

ANNEX 2 – ANNUAL ACTION PROGRAMME 2012 FOR UKRAINE PART 1

1. IDENTIFICATION

Title/Number	Support for Migration and asylum management in Ukraine CRIS: ENPI/2012/23684		
Total cost	EU contribution: EUR 28 million		
Aid method / Method of implementation	Project approach - direct centralised management - joint management with the International Organisation for Migration (IOM) and with the United Nations High Commissioner for Refugees (UNHCR)		
DAC-code	15110	Sector	Public Sector Policy and Administrative Management

2. RATIONALE

2.1. Sector context

For many years Ukraine lacked a comprehensive migration policy. Various State actors dealt in uncoordinated manner with specific tasks. It is only recently that Ukraine has set up the basis for comprehensive migration management policy. The State Migration Service (SMS) has been recently established as a central authority dealing with migration and asylum areas. It still lacks sufficient capacity to deal effectively with all areas of responsibility as most of the staff is new to the system.

A Concept of the State Migration policy and an Action Plan to implement this Concept have been adopted in 2011. These two documents are also considered as an Institutional Reform Plan (IRP) in migration area in the context of the Comprehensive Institution Building (CIB) programme under the Eastern Partnership Initiative.

Visa dialogue has served as an important incentive to make progress in this sector. Implementation of the Visa Liberalisation Action Plan (VLAP) has been declared by the Ukrainian authorities as a top political priority. The VLAP is structured under 4 blocks (Block 1: covers Document security, including biometrics and Block 2: covers asylum and migration issues, including readmission). The State Migration Service has been established as a central executive agency in December 2010, a Concept of the State Migration policy and an Action Plan have been adopted in 2011.. The Commission services and the EEAS are reporting on the implementation of the VLAP. The Second Progress Report of the implementation of the first phase of the VLAP was issued on 9 February 2012.

2.2. Lessons learnt

The Court of Auditors report on justice, liberty and security areas pointed to some issues to take into account for future assistance planning: the EU should support projects where the real interest of recipient countries is clear and evidenced by, among other things, national funding.

The past assistance projects have shown limited capacity of beneficiary institutions in terms of strategic management, instability of senior and middle level civil servants, low capacity for assistance management, lack of appropriate legal or institutional framework for the projects implementation.

In order to avoid duplication, donor coordination is an important aspect.

2.3. Complementary actions

Currently there are five ongoing Migration and Asylum thematic line projects in Ukraine covering the following issues: labour migration, support to implementation of readmission agreements including facilitation of assisted voluntary return and reintegration, protection of asylum seekers and refugees, local integration of refugees, legal and social protection of asylum seeking and refugee children. The total amount of funding is EUR 6.8 million. A new call for proposals has been launched in 2011 and additional thematic line projects may start in 2012-2013. TACIS READMIT project (EUR 35 million) foresees construction of two migrant custody centres and five temporary holding facilities for irregular migrants. Ongoing budget support programme on border management (EUR 66 million) covers border management aspects.

2.4. Donor coordination

Ukraine is currently in the process of restructuring its government-led donor coordination mechanism. The reform of the system under the auspices of the Ministry of Economy foresees inter alia – the creation of a sub-group dealing with migration, border management, trafficking(preventing and fighting trafficking in human beings?), etc. The EU is likely to be the lead donor for this thematic group working closely with the International Organisation for Migration (IOM). Once operational, the sub-group will allow regular consultation and exchange of information.

In the absence of government-led coordination donor coordination meetings are organised by the EU Delegation. Regular inter-agency meetings are also held with main international organisations present in Ukraine, in particular the IOM.

3. DESCRIPTION

3.1. Objectives

Aligning the Ukrainian system on migration and asylum management with European and international standards, best practices and experiences. Supporting the Ukrainian authorities in the implementation of the relevant VLAP benchmarks.

Purpose (specific objectives):

1. Adoption and implementation of legislative and regulatory framework in the areas of migration and asylum in accordance with European and international standards and best practices
2. Institutional capacity and level of performance of State agencies dealing with migration and asylum following best European and international standards, practices..
3. Adequate technical and material capacities of State agencies dealing with migration and asylum

3.2. Expected results and main activities

Expected results:

1. Legislative and policy framework should be compliant with European and international standards, best practices and experiences. This result also covers the VLAP benchmarks related to the introduction of biometric passport.
2. Institutional strengthening of State agencies dealing with migration and asylum following best European and international standards, practices. This result is part of the migration component of the CIB programme under the Eastern Partnership Initiative as defined in the CIB Framework Document for Ukraine.
3. Technical and material capacities of state agencies dealing with migration and asylum increased. This result also covers the VLAP benchmarks related to the introduction of biometric passport.

Main activities:

1. Support to assessment, elaboration and implementation of legislative and policy framework (expert analysis, provision of recommendations, presentation of best practices, organisation of public discussions, workshops, trainings, awareness and communication campaigns, etc.)
2. Assessment of capacity of State agencies to deal effectively with their tasks and provision of recommendations for its improvement, introduction of the system of performance monitoring, introduction of best practices in human resources, data and information flow management, improvement of quality of administrative services through their optimisation, simplification and transparency, introduction of special anti-corruption measures).
3. Provision of technical and material assistance (provision of equipment, set up of migration flow database, creation of additional places for accommodation of refugees and asylum seekers, etc.).

3.3. Risks and assumptions

Risk	Assumption/Mitigation Measures
Insufficient institutional capacity of the State Migration Service to implement the	Migration is a key pillar of The Comprehensive Institution Building

State Migration Policy Strategy and the Action Plan.	Programme. The development of institutional capacity within the State Migration Service itself will be a priority and will be strongly supported by IOM.
Insufficient budgetary allocations from the Government of Ukraine to the State Migration Service may affect the capacity to conduct core functions (including care of refugees) and implement reforms to State Migration Policy effectively.	Implementation of the VLAP serves as a strong incentive to allocate a sufficient budget to implement reforms in the area of migration. Budgetary allocations for the year 2012-2015 will be closely monitored and an adequate allocation from the state will be a precondition for the start of the projects. Dialogue with the government and other stakeholders on what represents a sufficient amount will be conducted.
Policy priorities in the migration area can change.	The State Migration Policy Concept should continue to be the policy framework for the reform agenda in this area. European and international best standards and practices should be used as an example. Human rights based approach, effective anti-corruption measures and sound financial management are to be used throughout all activities and within all priorities.
Lack of political will or consensus to implement the State Migration Policy.	Regular dialogue (JHA SubCommittee, Cooperation Committee, Cooperation Council and JHA Ministerial, Summit) tackles also migration and asylum issues and the implementation of the VLAP .

3.4. Cross-cutting Issues

Good governance, human rights, rule of law and gender equality should be seen as horizontal priority for this programme. Particular attention should be paid to addressing needs of vulnerable groups such as children, unaccompanied minors, victims of trafficking, and stranded migrants. Introduction of international and EU standards and best practices should be sought. Involvement of civil society organisations will be a guarantee for an efficient monitoring of activities. Integrity of public administration: actions envisaged under this programme shall include measures aimed at improving transparency of the administration and at eliminating or minimising opportunities for corruption and misuse of public funds.

3.5. Stakeholders

The State Migration Service (SMS) of Ukraine is a central body of executive power directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine.

The SMS is a part of the structure of state executive bodies; it has been created for shaping and implementing the state policy in the areas of 1) migration (i.e., both immigration and emigration), including fighting irregular migration, 2) citizenship, and 3) state registration of natural persons, refugees, and other categories of migrants envisaged by law.

The SMS took over the functions of the liquidated State Committee for Nationalities and Religions (asylum issues) and of the Ministry of Interior (fight against illegal migration, citizenship and registration of persons). As the agency has civilian status, the transfer of people from the Ministry of Interior (military status) did not occur automatically and the agency faced the need to recruit new people with a major loss of institutional memory. The process of establishing regional units is still ongoing.

The State Border Guard Service of Ukraine is responsible for border and entry control, including registration, short-term reception/detention as well as the identification and removal of persons apprehended within the border zone (60 km inland from the borders).

The Ministry of Foreign Affairs and the **Diplomatic Missions and Consular Posts (DMCPs)** are responsible for visas for short and long-term stay, and the Ministry is notified in cases of unsuccessful re-documentation procedures in the return process. The DMCPs are also responsible for consular registration of Ukrainian nationals residing abroad as well as for the maintenance of relations with Ukrainian diasporas. The Assistance Centre for the Ukrainian citizens abroad was established within the Ministry of Foreign Affairs in 2005.

The Ministry of Education, Sciences, Family, Youth and Sport is responsible for issues of minor migrants.

The Ministry of Social Policies is responsible for regulating labour migration and the issues of integration of migrants and Ukrainians who return home as well as preventing trafficking in human beings.

The Security Service of Ukraine takes measures to fight irregular migration. (please double check this if it has competences in this area)

The High Administrative Court and **regional courts** decide on appeals against decisions in asylum and migration procedures.

The main **international organisation** working in the field of migration present in Ukraine is **the International Organization for Migration (IOM)**. Its work focuses on assisting the Government in dealing with irregular migration, improving its migration management system, providing expert advice, reviews and input on migration related legislation, providing a forum for exchange on migration issues amongst interested and concerned stakeholders, promoting international dialogue on migration, allowing Ukrainian officials and others to strengthen the exchange with

colleagues in the region and globally; fighting trafficking in human beings and creating migrant-inclusive health practices and policies. At the same time, IOM Ukraine engages in exploring and promoting regular channels for Ukrainian labour migrants, harnessing the development potential of migration, disseminating migration information and managing migration movements and integration of ethnic minorities, promoting the benefits of cultural diversity, and counteracting xenophobia and intolerance. IOM operates in 3 locations: head office in Kyiv, sub-office in Crimea, and a Medical Centre. It has more than 140 operational staff and consultants. IOM has long experience in working with EU-funded projects.

UNHCR provides protection to refugees, asylum seekers and other displaced persons with the aim of seeking permanent solutions for persons who depend on international protection which, in the event of impossibility of return to the country of origin, entails providing for a supportive environment to integrate locally.

Local **NGOs** work on issues of human rights protection of migrants as well as provision of legal, social, psychological and material assistance.

On a wider level, the different type of **migrants** as well as **local population** will also benefit from improved migration management systems.

4. IMPLEMENTATION ISSUES

4.1. Method of implementation

Direct centralised management

Service, supply, works, twinning and grant contracts will be used.

Joint management

Joint management through the signature of (i) a Standard Contribution Agreement with IOM and (ii) a Standard Contribution Agreement with UNHCR, in accordance with Article 53d of the Financial Regulation. Both organisations comply with the criteria provided for in the applicable Financial Regulation and are covered by a framework agreement concluded with the Commission.

IOM is well established in Ukraine and has extensive experience in the field of migration management with operational office in Kiev and Crimea. In particular IOM's assistance will include support to the political dialogue relevant to the programme, support to the Delegation in preparation, implementation and monitoring of the programme, organisation of trainings, discussions, seminars relevant to the programme, communication and visibility activities, needs and cost assessments.

UNHCR may provide in the area of asylum management the same type of support as IOM provides in the area of general migration management. See in section 3.5 above for more information about specificities of both these international organisations.

Collaborating with these organisations under joint management is expected to have more impact than direct centralised management for reaching the objectives of the programme.

The change of management mode constitutes a substantial change except where the Commission "re-centralises" or reduces the level of tasks previously delegated to the beneficiary country, international organisation or delegatee body under, respectively, decentralised, joint or indirect centralised management.

4.2. Procurement and grant award procedures

1) Contracts

All contracts implementing the action must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question.

Participation in the award of contracts for the present action shall be open to all natural and legal persons covered by European Neighbourhood and Partnership instrument (Regulation (EC) N° 1638/2006 of the European Parliament and the Council - OJ L 310/1 of 9.11.2006). Further extensions of this participation to other natural or legal persons by the concerned authorising officer shall be subject to the conditions provided for in article 21(7) of the ENPI Regulation.

2) Specific rules for grants

The essential selection and award criteria for the award of grants are laid down in the Practical Guide to contract procedures for EU external actions. They are established in accordance with the principles set out in Title VI 'Grants' of the Financial Regulation applicable to the general budget. When derogations to these principles are applied, they shall be justified, in particular in the following cases:

- Financing in full (derogation to the principle of co-financing): the maximum possible rate of co-financing for grants is 80%. Full financing may only be applied in the cases provided for in Article 253 of the Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the Financial Regulation applicable to the general budget.
- Derogation to the principle of non-retroactivity: a grant may be awarded for an action which has already begun only if the applicant can demonstrate the need to start the action before the grant is awarded, in accordance with Article 112 of the Financial Regulation applicable to the general budget.

3) Joint management

All contracts implementing the action are awarded and implemented in accordance with the procedures and standard documents laid down and published by the relevant International Organisation.

4.3. Budget and calendar

The total amount of the action is EUR 28 million. Indicative breakdown of overall amount by main implementation elements:

The indicative breakdown of the overall amount for each objective is as follows:

Objective 1:	EUR 7 million
Objective 2:	EUR 8 million
Objective 3:	EUR 13 million

Indicative breakdown of overall amount by main implementation elements:

Supplies:	EUR 7 million
Services:	EUR 6.5 million
Twinning and grants:	EUR 6 million
Works:	EUR 6 million
Contribution Agreements with IOM	EUR 1.5 million
Contribution Agreements with UNHCR	EUR 1 million

The budget of the action includes funds for evaluation, audit and visibility activities. It is foreseen that the operational duration of the action will be 60 months from the entry into force of the Financing Agreement.

The indicative timeframe for launching the calls for proposals, the procurement procedures and the preparation of the contribution agreements is as follows:

Twinning and grants	fourth quarter of 2013
Service contracts	second quarter of 2014
Supply contracts	third quarter of 2014
Contribution Agreements	first quarter of 2013

The Government of Ukraine is expected to contribute to the implementation of this Programme financially or in kind. In line with the CIB guidelines, at least 20% co-financing will be required when EU funding will be used for supply and works contracts.

In the case of twinning projects, the Beneficiary administrations are requested to make their co-financing of the measures explicit in the project's budget. Such

contribution may be estimated at a maximum of one third of the contribution of the Commission. A minimum requirement for all assistance projects, including twinning and service contracts, is to provide the long-term project experts with adequate office space and basic communications.

4.4. Performance monitoring

The monitoring of this Programme will follow standard procedures, based on benchmarks to be agreed during the preparation of each of the sub-projects to be defined under the Programme, in co-operation with the Ukrainian government and other stakeholders and, in the case of twinning, based on the mandatory results agreed during the project preparation phase.

The sub-projects under this Programme will be monitored throughout their implementation by Results-Oriented Monitoring System of Projects and Programmes of External Co-operation. For overall monitoring of the programme, it is envisaged to set up Steering Committee, to involve all national stakeholders and donors, as well as all relevant project representatives and civil society. For Twinning and TA contracts, separate Steering Committees will be set up.

For overall monitoring of the Programme, a framework contract can be used.

4.5. Evaluation and audit

Mid-term and final evaluation of the programme implementation will be commissioned by the European Commission to assess programme performance, achievements and impact.

The projects will be evaluated/audited according to standard procedures. Evaluation of the results achieved will be entrusted to independent consultants as well as external audits. Each contractor should set aside sufficient allocation for evaluation.

In case of joint management, and where applicable, the provisions included in the relevant framework agreement(s) signed with the international organisation(s) will apply

4.6. Communication and visibility

Proper communication and visibility of the measures will be achieved via widespread dissemination of project achievements and results, as well as international visibility of twinning and technical assistance projects.

Each project under this Programme will have its own communication and visibility component and budget, according to the Communication and Visibility Manual for EU External Actions.

In case of joint management, and where applicable, the provisions included in the relevant framework agreement(s) signed with the international organisation(s) will apply