



## LOCAL BORDER TRAFFIC AGREEMENTS AS LEGAL INSTRUMENT FOR THE LIBERALIZATION OF THE VISA REGIME BETWEEN UKRAINE AND THE EUROPEAN UNION

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### Summary

The article is devoted to the analysis of international agreements signed by Ukraine and the European Union regarding the implementation of EU visa policy towards the citizens of Ukraine. The article researches a set of bilateral agreements on local border traffic with EU member states, providing a simplified border crossing procedure by citizens of Ukraine of the border zone of the EU member states.

**Key words:** association agreement, freedom of persons' movement, visa-free entry, local border traffic, legal instruments.

### Аннотация

Статья посвящена анализу международных соглашений, заключенных Украиной с Европейским Союзом по реализации Евросоюзом визовой политики в отношении граждан Украины. Исследованы двусторонние международные договоры о местном пограничном движении с государствами-членами Евросоюза, предусматривающие упрощенную процедуру пересечения границы гражданами Украины пограничной зоны государств-членов Европейского Союза.

**Ключевые слова:** соглашение об ассоциации, свобода передвижения лиц, безвизовый режим, местное пограничное движение, правовые инструменты.

### Formulation of the research problem and its significance.

The issue of ensuring freedom citizen's movement of Ukraine on the territory of the EU member states have become particularly relevant with the signing of Ukraine at the EU summit in Brussels (Belgium) on 27 June 2014 of the Association Agreement [1] with the European Union and its ratification by the Verkhovna Rada of Ukraine and the European Parliament on 16 September 2014. From 01 November 2014 certain provisions of the Association Agreement started to apply relating to the sections „Political dialogue and reform, political association, cooperation and convergence in the field of foreign and security policy”, „Justice, freedom and security”, „Economic and sector cooperation”, „Financial cooperation, with anti-fraud provisions”, „Institutional, general and final provisions”. Accordingly, taking into consideration the signing, the ratification, the effect of the international document and its further implementation into national legislation of Ukraine will create new opportunities for regional cooperation between our government and the European Union, namely the ability of Ukraine to integrate into the EU internal market and the possibility for Ukrainian citizens to use the advantages of freedom of movement within the territory of the EU member states as citizens of a third country.

**The Article aims** to analyse international agreements signed by Ukraine and

the European Union regarding the implementation of EU visa policy towards the citizens of Ukraine.

**Materials used.** The issue of analysis and research of the international agreements signed by Ukraine and the European Union regarding the implementation of EU visa policy towards the citizens of Ukraine is presented in the Ukrainian science of EU law only in the works of V. Muraviov, R. Petrov, O. Srtelzova, Z. Makarukha.

**Key statements of the research.** In the framework of the implementation by the EU member states of the common visa policy towards third countries between Ukraine and the EU, on the one hand, and Ukraine and the EU member states, on the other, a number of international documents were adopted regulating the issues in the visa sphere. These documents include: 1) The Readmission Agreement of 18 June 2007 [2] (through the Joint Readmission Committee, created under its Article 15); 2) The Visa Facilitation Agreement of 18 June 2007 [3] and the Agreement amending the Visa Facilitation Agreement of 23 July 2012 [4] (through the Joint Committee of experts in order to monitor the implementation of the Agreement under its Article 12); 3) the Action Plan on Visa Liberalisation of 2010 [5]; 4) bilateral international agreements concluded by Ukraine with the EU member states regulating issues related to the provision of opportunities for Ukrainian cit-

izens to move within the territory of the EU member states.

We believe that above listed international documents are simultaneously external legal instruments of cooperation between Ukraine and the EU in the implementation of the EU visa policy towards citizens of our state. The great importance of adopted documents is explained by the fact that they are practical steps towards establishing a visa-free regime between Ukraine and the European Union. As these documents are aimed at improving existing procedures of issuing visas, the procedure for the simplification of trips of Ukrainian citizens to the EU member states. In addition, they contribute to the further development of relations between Ukraine and the European Union, intensification of contacts in various fields of cooperation (e.g., socioeconomic, cultural, humanitarian, etc.). Finally, concluding the relevant documents, Ukraine will meet all of the harmonized rules, conditions and the main procedural aspects established by the EU member states to implement the common visa policy in relations with Ukraine.

One of the implementation examples of this EU policy towards Ukraine is concluded Agreement between Ukraine and the European Union on the readmission of persons on 18 June 2007, which regulates the procedures related to the identification and return of Ukrainian citizens and third countries, stateless persons who were or



are on the territory of the EU member states illegally. The Agreement foresees regular and expedited procedures of re-admission (Chapter II, Articles 5-9), documents confirming the origin of the illegal migrant (Articles 6, 7), time limits of the execution of requests for readmission (Article 8) and the like.

In addition to the Readmission Agreement of 2007 the effective legal instruments of Ukraine towards visa liberalization with the European Union are concluded international agreements on local border traffic by Ukraine with the European Union member states.

The introduction of this visa liberalization instrument in Ukraine's relations with the EU was the first practical step of the European Union in response to the introduction unilaterally by Ukraine of the visa-free regime for citizens of the European Union member states in 2005. By the decree of the President of Ukraine of 26 July 2005, was found that, starting from 01 September 2005 a visa-free regime of entry to Ukraine and transit travel via the territory of Ukraine for citizens of the EU member states, the Swiss Confederation and the Principality of Liechtenstein are introduced, if the period of their stay in Ukraine does not exceed 90 days [6].

Besides, the legal basis of agreements on local border traffic is the Regulation (EC) No 1931/2006 adopted by the European Parliament and the Council of the EU to facilitate the movement of persons in the border zone at the external borders of the EU member states with third countries. According to this document, the European Union member states were authorized to sign the bilateral agreement on local border traffic with third countries with the aim of introducing a single regime of movement of persons in the border zone (clause 2, Article 13 of the Regulation).

Also the significant role for the preparation for the conclusion of agreements on local border traffic was a Political Declaration on local border traffic agreements, which was contained in the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas of 18 June 2007. According to the Declaration the governments of Hungary, Slovakia, Poland and Romania have expressed their desire to launch negotiations on the conclusion of bilateral agreements with Ukraine for the purpose of the local border traffic regime implementation,

established by the rules of the European Council adopted on 5 October 2006, establishing local border traffic rules at the external land borders of the EU member states and complementing the Schengen Convention of 1990.

In this regard, in 2007 Ukraine initiated the negotiation with Poland, Slovakia, Hungary and Romania concerning the conclusion of bilateral agreements on local border traffic. As of today such agreements are signed with all the above listed the EU member states: 1) The Agreement between the Government of the Republic of Hungary and the Cabinet of Ministers of Ukraine on the rules of local border traffic of 18 September 2007 (entered into force on 11 January 2008) [7], 2) the Agreement between the Government of the Republic of Poland and the Cabinet of Ministers of Ukraine on local border traffic of 28 March 2008, (entered into force on 01 July 2009) [8], 3) the Agreement between the Government of Ukraine and the Government of the Slovak Republic on the local border traffic of 30 May 2008 (entered into force on 27 September 2008) [9]; 4) the Agreement between Cabinet of Ministers of Ukraine and Government of Romania on local border traffic of 02 October 2014 (the agreement is not still entered into force).

In accordance with the agreements citizens of Ukraine are entitled to exercise their freedom of movement right within the border zone of the one of the European Union member states. These capabilities can enjoy those citizens of Ukraine who permanently reside at least three years (hereinafter – border residents) in the settlements along the state border. They have the right to enter the territory of the border zone and reside on this territory if the permission on simplified border crossing without any other additional permits on the territory of the border zone of the other contracting party is available.

The effect of the agreements extends to spouses, minors or dependent adult children (including adopted children or children who are brought up), minor children or dependent adult children of the couple (including adopted children or children who are brought up) a person who is permitted to enter the territory of the border zone and stay on it. It is important to emphasize that the right to simplified border crossing of these categories of Ukrainian citizens can use the opportunity

even under the condition that they were permanently residing in the border zone less than 3 (three) years.

The documents provide a number of conditions for border crossing by Ukrainian citizens. In particular, such persons should not pose a threat to public order, internal security, public health or international relations of the host state. However, they must adhere to the laws and by-laws of that state. In the event of any abuse by Ukrainian citizens of the rules of the national legislation of the EU member states, the agreements provide a list of sanctions that may be applied by authorized bodies of states in relation to our citizens. The list of sanctions set out in the annexes to the agreements containing the obligation to leave the territory of the EU member states, the opportunity to apply the expulsion by the migration service, as well as a ban on entry and stay.

There are a number of common legal provisions on rules and procedures of border crossing by citizens of the contracting parties, which are identical in content, form and structure for the signed agreements on local border traffic by Ukraine with the EU member states. Among them: 1) establishment of payment of fee for granting the permit in the amount of € 20 (Article 9 of the Agreement with Poland), (Article 6 of the Agreement with Slovakia), (Article 2 of the Agreement with Hungary); 2) compliance with the requirements for obtaining a permit (Article 6 of the Agreement with Slovakia), (Article 4 of the Agreement with Poland), (Article 2 of the Agreement with Hungary) 3) the possibility of concluding agreements for an indefinite period and making amendments and additions to the agreements (Article 10 of the Agreement with Slovakia), (Article 6 of the Agreement with Poland), (Article 8 of the Agreement with Hungary) and the like.

Despite several common features inherent in these agreements, there are a number of significant differences between documents. For example, in contrast with the Agreement concluded by Ukraine with Hungary in 2007, the Agreement with Poland in 2008 is more voluminous in the content.

First, the document provides definitions of „local border traffic” and „border zone” except the definitions of „permission” and „residents of the border zone”. According to Article 2 of the Agreements



the local border traffic of persons means the regular crossing of the common border of state parties by the border zone residents of the either contracting state for the purpose to stay on the border zone of the other contracting state for social, cultural or family reasons and well-substantiated economic reasons that are in accordance with the national law of the other contracting state are not recognized as profitable activities. Under the border area is considered the territory of administrative units of contracting states, not exceeding 30 km from the common border.

In our opinion, the explanation of this kind of definitions in an international treaty is necessary from a legal point of view as for the border citizens are very important to understand the limits of the territory which they will be able to cross the common border under the simplified procedure and therefore to take full advantage of the stay on this territory.

Secondly, in comparison with the provisions of the Agreement with Hungary of 2007, the Agreement with Poland of 2008 establishes clear conditions for the border zone residents, which have the right to cross the common border of the states within the framework of local border traffic. Such persons must: a) provide a valid permit; b) not to be persons entered in the register of the Schengen Information System (SIS) for the purpose of refusing entry; c) a person shall not be regarded as such that pose a threat to public order, internal security, public health or international relations of contracting states, but also for any of the member states of the Executive Convention of the Schengen Agreement of 14 June 1985, in particular, which are not prohibited the entry into the territory of those countries (Article 3).

Third, in contrast to agreements concluded by our government with Hungary of 2007, Slovakia of 2008, the length of stay in the border zone of Poland for Ukrainian citizens is 60 days (while the term of stay in the border zones of Hungary and Slovakia is 30 days), the maximum period of stay- is not more than 90 days (Article 4).

Finally, the Agreement with Poland 2008 provides the establishment of organizational and legal mechanism for the implementation of the international instrument. In particular, under clause 2 of Article 16 of the Agreement a Joint Commission of experts is established, the com-

petence of which includes matters related to the monitoring of the implementation of the Agreement and a process for resolving disputes arising from the interpretation or application of the provisions of the Agreement. If necessary, the Joint Commission will meet in session on the request of either contracting party. Typically, these meetings are held at least once a year.

Comparing agreements concluded by Ukraine with Poland and Hungary, the Agreement with Slovakia contains new provisions, the content of which is disclosed in Article 7 and Article 8 of the document. According to Article 7 "Sanctions" their content is reduced to annulment and revocation of the permission for local border traffic and the introduction of restrictive measures under national law in the border state. With regard to Article 8 „Comparison in treatment”, its essence lies in the fact that the parties provide to citizens of the other contracting state and persons under community law on free movement, as well as third country nationals and stateless persons who legally reside in the border area of the state, the same attitude is granted to residents of border areas of the state. Thus, the Agreement introduced a national regime in relation to citizens of the border zone of the other contracting state.

On 17 July 2014 the Cabinet of Ministers of Ukraine passed the instruction „On approval of the Draft Agreement between the Government of Romania and the Cabinet of Ministers of Ukraine on local border traffic”[10].

On 02 October of 2014, Ukraine signed an Agreement with Romania on local border traffic. The provisions of the Agreement provide the same simplified procedure for border crossing by residents of border regions of Ukraine and Romania who live within a 30-kilometer zone from the common state border that was stipulated in the agreements with Hungary, Poland and Slovakia. Almost half a million of Ukrainian citizens residing in said territory on the border with Romania will have the opportunity right to realize such right. Herewith, unlike other agreements, residents of border areas have the opportunity to receive free permits for simplified border crossing with the right to stay in the border zone of another state up to 90 days each time from the date of crossing the border.

In general, agreements on local border traffic establish a special regime of

systematic border crossing and stay of Ukrainian citizens who are border regions residents in a certain border zone of Hungary, Slovakia, Poland and Romania on the basis of a special document (permit) to establish kindred, socio-cultural, tourist and recreation, economic relations. Herewith the scope of such agreements is limited to the range of subjects as they apply only to Ukrainian citizens who live in the border territories with the neighboring EU member states. At the same time, the conclusion of Ukraine such type of international instruments with the EU member states contributes to the simplified procedure and the order for border crossing by citizens of Ukraine the border zone of the EU member States and is one of the important steps of our state to implement in the future visa-free regime agreement on amendments to the agreement between Ukraine and the European Community on trips between Ukrainian citizens and the EU member states.

The Agreement between Ukraine and the European Community on the facilitation of the issuance of visas was signed on 18 June 2007 establishing a simplified regime of the issuance of visas to Ukrainian citizens by consular institutions of the EU member states under the Schengen legislation. Key elements of the agreement are the provisions concerning the prospect of introducing a mutual visa-free regime; visa-free regime for holders of diplomatic passports (Article 10); the issuance of multiple visas (for a period of from 1 to 5 years) for a broad circle of Ukrainian citizens, including members of the business entities, members of government delegations, relatives of Ukrainian citizens who legally reside in the EU member states, journalists, sportsmen, participants of scientific, cultural and artistic activities (Article 5); the issuance of free visas to numerous categories of persons, in particular children under the age of 18 years and children under the age of 21, dependent children, pensioners, journalists, relatives of Ukrainian citizens who legally reside in the EU member states (Article 6, clause 4). The agreement regulates the list of documents certifying the purpose of travel (Article 4), captures the consular fee for a visa at € 35 and € 70 in urgent cases (article 6), limits the timing of the review of questionnaires for a visa is 10 calendar days (Article 7).



In accordance with the Agreement the Joint Committee of experts is created in order to monitor the implementation of the provisions of this document (Article 12). The Joint Committee is empowered to resolve disputes and disputes concerning the interpretation or application of this document and to make changes and additions to it.

On 23 July 2012 in Brussels (Belgium) an Agreement on amendments to the Agreement between Ukraine and the EU on visa facilitation was signed. On 22 March 2013 the Verkhovna Rada of Ukraine, and on 18 April 2013, the European Parliament ratified the document. On 13 May 2013 the EU Council of Ministers approved the ratification of the Agreement between Ukraine and the EU amending the agreement between Ukraine and European Community on visa facilitation. So, according to the document:

- the category of Ukrainian citizens are expanded, who will be able to get free and multiple-entry Schengen visa before obtaining visa-free regime by Ukraine with the EU. Such categories of Ukrainian citizens include: the representatives of public organizations; journalists and technical staff that they are accompanied by; drivers carrying international cargo; close relatives of citizens residing on the territory of EU members states and are citizens of one of the EU countries; representatives of religious communities; participants in official cross-border cooperation with the EU; members of official educational exchange programs and participation in seminars, courses, conferences employees taking part in international exhibitions, conferences and seminars;

- clearly defined periods of validity of multiple-entry visas- 1 and 5 years;

- the possibility for urgent visa processing within 3 days to persons living at a considerable distance from the place of submission of visa applications (subject to payment of urgent visa fee);

- introduced visa-free travel regime for Ukrainian citizens who use biometric service passports and the like.

Directly the dialogue on the liberalization of the EU visa regime for Ukrainian citizens was begun at the summit EU – Ukraine in Paris (France) in September 2008. During 2008-2009, the first stage of visa-free dialogue was conducted between the parties in the form of working groups and meetings at the level of Senior officials of Ukraine and the European

Union in the main four directions: safety of documents (in particular, introduction of biometric data), the fight against illegal migration (including issues related to readmission), public order and security, external relations.

On 22 November 2010 at the summit EU – Ukraine in Brussels was adopted the Action Plan on Visa Liberalization of EU visa regime for Ukraine (hereinafter – Action Plan). The Action Plan contains four main blocks of tasks, which Ukraine must fulfill to join the states, citizens of which don't need visas for entering the territory of the European Union member states.

For its part, the EU Commission, taking into account the adoption by Ukraine of all laws, on May 24, 2014 recommended a move to the second (implementing) phase. On June 23, 2014 in Luxembourg (Luxembourg) during a meeting of the EU Council at level of foreign Ministers adopted a decision on transition of Ukraine to implement the second phase of Action Plan on visa liberalization. In particular, the Council of the EU noted that Ukraine has fulfilled all the conditions and targets established in the framework of the first phase of the Action Plan on visa liberalization and decided to start the assessment of the compliance of completion of the indicators established in the framework of the second stage, the successful implementation of which will allow Ukrainian citizens to get visa-free regime with the EU.

**Conclusions.** Accordingly, the realization of the ultimate goal- obtaining visa-free regime for Ukrainian citizens- will depend on effective implementation of already concluded by our government with the European Union and its member states international treaties in the field of visa, such as The Readmission Agreements of 18 June 2007, the Agreement on the facilitation of issuance of visas of 18 June 2007, the Agreement on amendments to the Agreement between Ukraine and the EU on visa facilitation of 23 July 2012, the Action Plan on visa liberalization in 2010 and bilateral agreements on local border traffic with the EU member states.

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