 'Solidarnosc' or, say, the Lithuanian 'Sajudis'. The political coalition has never been formalized, but the informal alliance remained viable as long as both parties needed each other to promote national independence, to withstand the 'Moscow threat' (largely exaggerated) and to counteract the 'red revenge' (largely imaginary).

Yet it became too clear that the post-Soviet nomenklatura-turned-oligarchy had no vested interest in democratization and Westernization that was likely to undermine its dominance over the country's politics and economy. At the same time, the oligarchic regime had its reasons to maintain good relations with the West, where its versatile interests were concentrated, and to avoid – as long as possible – direct confrontation with democratic forces within Ukraine. To this end, a highly ambiguous policy had been pursued both nationally and internationally.

At home, the oligarchic regime employed the 'transition' rhetoric and imitated all sorts of reforms and democratic procedures, while on the international level, the regime had talked up Ukraine's 'European choice' and 'Euro-Atlantic integration'. In both cases, however, the shallow words had no substance. Their primary goal, as eventually became clear, was (a) to dispossess the democratic opposition of their slogans and programmes; (b) to compromise these slogans and programmes in the eyes of the population; and (c) to create a kind of the ideological smoke-screen that would hide their authoritarian, 'non-European' practices and protect the corrupt, undemocratic regime from international isolation.

With the start of the new century, however, the crafty 'muddle through' politics pursued by the Ukrainian authorities drew to a close, brought about primarily by substantial changes within Ukrainian society – although the last straw proved to be a political scandal that broke out at the end of 2000 when the incumbent president, Leonid Kuchma, was implicated in the murder of opposition journalist Heorhiy Gongadze. The event did not lead to the immediate dismissal of the corrupt government, but effectively catalyzed latent changes and grudges within society. In the domestic realm, it put an ultimate end to the protracted and controversial collaboration of Ukrainian democrats with the oligarchic regime. In the international sphere, it led to the virtual diplomatic isolation of the Ukrainian president and further cooling of EU-Ukraine relations, which had never actually been very warm.

In his last attempt to appease the Americans and to rescue his stakes in Europe, President Kuchma sent Ukrainian troops to Iraq, declared Ukraine's intention to join NATO, and pushed hard to get the EU to give Ukraine a more or less clear promise of prospective EU membership. While the Americans discreetly accepted the gift, the Europeans were more restrained, in most cases avoiding direct contact with a pariah-president and suggesting tactfully that Ukraine needs to put its house in order before EU-Ukraine relations can improve.

### 3.1.2 European ambiguity

Historically, Ukrainians have many reasons to be sensitive with regard to how they are treated and perceived by the West. Independent Ukraine proved to be the ‘unwanted stepchild’, not only of Soviet perestroika but also of the 1917 Russian Revolution. Ukrainian students today know from their historical textbooks that the USA established diplomatic relations with the USSR in 1933, exactly when Moscow was starving to death at least 5 million Ukrainian peasants. And from the same textbooks, they know how, in the same year, another Western democracy responded to one of the world’s largest genocides: ‘The truth of the matter is, of course, that we [the British Foreign Office] have a certain amount of information about famine conditions in the south of Russia [sic], similar to that which had appeared in the press. . . . We do not want to make it public, however, because the Soviet government would resent it and our relations with them would be prejudiced.’<sup>6</sup>

Against such a background, many Ukrainians cannot but suspect that the West still has not come to terms with Ukraine’s existence, and still tends to treat it as a legitimate zone of vaguely defined but widely applied Russian ‘interests’. Such a perception was skillfully exploited by the post-Soviet elite to invigorate old anti-Western stereotypes in Ukrainian society; to justify the lack of a coherent, comprehensive and responsible foreign policy driven by national (rather than clannish or personal interests); and to divert public attention from the real and fundamental reasons that made crypto-Soviet Ukraine incompatible with and inadmissible to the EU. The rhetorical strategy was designed to persuade the people that we are excluded from the EU not because we are unreformed and our leaders are crooks and liars, but because we are different, we are Ukrainians, Eastern Slavs, the ‘worst’ brand of human being.

Unfortunately, Europeans did little if anything to dispel these impressions. On the contrary, in many cases, they fuelled fears and biases deeply rooted in Ukrainian inferiority complexes.

#### a) ‘Russia first’

Perhaps the best example of blind West European Russocentrism, which not only overshadows but profoundly harms EU-Ukraine relations, comes from a classified report drawn up by the German and French foreign ministries in 2000: ‘The admission of Ukraine would imply the isolation of Russia. It is sufficient to content oneself with close cooperation with Kiev. The Union should not be enlarged to the East any further. . . .’<sup>7</sup>

It seems that only East Europeans who have a much more accurate idea of Russia from their historic experience can understand how absurd and insulting such Yalta-style arguments are. An expert on Ukraine had the following comment on the whimsical logic expressed so aptly by the German and French foreign ministries: ‘To some West European EU members, Ukraine is still seen as “semi-Russian”, a factor that reinforces the tendency to place the fate of all three eastern Slavs together. . . . Linking the destinies of Ukraine and Russia places them both beyond “Europe”. . . . This suits Russia, which is seeking to develop a “strategic partnership” with the EU but not membership. It does not suit Ukraine that seeks membership.’<sup>8</sup>

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<sup>6</sup> M. Carynyk, L. Luciuk, and B. Kordan (eds.), *The Foreign Office and the Famine: British Documents on Ukraine and the Great Famine of 1932–1933* (Kingston: Limestone Press, 1988), p. 397.

<sup>7</sup> Quoted in ‘New Neighbourhood – New Association: Ukraine and the European Union at the Beginning of the 21st Century’, *Policy Papers* 6 (Warsaw: Stefan Batory Foundation, March 2002), p. 11.

<sup>8</sup> Kuzio, ‘A Turning Point in 2004?’, pp. 6, 14.

There are, of course, many reasons to prioritize relations with Russia, the largest country on the continent with rich gas and oil reserves, the largest nuclear arsenal, and a permanent seat on the UN Security Council. But the reasons for showing overt favouritism to Russia at the expense of its neighbours are less clear. It can partly be explained by an imperial likeness, historically embedded in modes of thought and behaviour and in national psyche and “habits of the heart”, that is common to large European nations and Russia alike. A more credible explanation, however, is the heavy dependence of Western thought about Russia on Russian imperial myths elaborated, by and large, in the 18<sup>th</sup> century and firmly established as ‘scholarly truth’ and ‘common knowledge’. Ukraine unfortunately has been a central part of this historic and cultural mythmaking, its major target and victim.

In brief, the myth consists of three major narratives. The first one blurs any difference between the two very different historical entities Rus' and Russia. Linguistic similarity is successfully converted into historical, geographical and political similarity and, eventually, into sameness. By the same token, modern Romania can be identified with ancient Rome, and Britain identified with Brittany. The second narrative grants the modern name ‘Russia’, coined in the early 18<sup>th</sup> century, to medieval Muscovy and establishes mythical ties between the Moscow Tsardom and Kyivan Rus'. The fact is, however, that the idea of Moscow succession to the Kyiv Rus' legacy cannot be found in Muscovites' thought until the end of the 17<sup>th</sup> century, when the Left Bank Ukraine and the city of Kyiv were taken from Poland and when the formation of the Grand Imperial Myth began. And finally, the third narrative questions the very existence of the Ukrainian (and Belarusian) nations, misrepresenting them as incidental offshoots of the great Russian nation – despite the fact that these ‘offshoots’ came under full Russian control for the first time in their history only at the end of the 18<sup>th</sup> century, after the partition of Poland.

All nations are largely built on ‘invented traditions’, and Russia is no exception to the rule. But very few nations centre their identities almost fully on historical myths, and very few national myths are so expansive, so militant and, alas, so broadly accepted as ‘historical truths’.

A policy of ‘Russia first’, based on these national myths as well as on cynical Realpolitik, seems to be the main if not the only rationale underlying West European ambiguity toward Ukraine and its reluctance to treat Ukraine as an equal to the other nations of the continent, with the same rights, chances and prospects for EU membership as Albania, Turkey or, say, Bosnia and Herzegovina.

In practical terms, the ‘Russia first’ policy results in discrimination against Ukraine and in double standards. One may point out special concessions that the EU has given to Russia, such as market economy status and the prospect for visa-free travel. Ukraine, **until recently**, has not been offered these same privileges, although its economy and border controls **have always been** very similar to Russia’s. ‘Despite the evident difficulties of dealing with large countries’, an expert suggests, ‘the EU needs to speak with one voice in its whole neighbourhood, and it needs to say the same thing year after year’.<sup>9</sup>

EU policy vis-à-vis Ukraine will continue to be marked by double standards and duplicity as long as the EU refuses to recognize the absolutely different strategic agendas of Ukraine and Russia and does not decouple the two countries. The present policy is certainly unacceptable for Ukrainians since it not only discriminates against them but also undermines their national identity; that is, their separateness and, in matter of fact, their independence from Russia. They would never agree with the ‘Russia first’ policy, with its imperial vestiges, great powers stereotypes, and the long shadow of Yalta. But in other

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<sup>9</sup> Heather Grabbe, ‘How the EU Should Help its Neighbours’, policy brief (London: Centre for European Reform, June 2004), p. 5, available at [www.cer.org.uk](http://www.cer.org.uk).

regards, Ukrainians can compromise. They have to recognize that ‘enlargement fatigue’ is a reality in Europe. The timing is truly bad for Ukraine, after the accession of ten new countries in 2004, the decision to start membership talks with Turkey, and the failed referendums on the EU Constitution in France and the Netherlands. For too many Europeans, Ukraine and Turkey, by virtue of their size and location, are ‘twin nightmares’ haunting the EU.<sup>10</sup> Many of them perceive these countries as not just too poor, too big, and too different, but as thoroughly alien, even hostile.

Ukrainians may be surprised, even exasperated by the fact that the ENP places them in one bag with the countries of North Africa and the Middle East, but this decision reflects a profound mode of Western thought: all these countries, including Ukraine, are perceived as not really ‘European’, and the name ‘European Neighbourhood Policy’ (instead of ‘EU Neighbourhood Policy’) is not just a breach of political correctness, but an essential view, a part of the *Weltanschauung*. In a sense, Europeans are right: all the differences between East Slavonic and North African countries notwithstanding, all of them ‘are involved in a more or less open civil war which seems to be fed by a disagreement on the adoption of Western values’.<sup>11</sup> What is common between Morocco and Belarus, Lebanon and Ukraine is that in all of them ‘the EU is challenged by another spiritual power’ – muslim orthodoxy in one case, Russian ‘Eurasian’/neo-Soviet imperialism in the other.

In Ukraine, the West – in both national and international terms – scored a victory last year. In geopolitical terms, Ukraine’s further European advance might be as important as Turkey’s. In one case, the whole Muslim world would see that ‘Islam is compatible with secular democracy’.<sup>12</sup> In the other, the entire post-Soviet world, including Russia, will see that the Soviet legacy can be overcome, the post-Soviet “void of values” filled, and “disintegration of all levels of society”<sup>13</sup> reversed. It will take much time, and even more effort, for Ukrainians and Europeans to come to terms with these simple truths and complicated reality.

#### b) ‘United States of Europe’ versus ‘New Medieval Empire’

The EU’s unfortunate policy towards Russia largely obscures, in Ukrainian eyes, another perhaps more serious reason for the EU to be reluctant and equivocal in regard to Ukraine. The very character of the Union – its own identity, future structure and limits – is in question. On the one hand, there is a strong feeling that the EU ‘cannot go on enlarging forever’, as the former President of the Commission Romano Prodi has cautioned, because this would ‘water down the European political project’.<sup>14</sup>

On the other hand, there are strong arguments that the costs of non-enlargement could ultimately be much higher than the costs of enlargement,<sup>15</sup> and that ‘stretching Europe further, with all its complications, is a more realistic project than pushing it deeper’.<sup>16</sup> In such a context, not only EU leaders, but Europeans at large ‘find themselves confronted with a strategic dilemma. On the one hand they would like to keep the EU

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<sup>10</sup> Martin Wolf, ‘The Pull of a Free and Prosperous Europe’, *Financial Times*, 1 February 2005.

<sup>11</sup> Josef Langer, ‘Wider Europe and the Neighbourhood Strategy of the European Union: A Quest of Identity?’, *Europe 2020*, 19 April 2004, available at [http://www.europe2020.org/fr/section\\_voisin/190404.htm](http://www.europe2020.org/fr/section_voisin/190404.htm).

<sup>12</sup> Michael Emerson, ‘Imagine’, *The Wall Street Journal*, 8 February 2005.

<sup>13</sup> Langer, ‘A Quest for Identity?’.

<sup>14</sup> As quoted by Josef Langer, in ‘A Quest of Identity?’.

<sup>15</sup> Jacques Rupnik, ‘Concluding Reflections’, *Journal of Democracy*, vol. 15, no. 1 (2004), p. 80.

<sup>16</sup> Alina Mungiu-Pippidi, ‘Beyond the New Borders’, *Journal of Democracy*, vol. 15, no. 1 (2004), p. 61.

reasonably compact in number of member states; on the other, the high principle of their system is to be open to all European democracies'.<sup>17</sup>

This seems to be the main conceptual problem haunting Europeans: 'whether this continuously enlarging EU would tend toward a unitary or increasingly differentiated structure; or between what some have called a United States of Europe (USE) versus a New Medieval Empire (NME). The point of the USE is that the jurisdiction of the union would apply equally to all member states, and the frontier between in and out would be well defined. The point of the NME is that beyond the core power structure there would be graduated degrees of inclusion for a variety of associated states of the periphery, and the frontiers between in and out would be fuzzy.'<sup>18</sup>

All other problems like digesting new member states, institutional reforms, adopting the Constitution, the Turkish cultural challenge, and so on, are rather secondary to the main dilemma at the heart of the EU's ambiguity. In a sense, it comes from an inevitable disparity between theory and practice, between the bright liberal-democratic project informed by ideas of equality, solidarity and inclusiveness, and mundane reality informed by political fighting, economic hardships, cultural clashes, biases and phobias, and the threat of populist demagoguery. Since Ukraine's ambiguity vis-à-vis the EU stems from a similar disparity, one may draw a parallel between the two ambiguities.

The comparison is superficial, however. The EU's ambiguity is, by and large, unintentional – partly determined by social reality, partly by lack of knowledge. Ukraine's ambiguity towards the EU is, or has been, deliberate, and was only partly, primarily at the beginning, determined by social reality. To a greater extent, it was cunningly designed by Ukrainian leaders as a key element of their deceptive, manipulative and self-indulgent politics – a kind of balancing act 'between searching for benefits and non-desire to change themselves'.<sup>19</sup>

### **3.2 New Neighbourhood: the 'ring of friends' or a 'buffer zone'?**

Two events of 2004 – regime change in Ukraine and the EU enlargement, with which Ukraine became an immediate neighbour of the EU – are cause for the EU and Ukraine to reconsider their relations in both practical and conceptual terms. Such reconsideration is not a simple task; the 'big-bang' enlargement was planned long ago, with all the related policies and documents, while the Orange Revolution occurred unexpectedly – at least for Europeans – and brought with it more difficult questions than easy answers.

Ukrainians may once again become the 'unwanted step-children' of grand continental events: this time of the Great East European Revolution that swept away authoritarian regimes west of Ukraine in 1989, but reached Kyiv with a regretful 15-year delay. The new Ukrainian authorities, however, seem to take a very pragmatic stance vis-à-vis the EU. On the one hand, they remain very critical of the EU policy towards Ukraine, pointing out, exactly as their predecessors, its short-sightedness and duplicity. Yet, on the other hand, they accept the proposed programmes and mechanisms of cooperation, however feeble and superficial, and – unlike their predecessors – try to make full use of these programmes, putting an end to a weird ambiguity, at least on the Ukrainian side. In other words, they try to put the ball on the EU's court by completing all the required reforms and programmes and exposing therein the double standards and the inadequate and

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<sup>17</sup> Emerson, 'Imagine'.

<sup>18</sup> Emerson, 'Imagine'.

<sup>19</sup> Oleksandr Sushko, 'Viva Enlargement! Celebration with a Bitter Taste', *Ukrainian Monitor*, available at [www.foreignpolicy.org.ua/eng/topic/index.shtml?id=3049](http://www.foreignpolicy.org.ua/eng/topic/index.shtml?id=3049).

biased approach of the EU towards Ukraine, which is apparent in the EU's denial of Ukraine's membership aspirations, while accepting membership bids from Turkey, Albania and Macedonia. At the moment, the only option available to Ukrainians is to work hard, improve the country's image, and put diplomatic pressure on the West – and hope that even the most reluctant Europeans will sooner or later run out of excuses for keeping a reformed and dynamic country outside the Union.

### **3.2.1 Consequences of EU enlargement**

In all likelihood, EU policy toward Ukraine will not be reconsidered within the next three years, until and unless the recently adopted Action Plan is successfully completed. It means that Ukrainians, for the time being, will have to cope with the negative consequences of EU enlargement and to benefit from some of its positive aspects using the available, and rather limited, instruments and provisions of the ENP.

The disadvantages of the enlargement are most tangible in border regions and primarily affect the new member states and the new neighbours of the EU. Experts frequently point out the multiple inconveniences caused by the new member states' imposition of visa requirements on the new EU neighbours. The new visa requirements indeed harm petit-traders on both sides of the border, complicate business and professional contacts, cultural and academic exchanges, tourism, cooperation between NGOs, strike at family ties, and so on. The visa regime is especially harmful for local communities that are divided by highly artificial borders, sometimes across the same village where people have to travel hundreds of kilometres to the capital city to obtain a visa that enables them to visit relatives in the 'foreign' part of their village. Ethnic minorities, separated by visa regime from their kin-nations, are also major victims of the new policy of exclusion: Hungarians, Poles, Romanians and Bulgarians in Ukraine and, potentially, Ukrainians in Poland, Slovakia and Romania.

Visa requirements have a very important symbolic dimension. For many people, they represent a harsh blow, intensifying the feeling of exclusion and isolation, and aggravating inferiority complexes of 'second class Europeans'. For 'Westerners', it is a dramatic betrayal of their best hopes and ideals, a sort of the 'God is dead'. For the Sovietophile 'Easterners', it is just another proof of 'Westerners' presumed hostility toward Eastern Slavs and a clear signal that 'we are not expected there', so we should move eastward where we really belong.

Of course, the numerous negative consequences of the 2004 EU enlargement for Ukraine were predicted by experts long ago: 'In the foreign policy sphere, the accession of neighbouring countries to the EU and the relating dynamisation of their development will increase even more the difference in transformation rates between these countries and Ukraine, which will objectively complicate bilateral relations'.<sup>20</sup> This has not happened with Poland yet, but Ukraine's experience with Slovakia, Czech Republic, and to some extent, Hungary, confirms rather than disproves the prediction that the position of Europe-oriented forces in these countries after accession will strengthen, and they will consider cooperation with Ukraine, along with wider regional cooperation in the East, to be second-rate in comparison with the western vector of their foreign policy.

It also came to be true that "in the trade-economic sphere, competitive positions of Ukrainian goods will worsen in the markets of neighbouring countries, in conjunction with the prospect of imposing on them the EU single tariff, as well as the loss of possibilities of

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<sup>20</sup> Olena Malynovska, 'EU Enlarged, Schengen Implemented: What Next? Political Perspectives for Ukraine', (Budapest: Local Government and Public Service Reform Initiative, 2004), p. 4.

independently regulating their trade regimes with Ukraine, cancellation of free-trade agreements with Ukraine and Baltic countries, expansion of anti-dumping measures against Ukraine, etc.”<sup>21</sup>

The advantages of the enlargement might be no less weighty, but so far they remain much less palpable. Most of the advantages manifest as opportunities to be jumped at and developed, and as such, require vision, purposefulness and, generally, reciprocity on the partners’ side. As a neighbour of the enlarged EU, Ukraine has a good opportunity to intensify its economic relations with the Union and to eventually join the European free trade zone; to develop various transportation projects (Odesa–Brody–Gdansk pipeline among them), to enhance regional and transborder cooperation within Euroregions (Buh, Upper Prut, Lower Danube, Carpathian), and of course, to get the strongest support for reforms in the area of justice and home affairs (JHA). JHA is the EU’s major concern with regard to the new neighbourhood and manifests in various types of assistance and cooperation in combating illegal migration and organized crime, enhancing border security and protection of travel documents, training personnel and developing databases, and so on.

Another potential advantage, evident in the case of Poland, is the greater sympathy and increased support that the new EU member states have for Ukraine; they know Communism not only from the works of Karl Marx and associate Russia with more than Dostoevsky and the Bolshoy Theatre.

And last but not least, Ukraine gains the advantage of being exposed, as never before, to the attraction of the ‘European magnet’ – with its high standards of democracy, rule of law, business and labour, human rights, and so on.

There is no doubt that Ukrainian and EU priorities with relation to the new neighbourhood diverge significantly, and that the Wider Europe initiative elaborated in Brussels reflects much better the interests of the stronger partner – to the great disappointment of the weaker. But the silver lining of the EU’s ambiguity is that its policies typically vary between minimalist and maximalist conceptions. “The Commission’s paper [on the Wider Europe] is itself at the minimalist end of the spectrum”.<sup>22</sup> It is up to Ukraine therefore to broaden the spectrum and to make full use of its ‘maximalist end’.

### **3.2.2 The Wider Europe initiative: trumps and traps**

The European Commission’s ‘Wider Europe’ Communication, of March 2003, was a relatively late attempt to grapple with the consequences of the forthcoming enlargement that would leave the EU ‘bordered by odd neighbours’.<sup>23</sup> The new neighbours are seen primarily as ‘soft threats’ – sources of illegal migration and refugees, arms and drug trafficking, illicit trade and organized crime, potential ecological catastrophes, inter-ethnic conflicts, and epidemic diseases. They are not considered potential candidates to the EU, in however remote a future. The North African and Middle East countries have been written off simply because they are not located within geographic Europe; while the East European nations of Ukraine, Belarus, and Moldova have been whimsically removed from Europe by assigning them to so-called Eurasia – a politically charged term that in popular discourse means little more than ‘greater Russia’, which effectively excludes the western New

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<sup>21</sup> Malynovska, ‘EU Enlarged, Schengen Implemented’.

<sup>22</sup> Michael Emerson, *The Wider Europe Matrix*, (Brussels: CEPS, 2003), p. 24.

<sup>23</sup> Mungiu-Pippidi, ‘Beyond the New Borders’, p. 49.

Independent States from Europe proper and places them in a nebulous Russian sphere of influence.

The EU has chosen the minimalist or middle way; that is, toward a policy of containment rather than engagement with its new neighbours. The maximalist approach in this case would have meant the full use of resources and incentives to prevent a new division of the continent into a rich stable core and a poor unstable periphery. As long as a huge difference exists in the quality of life on the two sides of the border, there will always be enormous pressure from the 'Rest' to penetrate into the 'West'. At a glance, in this context the minimalist approach looks much simpler. However, in fact, the measures are in effect a new iron curtain that protects the in-group against the out-group, the European haves against the non-European have-nots. Or, as a Romanian scholar has commented with irony, a 'new wall . . . separates Europe from the "desert of the Tatars" to its east', as 'the primordial and immediate interest of EU Europe as regards wider Europe is clear: Guard the borders east and south to prevent immigration and other unwanted flows from and through these marginal countries'.<sup>24</sup>

Such an approach however is very dubious from a moral standpoint as it subverts the very principles upon which the Western liberal democratic world is built. This world, of course, is very inventive in finding convincing excuses and sophisticated ways to bypass some principles or to accommodate them to a daunting reality. But even in purely practical terms, besides the questionable commitment to elevated words and exalted ideals, the minimalist approach may ultimately require even more resources than its maximalist alternative. In the modern world where security threats have been globalized, firm borders tend to be increasingly less effective against such threats. 'Hard borders are not even very useful for combating cross-border crime. Most experts agree that improving police and security cooperation between countries is a more efficient alternative than hiring lots of border guards or buying expensive surveillance technology'.<sup>25</sup>

The European Neighbourhood Policy tries reasonably to combine both approaches, paying more attention, however, to the symptoms of the disease (cross-border crime and other 'soft threats') than to its causes (political, cultural, and economic exclusion of the neighbouring countries).

#### *a) European Neighbourhood Policy*

The European Neighbourhood Policy outlines a great number of measures that, if implemented coherently and with proper incentives, could serve the maximalist requirements of the EU and Ukraine. The measures comprise:

- extension of the Internal Market and regulatory structures,
- preferential trading relations and market opening,
- perspectives for lawful migration and movement of persons,
- intensified co-operation to prevent and combat common security threats,
- greater EU political involvement in conflict prevention and crisis management,
- greater efforts to promote human rights, further cultural co-operation and enhance mutual understanding,
- integration into transport, energy and telecommunications networks and the European Research Area,

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<sup>24</sup> Mungiu-Pippidi, 'Beyond the New Borders', p. 53.

<sup>25</sup> Jan Zielonka, 'Challenges of EU Enlargement', *Journal of Democracy*, vol. 15, no. 1 (2004), p. 29.



- new instruments for investment promotion and protection,
- support for integration into the global trading system,
- enhanced assistance, better tailored to needs, and
- new sources of finance.<sup>26</sup>

The ENP, however, was met in Ukraine with great reserve, not only by the oligarchy, who are the least interested in ‘EU political involvement’ and ‘efforts to promote human rights’, but also by the democratic and strongly pro-European opposition. The primary criticism was of the document’s conceptual flaws: ‘the Commission’s non-readiness to formulate Eastern European policy as a separate agenda based on the recognition of the specific character of relations with nations that historically and geographically belong to Europe. . . . Direct contextual binding of Eastern European policy with the Mediterranean and Middle East one can be regarded as an unfriendly intention aimed to separate this part of Europe from the rest of countries integrating into the EU. This binding is an evident political and psychological mistake of the document’s authors.’<sup>27</sup>

Borys Tarasiuk, the new Ukrainian minister of foreign affairs, was a leader of the opposition when he first expressed his disappointment with the ENP: ‘We do not understand why the EU puts Ukraine together with Russia and Belarus, which do not express a desire to become EU members. We do not understand why Ukraine is placed in the group of the so-called EU neighbours along with the North African countries and the countries of the Middle East. We do not understand the EU policy, which is called the “European Neighbourhood Policy”, in which Ukraine is included. . . . [I]f the EU is developing [such] policies towards Ukraine, it becomes evident that we are not perceived as a country that is part of the European continent. Otherwise, this strategy would have been called the “EU Neighbourhood Policy”.’<sup>28</sup>

From an Ukrainian perspective, the ENP is a clear improvement over the PCA and the Common Strategy, which have long been criticized as being too static, as having no potential to evolve and for transferring problems of transition entirely to the country itself.<sup>29</sup> The ENP envisages that ‘in return for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms, including aligning legislation with the *acquis*, the EU’s neighbourhood should benefit from the prospect of closer economic integration with the EU. Specifically, all the neighbouring countries should be offered the prospect of a stake in the EU’s Internal Market and further integration and liberalization to promote the free movement of persons, goods, services and capitals (four freedoms). If a country has reached this level, it has come as close to the Union as it can be without being a member.’<sup>30</sup>

The idea that a country may become ‘more than partners but less than members’ and ‘share everything but institutions’ may be attractive for nations of North Africa and the Middle East, who lay no claim to Europeanness. But for Ukrainians, who have long been denied their nationality and branded as ‘Little Russians’ (even today some French top

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<sup>26</sup> European Commission, *Wider Europe Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, Brussels, 11.03.2003, COM(2003) 104 final, pp. 10–14, available at [http://europa.eu.int/comm/world/enp/pdf/com03\\_104\\_en.pdf](http://europa.eu.int/comm/world/enp/pdf/com03_104_en.pdf).

<sup>27</sup> Sushko, ‘Viva Enlargement!’.

<sup>28</sup> ‘*Our Ukraine*’ Press, 16 June 2004, at [www.razom.org.ua](http://www.razom.org.ua).

<sup>29</sup> Kuzio, ‘A Turning Point in 2004?’, p. 20.

<sup>30</sup> European Commission, *Wider Europe Neighbourhood: A New Framework*.

officials are not certain about the issue<sup>31</sup>), the problem of Europeans has enormous symbolic importance. It goes far beyond politics and economy. For many Ukrainians, a 'return to Europe' is the only way to become definitively decoupled from Russia and to firmly secure their separateness, not just on political maps but also on mental maps of Europe. In this peculiar context, the very denial of European prospects is morbidly perceived by Ukrainians as denial of their identity and, implicitly, of their right to exist beyond 'greater Russia'.

Therefore, Ukrainians criticize the ENP primarily for its conceptual duplicity, rather than flaws in substance. First, they believe that the notion of 'integration not accession', which lies at the heart of the 'Wider Europe' Communication, fails to take into account the differing positions on EU membership of the four western CIS states and treats them all uniformly as if they shared Russia's objective of non-membership. And secondly, they perceive the application of the 'Mediterranean' rather than 'Balkan' model of integration to the Western New Independent States as more evidence of notorious Western double standards.<sup>32</sup>

Still, there are experts who dismiss the ENP as 'a very strange, ambiguous creation', not only because it extends the notion of Wider Europe to North Africa and adds a new category of countries to the new European architecture – 'countries, which are the least of all wanted in the EU'; but also because they see the ENP as a typical Western trick 'to keep Ukraine anchored to the EU but at a distance, with commitments from the Ukrainian side and no binding commitments and free hands from the side of the EU', 'to promise no incentives or clear prospects, to describe actions in such a form that would enable the EU to always argue that not everything has been done yet.'<sup>33</sup> However, proving or disproving these allegations requires a closer look at the practical, substantial part of the ENP, reified in the Action Plans.

#### *b) EU-Ukraine Action Plan*

The 'Wider Europe' Communication of March 2003 envisaged action plans as 'key policy instruments of the EU for the relations with the neighbouring countries over the medium term'. In June 2003, the EU Council approved the main guidelines for elaboration of action plans within the framework of the Wider Europe concept. It stated that Action Plans 'should be political documents, building on existing agreements and setting out clearly the over-arching strategic policy targets, common objectives, political and economic benchmarks used to evaluate progress in key areas, and a timetable for their achievement which enable progress to be judged regularly. They should be concise, complemented where necessary by more detailed plans for sector-specific co-operation, and should inform EU country assistance.'<sup>34</sup>

Ukraine was the first of seven states in the Neighbourhood policy's 'first wave' to be assigned to cooperate with the EU according to an action plan (the other six countries were Moldova, Jordan, Israel, the Palestinian Authority, Tunisia and Morocco). Of the seven countries, only Ukraine and Moldova have expressed a desire to become EU

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<sup>31</sup> Personal communication with a Polish diplomat who witnessed an informal conversation between President Jacques Chirac and President Aleksander Kwasniewski in October 2004.

<sup>32</sup> Kuzio, 'A Turning Point in 2004?', pp. 20–21.

<sup>33</sup> Oleksandr Sushko, 'EU-Ukraine Action Plan: Unresolved Dilemmas', *Headlines and Comments*, no. 4 (2004), Centre for Peace, Conversion, and Foreign Policy of Ukraine, Kyiv, available at [www.foreignpolicy.org.ua/eng/papers/index.shtml?id=2820](http://www.foreignpolicy.org.ua/eng/papers/index.shtml?id=2820).

<sup>34</sup> Shushko, 'EU-Ukraine Action Plan: Unresolved Dilemmas', p. 3.

members and, as a result, are in need of a new policy from the EU. At present, only Ukraine and Israel, and perhaps Moldova, appear able to fully implement all the provisions of their action plans, including the sensitive issue of human rights.

To date, cooperation between the EU and Ukraine within the framework of previous action plans has been generally poor. The limited effectiveness of the action plans was determined, on the one hand, by the essential indifference of the EU towards a remote and little known country, which contributed a meagre 1% to the total volume of EU foreign trade. On the other hand, it was caused by the mostly 'virtual', declarative European integration pursued by Ukrainian authorities who were essentially hostile towards European values and standards.

The Partnership and Cooperation Agreement between the EU and Ukraine mainly regulated trade, and provided some opportunity for the exchange of information. The PCA provided little actual opportunity for elaborating and implementing practical steps. Political dialogue has also had limited scope for development of practical cooperation.<sup>35</sup>

The new Action Plan, designed within the European Neighbourhood Policy, intends to introduce bilateral mechanisms of cooperation, make its provisions more binding, and establish a clearer timetable, benchmarks and incentives. However, Ukrainian representatives complain that they still have a very limited possibility to influence the content of the document, that incentives remain very vague, and that the provisions of the document are much more binding for Ukraine than for the EU. The main disappointment with the Action Plan on the Ukrainian side is the EU's refusal to include any hint about Ukraine's possible EU membership.

Ukrainians have become lukewarm about the Action Plan (and the ENP in general). The elaboration of the document was delayed throughout the year,<sup>36</sup> and its adoption postponed a few times – until the presidential elections, which unexpectedly dragged on for three months, and then until the formation of a new government in Kyiv. Ukrainians pressed hard after the revolution to get more substantial concessions from the EU, and successfully bargained 11 amendments to the Action Plan that would ultimately help Ukraine secure market economy status and boost its chances of joining the World Trade Organization (WTO); loosen the draconian visa regime; and facilitate its participation and inclusion in EU programmes and agencies.

The major goal however remains unattainable. All Ukrainian demands and arguments notwithstanding, the EU would agree only to a smooth diplomatic formula to the effect that, with the successful implementation of the Action Plan within three years, the EU and Ukraine would upgrade their relationship to a new – unspecified – level: 'Consideration will be given to the possibility of a new enhanced agreement, whose scope will be defined in the light of the fulfilment of the objectives of this Action Plan and of the overall evolution of EU-Ukraine relations. The advisability of any new contractual arrangements will be considered in due time.'<sup>37</sup>

The informal agreement was reportedly reached that Ukraine would not bother the EU with a membership application until 2007, while the EU would avoid any statements that might be perceived as a denial of Ukraine's EU prospects.<sup>38</sup> Ukrainians therefore would have three more years to prove their commitment to European values and pro-

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<sup>35</sup> Shushko, 'EU-Ukraine Action Plan: Unresolved Dilemmas', p. 1.

<sup>36</sup> See Andrew Beatty, 'Ukraine Threatens to Reject New EU Deal', *Euobserver*, 11 June 2004.

<sup>37</sup> See at [http://www.delukr.cec.eu.int/data/doc/Proposed\\_Action\\_Plan\\_EU-Ukraine.pdf](http://www.delukr.cec.eu.int/data/doc/Proposed_Action_Plan_EU-Ukraine.pdf).

<sup>38</sup> Tom Warner and Stefan Wagstyl, 'Ukraine Accepts Long Wait to Join European Union', *Financial Times*, 30 December 2004; and Mark Landler, 'Ukraine's New President Asks for Help at Economic Meeting', *The New York Times*, 29 January 2005.

European reforms. While Europeans would have three years to get accustomed to a new neighbour who has no less right or reason to become a member than Turkey, Albania, or Macedonia.

The compromise can be interpreted as a diplomatic victory for the EU who, as the stronger partner, imposed its will on the weaker party, taming the very people who a few months earlier rejected the ENP and AP as thoroughly unacceptable. But in moral and psychological terms, the Ukrainians may be proud of the dubious compromise. They displayed pragmatism, despite their frustration, and quite reasonably opted for a bird in the hand instead of two in the bush. Now the EU will have to answer – if only Ukrainians keep on reforming their country.

#### **4. Towards the free movement of persons: challenges and responses**

As mentioned earlier, the European Neighbourhood Policy contains no references to the ‘four freedoms’ that were initially envisaged by the ‘Wider Europe’ initiative as a long-term objective for EU neighbours. The ambitious goal of sharing with the new neighbours ‘everything but institutions’, proclaimed in March 2003, had faded away by May 2004, not to resurface in subsequent action plans.

Of the ‘four freedoms’, the free movement of persons is the most difficult for the new neighbours to achieve and the least desirable for the EU members to concede. On the one side, the growing free movement of goods, services, and capital in the global economy requires a similar growth in the free movement of people. On the other side, such a move is at odds with public opinion in ‘first world’ countries concerned about declining social benefits and obsolescent welfare systems and, to make bad things worse, life in a near permanent state of emergency after the events of 11 September 2001 in the United States and 11 March 2004 in Madrid.

Any prospect to dismantle border controls and increase permeability of frontiers evokes strong anxieties about a skyrocketing of irregular immigration and transnational organised crime, let alone threats of international terrorism. This general trend in public opinion is reflected in many member states by a growth in support of rightwing political parties that advocate anti-immigration agendas, and is also illustrated in the results of the last European Parliament elections in June 2004. As a result, JHA issues and in particular policies associated with border control have become major political concerns: ‘The EU Action Plan on JHA with Ukraine of December 2001 provides for this and in the Ukraine Country Strategy Report 2002–2006,<sup>39</sup> improved border management and infrastructure were stated as fundamental goals in order to efficiently fight against illegal immigration, trafficking in human beings and smuggling of drugs. So far, however, measures to secure frontiers have prevailed over measures to sustain the free movement of people.’<sup>40</sup>

It is the free movement of people, however, that provides – as an ultimate goal – a sufficient incentive for the new neighbours to cooperate with the EU on a great number of security issues that are primarily of the EU’s concern and much less of its neighbours’. It is also this very freedom (or lack of it) that affects people’s lives in the most visible and immediate way, giving them a sense of inclusion or, alternatively, exclusion and, in the

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<sup>39</sup> Country Strategy Paper 2002–2006, National Indicative Programme 2002–2003, Ukraine, 27 December 2001. See also the National Indicative Programme for Ukraine, adopted by the European Commission on 4 August 2003.

<sup>40</sup> Joanna Apap, Sergio Carrera and Kemal Kirişci, *Turkey in the European Area of Freedom, Security and Justice*, EU-Turkey Working Papers no. 3 (Brussels: Centre for European Policy Studies, 2004), p. 38.

latter case, proves to be much more harmful – psychologically, politically, and culturally – than all the accompanying economic disadvantages.

Thus, this very freedom cannot be written off as too untimely and remote a goal, or perhaps too unattainable and idealistic. Nor should it be reduced to the non-binding statement that presently appears in the ENP, ‘the European Union may also consider possibilities for visa facilitation’, after what is a vague and rather marginal promise to introduce ‘regulations on the establishment of a local border traffic regime’, which ‘will, if adopted, make it possible for border area populations to maintain traditional contacts without encountering excessive administrative obstacles’.<sup>41</sup>

Without doubt, the security concerns raised by EU members are justified, and all the required technical, legal, political and other measures should be adopted and introduced to ensure visa facilitation. But the ultimate goal should be stated clearly, and all the proper criteria and benchmarks on the agreed road map should be unequivocally defined.

#### 4.1 Real and imaginary threats

In addition to various technical problems that will be considered in more detail below, there is another issue that tremendously hampers both the ENP in general, and the facilitation of the free movement of persons within this neighbourhood in particular. Paradoxically yet, this issue is absent from all the EU documents, including the ENP and action plans. The issue in question can be roughly defined as opinion making that includes all the ways and means and approaches employed to cover the highly sensitive issues of international migration and border controls and security.

The sensationalist approach that predominates in the mass media largely informs public opinion in the EU, fuelling unsubstantiated fears of East European mobs eager to sneak into the West European garden ‘to profit from the social security system to which they have not contributed and have no right’.<sup>42</sup> A scarcity of reliable statistics and impartial information contributes greatly to xenophobic mythmaking that is often based on purely speculative figures (like the 5–7 million Ukrainians allegedly working abroad, or 30–50% of the Ukrainian population allegedly willing to emigrate) and on imbalanced reports – like all the alarmist writing that flooded international media, for example, by the day of the EU big-bang enlargement:

Dorohusk, Poland – The message here at this gleaming border post overlooking the thickly forested banks of the Bug River is that Poland is ready.

Inside a spotless weapon room is a rack of snub-nosed Gliberyt automatic pistols, a Polish version of the famous Uzi. There are 9-millimeter pistols, boxes of bullets, two submachine guns and night vision goggles inside green canvas kits.

Outside is a Land Rover, motorcycles and two dogs trained to follow tracks in the woods. Not seen, but also available to protect this stretch of the 327-mile border between Poland and Ukraine, are snowmobiles, a helicopter and a patrol plane . . .

‘There was a belief that hordes of illegal migrants are waiting outside our borders and that our controls were inefficient’, said Jan Turczynski, Poland’s chief European Union negotiator.<sup>43</sup>

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<sup>41</sup> European Commission, *European Neighbourhood Policy: Strategy Paper*, p. 17.

<sup>42</sup> Danuta Huebner, ‘Frontiers and Boundaries in an Integrating Europe’, in Rachel Fearey and George Kolankiewicz (eds.), *Europe 2021: Beyond Visible and Invisible Borders*, SSEES Occasional Paper, no. 53. (London: British Council and School of Slavonic and East European Studies, 2001), p. 28–29.

<sup>43</sup> *The New York Times*, 25 April 2004.

The above excerpt is from the respectable *The New York Times* and represents the typical rather than the exceptional way of addressing the issue. It may be compared with a twin-article from the British *Observer*, cooked apparently following the same recipe:

Come May Day, the edge of the edge of Europe . . . Here [at the little village of Horodlo] is the easternmost point of a new 2,400-mile frontier of the European Union.

...

Springtime is stirring in the little park in Horodlo and in the Sparrow pub, to which Darek and Monika have returned from Warsaw, hoping the frontier will mean new business. 'They're bringing in 40 extra policemen just for our little village', says Monika, 'to add to the two we have at the moment. And that's in addition to the border guards'.

'They've been chasing out the Ukrainians', says Janusz who keeps the mini-market, 'because the Ukrainians bring in smuggled cigarettes to sell for two zlotys (28p), while we have to sell them for five. Now people will have to come to us for a smoke'.

The border of the new EU is both porous and harsh. Upriver, what they call the new 'Velvet Curtain' is being drawn, on Brussels insistence – a necklace of new guard posts manned by thousands of newly recruited armed men.<sup>44</sup>

From such reporting, few readers would ever think of the Easterners on the other side of the border as human beings, engaged, in fact, in activities and business other than smuggling cigarettes and challenging European Land Rovers, helicopters and snowmobiles. Some of the Easterners build aircrafts and teach students, translate European poetry and direct symphonic orchestra; surprisingly, all of them are literate, and most of them educated, employed, and strongly attached to their homeland.

The tenets of honest journalism require the mass media to present the other side of the coin, no matter however catchy and marketable the first side might be. So far, only the Polish mass media present balanced reporting on the 'new neighbourhood' – which is not surprising as, in most cases, Polish politicians are the few who are honest and coherent in their approach towards their eastern neighbours. The Polish mass media never avoid hot issues (and there are more hot issues between Poland and Ukraine than probably anywhere else in Europe). Nor do they refrain from good words about the diligence of Ukrainian agricultural workers – even if they work illegally. They do not blame Ukrainian teachers in remote Polish villages for the country's high unemployment; and they do not reduce eastern aliens to the caricatured images of *The New York Times* – perhaps because they know that the Neighbourhood is not just about chasing Ukrainians out with Polish versions of the Uzi and dogs trained to follow tracks in the woods:

The Ukrainian tourist is a guest who is very much awaited in Poland [Polish radio quotes a government official]. Today we have almost 2m tourists from Ukraine, tourists who come to our country above all for rest. This is a prosperous tourist, a tourist who spends relatively a lot of money in Poland. Zakopane [leading southern mountain resort] and the south of Poland today in great measure live from Ukrainian tourists. But Ukrainian tourists ever more frequently come to the Polish coast, to the Tri-City.<sup>45</sup>

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<sup>44</sup> *Observer*, 18 April 2004.

<sup>45</sup> Polish Radio 1, Warsaw, in Polish, 30 June 2005; BBC Monitoring Service, UK, in English, June 30, 2005.

As a matter of fact, recent studies reveal that only 6% of Ukrainians express an intention to emigrate,<sup>46</sup> and only 13% have valid international passports – a far cry from a mass exodus from an impoverished country.<sup>47</sup> Again, the poverty in Ukraine is a very relative notion (if compared with Africa or South Asia). A nominal average monthly salary in Ukraine of \$112 is, in adjusted purchasing capacity, 5.6 times higher.<sup>48</sup> In practical terms this means that an inhabitant of Kyiv, where the average salary is 2,000–3,000 hryvnas a month, can afford more or less the same standard set of goods and services as an inhabitant of Moscow, Athens, or Lisbon. Little surprise then, that the capital city itself is a powerful magnet for labour migrants, from both Ukraine and abroad (mostly from Asia). Such a ‘buffer’ apparently cushions the flow of labour-seekers to the West. While the unemployment rate in Kyiv is next to zero, only 2% of the surveyed city inhabitants expressed an interest in working abroad – but only legally and mostly as professionals or specialists.

In sum, the Ukrainian immigration ‘threat’ is largely exaggerated. In actuality, reliable studies prove that there are about one to two million Ukrainians working abroad, both legally and illegally.<sup>49</sup> Nearly half of them (41–45%) work in Russia, about 18% in Poland, and about 11% in the Czech Republic. In all these cases, not only geographic closeness (cf. the limited number of Ukrainians working in neighbouring, visa friendly Hungary), but also language and cultural proximity prove to be more important considerations for Ukrainians than higher salaries in the West. As destinations for Ukrainian *gaestarbeiters*, Western countries lag far behind Ukraine’s immediate neighbours: only about 11% of Ukrainian *gaestarbeiters* work in Italy, 9% in Germany, 7% in Portugal, and 7% in Spain.<sup>50</sup> In real numbers, this works out to around 100,000 workers, and certainly not more than 200,000, in each country.

Virtually all the *gaestarbeiters* work hard and raise no claims to Western welfare benefits. Most of them have no intention to stay permanently in their host country but typically return to their families in Ukraine and invest the money earned abroad in housing, their children’s education, or a business. Even those few who decide to stay permanently abroad usually integrate into the host society; that is, they do not create ethnic

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<sup>46</sup> Vira Kovtykha, ‘Zavizovane prynyzhennia’ [‘Rubber-stamped visa humiliation’], *Den*, 24 June 2005, p. 7.

<sup>47</sup> Joanna Konieczna, *Unia i Rosja. O planach migracyjnych Ukraińców* [EU and Russia. Migration plans of Ukrainians] (Warszawa: Fundacja Batorego, 2004), p. 4. Cf. the conclusion made by the same reputable sociologist: ‘Research reveals that there are no reasons to fear a new wave of labour migration from Ukraine. It seems that everybody who wanted to move, has moved. In the meantime, the great majority of citizens is absolutely not interested in issues related to searching for a job abroad. The group of travellers is rather narrow, albeit very active.’ (p. 10).

<sup>48</sup> Volodymyr Yatsenko, ‘Sotsialne strakhuvannia’ [‘Social insurance’], *Dzerkalo tyzhnia*, 18 June 2005, p. 11. The methodology is employed by the World Bank ([www.worldbank.org](http://www.worldbank.org)). In 2003, its experts calculated Ukrainian GDP per capita in terms of adjusted purchasing capacity at \$5,430 – while its nominal size, at a speculative rate of UAH against USD, was just about \$1,000. Today, a Deutsche Bank expert has come to a similar conclusion: ‘At EUR 1,200 at market prices, income per capita [in Ukraine] is not even half as high as in Russia, Romania and Bulgaria. . . . Measured in terms of purchasing power parities, though, per capita income rises to roughly EUR 5,000.’ (Moritz Schularick, ‘Ukraine: The Long Road West’, Deutsche Bank Research, Frankfurt, 27 May 2005).

<sup>49</sup> As suggested by Konieczna, *Unia i Rosja* [EU and Russia], p. 3. A Ukrainian analyst from the Kyiv-based Centre for Peace, Conversion, and Foreign Policy of Ukraine has arrived at the same figures, presuming however that during the season of agricultural work there could be up to 2.5 million Ukrainians working abroad. See also, Andriy Starodub, ‘People and Digits: Current Ukrainian Labour Migration in Terms of Electoral Wars’, *Headlines and Comments*, no.4 (2004), available at [www.foreignpolicy.org.ua/eng/papers/index.shtml?id=3972](http://www.foreignpolicy.org.ua/eng/papers/index.shtml?id=3972).

<sup>50</sup> Konieczna, *Unia i Rosja* [EU and Russia], p. 5.

ghettos or display welfare parasitism, and certainly do not prove susceptible to religious fundamentalism and Al-Qaida propaganda. Ironically, the countries where Ukrainian workers are most present are much less fearful of the ‘Ukrainian invasion’ than those countries where Ukrainian workers are virtually absent. It was primarily Poland, Portugal and Spain who legalized Ukrainian illegal workers and signed agreements with the Ukrainian government that regulate inflow, employment and return of Ukrainian, mostly seasonal, labourers.

Xenophobia is primarily a biological phenomenon. It derives from a basic instinct that can either be controlled or not: that can be tamed by culture and education, or released and exploited by populist ideologies and political forces. The latter is certainly much easier to employ, so it should be little surprise that the populist media and glib politicians make a scarecrow of the ‘Polish plumber’ who allegedly takes all the jobs from diligent Frenchmen; and blame the allegedly ‘soft’ visa regime that reportedly facilitated a large-scale import of Ukrainian prostitutes to Germany in 1999–2001, even though at the same time dozens of reputable Ukrainian professionals – scholars, journalists, businessmen – were denied visas: a clear sign that it was not a matter of ‘softness’ but, rather, of large-scale corruption, in which German officials had been apparently involved.

It is clearly not so easy to influence dominant public discourses, but the problem should certainly be addressed and a degree of political correctness and professionalism established through the joint efforts of politicians, journalists, experts, governments and, of course, public intellectuals. Otherwise, not only the ENP but any effective international policy will be heavily prejudiced and jeopardized.

## 4.2 Neighbours’ experience

Although all references to the ‘four freedoms’ have been removed from the ENP, a possible basis for negotiating the free movement of persons is the vague promise to ‘consider possibilities for visa facilitation in the event that such a move is ‘matched by effective actions’ by a neighbour.<sup>51</sup> The EU-Ukraine Action Plan, adopted in February 2005, contains more specific formulae on the issue:

In the context of EU enlargement and the European Neighbourhood Policy, a constructive dialogue on visa facilitation between the EU and Ukraine will be established, with a view to preparing for future negotiations on a visa facilitation agreement, taking account of the need for progress on the ongoing negotiations for an EC-Ukraine readmission agreement.

According to the JHA Action Plan, the EU Council should review the operation of this Action Plan towards the end of 2005, and may decide to carry out further reviews in relation to this matter. Based upon such reviews and developments in Ukraine, new objectives and actions could be considered to be added to the Action Plan with Ukraine in the context of the European Neighbourhood Policy.<sup>52</sup>

An 11-point list of additional measures, bargained for by the Ukrainian government after the revolution, largely repeats the provisions already contained in the Action Plan without expounding further on visa facilitation:

With regard to negotiations to be held between the EU and Ukraine before the next EU-Ukraine summit, options should be considered in which way and in which

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<sup>51</sup> European Commission, European Neighbourhood Policy: Strategy Paper, p. 17.

<sup>52</sup> Proposed EU-Ukraine Action Plan, 12.9.2004, p. 20.



framework the granting of visa may be facilitated while complying strictly with security requirements. In this context, progress in the ongoing negotiations on an EU-Ukraine readmission agreement will remain essential. The EU will continue to assist Ukraine in implementing the JHA Action Plan and the scoreboard.<sup>53</sup>

It is clear that EU internal security is the major condition for visa facilitation with Ukraine. Readmission agreements are also central to facilitation. A number of other measures should be implemented by countries seeking to exempt their nationals from EU visa requirements.

First of all, countries should be politically and economically stable; that is, they should not generate any significant number of migrant workers, let alone political refugees. Second, countries should have effective border control and visa systems, and the necessary technical capacity to protect their territory from undesirable aliens and to prevent their transit to the EU. Third, countries should have effective legal systems to combat illegal migration and, at the same time, to deal with asylum seekers and refugees. Fourth, they should have the administrative capacity to enforce relevant laws and decisions, and prevent them from being sabotaged or bypassed by ubiquitous corruption. And fifth, countries should pay special attention to ‘confidence building’ with the EU, since visa facilitation and, ultimately, removal of visa requirements, depends not only on the technical issues listed above but also on mutual trust between leaders of the EU and third countries. By and large, visa facilitation is a political decision – as the experience of many East European countries graphically proves. The East European countries signed readmission agreements with the EU after accession negotiations had already begun, but prior to negotiations they implemented comprehensive national strategies aimed at exempting their nationals from EU visa requirements. Furthermore, they paid due attention to meetings with EU leaders, informing them about their efforts and the results achieved.

Bulgaria, similar in many ways to Ukraine, was removed from the Schengen negative list in 2001, after the European Commission assessed a wide range of criteria on matters such as illegal immigration, public policy, security, the European Union’s external relations, and the implications of regional coherence and reciprocity.<sup>54</sup> The decision was based on three major considerations:

On the legal framework and administrative practice at the Bulgarian borders, the report noted that the following reforms were decisive for the lifting of the visa requirements: the introduction of new passports that meet the EU requirements, the abolition of facilities for issuing visas at the border, the establishment of criminal sanctions for irregular border crossing and forged documents as well as for the facilitation of illegal immigration, etc. [...]

On the repatriation of Bulgarian nationals, the Commission noted as a key factor that Bulgaria had bilateral readmission agreements in force with 10 member states and six other states. Indeed, the signing of bilateral readmission agreements with each of the EU member states was of primary importance.

Other additional national reforms that were taken by Bulgaria included better computerised control systems at border posts, an action plan with [the only EU member neighbouring Bulgaria] Greece and more legislation containing penalties on carriers who take persons out of Bulgaria.<sup>55</sup>

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<sup>53</sup> *CEPS Neighbourhood Watch*, no. 1 (February 2005), p. 4.

<sup>54</sup> Apap et al., *Turkey in the European Area of Freedom, Security and Justice*, p. 40.

<sup>55</sup> Apap et al., *Turkey*, p. 40.

Of course, the experience of East European countries has limited relevance for Ukraine, for a number of reasons, of which the most serious are: (a) the Russocentrism dominant in the West, which in practice manifests as a strong anti-Ukrainian bias; and (b) the internal crisis of the EU, which strongly restrains proactive policy in the 'neighbourhood'. 'Alas for Ukraine', the experts sardonically conclude, 'it is the case that any state aspiring to membership of the EU will be judged according to higher standards than those the most recent new Member States were required to adhere to'.<sup>56</sup>

This does not mean that all efforts are doomed, but only that much more active, flexible, and comprehensive policy is now required from Ukraine if it is to achieve what its East European neighbours achieved with the EU's support and encouragement.

### **4.3 Options for the Ukrainian government**

Three priority measures of the Action Plan may have a direct impact on visa facilitation, and the eventual lifting of visa requirements from Ukrainian citizens:

- Establishing a constructive dialogue on visa facilitation between the EU and Ukraine, with a view to preparing for future negotiations on a visa facilitation agreement, taking account of the need for progress on the ongoing negotiations for an EC-Ukraine readmission agreement.
- Gradual approximation of Ukrainian legislation, norms and standards with those of the European Union that also requires to reinforce administrative and judicial capacity;
- Encourage dialogue on employment issues and best endeavours, in accordance with the PCA, to ensure that treatment of migrant workers does not discriminate on grounds of nationality.<sup>57</sup>

The policy options that follow below are largely drawn from the Action plan's priority measures but have been elaborated in more detail for the purposes of this paper. Moreover, these options aim not only to mitigate, in the short to medium term, the negative consequences of EU enlargement for Ukraine, as the Action Plan suggests. They also strive to promote, in the medium to long term, the free movement of people between the EU and Ukraine, within the framework of Ukraine's stated drive towards EU membership.

The general approach to visa facilitation with the EU should be based on a clear understanding that it is Kyiv, not Brussels, who is pushing hard for Ukraine's 'European integration', and therefore, it is Kyiv who should be expected to make more concessions and prove its greater commitment. Many policy solutions could and should be asymmetrical, and reciprocity from the EU may not come quickly, if ever.

#### **4.3.1 Visa policy**

Ukraine's complicated visa regime is a key problem, and was a concern in 2005, for example, for the organisers of the Eurovision song contest in deciding whether or not to hold the event in Ukraine. By the same token, the visa regime may influence decisions on a number of similar issues, like whether to make Kyiv the Cultural Capital of Europe in

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<sup>56</sup> Roman Wolczuk, Grzegorz Gromadzki, Oleksandr Sushko, Marius Vahl, and Kataryna Wolczuk, *Will the Orange Revolution Bear Fruit? EU-Ukraine Relations in 2005 and the Beginning of 2006* (Warsaw: Stefan Batory Foundation, 2005), p. 18, available at <http://www.batory.org.pl/doc/orange.pdf>.

<sup>57</sup> Proposed EU-Ukraine Action Plan, 12.9.2004, p. 3.

2010, to hold a European Football Cup in Ukraine (jointly with Poland) in 2012, and so on. The visa regime might be even more harmful for Ukrainian business and tourism. Even so, the main consequence is by far symbolical and psychological. If Ukraine really wants to decouple itself from Russia and other post-Soviet authoritarian regimes, which still use restrictive visa policy to bar politically undesirable visitors from the West, it should unilaterally remove visa requirements for EU citizens as well as for citizens of developed countries who pose no threat as potential economic immigrants.

The first steps of this sort were made in 2001, when Ukraine revoked the requirement for foreigners to be registered within three days of arrival (now they can stay in Ukraine up to three months without registering), and entitled citizens of the EU, USA, Canada, and Japan to apply for Ukrainian visas without need for a formal invitation from Ukraine.<sup>58</sup> Also, in August 2004, the Cabinet of Ministers of Ukraine entitled Ukrainians with foreign citizenship to free multiple-entry visas.

In May 2005, Ukraine temporarily abolished visa requirements for EU and Swiss nationals and, in July, declared permanent the visa-free regime for these nationals. Also, in the same month, the Ukrainian government abolished visa requirements for US citizens – in response to a substantial (by more than one-third) reduction of visa fees for Ukrainian citizens and endorsement of long-term (up to 5-year) multiple-entry visas for second-time Ukrainian visitors to the USA with positive records.

The Ukrainian government firmly believes that the eventual benefits from the removal of visa requirements will exceed the reduction in revenue – both directly, due to a boost for business and tourism, and indirectly, due to the country's improved image abroad. For Ukraine, at the moment, it would be too much to expect reciprocal abolishment of visa requirements for its nationals by the EU; however, it should be possible to negotiate cost-free European visas for Ukrainian citizens. If the EU were to deny Ukraine this concession, rather than reintroduce visa requirements for EU nationals, the Ukrainian government should follow the Turkish example and establish an entrance fee to be paid at border crossings.

Moving towards a visa-free regime with the EU, Ukraine should bring its visa policy in relation to third-country nationals in line with the Schengen requirements. Since the end of 1999, Ukraine uses visa stickers with a relatively high level of protection against forgery, which can be further upgraded to EU standards. But an even more immediate task would be to apply EU criteria for granting (or denying) visas to third-country nationals. Ukraine should be prepared to use EU databases containing information on common security threats, suspicious and blacklisted persons, etc.

Ukraine's relations with its non-EU neighbours, in particular with Russia, represents a delicate issue. The Ukrainian government would do well to maintain visa-free regimes with these countries as long as possible for both political and humanitarian reasons. To avoid political speculations on the issue, the Ukrainian government should state clearly that even after Ukraine's hypothetical accession to the EU in some remote future, Ukraine (a) would apply the simplified, 'Polish' visa policy to its neighbours; and (b) would support measures that facilitate removal of visa requirements from Russian citizens (and other European post-Soviet countries, which would not have become EU members by that time).

At the same time, the Ukrainian government should stipulate firmly that travel documents must have sufficient protection against forgery. In practical terms, this would require Russian citizens entering Ukraine to use only quality international passports –

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<sup>58</sup> Presidential Decree on Additional Measures as Regards Realization of the Human Right to Freedom of Movement and Free Choice of Residence, 15 June 2001, available at [www.gov.ua](http://www.gov.ua).

instead of the low-security internal passports and other dubious identification documents broadly employed now. (In fact, such a requirement was introduced in both Kyiv and Moscow for Russian and Ukrainian nationals respectively in 2001, but implementation has been postponed many times since). Finally, border control should be substantially tightened, an issue that will be considered in the next paragraph.

### 4.3.2 Border management

Ukraine has two types of borders that originate from different political settings in the past and fulfil rather different functions in the present. The old Soviet border, which now separates Ukraine and the EU, still bears the features of Soviet totalitarianism including barbed wire, iron gates to regulate traffic, and Soviet-style border procedures that seem to be deeply embedded in the mentality and behaviour of the border personnel. The new, post-Soviet border that emerged between Ukraine and Russia and Belarus remains poorly demarcated and randomly guarded. The personnel here, however, are not much different from that at the other border: both customs and border officers tend to treat visitors as nuisances, if not a source of personal profit. These features of Ukrainian borders badly hurt the nation's image and have numerous other negative consequences. Recommendations for improving the management of the borders follow below.

First, selection, training, and supervision over personnel should be significantly improved. A large number of border guards should be transferred from Ukraine's western border to its much less secure eastern border. Moreover, salaries of customs and border officers should be raised severalfold – a move that would return a hundredfold to the state coffers. Agreements on joint border-checks should be negotiated and implemented with all neighbours. Such a model, as a Polish-German experience proves, reduces overall waiting time at the border, puts pressure on counterparts to speed up controls, reduces corruption and more generally helps to change the mentality of border personnel.<sup>59</sup>

Second, substantial investment should be made in border infrastructure: improving border facilities, establishing new border crossings, and other measures that would facilitate transborder transportation. At present, the average time needed to cross the Polish-Ukrainian border, with customs and passport checks on each side (for a total of four checks), either by private car or public commuting buses, is 2 to 4 hours, and sometimes 5 to 6 or more. If properly organized, waiting time at the border should not exceed one hour, which is never the case. In a recent survey, both Ukrainian (42%) and Polish (32%) respondents said that Ukrainian customs and border officers are responsible for deliberately creating a queue to allegedly exert bribes. (Many people admit that 'speeding up', or bypassing, the queue costs around 30 euro).<sup>60</sup>

Third, special attention should be paid to tightening the post-Soviet borders, primarily the borders with Russia and Moldova (specifically, Moldova's secessionist part – Transnistria, a 'black hole' for all sorts of smugglers and other criminals).<sup>61</sup> Until the year 2000, these borders had been virtually open, with checkpoints established only on major

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<sup>59</sup> Grzegorz Gromadzki et al. (eds.), *More than Neighbours: The Enlarged European Union and Ukraine – New Relations* (Warsaw: Stefan Batory Foundation, 2004), p. 86.

<sup>60</sup> Viktor Zamiatin (ed.), *Pereosmyslennia kordoniv mizh derzhavamy i kordoniv mizh liudmy: polityka shchodo podolannia novykh liniy podilu* [*Reconsidering borders between states and people: how to avoid new dividing lines*] (Kyiv: Fond Europa XXI, 2002), pp. 10, 19, 30.

<sup>61</sup> The new Ukrainian government seems to be strongly committed to the solution of the problem, in close cooperation with the EU. See Olena Horodetska, 'EU Offers Help to Ukraine, Moldova to End Smuggling', Reuters, 7 October 2005.

roads while up to 3,000 local roads remained practically unguarded. As a result, two thirds of smuggled goods and illegally trafficked people entered Ukraine via these roads.<sup>62</sup>

In 2000–2001, the Ukrainian government's doubling of the number of checkpoints and border guards in the east immediately resulted in more than a threefold reduction in the number of illegal migrants crossing this border. (The total number of illegal migrants detained in Ukraine fell from 14,646 people in 1999, to 5,422 in 2000 and 4,626 in 2001.<sup>63</sup> To put these figures in context, compare the number of illegal immigrants arrested during the same period in Turkey – 94,514 in 2000, and 56,219 in 2003).<sup>64</sup> Nonetheless, the Ukrainian eastern border still remains fairly porous and requires much stricter security measures.

Tightening control over the eastern border would require significant political will, as there are very powerful lobby groups in both Ukraine and Russia who are interested in keeping the border 'transparent', i.e. unprotected, and who would certainly try to politicize, ideologize and confuse what is a simple security issue. Therefore, the government would need to launch an effective and comprehensive political, diplomatic, and information campaign. At the same, in technical terms, tightening of control over the eastern border would be not so difficult if the Ukrainian government were to (a) engage Western partners who have a vested interest in securing Ukraine's eastern borders and who would likely provide technical assistance and diplomatic support; and (b) opt for a thoroughly new, European model of border control, which combines use of high-tech equipment and sophisticated methods of surveillance to ensure the integrity of the border.

#### 4.3.3 Clamping down on illegal migration and transborder crime

The EU perceives illegal migration and transborder criminality as the main threats emanating from Ukraine. As long as these two threats are not address and convincing proof of their resolution is not made available to Ukraine's European neighbours, any talks on lifting visa requirements from Ukrainian citizens or even removing them from the 'black list' would be premature. Therefore, it is in Ukraine's vital interest to fully cooperate with the EU in solving these problems.

##### *(a) Illegal migration: sticks and carrots*

Illegal migration is rooted primarily in poor economic conditions. At present, the average monthly income in Ukraine is 100 euro; however, opinion surveys reveal that if this were doubled, Ukrainians' intention to see work abroad would decrease to almost nil. Most Ukrainians tend to agree that they could live an acceptable life in Ukraine on a minimum monthly salary of 200 euro. The credibility of this claim is confirmed, indirectly, by the experience of Romania and Bulgaria where migration outflows declined dramatically when improved economic performance led to a significant increase in incomes. In the case of Ukraine, the same level of economic development is attainable in the very near future, especially in light of the country's strong economic growth since 2000 and the reformist

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<sup>62</sup> Blair Rubble and Olena Malynovska (eds.), *'Netradytsiyni' migranty v Kyevi* [ **'Non-traditional' migrants in Kyiv**] (Kyiv: Stylos, 2003), p. 73. See also *Border Guarding in Ukraine: Future Perspectives. Presentation of the State Programme of Action Aimed at Maintaining the Regime of the State Border, Frontier Regime and Development of Border Guard Troops of Ukraine for the Period up to 2005* (Brussels: 2002).

<sup>63</sup> Rubble, *'Netradytsiyni' migranty v Kyevi*, p. 38.

<sup>64</sup> Apap et al., *Turkey*, p. 20.

credentials of the new Ukrainian government. The capital city of Kyiv is a good example in this respect: living standards in the capital are double the national average, and the city produces virtually no illegal migrants.<sup>65</sup>

Still, at the current rate of economic growth, it will take five years for the increase in monthly incomes to effect a slowing of illegal migration from Ukraine. Therefore, the Ukrainian government would be wise to introduce other more specific measures designed to strengthen security for both Ukraine and the EU and enhance the overall credibility of Ukraine as a partner in combating common security threats.

First, Ukrainian authorities should elaborate and introduce a comprehensive approach to exit labour migration. The approach should comprise: the collection and publication of reliable statistical data on exit labour migration; assessments of regions in Ukraine where exit migration is greatest; combating crime connected with the organisation of illegal exit migration, including trade in spurious visas, invitations, and sham contracts; creation of facilities to harness the positive experiences of labour migrants who have returned to Ukraine, such as centres for innovation and entrepreneurship that provide assistance in starting businesses, investing funds, and identifying potential business partners, and so forth.<sup>66</sup>

Second, the EU and Ukraine should work out an agreement on the mutual protection of labour markets. The agreement should provide opportunities for legal job placement of Ukrainian citizens, and define responsibilities for rendering assistance for the timely return of guest workers to Ukraine and observance of all contract provisions. Labour migration should be facilitated by the creation, through joint efforts, of a database of organisations and enterprises acting as intermediaries (from both Ukraine and the EU) between job seekers from Ukraine and employers from the EU. Legal terms should be defined, and reciprocal agreements should be signed to avoid double taxation of guest workers.<sup>67</sup>

Third, Ukraine should sign readmission agreements with EU member states, regardless of how inconvenient it might be for Ukraine. The strict fulfilment of readmission agreements would cost Ukraine up to half a billion euro, but this is the only way to ease EU visa requirements, let alone to eventually achieve a visa-free regime.

To alleviate the envisaged financial burden, the Ukrainian government should (a) make more effort to curb illegal migration; and (b) actively promote readmission agreements with third countries whose nationals use Ukrainian territory for illegal migration. The first task requires not only much better border surveillance, especially in the east, but also much closer cooperation with the EU in tracking down murky tourist agencies, employment agencies, and others that serve as fronts for illegal migration, and improve surveillance on individuals who change identities after violating European laws. The second task would require the concerted efforts of both Ukrainian and European diplomats, especially in the case of Russia, which is the main supplier of illegal (mostly transit) migrants through Ukrainian territory and defiantly refuses to negotiate a readmission agreement with Ukraine. The task of securing Ukraine's border with Russia is especially urgent, as Ukraine is recognized as a 'secure third country' and, under a readmission agreement with the EU, aliens that enter the EU illegally from Ukraine would be readmitted back to Ukraine at Ukraine's expense.

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<sup>65</sup> Olena Malynovska, *Ukrayina, Yevropa, migratsiya: migratsiyi naseleattia Ukrayiny v umovakh rozshyrennia ES*, [Ukraine, Europe, and migration: migrations of the Ukrainian population and the EU enlargement] (Kyiv: Blan-pres, 2004), p. 171.

<sup>66</sup> Gromadzki, *More than Neighbours*, p. 85.

<sup>67</sup> Gromadzki, *More than Neighbours*, p. 84.

*(b) Transborder crime: a need for cooperation*

Transborder crime is indirectly related to poor economic conditions, and directly related to levels of lawlessness, corruption, and government inefficiency. During the last decade, Ukraine acquired a reputation as an oligarchic reserve where corruption was not only tolerated but encouraged by the authorities, and where the boundaries between politics, business, and the underworld had virtually disappeared. Ukrainian authorities of all rank, up to the highest levels, have been implicated in various crimes, including large-scale money laundering, human trafficking (selling of orphans), illicit trade in arms and others. Officials receiving kickbacks from smugglers, and who are sometimes themselves members of criminal rings, cannot be expected to embark on a battle against transborder and other crimes.

Fortunately, the new Ukrainian government seems strongly determined to eradicate graft and clean up national politics, business, and society. The task however will not be easy, and strong international support is highly desirable. Transborder criminality is an area where cooperation between law enforcement agencies of EU countries and Ukraine could be very efficient. Such cooperation must be based upon information exchange and should consist of permanent coordination of actions, common monitoring, and both counteractive and preventive measures. Recommended measures include:

- Identifying, freezing, seizing, confiscating and possible sharing or returning of assets; prevention and control over money laundering, counterfeiting of documents and currency, trafficking in and smuggling of persons, illegal migration, trafficking in drugs and stolen property (motor vehicles, cultural artifacts, etc.), computer and high technology crimes, corruption and all sorts of economic swindle.
- Monitoring of dubious businesses, in particular job, tourist, transportation and other agencies that are used as fronts for illegal migration, sex tourism, illicit trade and other criminal activities. Crack down on agencies that provide false visas, invitations, contracts and other documents, and rather openly advertise their 'services' via the Internet.
- Revision of Ukrainian laws and elimination of loopholes used by criminals; alignment of the Ukrainian system of laws to European standards and introduction of new laws and regulations where necessary; anti-corruption programmes in the law enforcement and judicial systems.
- Detection of criminal networks trafficking in women for sexual exploitation, both directly from Ukraine to the EU and through the Balkans and Turkey, as well as networks trafficking in women from third countries passing through Ukrainian territory. Creation of adaptation centres for victims of human trafficking upon return to Ukraine.
- Construction and reconstruction of detainee centres for illegal migrants on Ukrainian territory. Cooperation with EU experts in screening of asylum-seekers; adoption of programmes for assimilation of refugees from insecure third countries into Ukrainian society.

#### **4.3.4 Public relations**

If the Ukrainian government wants the EU to simplify its visa regime for Ukrainian citizens and, with time, remove visa requirements completely, the government must accomplish two difficult tasks in public relations. First, it has to convince its own citizens

that some unpopular measures, especially at the eastern border, should be implemented, and that no immediate rewards may follow from the EU. Second, the Ukrainian government has to convince the EU that vigorous reforms are underway in Ukraine, bringing appreciable results, and that old anti-Ukrainian views and biases deeply entrenched in the West should be reconsidered.

The first task should be fulfilled as part of a broader project of bridging the gap in Ukrainian society that has historically emerged between the more and the less Russified/Sovietized parts of the country, and has been dramatically (and rather cynically) deepened within the last decade. The last parliamentary and presidential elections were damaging for society, as the government unscrupulously exploited anti-Western, anti-American stereotypes, playing the predominantly Sovietophile east of the country off against the predominantly pro-democratic and pro-European west. Even though the pro-Western candidate was victorious, only a minority of Ukrainians surveyed support the country's accession to NATO while a small majority support accession to the EU. In both surveys, however, substantial groups remained undecided: 36% remained undecided on the question of NATO accession, and 28% on EU accession.<sup>68</sup> The number of undecided respondents clearly indicates that people need more information to make up their minds.

Symptomatically, in another recent survey, 41.3% of respondents declined to answer the question 'From which neighbouring country do the greatest flows of international crime and contraband penetrate into Ukraine, in your opinion?'. Of those that answered, 26.0% believe, inaccurately, that most international crime enters the Ukraine from Turkey; while 27.9% believe, accurately, that most enters from Russia.<sup>69</sup>

The protracted and extremely aggressive anti-Western brainwashing has clearly influenced the Ukrainian mindset, but failed to make an absolute majority of the population anti-Western. Now, pro-Western attitudes may spread rapidly if objective, balanced and comprehensive information on NATO- and EU-related issues becomes available. A successful information campaign can also be facilitated by the new Ukrainian elite (politicians, businessmen, officers in the military, journalists, NGO activists) who are strongly pro-Western, especially as the new elite are better informed than the average person and are better positioned to influence public opinion. For example, in the above survey, 87.5% of the surveyed 'elites' view the non-demarcated and porous border between Ukraine and Russia primarily as a security risk, while 59.7% of the general public assess it positively as 'proof of a special relationship between Ukraine and Russia'.<sup>70</sup>

The substantial gap between the pro-Western views of Ukraine's democratic elite and the rather vague and uncertain opinions of people at large is primarily the result of insufficient communication between the two groups, purposely obstructed by the previous oligarchic government. Now, however, the mental Westernization of society is both possible and much needed, but will not occur without a proper information campaign. First, the Soviet-style anti-Western stereotypes are deeply entrenched in some social groups and cannot be easily uprooted, especially if they are fuelled by controversial acts like the NATO bombardment of Yugoslavia or the American invasion in Iraq. Second, the new Ukrainian government cannot rely on the propagandistic methods of its predecessors

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<sup>68</sup> "Ukrayintsi za vstup do EU i proty vstupu do NATO," ["Ukrainians for and against the accession to NATO"], *Ukrayinska pravda*, 22 February 2005, see at [www.pravda.com.ua](http://www.pravda.com.ua).

<sup>69</sup> 'Public Assessments of the State of Ukraine's International and Border Policy: Poll Results in Details', opinion survey (Kyiv: Center for Peace, Conversion and Foreign Policy of Ukraine, 2001), see at <http://borders.cpcfpu.org.ua/eng/analytics/index.shtml>.

<sup>70</sup> 'Expert Assessment and Public Opinion Concerning Border Policy of Ukraine', research paper (Kyiv: Center for Peace, Conversion and Foreign Policy of Ukraine, 2001), available at <http://borders.cpcfpu.org.ua/eng/analytics/polls/document1.shtml>.



such as censorship and smear campaigns. Much more sophisticated and subtle information policies should be elaborated and implemented. Their ultimate success largely depends on the government's effective cooperation with NGOs and independent mass media. And third, Ukrainian Westernizers should follow and act to counter the powerful and predominantly anti-Western Russian media, which many Ukrainians today still rely on for alternative, heavily biased information – and in some cases is their sole source of information.

On the international level, the Ukrainian government cannot rely only on its own diplomatic resources but should also attract to the Ukrainian cause national and international NGOs, academics, public intellectuals, celebrities and other prominent public figures.

The main strategy should be threefold. First, Ukrainians should do their utmost to decouple themselves from Russia. The persistence of Russian historical myths in the West distorts Western policy vis-à-vis both Ukraine and Russia – as witnessed in the behaviour and public statements of some European politicians – and feed the old imperial (implicit and explicit) anti-Ukrainian biases and stereotypes prevalent in Western societies. As long as Russia, Ukraine and Belarus are lumped together within a mythical 'Greater Russia' – like Hong Kong and Taiwan within a Greater China – Ukrainians will never be considered in western capitals as separate players and without Moscow's consent will never be admitted to the EU and NATO, regardless of how successfully they fulfil the Copenhagen and any other criteria.

Second, Ukrainians should patiently but persistently work on the new image of their country, promoting achievements and dispelling stereotypes. They should remember that international assistance comes primarily to those nations who are trying to help themselves (and the EU's unexpectedly positive stance vis-à-vis Ukraine during the Orange Revolution confirms this). As part of the government's information campaign, progress with reforms should be effectively reported, and some odd stereotypes should be disproved with facts and arguments: for example, that 5–7 million Ukrainians work illegally in the West (the real figure is about one million); that many Ukrainians working abroad are involved in criminal activity (in actuality, the criminality rate among Ukrainians abroad is not higher than among nationals of the host country); or that Ukraine poses a serious threat in terms of migration (Ukrainian immigrants constitute about half a percent of non-EU nationals in the EU).

Third, diplomacy is needed to settle the border and readmission issues with Russia. An effort should be made to internationalize both issues as they affect not only Ukrainian but also European security.

The diplomatic and public relations efforts recommended above cannot be carried out in isolation: they must be accompanied by successful domestic reforms. Ukraine's previous governments badly compromised the country's image by not following up words with deeds and exposing an enormous gap between their pro-European declarations and neo-Soviet political behaviour. In Western capitals the result was 'Ukraine fatigue'. The international community's trust in the Ukrainian government and, implicitly, in the nation as a whole was badly damaged. Now, with the Orange Revolution Ukraine has earned some credibility, which now urgently needs to be built upon.

#### **4.4 Options for the EU**

The EU's general approach should be based on a clear understanding that Brussels, not Kyiv, has a vested interest in securing its new border in the east, and therefore it is

Brussels who should apply a maximalist approach to the new neighbourhood issue. The simple and cheap solutions promoted primarily by Paris might be effective in the short term, but in long term might prove to be catastrophic. The Polish (and US/NATO) approach seems to be much more coherent, competent and, as confirmed by last year's events, more productive. Now, as the EU has finally got a reliable partner in Kyiv, it would be thoroughly self-defeating to ignore reality and dwell upon obsolete Russocentric myths. If the proper resources and incentives are applied, there is a greater chance of Ukraine becoming a success story and bringing more strategic rewards than either the Western Balkans or Turkey.

#### **4.4.1 Technical and legal assistance**

The EU has provided assistance to Ukraine mostly within the TACIS programme, designed in 1990 for the Soviet republics and applied eventually to the New Independent States. Neither the scope nor the instruments of TACIS, however, are sufficient for Ukraine. Much more effective and intensive programmes, modelled on those developed for the pre-accession countries, should be applied to Ukraine to achieve comparable results. In order to facilitate transborder movement of people, and their free movement in the long term, between the EU and Ukraine, the EU should provide extensive and effectively targeted assistance in the areas that follow below.

First, the EU can assist Ukraine and its neighbours to establish new border crossings, modernize older crossings, and equip both with modern facilities for customs and document control, as well as for border surveillance in general – especially on the highly vulnerable eastern border.

Second, the EU can assist in training Ukrainian border personnel, particularly in how to operate the new facilities and how to apply new methods of border surveillance and customs control. Moreover, top- and middle-level officials in charge of border and customs control should be given special training. Training for personnel at all levels should emphasize that the EU and Ukraine have a shared responsibility to ensure that their borders are not only secure, but also friendly, i.e., customer-oriented. The EU should also support, and provide consulting services and supervision where needed, for anti-corruption programmes within respective government agencies.

Third, the EU can share databases containing shady third-country nationals and companies suspected of using Ukraine as a transit/intermediary country, as well as Ukrainian nationals and companies blacklisted in the EU. The level of sharing and cooperation should depend on the proved effectiveness and reliability of Ukrainian partners.

Fourth, the EU can help Ukrainians identify genuine asylum seekers from third countries, and develop and subsidize programmes for their integration into Ukrainian society. There are many signs that, as a secure country, Ukraine has itself become a final destination for an increasing number of immigrants from countries and regions marked by war, natural catastrophe and economic disasters. Experts estimate that of the some 100,000 immigrants residing in the capital city of Kyiv, approximately half are from the former Soviet republics (mostly from the Caucasus and Central Asia) and half from non-Soviet Asia. EU assistance is needed also for construction and maintenance of detainee camps and for readmission programmes.

Fifth, the EU can promote transborder investments and economic cooperation, in particular in the framework of Euroregions, to support small and medium-size enterprises and encourage cultural, educational, and ecological cooperation between local

communities in the border regions. Although such policy would make only minor inroads against the economic gap between EU insiders and outsiders, it would substantially alleviate the feelings of frustration, abandonment and isolation experienced by those living on the ‘wrong’ side of the border. In this view, Ukraine’s full participation in European cultural, educational, and research projects would be highly desirable.

Sixth, the EU can assist the Ukrainian government and civic groups in designing and implementing an effective information campaign aimed at dissemination of knowledge about the EU, especially about the experience of its new, postcommunist members. The EU should be advertised primarily as a ‘community of values’, built upon and supported by civic culture, solidarity, initiative, and responsibility. Poland, due to its cultural affinity, vested interest and competence in Ukrainian affairs, may play a crucial role in the development and implementation of these and many other EU policies.

Seventh, when supporting reform in Ukraine, the EU should pay special attention to law enforcement agencies, approximation of Ukrainian law to the European standard and administrative reform, which in particular may strengthen local self-government and facilitate more effective transborder cooperation between local communities. Ukrainian authorities and civic activists, especially on the local level, should learn some basics about European law and, in particular, about the legal opportunities for cross-border cooperation.

Eighth, the EU should provide Kyiv with strong diplomatic support in its efforts to negotiate readmission agreements with third countries, and to complete demarcation of its borders with Russia, whose authorities remain defiant on the issue (largely due to Western neglect of the issue perceived as encouragement for a neo-imperialist policy in the ‘near abroad’).

#### **4.4.2 Visa facilitation**

Visas are widely believed to be an instrument for protecting a state against uncontrolled migration, unwanted aliens, and transborder crime. While many experts discuss the efficacy of this instrument, very few address the highly negative side effects of visas. The main problem is that the principle of the presumption of innocence is not adhered to in the visa application process. It is up to applicants to prove they are not criminals, potential immigrants or illegal workers; while it is the prerogative of consulate officers to reject the evidence provided by applicants. Usually officials rely on the submitted evidence, sometimes on intuition or on their mood at the time, on certain biases or on statistically preferable proportions between accepted and rejected applications. Theoretically, evidence of any type may be deemed insufficient; and all applications are liable to rejection. Moreover, applicants have no recourse to judicial or administrative review of the decisions made on their applications.

Such a situation – whether reasonable or not – creates a peculiar psychological environment where officials have unlimited power over the applicants. Applicants are absolutely powerless in the consular ‘black box’, with no protection against bureaucrats’ arbitrary decisions in this Kafkaesque castle. In many cases, reputable people whose names could be easily checked in Google (writers, artists, scholars, journalists) are denied a visa without explanation, and only with the intervention of influential European partners can consular officials be forced to reconsider their decisions and, sometimes, to apologize.

The net result of this policy is growing anti-Western sentiment among people who have traditionally been and, in principle, should always be the greatest Western sympathizers. The feelings of marginalization, abandonment and isolation evoked by visa requirements, of being discriminated against and downgraded to the level of second-class

Europeans, make people especially sensitive to any injustice, mistreatment and neglect by Westerners – either in consulates or at border crossings. The implicit, or sometimes explicit, superiority of Western officials encourages their Ukrainian employees to emulate their masters in the most caricatural way. Guard and surveillance personnel are especially notorious for their arrogance, and complaints about their behaviour rarely receive an official response or other noticeable reaction from consulates. Severe measures can be tolerated if they are just, but measures that humiliate can never be tolerated.

The first step for European governments, within framework of the Friendly Neighbourhood Policy, is to transform their consulates from symbols of bureaucratic willfulness, unpredictability and superiority (as many Ukrainians perceive them) into symbols of reasonable concern for national security, law and order. With this aim in mind, a higher degree of professionalism should be demanded of consular staff – especially of Ukrainian employees. A great number of other measures can be implemented.

First, the long queues at consulates at all hours of day and night, in rain and frost, reveal a lot about the attitude of the consulate's owners towards the people. In fact, the queues are a manifestation of disrespect, a clear signal that 'you are not wanted here' and that 'the fewer of you that use our services, the better'. To do away with these shameful symbols of superiority and exclusion, the number of consulates, their size and operational capacities should be substantially increased. This is primarily a matter of good will rather than of financial or other constraints, since all consular services, including cases when visa applications are denied, are generously paid by applicants, so that the institutions are quite profitable.

Even at the friendliest – Polish – consulates where only 1% of applications are rejected (cf., 72% of applications rejected by the Austrian consulate),<sup>71</sup> Ukrainians spend an average of 4 hours in Kyiv and 19 hours in Lviv waiting.<sup>72</sup> A great deal of time is spent in most consulates just getting basic information and application forms – even though both can be easily made available on the internet. In many consulates, applicants spoil a day waiting in a queue to receive an appointment for submitting their papers (usually in a week or two). Upon arrival of the appointed day, because an exact time is not given, applicants still have to spend a few hours outside the consulate before being allowed in to submit their application. Then, applicants receive another appointment in a week or two, when they will spend a few more hours in another queue to pick up their visas (or visa denials, with a compromising stamp in their passport, which infringes the human rights of applicants by making them virtual pariahs in all other consulates, a priori subjected to biased treatment everywhere they present the black-marked passport).

Ironically, the American consulate, with the most applicant traffic in Kyiv and probably the greatest security concerns ever, has simplified the visa procedure to one visit. Information and application forms can be downloaded from the embassy website; an appointment can be arranged by e-mail; and the passport with a visa is usually delivered by express mail on the same day the application is submitted (if the applicant lives in Kyiv), or the next day (for those living outside the capital). The one visit is for submitting the application and participating in the interview. Unfortunately, not a single EU member state follows similar practices in Kyiv – a clear sign for many Ukrainians that, unlike Americans, Europeans do not seek a solution.

Even more striking is the comparison of American and European approaches to long-term, multiple-entry visas for Ukrainian nationals. Americans are reasonable in their

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<sup>71</sup> Daria Averchenko, 'Austria dla pingwinów', *Dziewięć tygodnia*, 19 February 2005, p. 23.

<sup>72</sup> Karolina Stawicka (ed.), *Monitoring polskiej polityki wizowej* [Monitoring of Polish Visa Policy] (Warsaw: Stefan Batory Foundation, 2004), p. 119.

approach and rely on applicants' previous records. For multiple-entry visas, of three-, five-, and ten-year periods, if applicants have already visited the United States and have no criminal record, a new visa is granted almost automatically. This is clearly a friendly approach, which (a) rewards people for proper behaviour; (b) facilitates primarily professional trips for businessmen, journalists, scholars, and other 'frequent travelers'; and (c) proves convincingly that American visa requirements are really instruments of national security and not a means to humiliate the East European 'underdogs' who should be kept outside by all possible means under different pretexts.

Again, EU member states should demonstrate their good will by applying a similarly flexible and differentiated visa policy in Ukraine. To date, however, the typical approach of EU member states is to grant single-entry visas for each trip to a single Schengen country, regardless of applicants' previous records or their professional needs. Even those frequent travellers who manage to submit a few invitations for a number of business trips to different countries, usually never receive a multiple-entry visa for a period longer than six months. Such restrictions have nothing to do with security considerations, as in many cases applicants submit plenty of evidence that they are neither criminals nor potential immigrants nor *gaestarbeiters*. All the talk about the Friendly Neighbourhood will ring hollow as long as EU visa policy is unfriendly. So far, the EU's policy towards Ukraine does less to restrict criminal activity, than it does to restrict the professional and business activities of law-abiding citizens.

One option for the EU is to grant long-term, multiple-entry visas to a greater number of applicants who have good records of previous visits to EU member states and have demonstrated the professions nature of their visits. Restrictions could then be placed on the length of stay for each visit; for example, a restriction could be imposed of not more than 90 days per year, or 30 days per visit (overstays can be easily controlled with entry/exit stamps in the passport). This would be a good solution for inhabitants of border regions who tend to visit their relatives across the border frequently but for short periods of time.

The EU should also consider the idea of European consulates, which would enable Ukrainian citizens to apply for a Schengen visa at the nearest EU consulate, independent of the country of destination. Granting visas at border crossings, at least to people who have already visited the EU and have positive records in SIS computers, would also be a friendly step that would facilitate the legal movement of people without undermining European security.

Another step that the EU can take, after the above simplifications to the visa regime, is the adoption of the 'Polish' model, which over the last year has proved its efficacy in both Polish-Ukrainian and Hungarian-Ukrainian neighbourhood relations. The model is based on an asymmetrical solution: Ukrainians are granted Polish and Hungarian visas free of charge, while Poles and Hungarians can enter Ukraine and stay up to 90 days without visas.

Finally, the EU can lift visa requirements for Ukrainian citizens for short-term visits. This decision, of course, requires a number of preliminary steps made by both the EU and Ukraine. On the one side, the Ukrainian government should work to double the average monthly income, from the present 100 euro to 200 euro in a few years. Further, Ukraine should strengthen its borders, sign readmission agreements with all the EU member states, and eradicate graft from government and law enforcement agencies.

For its part, the EU should establish clear criteria the fulfilment of which would lead to the lifting of visa requirements for Ukrainian citizens. These criteria should include a substantial decrease in the number of illegal immigrants and unauthorized workers from

Ukraine; full cooperation between Ukrainian and EU agencies on security and readmission issues; and so on. All these developments should then be carefully monitored by both sides, and correctives introduced as necessary – as was the case earlier in pre-accession relations between the EU and Romania and Bulgaria.

#### **4.4.3 Limited access to labour market**

Allowing Ukrainian citizens limited access to the EU labour market is a way to partly tame illegal migration and unauthorized employment of Ukrainian citizens, and partly mitigate the negative economic and psychological consequences of the emergence of a hard EU border west of Ukraine.

The EU member states have negative population growth and need approximately half a million immigrants annually to compensate for the natural losses of their own populations and to provide a sufficient labour force for their national economies. The member states receive two to three times this number of immigrants annually. Ukraine supplies about 1.5% of annual immigrants to EU member states, and Ukrainians make up less than 1% of non-EU nationals in the EU.<sup>73</sup> These numbers are benign and demonstrate that Ukrainian immigrants pose little threat to the EU, and even less so in view of the fact that Ukraine itself has a negative population growth and, even if visa requirements were lifted, would be incapable of supplying many more immigrants.

The following trends should alleviate the EU's anxiety over the 'immigration threat' posed by Ukraine:

- a. As a rule, Ukrainians do not stay in the West permanently. Usually, they go abroad for a year or two to earn money to bring back to their families in Ukraine. Upon their return, they invest the money earned abroad in building a home, educating their children, starting a small business, and so on.
- b. Typically, labour migrants are 30–40 years old with high school or university educations who work hard and have no criminal records, with the exception of overstaying their visas. They pose little economic threat because they usually take jobs otherwise ignored by EU citizens; and if they settle in the EU permanently they pose no cultural threat because they easily integrate, and in many cases assimilate, in local society. Ukrainian labour migrants do not form ethnic ghettos, nor are they susceptible to the influences of militant Islamism, and so on.

Thus, EU member states should create opportunities for temporary legal job placement for Ukrainian citizens by establishing quotas that take into consideration the needs of different segments of the labour market. The quotas could take a number of forms: they might be more general, or allotted according to season and sector. The size of quotas would be the subject of negotiations between experts, and subject to government approval.

NGOs in the EU and Ukraine would have significant roles in conducting information campaigns to advertise legal opportunities for labour migration to the EU member states – as well as the potential dangers awaiting illegal migrants. NGOs would also engage in the protection of workers' rights in the EU.

Enhanced opportunities for temporary labour migration will contribute to a reduction in permanent migration and help curtail the current abuse of the visa system by Ukrainian nationals. As long as Ukrainians have the possibility to obtain employment for

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<sup>73</sup> European Commission, *Wider Europe Neighbourhood: A New Framework*, pp. 23–25.

specific periods of time, with the possibility of periodically returning home, they tend not to become traditional immigrants and make every effort possible to maintain a legal status. By providing easy access to visas, EU member states would minimize the risk of many Ukrainians falling into the trap of illegal migration.<sup>74</sup>

## 5. Conclusions

The Orange Revolution and regime change in Kyiv has provided an excellent opportunity for the EU and Ukraine to reduce the pervasive ambiguity and duplicity that marked their earlier relations. The Ukrainian government can finally carry out necessary reforms, bringing its domestic policy in line with its European declarations and commitments. The EU, for its part, can begin to provide real – feasible and effective – assistance for Ukraine’s proclaimed ‘Europeanisation’.

The European Neighbourhood Policy provides some new possibilities for the EU-Ukraine cooperation, yet has been strongly criticized by Ukraine for its limitations and serious conceptual flaws. First, the ENP lumps together countries that are extremely different from one another: European and non-European, countries that aspire towards EU membership and those that don’t, and by failing to distinguish amongst neighbours downgrades the former to the level of the latter, symbolically excluding all of them from ‘Europe’. Second, the Action Plan for Ukraine, the main instrument under the ENP, was elaborated in Brussels in 2003–2004, when the previous, rather uncooperative and unreliable regime was still in Kyiv.

The new Ukrainian government firmly rejects the ENP because it ignores Ukraine’s European aspirations and fails to bring the country closer to Europe. At the same time, Kyiv accepted the Action Plan with 11 amendments in order to avoid further diplomatic tensions with the EU and to make pragmatic use of the opportunities – primarily economic – envisaged in the document. Still, Kyiv strongly insists that in 2007–2008 – with the completion of the three-year Action Plan and the expiration of the ten-year Partnership and Cooperation Agreement – the EU and Ukraine conclude an association agreement that contains clear prospects for Ukraine’s EU accession.

Even though the EU continues to avoid any political gestures that can be interpreted as a commitment to Ukrainian membership, in a few years its position will become absolutely untenable if Ukraine succeeds in its political and economic reforms and is able to meet the Copenhagen criteria. If Ukraine fails in completing the transition to a liberal democracy, there is also the possibility that the EU will be held responsible, and perhaps reasonably so, for not providing sufficient support and wasting a historic opportunity to transform the entire continent. Concerning internal restraints (e.g. the 2004 enlargement and the failed referendums), the EU is indeed in a very difficult position at present, and its lukewarm attitude towards Ukraine can be partly justified.

The optimum solution is a political declaration that does not oblige the EU to accept Ukraine’s application for membership in any foreseeable future, or to put the question of EU policy towards Ukrainian on the agenda for any specified period of time. The declaration should state, however, that membership for Ukraine is desirable but depends primarily on the Ukrainian government and the Ukrainian people – rather than on Brussels or, even worse, on Moscow. The declaration should not establish a timetable, but should set out clear benchmarks and criteria to be met.

The political declaration would be non-binding and thus would not have any direct consequences for the EU, but its impact on relations between the EU and Ukraine would

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<sup>74</sup> Gromadzki, *More than Neighbours*, pp. 84–85.

be significant. First, the declaration would help Ukrainian reformers mobilize society under the feasible and attractive slogans of future EU membership. Second, it would send an important signal to Russian hawks and curb their aggressive policy in the 'near abroad'. Third, the declaration would certainly enhance EU engagement in Ukrainian affairs and commitment to Ukrainian reforms.

The Action Plan provides sufficient room for EU–Ukraine cooperation in the nearest future. It encompasses, in particular, such important humanitarian issues as cross-border and regional level co-operation in education and training, science and technology, research and development, culture and audio-visual issues, in Justice and Home Affairs, and amongst young people and civil society. The only issue that seems to have been underestimated and may take its toll is the persistence of certain biases and stereotypes in both Ukrainian and European societies, which require coordinated efforts by governments and NGOs if they are to be dispelled, or at least marginalized.