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Consequences of Schengen Visa Liberalisation for the Citizens of Ukraine and the Republic of Moldova

**Agnieszka Weinar, Oleg Korneev,
Shushanik Makaryan, Sergo Mananashvili**

MPC Research Report 2012/01

January 2012



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**EUROPEAN UNIVERSITY INSTITUTE, FLORENCE
ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES
MIGRATION POLICY CENTRE (MPC)**

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Liberalisation for the Citizens of Ukraine and the Republic of Moldova**

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**MIGRATION POLICY CENTRE (MPC)
RESEARCH REPORT, MPC RESEARCH REPORT 2012/01
BADIA FIESOLANA, SAN DOMENICO DI FIESOLE (FI)**

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Migration Policy Centre (MPC)

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The Migration Policy Centre at the European University Institute, Florence, conducts advanced research on global migration to serve migration governance needs at European level, from developing, implementing and monitoring migration-related policies to assessing their impact on the wider economy and society.

Rationale

Migration represents both an opportunity and a challenge. While well-managed migration may foster progress and welfare in origin- as well as destination countries, its mismanagement may put social cohesion, security and national sovereignty at risk. Sound policy-making on migration and related matters must be based on knowledge, but the construction of knowledge must in turn address policy priorities. Because migration is rapidly evolving, knowledge thereof needs to be constantly updated. Given that migration links each individual country with the rest of the world, its study requires innovative cooperation between scholars around the world.

The MPC conducts field as well as archival research, both of which are scientifically robust and policy-relevant, not only at European level, but also globally, targeting policy-makers as well as politicians. This research provides tools for addressing migration challenges, by: 1) producing policy-oriented research on aspects of migration, asylum and mobility in Europe and in countries located along migration routes to Europe, that are regarded as priorities; 2) bridging research with action by providing policy-makers and other stakeholders with results required by evidence-based policy-making, as well as necessary methodologies that address migration governance needs; 3) pooling scholars, experts, policy makers, and influential thinkers in order to identify problems, research their causes and consequences, and devise policy solutions.

The MPC's research includes a core programme and several projects, most of them co-financed by the European Union.

Results of the above activities are made available for public consultation through the website of the project: www.migrationpolicycentre.eu

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Executive summary

The status quo

1. At the moment there are very few well-grounded studies about the costs and economic, social and cultural consequences of the visa regime for Moldova, Ukraine and the EU: indeed, in the last years, there have been just two reports giving a quantitative presentation of its costs and benefits. The majority of studies discuss security costs/benefits. Migrant practices are absent from policy-making considerations due to the prevailing lack of knowledge of academic research.
2. Migration trends from Ukraine and Moldova to the EU have been stable in recent years. Migration from there has been characterized by low circularity in part because of the visa regime and in part because of travel costs.
3. Already under the existing EU rules on visas, considerable numbers of Ukrainian and Moldovan citizens, namely holders of local border traffic permits, holders of valid residence permits or long-stay (“D” type) visas, as well as diplomatic or service passport holders, not to mention the holders of dual EU-MD/UA citizenship, are exempted from the uniform visa requirement when crossing the external borders of Member States.
4. The Schengen visa regime has been used as a labour policy tool. However it has not been particularly successful in protecting national labour markets. Certainly, visas have not stopped the flow of irregular workers from Ukraine and Moldova.
5. By focusing on irregular workers, visa regime penalises *bona fide* visitors and limits the development prospects of the countries of origin by undercutting brain circulation and business exchanges.
6. By pushing migrant workers into illegality, visa regimes help perpetuate the shadow economy and increase the numbers of those with limited access to rights.
7. The current visa regime does not allow for spontaneous circular migration (as was the case, for example, with CEE workers in the 1990s): rather, it is the main cause of growth in irregular population for those trapped in the destination countries.
8. The visa regime has an important social cost for the country of origin, including destructive effects on family life and particularly on children left-behind.
9. Current visa procedures rarely meet either the requirements of the Visa Code, or the conditions of the Visa Facilitation Agreements. The EU pays a high political cost for this. But the cost to people and businesses is much higher and more palpable and can be measured in thousands of euros.
10. The rules of visa regime are obscure and there is limited knowledge about applicants’ rights under the current legal framework among Ukrainian and Moldovan nationals.

Future scenarios

1. There are mixed accounts as to the quantitative effects of visa liberalization. Experts foresee a temporary migration hump, with more *bona fide* visitors and possibly more temporary/circular workers. Migrants and potential migrants believe, meanwhile, that visits for tourism might not materialise *en masse* for lack of funds, and besides migration pools in Ukraine and Moldova have already dried up: “who wanted to leave, has already left.”
2. Migrants who are already in the EU will travel more frequently to their home countries. However, the availability of financial means rather than visa requirements will be the key factor shaping the decision of Ukrainian and Moldovan migrants to travel back and forth.

3. Given the overwhelming ignorance and thus discontent about visa application procedure, we may speculate that there is a good chance that the information on visa liberalisation will also be badly prepared and will thus likely result in many unsuccessful entry attempts.
4. Even after the possible introduction of a short-term visa-free regime, entry to the Schengen zone will not be granted automatically. Ukrainians and Moldovans when crossing the external borders of the Member States will have to justify the purpose and conditions of their journey, *inter alia*, by providing documentary evidence, as well as proof of their intention to leave the territory of a Member State after an intended stay. Besides, visa-free mobility will be possible only for bearers of biometric passports.
5. The absence of an effective monitoring mechanism may lead, under a visa-free regime, to situations where the purpose and duration claimed and justified by documentary evidence before a border guard might not correspond to the real purpose and duration of an intended stay, thus creating a loophole which can be used by *mala fide* travellers.
6. In the case of a Schengen visa waiver, Moldovans and Ukrainians would not need an extra visa to enter and stay in the territory of the Schengen Member States for paid employment with three months per six-month period, provided that they fulfil other conditions of access to the labour markets of those States.
7. The economic costs of the visa waiver are not negligible. For the EU: consulates will lose an important source of income (on the other hand, they can cut staff); for local communities: outsourcing agencies, i.e. Visa Application Centers, as well as travel agencies, will lose their main source of income; for EU societies: even a small increase in migrant flows might be a difficult test given the present financial crisis.
8. A visa free regime will significantly stimulate contacts between various categories of highly-skilled workers – as researchers, engineers, IT specialists, doctors and businessmen. There will be more short-term exchanges and common projects between the EU Member States and Ukraine/Moldova. There will also be more outsourcing in particular sectors from the EU-based companies to their counterparts in Ukraine/Moldova.
9. Migrants from Ukraine/Moldova will be more willing to move to the EU legally for work (including the highly skilled), as the visa-free regime will allow them to better sustain family ties and broader social ties with their countries of origin without having to go through family reunification procedures.
10. Labour migration from Ukraine and Moldova will not depend only on the will of the migrants and relatively open borders. We have to take into account the overall economic situation in the EU, which looks gloomy in the coming years, and perhaps in the coming decades, (especially if contrasted with other emerging pools of attraction e.g. Russia, Kazakhstan and Turkey) and which might adversely affect potential flows of migrant labour from Ukraine and Moldova.
11. A visa-free regime provides an avenue for getting out of irregularity for those Ukrainian and Moldovan nationals who are presently staying illegally and who are currently caught in the Schengen Member States which they fear to leave because of the risk of being apprehended during exit border checks after which they would be unable to re-enter the Member States.

Key recommendations

1. Information is the key to limiting irregular migration:

The EU and Moldovan and Ukrainian authorities should provide and disseminate accurate and precise information about the rules of entry to the Schengen area and, since migrants often do not speak the language of the host country, migrants also need to be told about the changing rules for visa status. The lack of knowledge on rules for maintaining legal migrant status (or changing that status) entices migrants to overstay illegally, and often pushes migrants to use

illegal means to stay in the EU, thus contributing to risks, mistreatment of migrants and the violation of their human rights.

2. Under the visa-free system, the border is the first and final security check, sensitive to loop-holes, while it also needs to be traveler-friendly:

Assuming that the visa liberalization dialogue is successfully brought to a conclusion, the space between Ukraine and Moldova, on the one hand, and the Schengen zone, on the other, will be a true space for mobility in security: meeting all the conditions will surely make it more difficult to ignore Schengen rules and should also make the discovery of fraud a simpler matter. However, since the visa-free regime does not confer an automatic right of entry, an effective information campaign needs to be put in place to explain all the entry requirements to the Ukrainian and Moldovan public, in order to avoid a high-rate of entry refusals immediately after the countries are put on the White List.

It is crucial that the “smart borders initiative” be implemented, especially by introducing the electronic Entry/Exit system and the *Registered Travel* Program, both proposed by the European Commission. In addition, the reporting obligation pursuant to Art. 22 of the Schengen Convention can be used more effectively by Member States to deter illegal immigration under a possible visa-free regime.

In this vein, the Schengen states and national Moldovan and Ukrainian authorities should create mechanisms to facilitate the border-check procedure to reduce the waiting period for travelers by bus, car and train.

Border controls should be supported by intensified internal controls in the Schengen area and cross-border cooperation strengthened in order to eliminate corruption.

3. Visa liberalisation can be an instrument of regularization

After the entry of the visa regime into force, many visa overstayers might choose to use this opportunity to leave and regularise their stay. In order to facilitate this process, the Member States when introducing a visa-free regime for Ukraine and Moldova, should consider the relaxation of the thorough checks on exit for Ukrainians and Moldovans, especially those based on Art. 7(3)(c)(ii) of the Schengen Code, for at least the first three months. Information about this initiative should be widely publicised.

4. Visa liberalisation and the labour market

Each Schengen Member State wanting to avoid the facilitated access (point 3 above) of Ukrainians and Moldovans to its labour markets in the case of a visa waiver, can use the relevant safeguard clause provided in Art. 4(3) of the Regulation 539/2001. In this way they can further require a visa for those UA/MD citizens who intend to carry out paid activity during their three-months stay.

To promote circularity and legal employment, the EU should learn from its own experiences with previous visa waivers (for CEE countries in 1990s, and recently – Western Balkans): visa liberalisation should be accompanied then by measures giving more flexibility to short-term legal employment in various sectors and cooperation with the countries of origin strengthened.

Illegal employment of Ukrainian and Moldovan migrants is already there now and will not disappear overnight, but it might get more intense with visa liberalisation. However, this is not a problem of borders and Schengen visas, as in the long-term these instruments cannot effectively play the role of labour market regulators. It is the role of other institutions, such as labour inspectorates, to control the rule of law in this sphere. By cracking down on the shadow economy, the Member States will reduce irregular employment of their own nationals and foreign nationals alike.

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1. Introduction¹

This report asks one overarching question: “What impact would liberalisation of the visa regime produce on actual migratory movements between Ukraine and Moldova, and the EU?”. Therefore, we are not interested in assessing the mobility of tourists, but rather of migrants who work in the EU. This gives our study a specific perspective that looks at the Schengen visa regime as a tool of labour migration policy.

We base our conclusions on primary and secondary qualitative data. We do not discuss here statistics but rather rely on the opinions and testimonies of experts, migrants and potential migrants. The first section of the report is a review of the most important public reports and studies of the impacts of EU visa policy on the mobility of Ukrainians and Moldovans. The second part, delineating current visa practices, is based on three types of data: the Delphi survey of experts conducted in December 2011 by the research team², qualitative interviews with Moldovan and Ukrainian migrants in Germany, Italy and Poland as well as interviews with potential migrants in Ukraine and Moldova³, all conducted in the countries by our research colleagues⁴; and a review of the legal framework performed by the research team. The content of the third section, focusing on forecasts, is derived from the same data sources as the second section and translates the results of our research into a set of recommendation and policy options.

2. EU visa policy and migration from Ukraine and Moldova

Despite the fact that Schengen visa liberalisation for Ukraine and the Republic of Moldova is high on the political agenda, its potential impact on migration from the two countries is understudied. What is even more surprising is a striking lack of studies on the impact of the current visa regime on mobility of people. Indeed, while preparing this report, it has become clear that there is a general lack of empirical data on the subject. The available sources can be divided into four categories:

- a) Policy studies analyzing the process of visa liberalisation (e.g. examining stages of preparation of Ukraine and Moldova, or sharing recommendations for possible political actions).
- b) The monitoring of visa issuance by EU consulates.
- c) Studies on the impact of the visa regime on business relations.
- d) Academic research on the migration of Ukrainians and Moldovans to EU Member States in general, from which some information on visa regimes can be extrapolated.

The first category of studies is by and large irrelevant to our analysis. The premise of the current report is that both Ukraine and Moldova meet all the requirements of the EU enumerated in the Action

¹ The research team thanks Philippe Fargues for his comments on earlier drafts of the paper, as well Halyna Leontiy, Yaroslav Petryshyn, Stefan Todirascu, Marianna Voitenco, and the “Socioinform” NGO for conducting interviews with migrants and potential travelers in, respectively, Germany, Poland, Moldova, Italy and Ukraine. We also thank Francesco Barbieri for helping organize the Delphi expert survey. We also thank CARIM-East project, co-financed by the European Commission, for supporting the research.

² 42 participating experts from the EU, Ukraine, and Moldova: researchers studying Ukrainian and Moldovan migrants in the EU, members of think-tanks analysing EU visa policy, NGO activists working with Ukrainian and Moldovan migrants; researchers working for international organizations.

³ 45 interviews of potential migrants in source countries. For disclaimer see fn. 1.

⁴ 45 interviews in total comprising three main categories: domestic workers, agricultural workers and construction workers. It must be noted immediately that the methodology of this part of the research does not meet strict scientific standards and thus it does not have claims to show universal truth. The main strength of this study is that it provides some insights into a “migrant’s view” of the current visa facilitation and of the possible effects of a visa-free regime.

Plans for Visa Liberalisation, minimizing, in this way, its negative impacts. Policy plans and recommendations on how best to achieve these aims⁵ are beyond the scope of our analysis. However, one strand of the studies, most notably the European Stability Initiative (ESI) project⁶, identifies three major concerns of the EU inscribed in the Action Plans, which should be tackled by Ukrainian and Moldovan policy makers:

- a) A visa free regime will cause an increase of illegal migration.
- b) A visa free regime will cause more asylum abuse.
- c) A visa free regime will facilitate organized crime.

Experts at the ESI have researched the parallel case of the Western Balkans, and have drawn lessons for the next wave of countries. They conclude that contrary to the EU's fears, the visa liberalisation process will have a positive impact on security of the Schengen zone, as Western Balkan countries were motivated to fight irregular migration and cross-border crime to stay on the White List. They conclude that granting visa liberalisation to Ukraine and Moldova will have a similar effect. This view is debatable, especially since Ukraine does not have the same level of commitment to fight irregular migration and engage in migration management as, for example, Serbia. As regards the abuse of asylum procedures, ESI experts argue (based on empirical research) that the fault lies with strong pull factors: Western Balkan citizens, mostly Roma, came *en masse* to only 3 out of 26 Schengen countries, and their number decreased when special allowances (e.g. Assisted Voluntary Return funding) were cut and procedure times were substantially reduced. ESI experts recommend that in order to avoid abuses and speed up procedures for manifestly unfounded applications, all the countries on the Schengen White List should be declared safe third countries. This seems logical, as such countries should have met the criteria laid in the Block 3 and 4 of the Action Plans, including respect for human rights.

The monitoring of Schengen consulates was initiated by the Open Society Institute in the early 2000s. Chosen consulates were monitored in several Eastern European countries over several years.⁷ However, only in 2010 did the monitoring done in Ukraine⁸ include all the Schengen countries. The objective of these studies is to bring to light the inconsistencies of the Schengen visa regime as implemented in Ukraine and Moldova and as such they are an important voice in the discussion on the validity of current solutions. For example, the results showed slight improvements in dealing with applications but also brought to light the *de facto* "rolling back" of visa facilitation agreements: the effective visa cost in Ukraine increased to 65-70 EUR as did the information deficit on applicants' rights.⁹

As regards studies on business relations, there has been only one widely distributed relevant attempt, namely the paper by the German Committee on Eastern European Economic Relations,¹⁰ which considered the impact of the visa regime on business and trade exchanges with Eastern Europe (mostly with Russia and Ukraine). This empirical study was based on a survey of 200 German companies doing business with Eastern Europe. German businesses seem to be worried about the application of the current visa regime. According to their findings, many claim loss of revenue due to visa obligations (both for EU businessmen going to Russia and due to visa obligations for East European businessmen coming to Germany) but they also complain about costs for visa applications (trips to consulates, the collection of

⁵ E.g. http://pasos.org/wp-content/uploads/2011/11/PASOS_EapvisaEU_25nov2011.pdf

⁶ "Schengen White List Project", www.esiweb.org

⁷ Stefan Batory Foundation's project "Friendly EU Border". Description at <http://www.libertysecurity.org/article988.html> accessed 10.01.2012

⁸ Europe without Barriers http://novisa.com.ua/upload/file/Viza_Monitor_ENG-3.pdf

⁹ These are the immediate effects of the introduction of application procedure in visa centres – see section 3.

¹⁰ As, for example the Committee on Eastern European Economic Relations on visa impact on economic/trade relations http://www.ost-ausschuss.de/sites/default/files/pm_pdf/Position%20Paper%20Roads%20to%20Visa-free%20Travel_0.pdf

documents). They also point out the detrimental effects of the Schengen visa regime on the economy: due to the visa requirements it is impossible to keep short deadlines when working with partners across the Schengen border or even to sign the contracts by legal deadlines. According to the findings, 20% of surveyed companies lost contracts and orders to other companies because of visa problems. The report includes important recommendations, that include:

- a) The facilitation of multi entry long-term visa issuance.
- b) The facilitation of application procedure: visas: for example, no invitation required for repeated travels, fully electronic procedure or simply issuance of visas at the borders and no fee.
- c) Pilot visa-free short trips.
- d) Visa-free travel for biometric passports' holders.

Unfortunately this type of empirical study, bringing out into the open economic (and other) issues related to the visa regime, is rarely available. A number of small studies, which are not easily accessible and which are virtually unknown to the wider public and policy makers, could fill this gap: e.g. MA theses, parts of doctoral dissertations, small ethnographical accounts in Schengen national languages conducted for specialized regional and national programs. In order to understand the practices, obstacles and conditions shaping the mobility of Ukrainians and Moldovans to the Schengen zone, a major investment in the literature review would be worthwhile.

Research reports and scholarly articles that are published and widely accessible do not usually pay a lot of attention to the visa issue. The Schengen visa is discussed together with other permits and it is difficult to base proper analysis on such scarce information. Some information on the current state of affairs has been quite well summarized by Clandestino,¹¹ which however did not talk only about Ukrainians and Moldovans. Also, relevant findings as regards Ukrainians are to be found in METOIKOS studies on circular migration.¹²

All in all, there are four main messages to be extrapolated from the available literature:

- a) The migration of Ukrainians and Moldovans is, by and large, spontaneous circular migration.
- b) Ukrainian and Moldovan workers often use Schengen visas as a jobseeker visa.
- c) Visa overstay is the most common breach of immigration law, together with working without work permit.
- d) Ukrainians and Moldovans work in the EU predominantly in three sectors: domestic work, construction, and agriculture. Highly-skilled migrants are less represented.

What is definitely lacking are the large-scale survey of various categories of migrants and visitors. But there is also a deficit in surveys concerning the impacts of visa regime on certain sectors of economy. Interestingly enough, the only reports talking about the impacts of visa liberalisation prepared on EU level and publicly available is a Europol report¹³ and a FRONTEX risk analysis.¹⁴ This, of course, provides quite a distorted view of the impacts of visa liberalisation. Contributions from such EU institutions as ETF, CEDEFOP, EASO, EUROFOUND and FRA would certainly make a difference. Also an input from social partners (e.g. CEEP, ETUC, BusinessEurope¹⁵) would broaden the scope of discussion and change its current security orientation, bringing to the spectrum many other areas, where visas matter.

¹¹ <http://clandestino.eliamep.gr/>

¹² <http://www.eui.eu/Projects/METOIKOS/Home.aspx>

¹³ https://www.europol.europa.eu/sites/default/files/publications/octa_2011.pdf

¹⁴ http://www.frontex.europa.eu/situation_at_the_external_border/art27.html

¹⁵ http://www.etuc.org/IMG/pdf/A_CES_migrants_EN_5-2.pdf "First and Foremost Workers"

Key points

- Current data does not allow a fair analysis based solely on desk studies. The available studies usually show only the state of play of EU visa policy implementation. In reality, a wealth of knowledge exists. But this knowledge is not easily accessible due to language constraints and to poor dissemination.
- There is no well-grounded research presenting the impact of visa liberalisation on the mobility of people, the economy of the affected countries or possible social impacts.
- A fair public and political debate on visa liberalization would need well-documented feedback from many actors, not only security agencies. Visa policy has had, after all, not only an impact on organized crime or illegal border crossings. It is most importantly a tool regulating people-to-people contacts, with a huge impact on businesses and the economic development of Ukraine and Moldova more generally.

3. Migrations from Ukraine and Moldova under the current visa regime

In this section we will focus on the present state of migration from Ukraine and Moldova to the Schengen zone in the specific context of the EU visa regime, as well as venturing specific forecasts. It is our belief that any attempt to understand the future can only be based on the assessment of the current situation. We will approach this challenge from three angles:

First, we will present the results of the Delphi survey of experts, who are either experienced researchers in the field of Ukrainian and/or Moldovan migration or practitioners working with Ukrainian and Moldovan migrants.

Second, we will offer an in-depth look into the individual stories of migrants and potential migrants from Ukraine and Moldova, both low and highly-skilled.

Third, we will discuss legal aspects of the visa policy, its application and loopholes used or potentially used by migrants.

At all stages we will address the three main points that shape the current debate on visa liberalisation: the risk of illegal migration and organized crime contrasted with the need for more business, scientific and cultural exchanges.

3.1 Migration from Ukraine and Moldova under the current visa regime: results of the Delphi survey.

This section presents the summary of the results of the Delphi survey. The respondents are researchers, experts and scholars working in the field of Ukrainian and Moldovan migration to the EU. Our group of 44 respondents consisted of EU, Ukrainian and Moldovan nationals who could respond to the survey in English and Russian. In the first round, where we asked 28 closed and 2 open-end questions, we received 58 responses (some experts who were particularly knowledgeable on the issue filled in both surveys: for Ukrainian and for Moldovan migrants). In the second round, where we asked open-end questions, we received 18 responses. Therefore, we decided to base our analysis on the first round with the second round being treated as supplementary material.

We asked our respondents to share with us their expertise and knowledge on several topics important in the context of visa liberalisation:

- The characteristics of current migration¹⁶ from Ukraine and Moldova taking into account three main categories of migrants: domestic workers, workers employed in construction sector and in agriculture.
- The impact of the current visa regime on the countries of origin and destination.
- The future developments under visa liberalisation.

3.1.1 Migration from Moldova and Ukraine: the current situation according to Delphi

Ukraine offers the biggest pool of migrants to the EU from the Eastern Neighbourhood. According to permit data 687,967 Ukrainians and 197,856 Moldovans stayed legally in the EU in 2010.¹⁷ However, these numbers are not exhaustive. The number of Ukrainian migrants fluctuates seasonally as many work in agriculture. Thus, remembering that we talk here about hard to measure numbers of temporary and long-term workers, visa overstayers, and illegal workers we decided to look for the most reliable estimates. In order to at least give an idea of the estimates which experts believe are most trustworthy, we asked our respondents to share their opinions with us. 70% of the responses indicated estimates between 1,000,000 and 2,000,000 people who can be labeled as Ukrainian migrants in the broad sense. The estimates for Moldovans quoted by the experts take into account two specifics of this migration: less seasonal employment and a higher rate of dual citizenship. And thus the estimates most commonly quoted as trustworthy in the survey (85%) oscillated between 200,000 and 500,000 individuals.¹⁸

The respondents agreed that most Ukrainian and Moldovan migrants enter the EU on Schengen visas (43% of answers for UA and 39% for MD). This is particularly relevant for workers at the unskilled- or low-skilled end of the labour market (domestic work or construction), who decide to work irregularly and overstay their visas. The second type of visa used by the migrants is a national temporary visa (26.7% of the answers for UA and 7 % of the answers for MD). Experts seemed to agree that entry on the basis of work visa is less common. It seems that the family reunification visa is more common for Ukrainians than for Moldovans.

In the eyes of our respondents, illicit behaviour of Ukrainian and Moldovan migrants in the EU, when relevant, takes on two forms: illegal employment in the shadow economy and overstaying with the visa. As explained in the section 3.2 below, those who work irregularly had usually come legally and are able to regulate their status with time. Instances of the abuse of the asylum system, illegal border crossing or trafficking seem to be less relevant. Moreover, according to the majority of Delphi respondents, Ukrainian and Moldovan migrant workers are rarely involved in criminal activities and possibly the percentages of such people are very low in the overall number of migrants and visitors.

The experts agreed that the numbers of Ukrainian and Moldovan migrants working illegally in the EU has tended to decrease since 2008¹⁹ or at least to have stabilized. The question concerns the stability of stocks, not flows. The decreasing of stocks is due to the fact that migrant workers from two countries have already entered the EU and stayed, and many of them have been able to regularize their situation over time (see 3.2). Moreover, the crisis in the EU influenced the availability of jobs. Ukrainians and Moldovans do not typically seek asylum. In fact the numbers of asylum seekers from the two countries

¹⁶ We set a series of questions asking the respondents to provide most trustworthy estimates.

¹⁷ Carim-East database, www.carim-east.eu

¹⁸ Migration from Moldova has one important trait: between 20% to 40% of migrants, as estimated by the experts, have dual EU citizenship (most commonly Romanian or Bulgarian). This fact influences their count in the country of destination, but not in the country of origin. The higher end of the provided estimates is based on the counts of the country of origin.

¹⁹ We chose the cut-off date 2008 as this is the year of the entering into force of the Visa Facilitation and Readmission Agreements with Moldova and Ukraine, as well as the first year of the economic crisis.

have decreased since the 1990s and are currently very low.²⁰ It is important to mention that according to experts, these two countries would not represent an important source of asylum seekers post visa liberalisation, as there are very few vulnerable groups prone to migrate from there.

We asked our respondents to choose 5 top countries of destination for Ukrainian and Moldovan workers from the list of all Schengen states and to indicate the relevant sector, as well as employment status. According to the results, Ukrainian workers are present in all EU Member States. The respondents indicated that the majority of Ukrainians choose the Czech Republic, Italy, Greece, Poland and Spain as their destination. The Czech Republic, due to the recent history of active migration policy targeting Ukrainians, is the place for workers in manufacturing and construction. In Italy and Greece²¹, both countries with limited legal channels for migrant workers and strong pull factors in only a few sectors of the labour market, Ukrainian workers are employed predominantly as domestic workers and, to a lesser extent, in agriculture. In Poland and Spain, countries with legal possibilities favouring temporary and circular labour migration, Ukrainians are employed in agriculture, construction, and domestic work.

According to the answers we received, Moldovan migrants, on the contrary, choose only a few destinations in the EU. Apart from Romania, which is not in the Schengen zone, the main host countries are Italy and Greece, for domestic workers and agricultural workers. Portugal is an important market for construction workers, while in Spain Moldovans are represented in agriculture, construction and domestic work.

Interestingly enough, the Delphi results seem to suggest that legal and illegal employment can be found in the same sectors in the same countries at the same time, with people of different status often working side by side. More cases of illegal work can, however, be found in the domestic sector and agriculture than in manufacturing or construction.

The Delphi survey offered an interesting insight into the impact of the current visa regime on countries of destination. Schengen visas are often used as the entry points for jobseekers and temporary workers. Since there is no guarantee that such a visa can be obtained again, spontaneous circular migration is discouraged, thus trapping many individuals in the destination country as visa overstayers. As a consequence, the much praised idea of circular migration is not facilitated, while overstaying is, instead, promoted.

The experts seem to agree that the most important impact of the visa regime for Ukraine and Moldova is its social dimension. Disruption of family life and the impact on any children left behind by migrant parents are weighty negative effects. Another important impact mentioned by experts in the case of Ukraine is limited innovation potential (barriers to the circulation of brains) and limited business exchanges.

As regards effects on the country of destination, the visa regime is a tool that lies in the way of the further Europeanization of EU neighbours and is thus perceived as sending the wrong political signals. This aspect was often underlined as most relevant by the experts. Moreover, the Schengen visa policy contributes to some negative phenomena. For example, it pushes up the growth of undocumented populations, as Ukrainian and Moldovan workers who overstay, staying permanently or at least for many years, fearing the consequences of crossing the border when returning. Another important effect is the growth of smuggling and trafficking networks, as people are prone to take more risks and to circumvent what they perceive as impossible obstacles to movement.

However, the Schengen visa regime can also have positive impacts. When asked, our respondents indicated that in the case of Ukraine possible positive sides would be rather limited brain drain or

²⁰ According to Eurostat, Ukraine and Moldova do not appear among the top 30 countries of origin of asylum seekers in the EU. See e.g. Eurostat: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-11-005/EN/KS-QA-11-005-EN.PDF

²¹ However, there are many ethnic Greeks from Ukraine included in this number.

limited depopulation. However these aspects were deemed less important or even irrelevant in the light of the corresponding negative impacts. In the case of Moldova, positive impacts were noted, as limiting the exodus of workers abroad and brain drain, but again, the negative impacts were perceived as being much more relevant.

Positive aspects of the visa regime for the country of destination were much easier to pin down for the respondents. The majority noted that employers benefited from the comparative advantage of irregular employment. The second most indicated beneficial effect was the financial gain of the consulates.

Key points

- Ukrainian and Moldovan migrants enter the EU predominantly on Schengen visas. In this number there are *bona fide* travelers as well as potential irregular workers.
- The Schengen visa regime is used as a tool of labour market policy, and not only as a border management tool.
- Taking into account the existing loopholes and the final effect (a presence of Ukrainian and Moldovan migrants working irregularly in the EU), the Schengen visa regime has not protected the national labour markets: visas do not stop the flow of irregular workers.
- Labour migrants pushed into illegality as visa overstayers feed the ranks of vulnerable individuals, who are an easy target for dishonest employers.
- Ukrainian and Moldovan migrants work predominantly in only a few sectors of economy, notorious for being unpopular with receiving country's citizens.
- Ukrainian and Moldovan migrant workers prefer legal employment and tend to choose sectors where they can count on obtaining a work permit in a given EU Member State.
- Following the regularization in main countries of destination, as well as the introduction of new ways for legal employment in some Schengen states, the irregular employment of Ukrainian and Moldovan migrants seems to have decreased or at least to have become stable.
- The current visa regime, if considered as an instrument of labour policy, does not allow for spontaneous circular migration (as was the case, for example, with Central European workers in the 1990s) and, instead, it is the main cause of growth of irregular population trapped in the destination countries.
- The visa regime has an important social cost for the country of origin: disrupting family ties and creating a generation of children, who grow up without parents.
- By focusing on irregular workers, the visa regime penalizes *bona fide* visitors and limits the development prospects of countries of origin by undercutting brain circulation and business exchanges.

3.1.2 The consequences of visa liberalisation and policy goals to be pursued

In the forecasting part of the survey we asked our respondents to answer three questions:

- What will be the main consequences of visa liberalisation on migration from Ukraine and Moldova to the EU?
- What should be the policy goals at the EU-level following visa liberalization?
- What should be the policy goals at the national level in the Schengen member states following visa liberalisation?

The analysis of the results show that in the case of Ukraine, the respondents see three main effects: increase of temporary legal migration to the EU and increase in the numbers of *bona fide* travelers to the EU, as well as an increase in regular employment (the details are presented in Annex 1).

The first two are, in fact, closely related: temporary legal immigration for many experts is today equal to short-term mobility (e.g. business trips or vacation). The third effect – more regular employment – would suggest that visa liberalisation might also influence labour migration policies. On the one hand, then it may be expected that the Member States will accompany visa liberalisation with some form of legal employment program (e.g. caps for short-term contractual workers in specific sectors occupied in any case by Ukrainian workers). On the other, it may mean that migrants, who are sure that they can return at any moment, will be more prone to look for a willing employer while visiting, and then go back to Ukraine to apply for a work visa there. Yet another option is explained in the legal section (3.3): visa liberalisation, if implemented in a specific legal context, can be equivalent to working legally for 3 months.

The respondents expect that there will be more spontaneous circulation of irregular workers, and that the number of irregular Ukrainian workers will increase. But these are not the most relevant consequences. Moreover, a visa-free context will adversely influence the traffickers and smugglers' networks.

When one of the main blocking points to mobility is removed, namely the visa regime, we would not expect to find growing illegal migration (in the sense of crossing the border illegally) among the relevant consequences. Respondents clearly reject the possibility of any increase in that category. Low marks were given to the threat of intensified criminal activities, but this can be interpreted as the follow up to the prevailing view among migration experts: first, migration is not about criminal activities; second, criminals do not see visas as an obstacle; and third, meeting all the requirements of visa liberalisation benchmarks will result in mobility in a more secure environment.

In the case of Moldova, the results of the survey differed. Although the increased mobility of *bona fide* travelers is acknowledged here too as the most important consequence of the visa liberalisation, it is closely followed by an expected increase in the circulation of irregular workers. The respondents also foresee an increase in all forms of legal presence of Moldovans in the EU, but they do not single this out as the most important consequence. Like the experts analysing the Ukrainian situation, they expect the number of irregular workers from Moldova to grow, but again this would not be, in their view, the most important effect of the visa liberalisation. Interestingly enough, they bring to forefront a beneficial effect of visa liberalisation for disruption of smuggling and trafficking networks.

All in all, the experts expect an increase in temporary and short-term flows from both countries to the EU, be it for *bona fide* visits (majority) or short-term employment. Based on the previous experiences (e.g. the lifting of visa obligation to Central European states in the mid-1990s or the 2004 EU accession), lifting a barrier to movement results in a migration hump that stabilizes over time. An important question seems to be the projected size and the character of this hump. The size, as the recent EU experience of internal mobility shows,²² does not depend solely on proximity or openness. There are many other factors determining the outcome. These include the degree of satiation of migrant networks, the state of the labour market in the EU host country, opportunities at home, or competition from non-EU poles of attraction. Taking into account the results of the survey, we can conclude that if the most relevant effect would be an increase in *bona fide* travellers, the hump should be of easily manageable size. Possibly the circular migration of irregular workers from Moldova (given the size of the population, quite small in real terms) and, to a much lesser extent, from Ukraine might not result in a greater number of irregular population in the host country, due to increased legal circulation there.

²² See e.g. Herbert Brucker et al (2009) Labour mobility within the EU in the context of enlargement and the functioning of the transitional arrangements. Final Report. European Integration Consortium. <http://www.iab.de/1298/section.aspx>

The character of the migration hump, as suggested by the Delphi results, is largely temporary. But again, in both cases the respondents agreed that there will be a possible increase in permanent legal migration to the EU, as temporary migration lingers on.

Another issue is the dynamics of projected flows: will the hump linger? For how long? This is a question that cannot be answered in this report, as the answer depends on various variables: propensity to migrate, financial means to be spent on tourism, the state of the economy in the country of origin and destination. However, we decided to look at the question in terms of controlling additional flows and shaping their character, by asking our respondents about possible policy goals for the EU and Schengen Member States to be pursued after visa liberalisation.

The experts agreed that there are four main policy goals to be achieved at the EU level:

- Increasing awareness about the rules and limitations of Schengen visa liberalization.
- Harmonizing rules against irregular employment of legal third-country nationals.
- Simplification of access to rights for third-country nationals (implying also the right to work, the right to transfer social security and pension rights etc.).
- Cooperation with countries of origin to create better employment opportunities.

The above policies will have a two-fold effect: they will both limit the migration pressure at home and decrease the cases of illegal employment or vulnerability in the country of destination.

The four most important policy goals to be pursued by the Schengen Member States according to the experts are:

- Increase awareness about different opportunities given by national visa and Schengen regimes.
- Fight corruption at the border.
- More flexibility to issue work permits.
- Design and implement circular/temporary migration schemes that will accompany visa liberalisation.

The above recommendations tackle the core issues of a visa-free regime. As the responsibility for controlling the flows will now be of the border guards, the strongest point of the system will be the border's weakest link. However, we should remember that border checks will likely be backed up by increased internal checks, and that these also should be immune to corruption. Raising awareness of the conditions for mobility to the national territory is a natural way of limiting instances of law violation. More legal opportunities to work temporarily can off-set the negative effects of increased inflows of jobseekers and channel them into manageable schemes (see e.g. the German experience of Central European migrant workers in the 1990s²³).

Key points

- The most important effect of visa liberalisation would likely be more mobility of *bona fide* travelers resulting in economic benefits for the EU.
- A migration hump following this policy change would also be due to an increase in temporary migration and the spontaneous circular migration of workers. The size of the hump and its duration needs to be assessed and worked out in further research.
- Effects of visa liberalization might be better managed at the EU level by initiatives limiting migration pressure at home, decreasing the cases of illegal employment or vulnerability in the country of destination.

²³ <http://migrationeducation.de/22.0.html> accessed 09.01.2012

- At the national level, fighting corruption at the border, launching awareness campaigns, and creating legal channels for temporary labour migration would be the most desirable policy goals.

3.2. The impact of visa liberalisation on migration: Interviews with migrants and potential visitors

The research team initiated interviews with 46 Ukrainian and Moldovan migrants in the European Union (15 based in Germany, 15 in Poland, and 16 in Italy,) who were legally or illegally employed in construction, domestic work or agriculture. Approximately an equal number of interviews – 44 – were conducted with *potential* migrants in the Ukraine and Moldova. Thus, a total of 90 interviews were conducted (see Annex 2 table 3.2 for more details) across five countries. Interviews were designed to evaluate the nature of changes in migration trends (including potential illegal migration dynamics) that can potentially occur due to visa-liberalisation reforms between Moldova, Ukraine and the EU. In the EU the respondents were chosen using snowball sampling, whereas in Moldova and the Ukraine potential migrants were identified at entrances of EU member-state embassies, as well as in public places, such as supermarkets, enterprises, etc. Potential migrants were adult men and women younger than 45 years old who had never been to an EU country.

Two questionnaires were designed for each group of respondents. The questionnaire for migrants in the EU countries contained three blocks of questions: The first block acquired information about the factors (including obtaining a visa and passing through the border-control) that shape the frequency, length of stay and the decision of migrants and their family members to visit the EU and return to their home country after the visit. The second block of questions referred to the potential of illegal migration and acquired information about the intentions of migrants to work and stay in an EU country beyond the provisions provided by the entry visa. And, finally, the third block assessed the extent to which a visa-free regime could affect future travel and work intentions of Moldovan and Ukrainian migrants who were already in the EU.

The second questionnaire, which was applied to potential migrants in Moldova and the Ukraine, examined whether visa-free regimes could affect the frequency, length of stay and work intentions of Moldovan and Ukrainian travellers to the EU.

The analyses and forecasts on migration dynamics and characteristics provided in this section are based on the results derived from these interviews. Ukraine initiated visa liberalisation dialogue in 2008, and Moldova did so in 2010. Hence, in our analysis we tried to examine the nature of migration dynamics since 2008 to more accurately identify the anticipated migration trends that would be brought about by visa-liberalisation.

3.2.1. *What factors shape the frequency and length of travel of (potential) migrants to/from the EU?*

Our interviews with Moldovan and the Ukrainian migrants in the EU revealed that the travel frequency of migrants to their home country varies depending on the destination EU member-state (see table 3.2.1). This may be due to various factors including the small sample size, but also due to difficulties of obtaining a visa to return to the EU, characteristics of migrant networks, concentration of migrants in certain destination countries, as well as differences of migration and integration patterns of Moldovan and Ukrainian migrants in the host state. Table 3.2.1 reveals that on average migrants travelled home five times during the four-year span of 2008-2011, hence one visit on average per year. Half of our interviewed migrants in the EU (see the value for the median in table 3.2.1) travelled home less than three times during 2008-2011, and the other half travelled more than three times over the same period, with the maximum at 36 journeys for one respondent from Poland. The overwhelming majority of respondents both those already in the EU *and also* those potential migrants in Moldova and Ukraine who intend to travel to the EU stressed that **(a) financial resources**

and (b) time availability, are two of the most important factors that determine the frequency of their travel and visits of family members to/from the European Union.

Table 3.2.1. Total number of visits made to Moldova and Ukraine during 2008-2011 by interviewed Moldovan and Ukrainian migrants currently living in the EU

For migrants already in the EU with children and relatives in the home country, the availability of financial means for travel is important factors for home visits to Ukraine and Moldova. Nevertheless, **(c) the risk of losing their job in EU** largely limits the frequency of travel of migrants home. Thus, migrants leave for home only when they have “vacation” from their employer or have found a

	Average number of visits made during 2008-2011	Median²⁴ number of visits	Minimum number of visits	Maximum number of visits	Sample size (n)
Germany	2	2	0	5	15
Italy	4.18	3	0	15	16
Poland	11.21	9.5	5	36	14
For the full sample	5.64	3	0	36	45
Total sample size	45				

temporary replacement for their job. For example, migrants who perform domestic work and provide nursing services for elders in families, baby-sit, or clean apartments often ask other migrants to temporarily replace them in the household for the duration of their visit home, thus, ensuring that upon return they retain their job in the same household. And finally, **(d) the extensive paperwork** in general required to obtain a new visa to return to the EU is another obstacle that refrains persons from travelling to/from the EU and Moldova or Ukraine.

In the EU we interviewed migrants in domestic work, construction and agriculture. These were typically low-skilled migrants and earn at low levels. Thus, these migrants also have limited financial resources to invite family members (and if possible, also pay for their travel). Hence, **family visits to migrants are rare**. Moreover, the bureaucratic machinery of obtaining necessary paperwork for visa application adds unnecessary anxiety to the travel plans of their relatives, and hence, often discourages migrant family members from visiting migrants in Europe.

Key points

- Vacation from work and the possibility of retaining a job in the EU upon return (i.e. work vacation or temporary replacement for their work responsibilities) is by far the most important factor in determining whether migrants will visit their home country.
- Moldovan and the Ukrainian migrants in the EU travel to their home country if they have left-behind relatives and children.
- Availability of financial means to travel home is an important factor for both travelling home, as well as for inviting visitors.
- Family visits to migrants are rare due to the scarcity of financial resources.

²⁴ ‘Median’ means that half of the respondents’ answers falls below the median value, and the other half falls above the median value, as indicated in the table.

- The availability of financial resources and of spare time (for vacation) is the key factors in determining the frequency/length of travel to the EU.
- The requirement to obtain a visa, as well as emotional and time-consuming hardships related to preparing the visa application paper-work for travel to the EU are important in discouraging potential travellers to the EU.

3.2.2. *What problems and challenges do Moldovan and Ukrainian migrants face during their journeys to the EU, and to what extent can these hardships be addressed by visa-liberalisation reforms?*

To avoid complications in obtaining a visa, many Moldovan and Ukrainian migrants rely on travel agencies (not to be confused with visa application centres). These agencies, for a fee obtain visas to an EU member-state. In fact, all 16 interviewed respondents in Italy claimed that they had received their visas using this medium. Relying on travel agencies is also convenient for (potential) migrants that live in settlements further away from an EU member-state embassy. For example, at times the journey to Kiev to obtain a German visa can take 6-14 hours, not to mention the additional costs of hotel accommodation and travel expenses. However, while travel agencies are convenient channels for obtaining visas, these entities are also entangled in corruption, often involving embassy staff members. For example, a representative of an NGO working with Moldovan and Ukrainian migrants in Italy informed us that many Ukrainians pay as much as 500-1000 Euro, and at times 3000 Euros, to be guaranteed Polish visas to travel to the EU. The price can be even higher depending on the type of a visa desired.

Different embassies and consulates of EU Member States have varying reputation for strictness in granting entry visas to Ukrainians and Moldovans. This leads **to alternative routes for illegal migration**. For example, when the German embassy in Ukraine rejects a visa application, many “rejects” apply for a Polish visa and easily gain access to the EU. Similarly, many Moldovan migrants use the Romanian visa or even the Romanian passport (due to dual citizenship) as an alternative route to enter the European Union, and then travel to the desired EU member-state. Usually, the final destination of Moldovan migrants is Italy or Portugal, where, as migrants claim, it is much easier for illegal migrants to legalise themselves. Thus, maximum harmonization of visa application and migrant status legalization rules are crucial and in the direct interest of EU Member States in fighting illegal migration.

3.2.2.1 *At the embassy*

Those who apply for visas directly, stress three *unpleasant* issues they have to deal with in their travel to the EU:

- “Unnecessary amount of extensive paperwork for a visa.”
- “Long time to get a reply on submitted visa application.”
- “Rude and disrespectful” treatment of visa applicants by the local Moldovan and Ukrainian staff working at the EU member-state embassies in Moldova and Ukraine.

Almost all respondents in Italy complained that it was very hard to obtain visas for children or members of the family. Interviewed migrants in the EU also noted that the required paper-work represented bureaucratic irrationality. For example, some cited the requirement to provide proof of financial means for the full period of intended travel. Most respondents obtain cashiers’ checks from the bank to show proof of financial means. Those who do not have such financial means, simply borrow the money from friends to obtain the cashier’s checks to show at the embassy. However, as soon as the interview at the embassy is over, respondents redeem the checks in the bank and get their money back. In the eyes of visitors, this is just an unnecessary charade. Similarly, the long time needed for replies on visa applications leads to negative outcomes for visa applicants. Three

respondents from Poland complained that due to the delays in obtaining a visa, they lost the job offers they had already arranged in Poland.

3.2.2.2 At the border

Many of the migrants we interviewed had initially arrived in the EU as tourists or on a personal visit and then overstayed. Thus, they also had faced problems at the border when border guards questioned their travel invitations to the EU, or when they tried to re-enter the EU after having overstayed in the EU during past visits. Thus, respondents noted that having “acquaintances” among border-guards is important. However, even those that had arrived legally, still complained that at the land border (both at the exit and entry countries) migrants are exposed to long-lasting border check-up procedures that can last as long as 6-8 hours. Usually the corruption at the exit border point in the origin country is one of the reasons that border-checkups are so cumbersome for migrants.

Key points:

Challenges faced by migrants during travel to the EU:

- Long waiting time for visa application processing in EU member-state embassies in Moldova and Ukraine.
- Unnecessary bureaucracy and extensive paperwork for visa applications.
- Extensive waiting time at border-control and customs points.
- Corruption of border guards in countries of origin,
- Rude treatment of migrants and travellers by embassy personnel and border guards.

3.2.3 What are the anticipated consequences of the visa-liberalisation regime?

Our interviews revealed that **visa-liberalisation will not, for several reasons, lead to an increase in migration to the EU from Moldova or the Ukraine.**

- Moldovan and Ukrainian migrants insist “those who [wanted to leave] have already left.” For example, Ukrainian migrants claim that a typical migrant who today travels to work in the EU, to Germany or to Italy, as an example, arrived in that country during the much higher migration volumes in the 1990s. Since then they have established personal contacts with potential employers and they rely on these contracts. These migrants also speak the language of the host country. Almost no “newcomer” can be found among the Ukrainian migrants working in Germany, migrants claim. At most, and only rarely, relatives of the migrant may come to work in the EU.

Similarly, Moldovan migrants claim that while many Moldovan citizens can acquire Romanian citizenship as well as their own and then travel to the EU, rarely do Moldovan migrants opt for this option. Those Moldovan citizens who intended to move to the EU had already done so in the 1990s. Thus, Moldovan and Ukrainian migrants insist that the migration of their compatriots to the EU has stabilized in the last ten years, and should not change due to visa liberalisation. The results were somewhat inconsistent in Poland. Here too all respondents noted that migration trends should not change. Yet in Poland all 15 (and all Ukrainian) respondents also noted that visa-liberalisation with Ukraine may lead to an increase in low-skilled labour migration to the EU, and hence, it will be very hard for migrants to find jobs.

Interviews with potential migrants in Ukraine and Moldova also revealed support for the thesis that no absolute increases in migration would occur due to visa-liberalisation. Particularly, while interviewed, citizens noted that visa liberalisation would make travel to the EU easier and perhaps

also more frequent: in Ukraine only a third (6 out of 22 respondents) could even remotely guess how often they would travel to the EU. Those rare respondents stated a frequency of once or twice a year for vacationing in the EU. A similar attitude was found in Moldova.

- Due to the limited financial resources of migrants in the EU, it is not likely that visits of migrant family members to the EU will become more frequent. Similarly, potential migrants claim that travel to the EU will largely depend on financial means being available.

However, while visits of family members to migrants in the EU will likely not become more frequent, visa liberalisation will be important for maintaining close family ties, especially when children are involved. As we learned during interviews, children and family members usually face great hardships in obtaining visas to visit their migrant relatives in the EU. For such visits visa-liberalisation will bring a clear benefit.

- It is, instead, anticipated that due to visa liberalisation Moldovan and Ukrainian **migrants in the EU will travel home somewhat more frequently**, primarily because it is cheaper for a migrant to travel to see the family and pay for his/her travel, than to invite several family members to the EU and cover their travel and living expenses in the EU. **This will especially be the case for migrants in those EU member-states where the procedure of applying and getting an entry visa is more stringent and demanding, such as in Germany²⁵**. However, again, the availability of financial resources is a more important factor in the decision to travel home rather than the requirement to obtain a visa for return to the EU. Thus, **the impact of visa liberalisation is expected to be limited by the frequency of migrants' travel to their origin countries.**

3.2.4 What is the intended duration of stay of migrants in the EU and in their origin countries under the liberalised visa regime?

The predominant majority of interviewed migrants in the EU note that visa **liberalisation is not likely to affect the duration of their stay in their home countries** due to the lack of spare time or vacation from the job they have in the EU, and due to the risk of losing their job in the EU.

If visa liberalisation is not likely to change the length of visits of Moldovan and Ukrainian migrants to their home countries, will visa liberalisation potentially change the length of stay of interviewed migrants in the EU?

During our interviews we discovered that the travel frequency of Moldovan and Ukrainian migrants largely varies depending on their EU country of residence (see table 3.3.1). While it is not in the scope of this report to analyze the reasons for such variation, it is important to note that similar variation between countries was also observed for the *intended duration of stay* of Moldovan and Ukrainian migrants in the EU if a visa-free regime was applied. Future research should explore this variation.

However, what is important and relevant for visa liberalisation is that *within each EU country, specifically in Italy and Poland*, the answers of interviewed Moldovan and Ukrainian migrants to two questions -- the *intended stay at present during the current visit* and the *future intended stay when visa liberalisation policy is fully enacted*-- are quite consistent. This similarity (i.e. correlation) in answers within each country is observed in data provided in table 3.2.2 vs. table 3.2.3. Despite the variation between countries (such as Poland vs. Italy), within each country there is striking similarity in the answers of interviewed migrants. For example, interviews in Poland revealed that migrants (all respondents were Ukrainians) intend during their current visit to Poland to stay on average for 4 months. If visa liberalisation is fully enacted, then these migrants would, on average, stay in Poland for 3 months (see table 3.2.3). As the median value shows, half of the respondents in their present visit

²⁵ Many of the interviewed migrants mentioned that German embassies have very stringent criteria for granting visa entry into Germany. Thus, often migrants apply for a visa in Poland with the intention of traveling on to Germany.

(table 3.2.2) would stay less than 3.5 months, whereas the other half of interviewed migrants would stay 3.5-12 months. If a visa-free regime is enacted, then half of the respondents would stay for less than 3 months, and the other half would stay for 3-9 months (see table 3.2.2).

Table 3.2.2 Intended length of stay of Moldovan and Ukrainian migrants during their current visit to the EU, in months

	Average length of stay	Median length of stay	Minimum length of stay	Maximum length of stay	Sample size
Germany*					
Italy	8.62	9	2	12	16
Poland	4.21	3.5	2	12	14
Italy and Poland combined	6.33	6	2	12	30
Total sample size	30				

*In Germany 8 of 15 interviewed migrants informed us that they did not know how long they would stay, whereas 6 of the respondents stated that they were married to German citizens and intend to stay permanently. Only one respondent mentioned that they would stay for 1 year.

This similarity is also observed for interviews conducted in Italy. Here at present Ukrainian and Moldovan migrants intend to spend 8.6 months (see table 3.3.2) during their current visit to Italy. If visa liberalisation is enacted, then our respondents would spend 9.9 (roughly 10) months during their visit (see table 3.3.3).

Table 3.2.3 Length of intended stay of Moldovan and Ukrainian migrants in the EU if the visa-free regime is in place, in months

	Average length of stay	Median length of stay	Minimum length of stay	Maximum length of stay	Sample size
Germany*					
Italy	9.9	11	2	12	16
Poland	3.07	3	1	9	14
Italy and Poland combined	6.59	6	1	12	
Total sample size	30				

*In Germany 11 of 15 interviewed migrants informed us that they were married to German citizens, and intended to stay in Germany permanently. Two respondents were not sure how long they would like to stay if visa-liberalisation was enacted; the other 2 respondents mentioned an intended stay of 5-6 years, and 6 months accordingly.

Germany was a special case since almost half of our interviewed respondents were already married to German citizens and intended to stay in Germany permanently.

3.2.5 What would be the reasons for travel to the EU if visa liberalisation were applied?

We asked 44 respondents in Moldova and Ukraine to mention the most important reasons for their potential visits to the EU if a visa-liberalisation policy was introduced. Roughly 70% of all 44 respondents stated tourism/vacationing. Moreover, 72% of all respondents in Ukraine could visit the EU for 7-14 days, and only 6 mentioned that they would stay from 2-6 months. Labour migration was not among the typical answers.

Key points

- Visa liberalisation will likely not result in increases in migration flows between Moldova, Ukraine and the EU. While the travel of migrants in the EU to their home countries is likely to become somewhat more frequent, flows of new migrants to the EU from Moldova and Ukraine are not likely to occur.
- It is not likely that visits of migrant family members to the EU will become more frequent under a visa-free regime. Similarly, potential migrants also claim that travel to the EU will largely depend on the availability of financial means.
- Migrants who are already in the EU will travel somewhat more frequently to their home countries if there is no visa requirement. This will especially be the case for migrants in those EU member-states where the procedure for applying and getting an entry visa is more stringent and demanding, such as in Germany. However, the availability of financial means (rather than the requirement to obtain a visa) will be the key factor shaping the decision of Ukrainian and Moldovan migrants to travel home.
- Visa liberalisation will likely not change the length of stay that current Moldovan and Ukrainian migrants in the EU will spend visiting their home countries, given their lack of spare vacation time and the risk of losing their jobs in the EU.
- Visa liberalisation is not likely to change the duration of stay in the EU for Moldovan and Ukrainian migrants who are already in the EU.

3.3. Highly-skilled workers from Ukraine and Moldova.

Ukraine and Moldova are important members of the European Research Area. They participate in European student exchange programmes such as Erasmus, and have also become important hubs for the outsourcing of certain services (such as software development and call centers). According to EU official discourses, people with skills and high earners are welcome to the EU: this is reflected in the idea of the Blue Card directive and categories of people covered by visa facilitation agreements. For them the Schengen visa barriers should be more flexible, especially if they have regular contacts with EU-based companies and institutions. In practice, the highly-skilled are treated primarily as Ukrainian and Moldovan citizens, and thus potential irregular workers or visa overstayers and their mobility is not facilitated.

Highly-skilled workers interviewed for this project belong to two categories: those, who work in their home countries (Ukraine and Moldova) and those who work in the EU. Whereas the importance of the voice of the first group is obvious, since they are directly impacted by the current Schengen visa regime, the relevance of the second group for the purposes of this study might not be immediately clear. Our research has shown, however, that even though the problems of these two groups are not the same, in many instances they have shared experiences. Moreover, highly-skilled migrants are very often an example of successful integration, inasmuch as they manage to integrate into the host society while also keeping important social ties with their homelands. It is these ties that make it especially important for us to examine the situation of those highly-skilled migrants already in the EU. We were interested, among others questions, in whether the current visa regime allows the preservation of these

important social ties. We have found that multiple discrepancies between the clauses of the visa facilitation agreement and their implementation by particular member-states through their consulates in Moldova and Ukraine (or visa application centres²⁶ in neighbouring countries) create serious problems for highly-skilled migrants willing to preserve broad social and – particularly important for their efficiency in the host labour market – professional ties with their homelands.

Highly skilled workers in the EU have indicated two disturbing issues under the current visa regime:

- The difficulty in keeping close contacts with family and friends from home and difficulties for families and friends in visiting migrants in the EU.
- Negative career impact on spouses.

Staying in the EU for longer periods of time, or permanently, indicates that the migrant will visit his/her family in the country of origin but also that s/he would like to have the possibility to host the family whenever it is important or convenient. It is one of the most important elements of well-being indicated by our respondents. In these times when cheap airlines have reduced the cost of international mobility, visa obligations are the last barrier to regular visits. However, only one of our respondents managed to get a multiple entry visa for his parents and not without a fight. After the parents had been to visit several times, they decided to apply for multi-entry visas for several years. The idea came from the migrant who worked for EU institutions and knew the law, including the Visa Facilitation Agreement. In this particular case the application was rejected several times and it took an intervention from the European Commission to settle the issue. In 2010, the parents finally obtained multi-entry three-year visas. Unfortunately, it seems that the vast majority of highly skilled migrants from Ukraine and Moldova are not even aware that their close family members can apply for such a visa.

Visa obligation means as well that if a highly-skilled Moldovan or Ukrainian moves to the EU, e.g. for a fellowship or for a short-term assignment, her/his spouse and children must make a tough decision. Even if their financial situation allows them to regularly travel back and forth between the countries to visit, long and cumbersome visa procedures every time one wants to take a plane discourages these kinds of back-and-forth movements. As a result, the spouse follows the migrant, very often with irrevocable damage to his or her career. Among our respondents there was the case of a Ukrainian worker who decided to move back to Ukraine after 5 years spent in the EU on temporary resident permits. When moving to the EU, his wife decided against the experience of getting the Schengen visa every time they wanted to meet and followed him. She was not allowed to work in the EU and was a typical example of brain waste. Having considered their options, taking into account the reality of Schengen visa application procedure (the near-impossibility of obtaining a multi-entry visa) they rejected living apart and, instead, returned home. Clearly, in this case the interviewee was not aware that he could have exercised his right to a multi-entry visa based on relevant agreements, possibly after a legal dispute with the consulate in question.

The highly-skilled have, however, a choice as to where to go. They often choose the EU because it is closer to home, but also because once inside they get a legal status that allows them to move freely in 26 different countries even if it is just for tourist purposes. Thus being liberated from a visa obligation has been mentioned by some of the respondents as an additional pull factor.

The visa regime seems to have even more important consequences for our highly-skilled respondents living in Ukraine and Moldova. The interviewees enumerated several difficulties:

- Giving up on business meetings or conferences because of visa requirements.
- The overall high cost of getting the EU visa, especially after the introduction of the visa application centers that are supposed to facilitate the visa application procedures, but often end

²⁶ These are “external service providers” in the sense of Art. 43 VC and not Art. 41(2)VC “Common Application Centres”.

up being an additional burden for the applicants – both financially (because of the additional fee that applicants pay to these visa centers²⁷) and administrative/organizational (because these centers function as a barrier in communication with the consulates that are, at the end of the day, the only relatively reliable sources of information).

- Administrative visa procedures focusing on negative outcomes.

Those we have talked to usually travel to the EU between 2 to 10 times a year. Researchers and academics might travel even more often, but, as some of them explained, on many occasions they simply decide not to accept a conference invitation because they know that these two or three days of conference participation would mean at least a month of effort in getting a visa. Sometimes there is also too little notice, as a rule an invitation a month before is already too late.

The procedural issues were discussed by our respondents in length. Being *bona fide* regular travellers, with wide contacts in the EU, they still encounter impossible barriers each time they apply for a visa. First of all, the cost of the whole procedure has increased substantially with the introduction of the Visa Processing Centres. The EU case was often compared with the US case: business visitors for example would pay 100 USD and receive a multiple entry visa valid for 5 years. In the EU case, the same person has been regularly applying for the multiple entry business visa at the Dutch consulate for the last three years. He has never got even a year-long multi-entry visa, despite the fact that he works as a subcontractor for a Dutch company on a regular basis: he travels to the Netherlands four times a year, on six-month visas for which he applies in the Visa Processing Centres twice a year. This means that he has already spent ca. 600 EUR. Additional costs mentioned by our respondents include the need to change a passport when there is no space for the Xth Schengen visa to the same Member State.

More importantly, frequent travellers to the EU cannot but be amazed with inconsistencies in the system. They know very well that the speed of the application and the experience can differ from one particular Member State to another and depends on how their consulates or visa centres work. One interesting case concerned a highly-skilled Ukrainian worker employed by a company doing business with a Belgian client. He had been repeatedly either issued a multiple entry visa for six months, or refused the visa altogether. The first refusal was not well explained to the applicants. The second one was motivated by illicit actions of the Belgian client. For inexplicable reason, it took place week after two other team members with the same visa, trip history and set of documents received a multi-entry visa. This time the visa was granted anyways, few months later.

Sharp differences in the work of various consulates and their visa centres (e.g. the German, Italian and Polish consulates in Kiev) have been repeatedly emphasized by several of our interviewees. The speed of visa application procedures including appointments for the interviews and the eventual time spent over the consideration of visa demands, as well as the efficiency of the visa centres and the general access to the information vary substantially. Another inconsistency noted by the respondents was the role of travel agencies. In practice, an application via a travel agency does not require an interview at the embassy, so this is an option chosen by some when wishing to go to the EU for holidays. However, they notice with amazement that anybody could, when applying individually, buy holidays in an agency with fewer hurdles than they (when applying to the consulate) even though they are frequent *bona fide* travellers to the EU.

Our interviewees seem to believe that EU consulates attempt to refuse visas at any cost. All our respondents had a story about using external pressure to get a visa accepted or accepted on time, as their supporting documents, even if acceptable and sufficient according to the law, were questioned (e.g. a slightly unclear photocopy of the identity card of the Rector of the inviting University) or their file was arbitrarily decided (“a Ukrainian cannot just want to go to see an exhibition in Paris”). In all

²⁷ Contrary to the Visa Code, Art 17(5), applicants are regularly referred to visa application centres by the consulates. This information comes up not only from the interviews but also from the experience of the EUI when supporting its non-EU guests in obtaining a visa.

these instances, the case was speedily and positively closed after an intervention from a higher level (e.g. EU delegation, national MFA, the staff of the EU embassy), which, of course, puts the credibility of the whole procedure into question.

Our respondents believed that a visa-free regime would greatly facilitate their mobility towards the EU. But they also pragmatically perceived the chance of visa-free travel as being quite slim, and thus for time being they proposed focussing on more realistic goals, with a few small changes making it much easier for them to travel:

- The introduction of automatic requirement to grant a five-year multi-entry visa for frequent travellers, e.g. researchers and business people.
- The creation of special application windows for frequent/business travellers.
- Trust building among Schengen consulates to limit the need for interviews (if a person already has a visa).

Key points

- Highly-skilled migrants already in the EU do not see the visa regime as a problem for themselves, but for their families and family ties.
- Highly-skilled workers, both migrants and otherwise, tend not to know their rights under VFA and Visa Code.
- The arbitrary implementation of the visa facilitation provisions by the consulates of the MS is one of the main reasons explaining the desire of highly-skilled Ukrainian and Moldovan migrants to see their countries on the White List. Substantial changes in these visa issuance practices could improve the situation and would make it possible to solve some disturbing issues without the introduction of the visa-free regime in the near future.

3.4 Legal aspects of Schengen visa regime: rules, practices and remedies

The fact that Ukrainian and Moldovan nationals need to be in possession of a visa²⁸ when crossing the external borders of the Member States²⁹ derives from Art. 1(1) of and Annex I to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.³⁰

In accordance with the same Regulation,³¹ the Ukrainians and Moldovans who are holders of a local border traffic (LBT) card issued by the Member States with which Moldova (MD) and Ukraine (UA)

²⁸ The term “visa” is used in this paper in accordance with the definition provided for in Art. 2(2) of the Visa Code (Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, OJ 2009, L 243, p. 4-5): “an authorisation issued by a Member State with a view to:

(a) transit through or an intended stay in the territory of the Member States of a duration of no more than three months in any six-month period from the date of first entry in the territory of the Member States;

(b) transit through the international transit areas of airports of the Member States.”

²⁹ The term “Member State” refers here to those EU Member States which apply the Schengen *acquis* in full as well as to the associated states. Cf. COM Decision of 19.3.2010 establishing the Handbook for the processing of visa applications and the modification of issued visas, C(2010)1620 final, p. 15.

³⁰ OJ 2001 L 81, p. 1.

³¹ Art. 1(2) of the Regulation 539/2001.

have concluded relevant bilateral agreements³² are exempted from visa requirements. However, this exemption applies only when the persons concerned exercise their rights within the context of the Local Border Traffic regime. Four such bilateral agreements between Hungary and Ukraine (2008), Slovakia and Ukraine (2008), Poland and Ukraine (2009), and Romania and Moldova (2010) have so far entered into force.³³ These agreements make more than 2.2 million Ukrainian and Moldovan border residents eligible for an LBT permit to stay in a 30 to 50 km border area for a period not exceeding three months, provided that they have legitimate reasons to cross an external land border frequently.³⁴

An optional clause of Regulation 539/2001 which allows the Member States to provide for exceptions from the visa requirement for holders of diplomatic or service passports³⁵ has been implemented by the Visa Facilitation Agreements with MD and UA³⁶, as well as by some bilateral agreements.³⁷

Finally, the Schengen visa obligation does not apply to those Ukrainians and Moldovans who hold valid residence permits or long-stay (“D” type) visas issued by one of the Schengen Member States.³⁸ They may move freely for up to three months in any six-month period within the Schengen zone, provided that they fulfill the entry conditions referred to in Article 5(1)(a), (c) and (e) of the Schengen Borders Code.³⁹

It is against this background that the existing visa and subsequent border crossing conditions for the majority of MD and UA citizens, including the categories covered by this study, who want to enter the territory of a Schengen Member State for stays not exceeding three months per six-month period, are determined in each case by three main legal instruments, namely the Community Code on Visas (Visa Code or VC),⁴⁰ the Schengen Borders Code (SBC)⁴¹ and the respective Visa Facilitations Agreement (VFA).⁴²

Key points

- Already under the existing EU rules on visas, considerable numbers of Ukrainian and Moldovan citizens, namely holders of local border traffic permits, holders of valid residence permits or long-stay (“D” type) visas, as well as diplomatic or service passport holders, not to mention the holders of dual EU-MD/UA citizenship, are exempted from the uniform visa requirement when crossing the external borders of the Member States.
- However, most citizens of these two countries who want to enter the territory of the

³² Based on another Regulation No 1931/2006 determining the LBT rules (OJ 2006 L 405, p. 1.)

³³ See Second report on the implementation and functioning of the local border traffic regime set up by Regulation No 1931/2006, COM(2011) 47 final of 9.2.2011, p. 2.

³⁴ Ibid., p. 4.

³⁵ Art. 4(1)(a).

³⁶ For holders of diplomatic passports according to Art. 10 of each Agreement.

³⁷ For holders of service passports. See for instance: Guidelines for the implementation of the Visa Facilitation Agreements with MD and UA in: Annex 8 to the Community Code on Visas.

³⁸ Art. 21(1) of the Convention Implementing the Schengen Agreement and Art. 5(1)(b) of the Schengen Borders Code.

³⁹ These conditions are: a) the possession of a valid travel document; b) the justification of the purpose and conditions of the intended stay, as well as the disposal of sufficient means of subsistence; c) absence of a national entry ban alert.

⁴⁰ See supranote 29.

⁴¹ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 105, 13.4.2006, p. 1.

⁴² Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas, OJ 2007, L 334, p. 169; Agreement between the European Community and Ukraine on the facilitation of the issuance of visas, OJ 2007, L 332, p. 68.

Member States for not more than three months per six-month period are still required to comply with the EU visa and entry conditions set out in three main legal instruments: the Community Code on Visas, the Schengen Borders Code and the EU-MD/UA Visa Facilitations Agreements.

3.4.1 Current problems and possible remedies in the foreground of possible visa liberalisation

Two main problems related to the application of the EU visa rules have been identified by the conducted surveys:

- i. The visa application procedures are perceived as being cumbersome in terms of paperwork and duration. This very often hinders people-to-people contacts, especially for academics.
- ii. The current EU visa regime with Ukraine and Moldova is considered as an impediment to family life.

Regarding the first problem, it should be noted that, when comparing the Visa Code with the Visa Facilitation Agreements between the EU and MD/UA, the latter do not really “facilitate” the visa application procedures. The only facilitation in terms of providing supporting documents is a clear prescription of what documentary evidence (in the majority of cases a written invitation or a request from a host) shall be presented for justifying the purpose of certain types of visits.⁴³ Similarly, the length of procedures relating to visa applications are only shortened by five calendar days. So instead of fifteen calendar days which the consulates have to decide on visa applications according to Art. 23 of the Visa Code, the decisions on visa applications from Ukrainian and Moldovan citizens shall take no more than ten calendar days as determined by Art. 7(1) VFAs. According to para. 2 of the same Article of the VFAs, diplomatic missions and consular posts of the Member States may extend this period of time for up to thirty calendar days “when further scrutiny of the application is needed”. Since modalities for lodging an application are not subject to the VFAs, the relevant rules of the Visa Code apply in every case. This means that in accordance with Art. 9(2) VC, consulates may add to the above-mentioned period of time two more weeks in that they require the applicants to obtain an appointment for the lodging of their applications.

To remedy the difficulties illustrated by the surveys, the Member States should, even before placing Ukraine and Moldova on the “white” list, make use of the options provided by the Visa Code and the Visa Facilitation Agreements. In particular, Member States should:

- i. Complete and harmonise the lists of supporting documents within local Schengen cooperation in Ukraine and Moldova (Art. 14(5) VC)⁴⁴, thus avoiding the arbitrariness as well as “visa-shopping” which is seemingly widely practiced in these countries because of the divergent interpretation of the visa rules.
- ii. Waive the requirement of the provision of one or more supporting documents for those Ukrainians and Moldovans who are known to them as *bona fide* travelers (Art. 14(6) VC);
- iii. Use restrictively their margin of discretion with respect to the length of procedures and apply more often Art. 7(3) VFAs which gives the Member States the possibility of taking a decision on a visa application within two working days.

With regard to the second problem, it is important to stress that since the Family Reunification Directive leaves a broad margin of interpretation to the Member States allowing the exclusion of

⁴³ See further details below in: 3.4.2.1.

⁴⁴ As has been done lately in case of Bosnia and Herzegovina, Turkey and Sri Lanka (see Commission Decision C(2011) 7192 final of 13 October 2011).

almost any third-country national from the scope of the directive,⁴⁵ visits of family members under the Schengen regime play an important role in keeping family ties intact. Hence, especially those Member States which use fully the discretion left to them by the directive should be encouraged to allow Ukrainian and Moldovan nationals residing in their territories to host their family members by making the most of the legal means provided by both the Visa Code and the Visa Facilitation Agreements. In particular, Member States shall issue, in such cases, multiple-entry visas based on Arts. 5(1)(c) of the respective Visa Facilitation Agreements. According to these provisions:

“Diplomatic missions and consular posts of the Member States **shall issue multiple-entry visas with a term of validity of up to five years** to (...) spouses and children (including adopted), who are under the age of 21 or are dependent, and parents (including custodians) visiting citizens of [Ukraine and the Republic of Moldova] legally residing in the territory of the Member States with the term of validity limited to the duration of the validity of their authorisation for legal residence”.

The word “shall” is to be interpreted here as an obligation for the relevant Member States, which in contrast to Art. 24 (2)(a) and (b) VC is not linked to further conditions such as applicant’s obligation to prove his or her integrity and reliability by illustrating that he or she lawfully used previous uniform visas.

Key points

- Compared to the Visa Code, the existing Visa Facilitation Agreements with Moldova and Ukraine do not really “facilitate” the visa application procedures in terms of the provision of supporting documents and the length of procedures; something confirmed by our surveys.
- In the light of the restrictive application of the Family Reunification Directive by Member States, visits of family members under the Schengen regime play an important role in keeping family ties intact.
- Member States should comply with their obligation, undertaken by the Visa Facilitation Agreements, and issue extensively to family members of Ukrainian and Moldovan citizens residing legally in their territories multiple-entry visas with the term of validity corresponding to the duration of the residence permits of their hosts. The same approach should be adopted *vis-à-vis* researchers and professionals particularly as the Visa Facilitation Agreements, as well as the Visa Code entail a clear mandate in this respect.⁴⁶

3.4.2 Legal tools inside the EU visa system relating to the prevention of illegal migration

Two such tools, in fact closely interrelated, are provided in the Visa Code, namely in Art. 14(1) laying down the set of supporting documentation to be presented with a visa application and in Art. 21 determining how the entry conditions shall be verified and how the risk of illegal immigration is to be assessed.

3.4.2.1 Supporting documents and risk assessment

According to Art. 14(1) VC, four types of supporting documents are required from applicants for a uniform visa: a) documents indicating the purpose of the journey; b) documents in relation to their

⁴⁵ See, for instance, the Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC) of 15.11.2011, COM(2011) 735 final, pp. 1-2.

⁴⁶ Reference should be made here to Recital 8 of the Visa Code, according to which the issuance of multiple-entry visas lessen the administrative burden of Member State consulates and facilitate smooth travel for frequent or regular travellers.

accommodation once in the country; c) evidence for sufficient means of subsistence for the whole journey; and d) evidence underpinning the applicant's intention to leave the territory of the Member State in a timely fashion.

The documentary evidence regarding the purpose of the journey belongs to those few conditions which have been simplified⁴⁷ as a result of the Visa Facilitation Agreements. According to Art. 4 of each VFA, in the majority of cases a mere written request from a host or a competent authority is sufficient for justifying the purpose of the journey. However, the documentary evidence for journeys undertaken for tourism or for "private reasons" (except for visits of close relatives) is not covered by the VFAs at all. The same is true for the documentary evidence required in the Visa Code with respect to accommodation, means of subsistence and intention to leave the Schengen area before the expiry of the visa. The last point represents one of the central elements in the verification process of entry conditions and risk assessment stipulated in Art. 21 VC. The non-exhaustive list of evidence for proving such intention is given in Annex II (B) to the Visa Code, which suggests that the applicant should not only prove the possession of a return or round ticket, but also that he or she should demonstrate that there are financial means or real estate, as well as stable employment, family ties or personal status proving integration into the country of residence.

Otherwise, the assessment process involves mainly verification of whether the applicant fulfils the entry conditions set out in Art. 5(1)(a), (c), (d) and (e) of the Schengen Borders Code, i.e.:

- The possession of a valid travel document,
- The justification of the purpose and conditions of the intended stay, as well as sufficient means of subsistence (cf. Art. 14(1) VC),
- The absence of an SIS or national entry ban alert.

3.4.2.2 Art. 5(1) of Schengen Borders Code

Art. 5(1) SBC is a solid instrument for monitoring human movements at the external borders as according to Art. 30 of the Visa Code, mere possession of a visa (uniform or with limited territorial validity) does not confer an automatic right of entry. Consequently, every visa holder is in accordance with Art. 7 SBC, subject to thorough checks which comprise verification of entry conditions laid down in Art. 5(1) SBC. This means that a border guard has to double-check if a person wanting to enter the territory of the Schengen Member States can provide evidence, including documentary evidence, justifying the purpose of the journey, the disposal of accommodation, the means of subsistence, etc. The existence of this mechanism, operating together with and even independently from the Schengen visa system, implies that visa liberalisation does not automatically deprive the Member States of the abovementioned tools for identifying *mala fide* travellers. Hence, after visa liberalisation, every Ukrainian and Moldovan citizen crossing external borders will have to fulfil Art. 5(1) SBC conditions and so they will be required to justify the purpose and conditions of the journey, *inter alia*, by providing supporting documents listed in Annex I to SBC. This list does not differ much from the one annexed to the Visa Code and is, in fact, congruent with that list as regards the entries for tourism, private or short-term study purposes, all of which are frequently used as legal means of entry into the territory of Schengen States by Ukrainian and Moldovan visitors and migrants.

The difference between the visa and borders codes is in this respect the absence in the SBC of an explicit provision about the obligation of a traveller to prove the intention to return home: according to the SBC list, merely a return or round ticket is required as a supporting document for fulfilment of entry conditions in cases of tourism or private journeys. However, it can be argued that if interpreted

⁴⁷ Mostly the reduction or abolition of fees, as well as the shortening of the application processing time.

in context⁴⁸ and in the light of the object and purpose of the Borders Code, the notion “thorough checks” includes the right of a border guard to require from a traveller the proof of the return intention in analogy with Art. 21 of and Annex II (B) to the Visa Code.

3.4.2.3 Current and future loopholes

An aspect which is not efficiently regulated in the Schengen Borders Code and which might be used for abusive practices in a visa-free regime is the verification of the real purpose and duration of an intended or past stay. This can lead to situations when the purpose and duration claimed and justified by documentary evidence before a border guard does not correspond to the real purpose and intended duration of a stay. For instance, a person exempted from the visa requirement can claim when crossing EU external borders that s/he intends to stay in a Member State for tourist reasons only for a few days thus providing only documentary evidence justifying the claimed purpose and duration while, in reality, s/he stays for the whole duration of the three month period with a totally different purpose than that initially claimed. Although such stay would be qualified as “illegal” in accordance with Art. 3(2) of the Return Directive⁴⁹, it is almost impossible to identify it as such at present. This would be remedied by the implementation of the “smart borders” initiative proposed by the European Commission.⁵⁰ Especially, the Entry/Exit System (EES) recording, *inter alia*, information on the purpose and claimed duration of stay.⁵¹ This would be a highly valuable instrument capable of identifying overstayers and deterring abusive practices.

A further monitoring mechanism at disposal of the Member States is mentioned in Art. 21(d) referring to the obligation of third-country nationals to report their presence on the territory of any Member State pursuant to the provisions of Art. 22 of the Schengen Convention.⁵²

3.4.2.4 A visa free regime as a means to facilitate outflow

When discussing the tools to counter illegal migration, it must also be borne in mind that, if properly managed, a visa-free regime can provide an avenue for getting out of irregularity for those illegally staying Ukrainian and Moldovan nationals, who are currently caught in their countries of destination as they fear to leave because of the risk of apprehension during exit border checks and a ban on re-entry to the territory of the Member States. In order not to prevent them from using the mentioned opportunity, the Member States, when introducing the visa-free regime for Ukraine and Moldova, should consider the relaxation of thorough checks on exit for nationals of these two countries, especially those checks based on Art. 7(3)(c)(ii) SBC,⁵³ for at least the first three months.

Key points

- Despite public perception often promoted by politicians, which puts a visa-free regime on a par with the possibility of entering the territory of the Member States without any additional requirement save a passport from a “white-list” country, the existing legal tools embodied in the EU legislation do not confer an automatic right of entry.

⁴⁸ Thorough checks in Art. 7 include, *inter alia* “Verification that the third-country national concerned has sufficient means of subsistence ... for his or her return to the country of origin”, and “Verification that the third-country national concerned [is] not likely to jeopardize the *public policy*” (para. 3(a)(vi)).

⁴⁹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying resident third-country nationals, OJ 2008, L 348, p. 98.

⁵⁰ See COM Communication on Smart Borders, COM(2011) 680 final of 25.10.2011.

⁵¹ See further details in COM Communication Preparing the next steps in border management in the European Union, COM(2008) 69 final of 13.2.2008. pp. 7-9.

⁵² See Art. 22 of the Schengen Convention

⁵³ According to this provision “thorough checks on exit may comprise ... verification that the person did not exceed the maximum duration of authorized stay in the territory of the Member States.”

- Even after the introduction of a short-term visa-free regime, Ukrainians and Moldovans, when crossing the external borders of the Member States, would have to justify, *inter alia*, by providing documentary evidence the purpose and conditions of their journey, as well as their intention to leave the territory of a Member State after a given period.
- An effective information campaign needs to be put in place to explain these issues to the Ukrainian and Moldovan public, in order to avoid high rates of entry refusals immediately after enlisting the countries in question in Appendix II of the Regulation 539/2001.
- With a view to closing possible loopholes, created by a visa-free regime, it would be indispensable to implement the “smart borders initiative”, especially by introducing the electronic Entry/Exit system and the *Registered Travel Program*, both proposed by the European Commission.
- In addition, the reporting obligation pursuant to Art. 22 of the Schengen Convention might be used more effectively by Member States to deter illegal immigration under a possible visa-free regime.
- As a visa-free regime provides an avenue for getting out of irregularity for illegally staying Ukrainian and Moldovan nationals who are currently caught in the Schengen Member States, the latter when introducing a visa-free regime for Ukraine and Moldova, should consider the relaxation of the thorough checks on exit for at least the first three months.

3.4.2 Access to the labour markets of the Schengen Member States

Two questions should be answered in order to assess the impact of any visa waiver on the categories covered by this study:

1. How is the current visa regime applicable to Moldova and Ukraine interrelated to the access of Moldovan and Ukrainian citizens to the labour markets of Schengen Member States?
2. Would a possible visa waiver simplify the labour market access of the categories covered by this study?

To answer both questions we should ask whether the Visa Code can be interpreted in such a way that it would also cover the authorization for entries for the purpose of paid employment and self-employed economic activities. The first step here is to consider the definition of visa provided for in Art. 2(2) VC according to which “visa” means an authorisation issued by a Member State with a view to (...) an intended stay in the territory of the Member States of a duration of no more than three months in any six-month period from the date of first entry in the territory of the Member States”. A similar definition of “visa” is given in Art. 2 of the Regulation 539/2001 where visa is “an authorisation issued by a Member State or a decision taken by such State which is required with a view to (...) entry for an intended stay in that Member State or in several Member States of no more than three months in total”. Both definitions are formulated in a purpose-neutral way. It is rather the period of an intended stay, i.e. a maximum three months within a six-month period, which is their defining element, leaving the purpose of the stay quite open to interpretation. Actually, it is only Art. 14(1)(a) VC which by demanding documents justifying the purpose of the journey links the latter to a given purpose. While the very text of the Visa Code does not entail any specifics about such purposes, Annex II to the VC, provides a non-exhaustive list of supporting documents and gives an indication of which main purposes can be claimed during the application process, namely:

- i. Business trips.
- ii. Study or other types of training.
- iii. Tourism or private reasons.
- iv. Political, scientific, cultural, sports or religious events.

- v. Official visits.
- vi. Medical reasons.

Although paid employment and self-employed economic activities do not figure in the list, it does not mean that they cannot be claimed as a purpose of the journey within the Schengen visa system if other modalities of labour market access are fulfilled. This assumption which derives not only from the visa definition but also from the purpose-neutral structure of the whole Visa Code as well as from the non-exhaustiveness of the supporting documentation, is further confirmed by the Visa Handbook in which the Commission, when elaborating on the supporting documentation related to business trips, adds to the list of Annex II further supporting documents, which should be required from three specific categories of persons: lorry drivers, seafarers and *persons travelling for the purpose of carrying out paid activity*.

In respect of the third group, the Handbook states that “The applicant must provide a work permit or any similar document *as provided by the national legislation of the Member State where a paid activity is to be carried out, if applicable*.” Likewise, when interpreting in the Handbook the conditions of issuance of multiple entry visas according to Art. 24(2)(a) VC, the Commission suggests that such visas should be issued, *inter alia*, to: members of the professions or artists regularly performing in the Member States, “without affecting the possible need to *also obtain a work permit to that end*”. Hence, depending on the national legislation of a Schengen Member State, a Schengen visa can be obtained for stays not exceeding three months per six-month period in order to carry out paid or self-employed economic activities.

In turn, this would signify that in the case of Schengen visa liberalisation, according to the Regulation No 539/2001, Moldovans and Ukrainians would not need an extra national visa to enter and stay in the territory of the Schengen Member States for paid employment **for three months per six-month period, if they fulfil other conditions for the access to the labour markets of those States**.⁵⁴

The example of Poland can illustrate how in certain cases a visa-free regime could facilitate the possibility of UA/MD nationals entering and working legally in a Schengen Member State during the three-month period. Poland currently offers a special scheme for Moldovan and Ukrainian nationals, which is based on a Regulation issued by the Polish Minister of Labour and Social Policy on 20 July 2011. According to § 1(22) of this Regulation, nationals of the Republic of Belarus, the Republic of Georgia, the Republic of Moldova, the Russian Federation and Ukraine may be employed based on a Polish employer’s registered declaration (*oświadczenie*) stating their willingness to employ the holder of the declaration. In the framework of this scheme, the work period is determined as six months in a twelve-month period and the relevant declarations have to be registered in a district labour office competent in the place of residence of the employer or in the place where the employing company is registered. Should the current mechanism remain in place in case of the visa waiver, Ukrainians and Moldovans on whose behalf Polish employers would register the aforementioned declaration, will be able to enter Poland without any visa with a view to carrying out paid employment within a three-month period. They would even be able to work without a visa for almost six months, provided that they accumulate time in accordance with the ECJ interpretation of “first entry” in case *Bot vs. Préfet du Val-de-Marne*.⁵⁵

In this respect, it should be noted that each Schengen Member State wanting to avoid such facilitated access of Ukrainians and Moldovans to its labour markets in the case of a visa waiver, can use Art. 4(3) of the Regulation 539/2001 stating that even by putting a third country on the “white list”, a Member State may still require visas for those nationals of that country who intend to carry out a paid activity during their stay.

⁵⁴ These conditions vary at present from country to country. For further details see, for instance: EMN Study on Satisfying Labour Demand through Migration, 2011.

⁵⁵ ECJ, Judgment of 3 October 2006, C-241/05, *Bot vs. Préfet Val-de-Marne*.

Key points

- According to existing EU legislation and depending on the national legislation of a Schengen Member State, **a uniform visa** can be obtained for stays not exceeding three months per six-month period in order **to carry out paid or self-employed economic activities**.
- This means in turn that in the case of the Schengen visa waiver, **Moldovans and Ukrainians would not need an extra visa to enter and stay in the territory of the Schengen Member States for paid employment** for three months per six-month period, **provided that they fulfil other conditions for the access to the labour markets of those States**.
- Each Schengen Member State wanting to avoid such facilitated access of Ukrainians and Moldovans to its labour markets in case of visa waiver, can use the relevant **safeguard clause** provided in Art. 4(3) of the Regulation 539/2001. As such they could further require a visa for those UA/MD citizens who intend to carry out paid activity during their three months stay.

4. Conclusions: Policy options

Option 0 – *Status quo*

The current situation is counterproductive for several reasons. First, the Visa Facilitation Agreements with the two countries are not implemented correctly and do not facilitate travel nor do they bring down costs. This is happening against the background of increasingly intense contacts between EU nationals and Ukrainian and Moldovan citizens, be it in the framework of youth exchanges, business contacts, research, cross-border teamwork, or civil society cooperation in which the EU invests heavily. Apart from adverse effect on people-to-people contact, the *status quo* has an economic cost to businesses on both sides of the border, as well as to the development of Ukraine and Moldova because of, *inter alia*, obstacles to brain circulation. It is also the source of frustration promoting a bad image of the EU in these countries, a bad image that may have a potentially high political cost. There is a need then to change the *status quo*.

Option 1 – Rolling back Visa Facilitation Agreements

One of the options clarifying the situation would be to roll back visa facilitation agreements and return to a heavy-weight Schengen visa regime. Such a solution at least would be honest towards the citizens of the two countries, who sincerely feel that nothing has changed for them since 2008. However, this option, in our opinion, should not be seriously considered because of its unfortunate political implications.

Option 2 – More mobility without visa liberalization

This option foresees a number of practical improvements to the current visa regime that will at least make it transparent and predictable:

1. The proper implementation of the Visa Facilitation Agreements
2. The proper implementation of the Visa Code accompanied by binding legal guidelines agreed within local Schengen cooperation that will erase the discretion of the Schengen Member States in the following areas:
 - i. The lists of supporting documents in Ukraine and Moldova.
 - ii. The length of procedures.
 - iii. The mode of lodging the application (*via* an outsourcing center or in person)

3. Introduction of special procedures for frequent travellers: maximum term multi-entry visas, special windows for express procedure, legal minimum of the documents needed.
4. Full information on the rights of applicants granted both by Visa Code and Visa Facilitation Agreements both on the consulates' websites and available in print on the spot.
5. The possibility of appealing against the decision on a visa in one's own language following a clear procedure. To this end there should be a special network of legal advisors established across the EU and in the two countries.
6. Pilot visa-free regime for biometric passport holders.
7. Pilot visa-free regime for individuals involved in cross-border EU programmes and projects.

Implementation of these proposals would improve the mobility of people and ease existing tensions while keeping the visa regime as a guard over EU labour markets. But it does not solve the problem of the social costs of migration and overstaying, as migrants under a visa regime are more prone to overstay their allowed time. Moreover, it does not send a good political signal to neighbours still engaged in the Europeanisation processes. This is why we are reluctant to support this option.

Option 3 – Visa liberalisation

This option is our preferred option in the light of all the political commitments between the EU and its eastern neighbours and given too the growing need for less divisions on the European continent. It would be clearly economically beneficial for at least for some sectors of EU economy (like tourism). It would facilitate circular movement and thus possibly reduce the social costs of visa regime. It would result in more mobility between neighbours in a secure environment, but it would also initially result in more mobility for irregular short-term employment, provided that there is demand for such work. To be successful, this option implies commitment on two sides:

1. The UA/MD side:
 - a) All the preconditions required by the Visa Action Plans are in place and are carefully monitored.
 - b) There is full cooperation over the fight against criminal networks and irregular migration, including the crack-down on corruption at the borders.
 - c) There is a genuine effort to create a positive environment for jobs and development at home.
 - d) There is the determination to raise awareness among Moldovan and Ukrainian citizens about the rules and limits of visa liberalisation.
2. The EU side:
 - e) The responsibility for the implementation of labour migration policy and labour market controls is moved back from consulates to labour inspectorates and labour ministries.
 - f) There are specific legal circular/temporary migration schemes accompanying visa liberalisation.
 - g) There are efficient monitoring mechanisms such as an entry/exit system and labour inspections in place.
 - h) There is increased cooperation with the countries of origin in creating a better environment for jobs and development at home.
 - i) There is, again, the determination to raise awareness among UA/MD citizens, but also among EU employers, about the possibilities and limits of visa liberalisation.

Annex 1

Consequences of visa liberalization on migration from Ukraine to the EU: the Delphi survey results.

More permanent legal immigration to the EU	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	6.67%
relevant (2)	16.67%
less relevant (3)	20.00%
irrelevant (4)	3.33%
More permanent illegal (illegal crossings) migration to the EU	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	0.00%
relevant (2)	3.33%
less relevant (3)	16.67%
irrelevant (4)	23.33%
More temporary legal immigration to the EU]	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	33.33%
relevant (2)	13.33%
less relevant (3)	3.33%
irrelevant (4)	0.00%
More temporary illegal migration to the EU	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	3.33%
relevant (2)	13.33%
less relevant (3)	10.00%
irrelevant (4)	23.33%
More irregular employment in the EU	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	16.67%
relevant (2)	16.67%
less relevant (3)	10.00%
irrelevant (4)	6.67%
More regular employment in the EU	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	20.00%
relevant (2)	23.33%
less relevant (3)	3.33%
irrelevant (4)	3.33%

More circulation of irregular workers between EU and home country	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	13.33%
relevant (2)	16.67%
less relevant (3)	10.00%
irrelevant (4)	6.67%
More bona-fide travellers (tourists, businessmen) in the EU	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	33.33%
relevant (2)	13.33%
less relevant (3)	3.33%
irrelevant (4)	0.00%
Dissolution of traffickers networks	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	3.33%
relevant (2)	23.33%
less relevant (3)	13.33%
irrelevant (4)	3.33%
Dissolution of smuggling networks	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	6.67%
relevant (2)	20.00%
less relevant (3)	16.67%
irrelevant (4)	3.33%
Creation of new forms of criminal activities	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	0.00%
relevant (2)	6.67%
less relevant (3)	20.00%
irrelevant (4)	16.67%
Strengthening of existing criminal activities	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	0.00%
relevant (2)	3.33%
less relevant (3)	16.67%
irrelevant (4)	20.00%

Consequences of visa liberalization on migration from the Republic of Moldova to the EU: the Delphi survey results.

More permanent legal immigration to the EU	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	7.14%
relevant (2)	3.57%
less relevant (3)	17.86%
irrelevant (4)	3.57%
More permanent illegal (illegal crossings) migration to the EU	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	0.00%
relevant (2)	7.14%
less relevant (3)	7.14%
irrelevant (4)	14.29%
More temporary legal immigration to the EU	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	7.14%
relevant (2)	14.29%
less relevant (3)	7.14%
irrelevant (4)	3.57%
More temporary illegal migration to the EU	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	0.00%
relevant (2)	7.14%
less relevant (3)	17.86%
irrelevant (4)	3.57%
More irregular employment in the EU	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	3.57%
relevant (2)	10.71%
less relevant (3)	10.71%
irrelevant (4)	3.57%
More regular employment in the EU	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	7.14%
relevant (2)	10.71%

less relevant (3)	10.71%
irrelevant (4)	3.57%
More circulation of irregular workers between EU and home country	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	10.71%
relevant (2)	14.29%
less relevant (3)	7.14%
irrelevant (4)	0.00%
More bona-fide travellers (tourists, businessmen) in the EU	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	21.43%
relevant (2)	7.14%
less relevant (3)	0.00%
irrelevant (4)	0.00%
Dissolution of traffickers networks	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	10.71%
relevant (2)	3.57%
less relevant (3)	10.71%
irrelevant (4)	3.57%
Dissolution of smuggling networks	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	10.71%
relevant (2)	3.57%
less relevant (3)	10.71%
irrelevant (4)	3.57%
Creation of new forms of criminal activities	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	0.00%
relevant (2)	3.57%
less relevant (3)	14.29%
irrelevant (4)	10.71%
Strengthening of existing criminal activities	
<i>Answer</i>	<i>Percentage</i>
most relevant (1)	0.00%
relevant (2)	0.00%
less relevant (3)	17.86%
irrelevant (4)	10.71%

Annex 2

Table 3.2. Socio-demographic characteristics of the sample of respondents (n=90), in persons

	Location of the Interview				
	Germany	Italy	Poland	European Union Total	Moldova and Ukraine
Interviewed by country	15	16	15	46	44
Origin of the respondent					
Moldova	5	8	0	13	22
Ukraine	10	8	15	33	22
Sex					
Male	6	10	2	18	24
Female	9	6	13	28	20
Type of work performed in the EU					
Domestic work	7	6	13	26	-
Construction	6	9	2	17	-
Agriculture	2	1	0	3	-
Education					
8-years of high-school	0	0	0	0	0
High school	1	4	3	8	6
Technical college, VET	7	8	6	21	15
University diploma	7	3	6	16	21
Post-graduate degree	0	1	0	1	2