

Project APE: “Civic Monitoring on the implementation of the Visa Liberalization Action Plan with the European Union”

**State Border Management - achievements and challenges
in the context of implementing the Action Plan
on Visa Liberalization with the European Union
(Phase I and Phase II)**

Introduction

The study includes both an assessment of the progress made by the authorities of the Republic of Moldova in implementing the national policy documents and the Action Plan for Visa Liberalization and an analysis of the way the Republic of Moldova will be assessed by the European Commission in the context of implementing Phase II of the Action Plan.

Currently, the Republic of Moldova undertakes consistent efforts to meet as soon as possible the criteria and recommendations arising from the commitments taken to achieve visa liberalization¹, with the priorities being set including in the area of state border management. Moldovan authorities have announced accelerated reforms in the area of Internal Affairs, particularly of those reforms that are needed to implement the provisions of the policy documents at the national level².

In this context, officials with relevant expertise should assess pragmatically the efficiency of the measures taken so far for making the border more secure in all its sectors. It must be taken into account the fact that the reforms in the field of state border management of the Republic of Moldova are part and parcel of the common EU policies in the field of Internal Affairs³.

The study has three distinct chapters and annexes related to the presented information:

1. State border management. A brief history 2005-2010;
2. Achievements and challenges (including Annex 1);
3. Conclusions and recommendations.

The objective aimed at is to present a point of view on the need for thorough preparation for the evaluation on the part of the European Commission (Phase II). The study emphasizes the need to strengthen cooperation between the authorities managing the state border at the national level (Border Police, Police, Customs Service etc.), at the bilateral level with the neighbouring

¹ In front of the citizens of the Republic of Moldova at the national level and, afterwards, in front of the Europeans.

² The National Strategy for the Integrated Management of the State Border and the Action Plan to implement the mentioned Strategy.

³ http://ec.europa.eu/dgs/home-affairs/index_en.htm

countries, Romania and Ukraine, as well as at the regional level, with the EUBAM Mission⁴ and Frontex Agency⁵.

Interviews were conducted with officials from the Ministry of Foreign Affairs and European Integration, Border Police, Customs Service, as well as with the experts of the European Union Border Assistance Mission to the Republic Moldova and Ukraine (hereinafter EUBAM) for the independent evaluation.

1. A Brief History

European Context

At the European Union (EU) level, the border management is part of the system of internal affairs, which, in turn, is part of the basic Policies - Justice and Human Rights. It is for the first time when the notion of border management occurs in response to the conclusions of the Tampere European Council⁶. Thus on December 9, 2001, the Council has institutionalized the "European concept of border control management."⁷ As a consequence of this document, the European Commission submitted to the Council and the European Parliament a statement on integrated management of external borders of the EU Member States⁸. As a consequence of this statement, the Council adopted on June 13, 2002 the Plan for the management of external borders of the Member States of the European Union⁹.

Following the adoption of this Plan, measures have been taken at the operational and legal levels in order to gradually develop a system of integrated border management to adopt the Schengen Borders Code¹⁰, to make a practical handbook for the border guards, to create a Fund for the External Borders and to found the FRONTEX Agency.

Later on, the Council for Justice and Home Affairs¹¹ defined the goal of the integrated border management. A set of recommendations and "best practices" were developed in Part 1 of the Schengen Catalogue, structured on the implementation sections and subsections of the integrated border management¹². Also in June 2007, the European Commission presented to the Member States an initial plan to create a European border surveillance system called "EUROSUR".¹³

⁴ The European Union Border Assistance Mission to Moldova and Ukraine (EUBAM) was launched on November 30, 2005, following a request made jointly to the European Commission by the presidents of the Republic Moldova and Ukraine. EUBAM is an advisory, technical body mandated to enhance the border-management capacities of our partners – the border guard and customs authorities and other law enforcement and State agencies of Moldova and Ukraine. EUBAM has a budget of €21 million (2011-13) and a staff of approximately 100 seconded and contracted staff mostly from EU member States, and 126 national staff of the Republic of Moldova and Ukraine. The mandate of the Mission has already been extended three times (in 2007, 2009 and 2011), with the current mandate expiring on November 30, 2015.

⁵ <http://frontex.europa.eu/about/origin>

⁶ October 15-16 1999

⁷ Doc. 14570/01 FRONT 69

⁸ COM (2002) 233 final

⁹ (doc. 10019/02). The plan includes the 5 main components of a common integrated management system: common coordination and cooperation mechanism, common integrated risk analysis, personnel and interoperable equipment, common body of legislation and responsibilities shared between the Member States and the EU.

¹⁰ REGULATION (EC) No. 562/2006 OF THE EUROPEAN PARLIAMENT AND COUNCIL of March 15, 2006 on the creation of a Community Code upon the rules that constitute the basis of free circulation of persons crossing the borders (Schengen Borders Code)

¹¹ During the meeting on December 4-5, 2006.

¹² The first edition of the Schengen Catalogue "Control of external borders, return and readmission: Best Practices and Recommendations", issued in February 2002, required, as a result of the European documents that were amending or supplementing the regime of border security system, an update of its provisions in March 2009. The catalogue is mainly focused on the proposal of recommendations on implementing regulations and other European documents in the field of external border security by presenting some examples designed to help the correct application of the Schengen acquis. The catalogue highlights best practices defined in the reports submitted by the Schengen Evaluation Committee.

¹³ This concept will be implemented in 3 phases during the years 2008-2013. During the two technical meetings in July and October 2007, the Member States welcomed the chosen approach and agreed that EUROSUR should cover not only the southern borders, but also the Eastern borders of the European Union. One of the key operational objectives must be interconnecting

National Context

Following the signing of the Republic of Moldova - European Union Action Plan under the European Neighbourhood Policy (ENP) on February 22, 2005, in Brussels, the Republic of Moldova undertook the commitment to align its legislation, norms and standards with those of the European Union. At the same time, the Republic of Moldova has also been invited to initiate political, security, economic and cultural relations with the European Union to intensify the cross-border cooperation and share the responsibility for conflict prevention and settlement. One of the key objectives of this Plan was to provide further support for a viable settlement of the Transnistrian conflict. Additionally, the plan established a comprehensive set of priorities in areas covered by the Partnership and Cooperation Agreement. Among these priorities, special attention was given to developing an efficient and comprehensive border management system in all sectors of the Moldovan border, including the Transnistrian segment.

Later on, the subsection called Border management (paragraphs (49) and (50)) was included in Chapter 2.5 called *Cooperation in justice and internal affairs* of the mentioned Plan. Through this, the Republic of Moldova committed to¹⁴:

- transform the Department of Border Guards into a law enforcement body and to make the corresponding amendments to the national legislation;
- enhance the cooperation between the relevant agencies (involved in the state border management), as well as the cooperation with neighbouring countries, including the chapters on border demarcation and cooperative agreements;
- develop a comprehensive strategy training in the field of state border management, including for improving the knowledge as regards the Schengen rules and standards;
- upgrade the equipment and develop the infrastructure of the state border;
- participate in "The Soderkoping Process";
- develop regional cooperation between relevant law enforcement bodies (police, border guards, migration and asylum services, customs).

The progress in achieving these priorities was monitored in the bodies established by the Partnership and Cooperation Agreement and the European Commission, which has periodically prepared and submitted progress reports. Thus, in 2005, the notion of *State Border Management* appears for the first time in the Republic of Moldova. The national authorities that have responsibilities in the field (especially the Border Guard Service and the Customs Service) were, among other national institutions, privileged by granting important support in implementing the provisions of the Republic of Moldova - European Union Action Plan, assistance provided by the European Union through the EUBAM Mission. Later on, this concept was developed through the legislative and regulatory framework at the national level, especially in the policy documents¹⁵.

2. Implementing the strategic reform framework

Strategic reform framework

Once the Government of the Alliance for European Integration was formed, the liberalization of visa regime with the European Union has been declared to be a strategic goal of the Republic of Moldova. To become an integral part of the area of freedom, security and justice, the Republic of

different systems, taking into account the geographical features and differences between the types of borders, in particular between land and sea borders.

¹⁴ According to the reports submitted by the national authorities, all commitments have been met. The reality was quite different though, a fact shown by the European Commission report delivered in autumn 2010.

¹⁵ National Development Strategy of the Republic of Moldova for the years 2008-2011, National Security Strategy and other documents.

Moldova has undertaken the commitment to implement policies of the European Union in the field of integrated border management. To this end, the National Council for the Integrated Management of the State Border¹⁶ was created in September 2012 as an advisory body to strengthen the efforts of the public authorities organizing the integrated management of the state border more efficiently. Its mission is to streamline the communication and collaboration between the Border Guard Service, on the one hand, and other central and local public authorities, on the other hand, as well as to contribute to the implementation of decisions and actions on making the state border secure.

Also in December 2010, the Government approved the National Strategy for Integrated Management of the State Border¹⁷, while in January 2011, the European Union has officially granted the Republic of Moldova the Action Plan on Visa Liberalization, which formulates concrete steps in terms of state border management.

Both documents, the Strategy for Integrated Management of the State Border and the Action Plan on Visa Liberalization with the European Union set the same strategic objectives, namely: implement the concept of integrated border management, in line with the EU requirements and standards; and gradual integration into the common European space of freedom, justice and security. This integration would provide the increase of citizens' safety degree, respecting the fundamental rights and freedoms, as well as streamlining the legal traffic of people and goods, while creating at the same time optimal conditions for the liberalization of visa regime for Moldovan citizens in the EU states.

In pursuing these objectives, the Strategy for the Integrated Management of State Border provides for the implementation of seven key priorities, namely:

1. Improve the legislation;
2. Improve the institutional system;
3. Improve the control and surveillance of the state border;
4. Improve the inter-institutional, cross-institutional and international cooperation;
5. Improve the management of human resources;
6. Ensure the development of logistics;
7. Develop the risk analysis system.

Evaluate the implementation of the strategic reform framework

The Strategy for the Integrated Management of State Border and the Action Plan on Visa Liberalization with the European Union represents the strategic reform framework in the field of state border management. Their evaluation was made by consulting the official documents (European Commission reports, progress reports submitted by the Government), interviews with officials from the Republic Moldova and with independent experts.

According to the chosen methodology¹⁸ - the sub-actions provided for by the seven priorities of the Strategy for the Integrated Management of the State Border, were assessed as:

- **Unaccomplished (N)**, where actions have been initiated;
- **Rather unaccomplished (MDN)**, where actions were initiated;
- **Rather accomplished (MDR)**, where the actions shares are about to be completed;
- **Accomplished (R)**, where actions have been completed.

¹⁶ Government Decision No.855 of September 21, 2010.

¹⁷ Government Decision No.1212 of December 27, 2010.

¹⁸ http://www.crpe.ro/library/files/summary_raport_vize_crpe_ape.pdf

1. Improve the legislation - a comprehensive analysis was made in the third progress report of the European Commission, which explicitly stipulates: "The Commission considers that the Republic of Moldova complies, overall, with the benchmarks set in Block 2"¹⁹. Thus, the new legislative framework provides for extending the powers of the Border Police in various areas such as legal review of documents and review of the administrative offenses, but it does not explicitly provide for powers in prosecution and powers throughout the Republic of Moldova (contrary to the provisions of the Strategy and the Action Plan for Visa Liberalization). This lack of the new legislative framework could have negative effects in the context of assessing the implementation of Phase II of the Action Plan for Visa Liberalization. As regards the integration of the Border Police in the Ministry of Internal Affairs, at the time the study was prepared, neither there isn't any coordination vision upon this exercise, as well as upon other complex fields such as human resources, officer staff training etc. neither within the Ministry, nor within the Border Police. As a result, of the 11 sub-actions mentioned in this chapter 7 were accomplished and 4 were rather accomplished.

2. Improve the institutional system - of the 8 sub-actions in this chapter 5 have the period 2011-2013 as a deadline for their accomplishment. These can be considered as *rather unaccomplished*, given that the actions have been only initiated and that some of them require additional funds²⁰. The other three sub-actions were accomplished, so that the necessary regulatory framework for the operation of the Centre for Reviewing Documents and the Prosecution Unit were set.

3. Improve state border control and surveillance - of the 15 stipulated sub-actions, 12 have as a deadline the period 2011-2013. They can be considered as *rather unaccomplished*, because the sub-actions have been only initiated, while some of them, related to the implementation policies on visas at the national level in accordance with the EU standards and practices, provide for the allocation of additional funds²¹. Other sub-actions can be considered *rather accomplished*, taken into account the fact that the actions are about to be completed.

5. Improve the inter-institutional, cross-institutional and international cooperation - of the 17 provided sub-actions, 3 have as a deadline the period 2011-2012, 11 have as a deadline the period 2011-2013 and three have as a deadline 2011. All sub-actions may be considered *rather accomplished*, given that the sub-actions are on the way to be completed or that their accomplishment may be considered as continuous, in particular the implementation of new initiatives, such as Smart Borders, EUROSUR, Automated Border Control (ABC).

4. Improve the management of human resources - of 10 stipulated sub-actions, 2 have 2011 as a deadline for implementation, 1 sub-action has 2012 as a deadline and 7 have as a deadline the period 2011-2013. The actions that have 2011 as a deadline may be considered completed. As for replacing the conscripts with contract-based staff, this can be considered as completed. But the actual replacement was not achieved while the action was carried on²². Thus, the Border Police (Border Police Service) has not hired conscripts since May 2011, with the last military being put on reserve in April 2012. As for the actions that have 2013 as a set deadline, they can be considered as *rather accomplished*, given that the actions are about to be completed.

5. Ensure the development of logistics - of the 20 stipulated sub-actions, 14 actions have as a deadline the period 2011-2013, of which 13 may be considered as *rather accomplished* and

¹⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0348:FIN:EN:PDF>

²⁰ Create an air surveillance service, which will also performs such tasks like search and rescue, quick medical transportation, transportation of officials, grant support operations to the police units and other tasks.

²¹ Similar to the case of Improving the institutional system.

²² Due to the lack of necessary funds.

one sub-action - *rather unaccomplished*. As for replacing the conscripts with contract-based staff, this action may be considered as *accomplished*. However, in terms of developing the state border infrastructure (the green border, in particular) and equipment, the duration of the actions will be extended, given that this priority is the most expensive one.

6. *Develop the risk analysis system* - of the 10 sub-actions, 4 have 2011 as a deadline, with the achievement status *rather accomplished*. One sub-Action has 2012 as a deadline, with the *rather accomplished* status²³. Other five sub-actions have the period 2011-2013 as a deadline and can be considered as *rather accomplished*.

To conclude, of the 91 sub-actions provided by the seven priorities of the Strategy for Integrated Management of the State Border, 14 sub-actions *Accomplished*, 61 sub-actions are *Rather Accomplished*, while 16 sub-actions are *Rather Unaccomplished* and no sub-action - *Unaccomplished* (Annex 1).

3. Streamlining the state border management: possible challenges and solutions

- ❖ Over the last years, the field of border management has been subjected to special attention on the part of donors who came up with a number of assistance projects. In the future this assistance will increase, but much depends on the internal capacities of assimilation of this assistance, as well as the credibility of the authorities involved in this process. Certain concerns may be related to the status of implementation of the EU project on developing the telecommunications infrastructure. Competent national authorities should comment on the legality of actions of former officials from the Border Guard Service and the Ministry of Internal Affairs. The survey results should be public and the main donor - the European Commission - should be informed about them;
- ❖ Although there has been a positive development as regards the national implementation of the principles of integrated management of the state border, still, the nominal composition of the National Council for Integrated Management of the State Border should be reviewed in order to raise the representativeness of the national authorities, as well as assign the status of Chairman of the Council²⁴ to the Minister of Internal Affairs, while the Secretariat of the Council is provided by the Border Police. One of the primary tasks of the new composition of the Council will be to develop a new Strategy for the Integrated Management of the State Border for the years 2013-2015 (after an exhaustive national evaluation and an evaluation on the part of the European Commission for Phase II of the Action Plan for Visa Liberalization);
- ❖ To overcome some conflicts of powers, a working group should be created within the Ministry of Internal Affairs to develop a legal framework necessary to ensure the institutional autonomy of the Border Police in the Internal Affairs system at the national level. In particular, this makes reference to the development of the mechanism to coordinate the policies and resolve arrears in the "powers" compartment (prosecution, powers throughout the entire country (management of the migration flows, combating illegal migration and focus the combatting efforts in the Police Border, by completely taking over these powers from the Bureau of Migration and Asylum)). At the same time, the issues related to training officers at the Academy of the Ministry of Internal Affairs should be settled by creating the Faculty of Border Police, taking into account the experience of the National College of Border Police²⁵. In this respect, assistance may be requested from the EUBAM Missions;

²³ Which is within the competence of the Customs Service.

²⁴ Art.1 and 4 of Law No. 283 of 28.12.2011 on Border Guard.

²⁵ The implementation of the Common Core Curriculum (CCC), which was launched in 2007 at the European Union level and the Border Guard Service level in 2009. CCC is a standardized set of skills and basic knowledge for the Border Guard Services of the European Union. CCC was designed and perfected by representatives of the Member States to bring together the best practices and common goals in training the staff of the border guard services (border police) throughout Europe. CCC includes

- ❖ There is a common understanding at the national level of the need to develop the concept of integrated management of the state border. Given the latest developments at the European Union level (EUROSUR²⁶, Smart Borders²⁷), the national authorities should carry out a comprehensive evaluation of the readiness for implementing Phase II of the Action Plan for Visa Liberalization. In this respect, it would be necessary to ask for assistance on the part of the EUBAM Mission to get prepared for this extremely important exercise for the national authorities;
- ❖ Although the Border Police and other national authorities enjoy assistance in capacity building, especially in border management, it is necessary to create or build the capacity of the units responsible for developing and coordinating the implementation of external assistance projects, requiring the assistance of the European partners, especially partners from Romania;
- ❖ The institutionalization of the Border Operations Centre at the level of Border Police gives real prerequisites for implementing the EUROSUR principles at the national level. At the same time, an integrated vision of all authorities involved in the implementation of these principles, including the creation of the National Coordination Centre, is necessary. Romania's experience in this regard would be highly advisable and assistance on its part should be requested, taking also into account the developments of the Border Police in the field during December 2011 - May 2012;
- ❖ The development of the equipment and infrastructure of the state border is a priority for the institutions involved in this process, each establishing its own budget line according to the approved budget. In order to develop an integrated vision it is necessary to implement the program-based budget funding, this approach being fully in line with the recommendations of the Schengen Catalogue, mentioned above. This budgetary mechanism would enable the priority-based planning of specific actions and development directions of the integrated management of the state border;
- ❖ At the level of institutional capacity building, the Border Police registered successes that would not have been possible without the assistance of partners, especially in regard to the organizational structure, which currently corresponds to the best European practices. This structure is based on three levels: strategic, operational and local (Recommendation 3-4 of the Schengen Catalogue). At the same time, given that the upper limit of the number of employees for the Border Police is about 3500 people, it is necessary to streamline the structure, particularly, at the regional level, reducing those 11 subdivisions to 4 or 5, while locally, it is necessary to create a single structure responsible for the control and surveillance of the state border crossing. This would allow the redeployment of functions at the executive management level (border police inspector^{****});
- ❖ As for the cooperation with neighbouring countries, there is a continuous development both on the Western dimensions, as well as on the Eastern one. Particularly, several initiatives have been implemented along with the Ukrainian partners - joint patrols and joint control. The same happened with the Romanian partners - the work of the Joint Contact Centre in Galati, joint patrolling and information exchange at all levels. At the same time, it is also necessary to increase the cooperation with Ukraine in terms of information exchange, joint assistance

modules representing the full range of border management, in particular issues related to the detection of false IDs and stolen cars, human rights, international law, leadership and other.

²⁶ <http://www.frontex.europa.eu/eurosur>

²⁷ http://europa.eu/rapid/press-release_IP-11-1234_ro.htm

projects within the Eastern Partnership. As for Romania, the cooperation in implementing the joint border control (given the experience of Ukraine and Poland), exchange of experience in the implementation of the Association Agreement with the European Union, especially block I and II, and other dimensions of cooperation of common interest should all be developed.

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