



CAMPUS NATOLIN (WARSAW)

The Implications of the EU Enlargement on the Movement of Persons: the case of Moldova

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**An emigrant does not go
to another country with only a suitcase.
Einstein was also an emigrant.**

To my parents, with enormous gratitude

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INTRODUCTION

THE ACTUALITY OF THE RESEARCH

The ongoing process of EU enlargement is paralleled by a search for identity inside the Union. A range of policies are still floating somewhere between Community competence and Member States' sovereignty. Third countries are embarrassed when they have to deal with the Union in areas where the Union itself is not sure where its competences start and where they finish. The European policy related to the movement of persons seems to be the perfect example for such a policy "in the making".

At the eve of the 2007(8) enlargement, Moldova faces a rather uncomfortable situation. The accession of Romania will inevitably lead to a more tightened border regime between Moldova and Romania. In this respect, Romanian and Moldovan authorities are already negotiating on the introduction of a first-ever visa regime between the two countries. The process is hindered by uncertainties, and an everlasting question is in the air: "But what will the Union say?"

The process of negotiating a visa agreement with Romania is not singular on the external agenda of the Republic of Moldova. The Chisinau government called Brussels for talks on a visa facilitation agreement, but its invitation remained unanswered. The European Union is apparently not willing to open its border to the country that generated a record number of emigrants during the last decade. It will be very difficult for Moldovan authorities to convince the EU on the relevancy of a more flexible visa regime.

However, Moldova cannot avoid pressuring the Union if it wants to keep at least the chance to have a lasting visa facilitation scheme with Romania. The fact is that Romania intends to become a fully-fledged member of the Schengen area by 2010, and after this date the movement of persons between this country and Moldova will be completely regulated by the Schengen framework.

The search for solutions inevitably addresses previous accession countries' experiences. The fact that Poland granted them a facilitated visa regime reassures Moldovans that they will get a similar deal from Romania, if not even a better one. The challenge is now to canalize efforts on getting a relaxed treatment from all the Schengen states. In this purpose, Moldovan government has to complete a very difficult homework.

What is in fact the role of the EU in dealing with issues related to the movement of persons? What is the Moldovan border policy and how it integrates in the general picture of the European borders? Why is it so difficult to get a visa facilitation deal from the EU? Maybe the negative image that Moldovans have in Europe? What will be the future Moldovan-Romanian border regime and how will it affect the possible future regime between EU and Moldova? These are just a small portion of all the questions that inspired the author to undertake this challenging research. The subject is highly actual, and several conclusions of this work will be tested in the up-coming years, if not even months.

STRUCTURE OF THE THESIS

The structure of the thesis resulted from the aforementioned questions. The work intends to present a general picture of the context in which the negotiations on the movement of persons are taking place between Moldova and Romania, and will probably take place between Moldova and the EU.

The thesis is structured in five Chapters. The first two Chapters will set the context on migration issues relevant to the EU and Moldova. The third Chapter will position Moldova's borders in the South European context. The latest two Chapters will discuss the future visa regime between Romania and Moldova, and the possible visa regime between the EU and Moldova.

The first Chapter of the thesis will present the state of affairs and the developments of the European border policy. It is of a particular interest to assess the paradigms and the visions that define the behavior of the Union in this field. The legal framework of policies related to migration, border and asylum will be presented, and the evolution of the Community competence in these areas will be evaluated.

The second Chapter is dedicated to the issue of emmigration of Moldovans to the EU. This aspect is of a particular concern for both EU and Moldova, and future positive trends could serve as an impetus for a border liberalized regime between the two parts. The past developments in migration will be analyzed, as well as the impact of this phenomenon on the EU and Moldovan society. A brief analysis of the Moldovan policy related to migration will be also presented.

The third Chapter will mark the passage from the first “setting the context” half of the work to the second “in depth analysis” part. This Chapter represents a brief study case of the Moldovan borders in the Southern Eastern European region. It will compare the degrees of openness of the borders of ten countries from this geographical area, and will position the Moldovan border regime in the regional context.

The fourth Chapter is dedicated to the Romanian-Moldovan future border regime. A comparative analysis will be provided, taking into consideration the experiences of three newly acceded countries. Consequently, a list of recommendations will be drawn. A special focus will be given to the citizenship aspect, as the Romanian passports held by a number of Moldovans will represent an alternative to visas, and will grant to the possessors freedom of movement both in Romania and EU.

The last fifth Chapter is discussing the possibility of a liberalized visa regime between Moldova and the EU. The present legal framework relevant to the movement of persons will be scrutinized and the implementation of the ENP Action Plan will be assessed. The need for a liberalized visa regime between EU and Moldova will be considered and some recommendations will be given in this respect.

CHAPTER I

GENERAL OVERVIEW OF EU IMMIGRATION, VISA AND ASYLUM POLICY

THE EU VISION OF EXTERNAL BORDERS

The EU's lasting process of enlargement created a composite external border policy, which is subject of different decision making actors led by distinct paradigms across such diverse policy areas as Regional Policy, Justice and Home Affairs, Neighbourhood Policy and Enlargement. These different perspectives attribute different functions to the EU's external borders, and thus provide diverging modes of governance and degrees of openness. Behn and Ehin critically analyzed the in-building European border policy, concluding that this is shaped by three major paradigms: Cohesion, Security and Expansion, making out a composite policy generating major contradictions between policy makers¹. This concept is presented in the following figure:

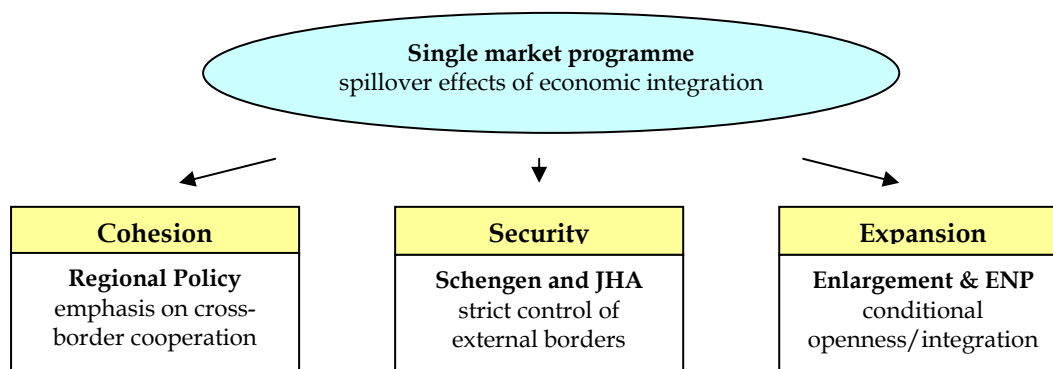


Figure 1. Three Policy Paradigms and Their Implications for External Borders (Berg and Ehin, 2006)

To predict the behavior of the European Union regarding an emerging border regime is thus a very difficult challenge, considering all the horizontal and vertical fragmentations of this complex policy. A border regime in itself is not easy to define. In our paper we will consider several dimensions of border regimes, and especially the degree of openness, the functions and the modes of governance². Regarding the *degree of openness*, the EU policy makers do not have a generalized answer, a set of discriminations along distinctions in categories of countries, nationalities and people being erected. Different EU initiatives emphasize the *functions* of the

¹ Eiki Berg and Piret Ehin, "What Kind of Border Regime is in the Making?, Towards a Differentiated and Uneven Border Strategy", in: *Cooperation and Conflict: Journal of the Nordic International Studies Association*, Vol. 41(1), pp. 53-71.

² The three concepts are presented in the article of Berg and Ehin. Idem.

borders: cross border cooperation reflects the integrative functions of the borders, while the incentives under the JHA paradigm aim to build a fortress protecting Europe against external security threats. The acceptable degrees of openness and the functions of borders can be regarded differently at national and community levels, raising questions regarding the *mode of governance* of external borders. The present establishment reserves the most of the competences concerning border management and financing to national authorities, but imposes the respect of *Schengen and communitarian acquis*, especially on the New Member States³. A shift towards an even more communitarian model of external border management will prove the federal nature of the EU at the expense of intergovernmentalism.

The EU external border regime was accused of fragmentation, vertical and horizontal, difficult cross-pillar coordination and institutional dialogue. The objectives envisaged by different decision makers are also divergent: from promoting EU values in near abroad to ensuring security and justice at the EU borders. Sometimes, it is not easy to conciliate these opposing views. It will prove to be a crucial issue in the Moldovan case, which is a very open country to EU values but has been a source of illegal migration and can eventually present a security threat because of the Transnistrian unsolved issue. It is thus to be seen if the policy applied by the European Union will be, in Jauhiainen terms, one of *frontiere coupure*, in which border is conceived as a divisive factor, or of *frontiere couture*, in which border plays an integrative role⁴.

Brussels will play an important role in defining the border policy of the enlarged Union. The Schengen Agreement will be the framework in which supra-national authorities will emphasize on the need for security at the borders. The Union developed a range of tools in this sense, namely the harmonization of visa, migration and asylum policies, the creation of the Schengen Information System and cooperation between judicial and police authorities⁵. The Commission and the Council jointly emphasize the importance of readmission agreements in order to ensure a better control of immigration and asylum. The incorporation of the *Schengen acquis* in the *acquis communautaire* and the transfer of issues concerning immigration, asylum and visa policies into the first pillar constitute clear signs that border policy is moving to a more supranational level of authority. There was even a Commission proposal to create a common

³ Idem.

⁴ Jussi Jauhiainen, "Territoriality and Topocracy of Cross-Border Networks", in: *Journal of Baltic Studies*, Volume XXIII, Summer, 2002, pp. 156-176.

⁵ Colleen Thouez, "Towards a Common European Migration and Asylum Policy?", *UNHCR Working Paper*, No. 27, Geneva, 2000. Available at: <http://www.jha.ac/articles/u027.htm>, May, 9, 2006.

European Border Guard⁶, but the implementation of this project risks to be impeded by the discrepancies between different border management habits and the opposition of member countries to cede sovereignty in these issues⁷. The EU institutions are rather expected to play a supportive role, offering technical assistance, equipment and training, and helping new member states to redefine border regimes.

The emergence of a new policy at the European level, namely the European Neighbourhood Policy, creates a completely new framework in which eventual border regimes could be defined. Under this new paradigm of expanding EU values in the near abroad, the border plays a crucial role. It is to the Union to answer how far it is ready to go in sharing “everything but the institutions” with the neighbouring countries. The system of sticks and carrots, labeled “conditionality”, could not avoid using the “border carrot” and third countries will certainly seek for different degrees of liberalization as a price for implementing reforms demanded by the EU. Even if it is doubtful that in a long run the conditionality will work without the accession carrot, for the moment the border issue is a joker that EU could use in order to impose parts of the *acquis communautaire* to the neighboring countries. The sole fact that ENP is conceived as a “rewards for complying” policy will create asymmetric neighbourhood relations and implicitly different border regimes. Consequently, the relations between the EU and third countries will stem from the implementation of “tailor-made” measures under bilaterally agreed Action Plans.

As we have seen in this part, the European Union has not formulated so far an integrated border policy. It is indeed a highly fragmented one, both horizontally and vertically, and Member Countries have an important degree of discretion regarding border management. Furthermore, the on-going process of enlargement will render external border regimes of the Union even more diverse and new solutions will have to be found. The fact that the Union removed border controls internally suggests that it should enhance control on its external borders. Only that this conclusion proves to be simplistic, the issue being much more complex than that.

⁶ Europa-Informationen, “EU Studying the Possibility of Border Guard to Curb Illegal Immigration”, Rome, May, 30, 2002. Available at: <http://www.europa-web.de/europa/03euinf/10counc/bordguar.htm>, May, 9, 2006.

⁷ Steeve Peers, “European Commission: EU Border Control Communication”, *Statewatch Analysis*, May, 2002. Available at: <http://www.statewatch.org/news/2002/may/06Aborder.htm>, May, 9, 2006.

THE DEVELOPMENT OF THE EU BORDER POLICY

The EU Immigration, Border and Asylum Policy is a very specific and a much contested issue of policy-making. As presented by Balzacq and Carrera, it is “fraught with national fears, rival ideologies and competing political sensitiveness”⁸. Nevertheless, EU is hardly trying to formulate a cohesive policy, and after the Maastricht Treaty member states engaged to adopt a more intergovernmental approach.

The first steps in this direction were undertaken in the Treaty of Amsterdam, which moves the area of visas, asylum and immigration policies to the first pillar of Community competence⁹. After a transitional period of five years, the decisions within this area shall be taken under the co-decision procedure¹⁰. Under the provisions of the Article 63.3. of the EC Treaty, the Council was required to adopt measures on immigration policy in the following areas:

- “(a) conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion,
- (b) illegal immigration and illegal residence, including repatriation of illegal residents”¹¹

These provisions became the legal foundation for all the Community acts dealing with regular migration, which has not been an easy task for the Council¹².

Under the title “A Common EU Asylum and Migration Policy” of the Conclusions of the Tampere European Council of 15-16 October 1999, the Finnish Presidency gave a strong political signal on the need of a European approach and stressed on the need of a

⁸ Thierry Balzacq and Sergio Carrera, *Migration, Borders and Asylum. Trends and Vulnerabilities in EU Policy*, CEPS, Brussels, 2002, p. 4.

⁹ The Title IV of the Consolidated Version of the Treaty Establishing the European Community, entitled “*Visas, Asylum, Immigration and Other Policies Related to Free Movement of Persons*”, is the legal basis for the Community competence.

¹⁰ Para. 2, Art. 67.1. said: “*After this period of five years the Council shall take a decision with a view to providing for immigration and asylum to be governed by the co-decision procedure established in Art. 251 EC Treaty and qualified majority voting*”.

The wording Art.67 of the EC Treaty after the Treaty of Nice is the following:

“*1. During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.*

2. After this period of five years:

— *the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State that it submit a proposal to the Council,*

— *the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by this title to be governed by the procedure referred to in Article 251 and adapting the provisions relating to the powers of the Court of Justice.”*

¹¹ Art. 63.3. EC Treaty.

¹² Thierry Balzacq and Sergio Carrera, *op. cit.*, note 8, p.5.

“comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit”¹³. The Tampere Conclusions invited the Commission to make a proposal for a scoreboard, specifying the structure of the agenda and deadlines for implementation. The Council structured the immigration, borders and asylum issues under four titles:

- I. Partnership with countries of origin
- II. A Common European Asylum System
- III. Fair treatment of third country nationals
- IV. Management of migration flows¹⁴

The implementation of these ambitious objectives was slow and unsatisfactory, failing to meet the deadlines and often criticized¹⁵. However, one conclusion is of a particular interest for our work. The Tampere Council encouraged closer cooperation between the consular services of the EU Member States in third countries, and even the setting-up of joint offices entitled to deliver European visas (this practice was first put in place in Istanbul)¹⁶.

In November 2004, another European Council set a five-year agenda in the Hague Programme: Strengthening Freedom, Security and Justice in the European Union¹⁷. The new Programme reiterated the objectives of the Tampere Council. It stressed the need of a “comprehensive approach, involving all stages of migration, with respect to the root causes of migration, entry and admission policies and integration and return policies”¹⁸. The new Programme gives much attention to the security rationale, implying the fight against terrorism, organized crime, illegal immigration, trafficking in and smuggling of human beings, while the respect for human rights is presented only as the basis of these preventive actions¹⁹.

On 10 May 2005, in the light of the Hague Programme, the European Commission set up an Action Plan and underlined ten priorities for the field of Freedom, Security and Justice:

¹³ European Council, Presidency Conclusions of the Tampere European Council, October, 15/16, 1999. Para. 10. Available at: http://europa.eu.int/council/off/conclu/oct99/oct99_en.htm, May, 9, 2006.

¹⁴ Idem.

¹⁵ Thierry Balzacq and Sergio Carrera, *op. cit.*, note 8, p.5.

¹⁶ Europa.eu.int, Free Movement of Persons: Introduction. Available at: <http://europa.eu.int/scadplus/leg/en/lvb/l14001.htm>, May, 9, 2006.

¹⁷ European Council, The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, December, 13, 2004. Available at: http://www.libertysecurity.org/IMG/pdf/hague_programme_en.pdf, May, 9, 2006.

¹⁸ Idem., Ch. III, Para 1.2.

¹⁹ The Hague Programme reads: “*The citizens of Europe rightly expect the European Union, while guaranteeing respect for fundamental freedoms and rights, to take a more effective, joint approach to cross-border problems such as illegal migration, trafficking in and smuggling of human beings, terrorism and organised crime, as well as the prevention thereof. Notably in the field of security, the coordination and coherence between the internal and the external dimension has been growing in importance and needs to continue to be vigorously pursued.*”. Idem., Introduction.

Strengthening fundamental rights and citizenship
Fighting terrorism
Defining a balanced approach to migration
Setting up a common asylum procedure
Maximising the positive impact of immigration
Developing integrated management of the Union's external borders
Striking the right balance between privacy and security while sharing information
Developing a strategic concept on tackling organised crime
Building a genuine European area of justice
Sharing responsibility and solidarity²⁰

Specific measures to be carried in the respect of these ten priorities are listed in the annexes of the Action Plan. The implementation is still under way and is difficult to assess. The fact is that EU is still striking to consolidate a common vision of its Immigration, Borders and Asylum Policy.

In November 2003, a Council issued a Directive regulating the status of third-country nationals who are long-term residents in the EU²¹. The Directive was significantly less generous in granting right to the migrants comparing to the initial proposal of the Commission, from March 2001²². The objective of the Directive was to offer residence rights to migrants than can be comparable to those of EU citizens, and also highlights the status of long-term residents in other member states than the one that offered the permit of stay. A special “*long term resident status*” is envisaged for those “who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application”²³. These persons will have the right to move and reside in other member states and will get access to employment and self-employment activities, education, social security, tax benefits and other rights comparable to those of EU citizens²⁴. On the other hand, the Directive allows member

²⁰ European Commission, Communication on the Hague Programme: Ten Priorities for the Next Five Years – The Partnership for European Renewal in the Field of Freedom, Security and Justice, COM(2005) 184 final, Brussels, May, 10, 2005. For a summary of the Communication visit <http://europa.eu.int/scadplus/leg/en/lvb/l16002.htm>, May, 9, 2006.

²¹ European Council, Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. Available at: <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:EN:NOT>, May, 9, 2006.

²² European Commission, Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, COM(2001) 127 final. 2001/0074(CNS). Available at: <http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/ce240/ce24020010828en00790087.pdf>, May, 9, 2006.

²³ European Council, Council Directive 2003/109/EC, *op. cit.*, note 23, Art. 4.

²⁴ *Idem.*, Art. 11.

states to ask migrants to comply with integration requirements, as provided by relevant national laws²⁵.

Further Council Directives offer the possibility of family reunification for non-EU citizens residing lawfully on the territory of a Member State²⁶, and draw the conditions of admission of third-country nationals for studies, academic exchanges, and volunteer service²⁷. Directives on non-discrimination on the grounds of racial or ethnic origin²⁸, as well as on equal treatment in employment and occupation²⁹ were also provided, but “neither of them covers differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of member states”³⁰.

The European Commission attempted as yearly as in 2001 to convince the Council for the need of a directive on the admission of migrants for employment purposes³¹. The goal of the proposal was to establish common procedures leading to one joint title for both residence and work permits. As the proposal did not meet the necessary consensus in the Council³², the Commission published in January 2005 a Green Paper³³ in order to foster the debate on the adoption of a common framework for accepting economic migrants as a way to overcome labour shortages in some fields and the general ageing of population that EU is facing:

“Between 2010 and 2030, at current immigration flows, the decline in the EU-25’s working age population will entail a fall in the number of employed people of some

²⁵ *Idem.*, Art. 5.

²⁶ European Council, Council Directive 2003/86/EC of 22 September on the right to family reunification, OJ L 251/12, October, 3, 2003. Available at: http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_251/l_25120031003en00120018.pdf, May, 9, 2006.

²⁷ European Council, Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375, December, 23, 2004. Available at: http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/l_375/l_37520041223en00120018.pdf, May, 9, 2006.

²⁸ European Council, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, July, 19, 2000. Available at: http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l_180/l_18020000719en00220026.pdf, May, 9, 2006.

²⁹ European Council, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, December, 12, 2000. Available at: http://europa.eu.int/comm/employment_social/news/2001/jul/directive78ec_en.pdf, May, 9, 2006.

³⁰ Thierry Balzacq and Sergio Carrera, *op. cit.*, note 8, p.19.

³¹ European Commission, Proposal for Council Directive on the conditions of entry and residence for the purpose of paid employment and self-employment activities, COM(2001) 0386 final, Brussels, July, 11, 2001. Available at: http://europa.eu.int/eur-lex/en/com/pdf/2001/en_501PC0386.pdf, May, 9, 2006.

³² Sergio Carrera, “*Integration*” as a Process of Inclusion for Migrants? The Case of Long-Term Residents in the EU, CEPS Working Document, Brussels, 2005. Available at: http://www.euractiv.com/29/images/CEPS%20integration%20for%20migrants_tcm29-138768.pdf, May, 9, 2006.

³³ European Commission, Green Paper on an EU Approach to Managing Economic Migration, COM(2004) 811 final, Brussels, January, 11, 2005. Available at: http://ec.europa.eu/justice_home/doc_centre/immigration/work/doc/com_2004_811_en.pdf, May, 9, 2006.

20 million. Such developments will have a huge impact on overall economic growth, the functioning of the internal market and the competitiveness of EU enterprises.”³⁴

In this context, the Commission considers that decisions must be taken in order to adopt a horizontal approach on a common fast-track procedure to admit migrants for paid employment in fields where EU itself faces shortages.

Yet, there has been a general disregard to the objectives of the Green Paper, and EU remained very conservative concerning the liberalisation of its border policy towards exterior labour force³⁵. Since 2001, more decision were taken in order to control irregular migration, to fight unauthorised entry, transit and residence, trafficking in and smuggling of human beings, and to build a comprehensive return and readmission policy³⁶. Cooperation with other countries to prevent huge migration flows was seen as essential in this respect. The Conclusions of European Council of Seville in June 2002 integrated the migration related concern into the framework of external relations of the Community:

“any future cooperation, association or equivalent agreement which the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration”³⁷

The EU is since very involved in a long process of negotiating readmission agreements with third countries. This aspect will be addressed several times in this work.

The management of the Union’s external borders is confined mainly to national authorities, but there was also a Border Management Agency established by a Council Regulation. The Agency is based in Warsaw will coordinate the coordination between member states, will carry out risk analyses and researches on control of external border, will support member states in

³⁴ *Idem*, p. 3.

³⁵ Hermann Schneider, “Towards a European Migration Policy: From Maastricht to Amsterdam, from Tampere to The Hague” in: *Migration, Integration and Citizenship: A Challenge for Europe’s Future, Volume II, Forum Maastricht, University of Maastricht*, 2005.

³⁶ European Council, Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking of human beings, OJ L 203/1, August, 1, 2002, p. 0001-0004. Available at: <http://lib.juris.u-szeged.hu/szervezet/tanszekek/bunteto/egyeb/pdf/2002629jha.pdf>, May, 9, 2006.

European Council, Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorized entry, transit and residence, OJ L 328/1, December, 5, 2002, p. 0001-0003. Available at: <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:32002F0946:EN:HTML>, May, 9, 2006.

Other decisions and directives listed in Thierry Balzacq and Sergio Carrera, *op. cit.*, note 8, p. 27-28.

³⁷ European Council, Presidency Conclusions of the Seville European Council, June, 21-22, 2002, 13894/02, Brussels, October, 24, 2002. Available at: http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/72638.pdf, May, 9, 2006.

organising joint return operations, and will provide training for national border guards³⁸. The next steps of the Union regarding its Border policy should be the implementation of new technologies and biometrics for a better management of external borders, the establishment of a Visa Integrated System and the modernization of the Schengen Information System³⁹.

Addressing third country nationals, the Council issued the Regulation (EC) 539/2001 listing the countries whose citizens are required to have a visa in order to cross its borders. This regulation imposed visas on 131 countries and 3 territorial entities, while 43 other states were exempted from this requirement⁴⁰. Among the countries of a particular interest for our further work, Moldova, Ukraine, Belarus and Russia were on the visa list, known also as the EU “black list”, while Romania and Bulgaria were offered visa-free regimes. Several other Council Regulations set up a uniform format for the visa, enabling third-country nationals to travel throughout the Union with a single visa⁴¹.

In conclusion, a rather dual picture appears. The Community-wide policy on border and migration issues is still under construction. The Commission calls for a more open attitude towards the foreign labour force, while the Council remains still. Much of migration policies and external border control competence is confined to national authorities, which makes up a policy with a rather low level of competence. Nevertheless, as we will see further in our work, the New Member States and the candidate countries were asked to regard the *Schengen acquis* as a *communitarian acquis*, and therefore were limited in their sovereignty related to migration and border policy. In the light of the purpose of the present work, this shows once again the horizontal and vertical fragmentation of the EU approach⁴².

³⁸ European Council, Council Regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union of 26 October 2004, (EC) No. 2004/2007, OJ L 349/1, November, 25, 2004. For more information on the Agency see <http://europa.eu.int/scadplus/leg/en/lvb/l33216.htm>, May, 9, 2006.

³⁹ ³⁹ Thierry Balzacq and Sergio Carrera, *op. cit.*, note 8, p.37-40.

⁴⁰ European Council, 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, *Official Journal L 081*, March, 21, 2001, p. 0001-0007. Available at: http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32001R0539&model=guichett, May, 9, 2006.

⁴¹ European Council, Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas. Available at: <http://europa.eu.int/scadplus/leg/en/lvb/l14009.htm>, May, 9, 2006.

References to other Council Regulations are provided at the end of the webpage.

⁴² Unlike the New Member Countries and the accession countries, old member countries like Great Britain or Ireland can opt out from the Schengen acquis.

CHAPTER II

MOLDOVANS IN EU:

A NEVERENDING STORY OF EMMIGRATION

EVOLUTION OF MOLDOVAN EMMIGRATION

In the light of our research, it is of a particular interest to assess the impact of the Moldovan emmigration in the EU, an issue that will certainly make headlines in eventual Moldovan – EU negotiations on visa issues. During the last decade, Moldova was a net exporter of labour force. The causes of such an evolution were low living standards and difficulties of finding employment internally, common to most of the post-Soviet countries. The current trends show a shift in the destination preferences, as progressively more Moldovans are migrating westwards, instead of their traditional CIS destinations, and Moscow specifically⁴³.

The Moldovan government did not do much in order to stop this process, as it was seen as a short term solution to a range of internal problems, such as unemployment or lack of income sources. It has been suggested that the money transfers that emigrants are providing back for their families in Moldova were a decisive factor that kept Moldovan economy going. Moreover, some views were expressed saying that the outflow of Moldovan active population, with more democratic and pro-European views, allowed the Communist Party to win the elections in 2001, using a discourse that emphasized the nostalgia for the Soviet time, a discourse that appealed especially to the elder generation⁴⁴. Generally, the Moldovan government was initially a passive observer of the migration of its citizens and only recently undertook more or less coherent regulatory steps in order to settle the situation.

The way how Moldovans become emigrants was presented through an example in *Le Monde Diplomatique*:

“Costea, 30, comes from Balti, the second largest town. He started by trying to cross without papers and was turned back at the border between Poland and Ukraine. So he bought a Schengen visa. In Chisinau there are "travel agents". They

⁴³ Ecaterina Buracec, *Migratia de Munca si Impactul ei Asupra Societatii [Labour Migration and its Impact on the Society]*, IPP Publications, Chisinau, p. 4. Available at:

<http://www.goethe.de/ms/buk/archiv/material/Migration/Discurs%20Ecaterina%20Buracec.doc>, March, 24, 2006.

⁴⁴ Michael Jandl, “Moldova Seeks Stability amid Mass Emigration”, Country Profile, Migration Information Source, December 2003. Available at: <http://www.migrationinformation.org/feature/display.cfm?ID=184>, May 9, 2006.

wangle the necessary letters of invitation for embassies to issue tourist visas. Costea had to pay \$1,250. On arriving in Paris he applied for political asylum. During the year that it took for his application to be processed and refused, he worked illegally on building sites. He claims to have earned \$1,050 a month, two thirds of which he sent home to his wife Stella. She bought a 60 square metre flat for \$2,600 and fitted it out "just like in the West", with a washing machine, dishwasher and shower, and water heaters."⁴⁵

The number of Moldovan emigrants is a subject of continuing researches and debates. Generally, the numbers presented vary in between 450,000 and 1,000,000, what represents 11%-25% of the total population⁴⁶. According to the polls, up to 29% of the Moldovan population used to work abroad at least once⁴⁷. Moreover, another poll suggests that 42% of Moldovans are in favour of the emigration, and an overwhelming 80% of the respondents answered that they would like to go abroad if they had the opportunity⁴⁸. According to some official data presented in 2003 by the Department of Statistics and Sociology, there were no more than 234 000 Moldovans residing abroad on a legal or illegal basis. The same source evaluated that men accounted for 68% of the migrants, persons from rural areas for 69% of this

⁴⁵ Guy-Pierre Chomette, "What Country, Friend, Is This?", *Le Monde Diplomatique*, January, 2002. Available at <http://mondediplo.com/2002/01/14country> or

<http://www.globalpolicy.org/nations/citizen/2002/0102moldova.htm>, May 9, 2006.

⁴⁶ The numbers presented by different sources are as follow:

450,000 in Valeriu Munteanu, *Politica Migrationala a Republicii Moldova: Probleme si Caile de Solutionare [The Migration Policy of the Republic of Moldova: Problems and Ways Out]*, State Service for Migration, Chisinau, 2002. Available at: <http://www.ipp.md/files/Publicatii/2002/frontiere/16~Migatia.doc>, May, 9, 2006.

500,000 in Valeriu Gheorghiu, *Noile Frontiere Schengen si Implicatiile Lor asupra Relatiilor dintre Romania si Republica Moldova [New Schengen Borders and Their Implications on the Relations between Romania and the Republic of Moldova]*, Institute for Public Policy, Chisinau. Available at:

<http://www.ipp.md/files/Publicatii/2002/frontiere/10~VizaPViza.doc>, May, 9, 2006.

450,000 – 600,000 in Anatoli Dirun, *Migratiunea fortei de munca in Republica Moldova [The Migration of the Labour Force in the Republic of Moldova]*, State University of Tiraspol. Available at:

http://www.iatp.md/tiraspolngo/publications_2ro.html, May, 9, 2006

600,000 in an IOM report cited in: Eugeniu Burdelnii, *In Search of New Guidelines for East-West European Migration in the Light of European Union's "Wider Europe – Neighbourhood Policy" (the case of the Republic of Moldova)*, 2004. Available at: <http://www.cenpo.ro/files/03%20Migration.pdf>, May, 9, 2006.

800,000 in UNICEF, UNOHCHR, OSCE/ODIHR, *Trafficking in Human beings in South Eastern Europe*, 2004, pp. 112-113. Available at: <http://www.unicef.org/ceecis/Trafficking.Report.2005.pdf>, May, 9, 2006.

600,000 – 1,000,000 in Tanja El-Cherkeh and others, *EU-Enlargement, Migration and Trafficking in Women: The Case of South Eastern Europe*, Hamburg Institute of International Economics, Hamburg, 2004, p.81. Available at: <http://www.migration-research.org/dokumente/whats%20new/Report247.pdf>, May, 9, 2006.

and in Evghenia Sleptova, *Labour Migration in Europe: Special Focus on the Republic of Moldova*, Institute for Public Policy, Chisinau, 2003, p. 21. Available at:

<http://www.ipp.md/public/biblioteca/50/en/St~Sleptova-fin.doc>, May, 9, 2006.

and in Stanislav Ceciui, *Frontierele Moldovei pe harta Europei [Moldovan Frontiers on the Map of Europe]*, Moldconsult, Chisinau. Available at: <http://www.ipp.md/files/Publicatii/2002/frontiere/12~FrontHarta.doc>, May, 9, 2006.

⁴⁷ Polls performed by the Institute for Public Policy, cited in Anatoli Dirun, *op. cit.*, note 46.

⁴⁸ Tanja El-Cherkeh and others, *op. cit.*, note 46, p.81.

number⁴⁹. The estimations of the officials are thus three times smaller than those of independent experts. One has to bear in mind that these figures represent a total number of immigrants, residing mainly in CIS countries⁵⁰ and EU.

These numbers are much of a worry, especially if we consider that only 2 percent of all these people are legally employed (8 201 persons in 2003)⁵¹. The emigrants represents up to one fifth of the total Moldovan population and one third of the active population. Sadly, the emmigration is not yet settled, as the number of persons living the country grew continuously during the years 2000-2003⁵².

Some official statistics say that only in 2001 the Moldovan – Romanian border was crossed by the Moldovan citizens as follows:

- from the Moldovan territory – 1,152,416
- on the Moldovan territory – 1,095,770⁵³

Considering the size of the Moldovan population, of around 4 million (including half a million living in Transnistria), these figures show clearly the size of the migration at the Romanian border. Also, it is noticeable that the emmigration is exceeding immigration by more than 50,000 per year. As there are no clear figures on the number of Moldovan citizens residing and working in countries at west of Moldova, if the trend was similar every year, we can assume that somewhere between 300,000 and 500,000 Moldovans are nowadays residing, legally or not, in European Union. This figure is indeed the one presented by the most of the analysts.

In Europe, Moldovan migrants follow some main vectors:

- the Western and Central European vector: mainly Germany, France, Poland and Czech Republic
- the Southwestern vector: Italy, Spain and Portugal
- the Southern vector: Greece, Turkey and Cyprus

⁴⁹ Evgenia Sleptova, *op. cit.*, note 46, p. 21.

⁵⁰ Russian authorities estimate that over 250 000 Moldovans are illegally employed in Moscow. *Idem.*

⁵¹ Nezaavisimaia Moldova, “Migration and protection of citizens’ interests”, June 2002.

⁵² According to data from the Customs Department of Moldova, the number of people who left the country was: 44,000 in 2000, 59,000 in 2001, and 94,000 in 2003. Figures presented in Valeriu Munteanu, *op. cit.*, note 46 and Anatoli Dirun, *op. cit.*, note 46.

⁵³ Vladimir Galca, Eugen Hristev, “The Western Border of the Republic of Moldova – the Future Schengen Border”, in: *Impact of the Expansion of Schengen Acquis on the National Policies and Local Communities of Nine Central and East European Countries*, Institute for Public Policy, Chisinau. Available at: <http://www.isp.org.pl/files/4652166990754955001118155171.pdf?PHPSESSID=d8151765dcd7013fc4915e981698bc97>, May, 9, 2006.

It is very difficult to get exact estimations of the numbers of emigrated Moldovans per country⁵⁴. Though, some indirect figures can suggest these proportions:

- every year over one thousand Moldovans are returned to Poland because of illegal attempts to cross the German border. German authorities estimate that most of Moldovans residing on its territory are employed in construction sector in the East of the country
- in Portugal, over 88% of illegally employed persons are Moldovan, Romanian or Ukrainian.
- up to 5 000 Moldovans are deported every year from Spain, Portugal, Turkey and Israel.
- during the years 1997-1999 some 130 Moldovans died in accidents in foreign countries⁵⁵.

Moldovan citizens working abroad are generally employed in low-paid and low-skilled fields, and only 27% are employed according to their qualification⁵⁶. Main sectors are construction, agriculture, mining, household, transport, and sex industry⁵⁷. One can distinguish three main categories of migrants:

- trade tourists – accounting for one fourth of the total migration, and basically involving people from urban areas.
- seasonal workers – up to 35% of the migrants, especially employed in agricultural sector. Researches show that during the high agricultural periods, Moldovan emmigration rises by 30-40 percents.
- long term employed – some 40% of the total. A large number of these workers are young and fertile migrants aged between 20 and 30⁵⁸.

⁵⁴ According to an IMF report, cited in Eugeniu Burdelnii, *op. cit.*, note 46, 150,000 Moldovans work in Italy, 40,000 in Czech Republic, 30,000 in Portugal, 20,000 in Spain and France. About 100-200 people from every Moldovan village work abroad, says the same source.

Other figures are presented by the Moldovan Department of Migration: 150,000 in Italy, 80,000 in Portugal, 30,000-100,000 in Greece (Moldovans are the most numerous emigrants in Greece, according to this report), 40,000 in Czech Republic, 20,000 in Spain, 15,000 in France, 10,000-15,000 in Germany, 5,000-7,000 in Cyprus. Data from: Ion Loghin, *Republica Moldova si Fenomenul Migratiei in Contextul Extinderii UE [The Republic of Moldova and the Phenomenon of Migration in the Context of the EU Extension]*, Moldovan Department of Migration. Available at: <http://www.ipp.md/files/Publicatii/2003/iulie/Pr~Loghin.doc>, May, 9, 2006.

Slightly different numbers are given in Anatoli Dirun, *op. cit.*, note 46: 150,000 in Italy, 80,000 in Portugal, 30,000-100,000 in Greece, 40,000 in Czech Republic, 20,000 in Spain, 15,000 in France, 10,000-15,000 in Germany, 5,000 in Romania, less than 1,000 in other European countries.

⁵⁵ Evghenia Sleptova, *op. cit.*, note 46, p. 21-22.

⁵⁶ Tanja El-Cherkeh and others, *op. cit.*, note 46, p.78.

⁵⁷ Anatoli Dirun, *op. cit.*, note 46.

⁵⁸ Evghenia Sleptova, *op. cit.*, note 46, and Anatoli Dirun, *op. cit.*, note 46.

THE CONSEQUENCES OF MOLDOVAN MASSIVE EMMIGRATION

What seems to be a negative phenomenon has had important positive impacts on the Moldovan economy. People that left the country eased the pressures on the internal unemployment and the budget expenditures. Important amounts of foreign currency were sent back home. According to the estimations of the Moldovan National Bank, Moldovans working abroad sent to their families in the home country around 275 million dollars in 2002⁵⁹, amounting up to 15% of the GDP. In per capita terms, every migrant is sending home by back transfer 1,000 dollars per year⁶⁰. Considering the costs of such transfers and the habits of the population, it becomes evident that much more money is brought in cash or in kind. According to an estimation of Marian Lupu, the former Minister of Economy, presently Speaker of the Moldovan Parliament, Moldovan migrants send back home up to \$1 billion, what represents half of the Moldovan GDP⁶¹. From a strictly monetary perspective, this inflow of hard currency is favorable to the stability of the national currency, and the Moldovan National Bank does not place restrictions on the import of foreign currency⁶². Moreover, these resources are partially used for investment, what also contributes to the internal development of Moldova. On the other hand, the investments are not purely economic, as some returned Moldovans bring fresh ideas and *savoir faire* that favour the social development of the society.

Except this accumulation of capital, several other trends mark the impact of the migration on the Moldovan economy:

- People massively and “voluntary” withdraw from the labour market
- The hidden unemployment, i.e. people on long term leaves, is growing
- The major part of the labour force is accumulating in the private sector
- The migration abroad especially affects the labour force and thus the future development of the rural areas

⁵⁹ Anatoli Dirun, *op. cit.*, note 46. This number reflects only bank transfers, mostly through Western Union offices, which can be found everywhere in the country. A table of the evolution of these remittances, from the National Bank of Moldova is also provided:

Remittances	1999	2000	2001	2002	2003	2004
\$ (mln.)	109,8	159,0	223,0	275,0	360,0	415[1]
in % of GDP	9,3	12,3	15,1	16,5	19,1	...

⁶⁰ Eugeniu Burdelnii, *op. cit.*, note 46.

⁶¹ Idem.

⁶² Evghenia Sleptova, *op. cit.*, note 46.

- There is an increase in "voluntary" migration, in particular among women, and a feminization of the emigration
- Alongside with voluntaries, the proportion of "forced" migrants is also growing⁶³
- The social security system is affected, as emigrants do not pay contributions to the Social Fund⁶⁴

The problems can be even bigger than that. A large part of the long term employed migrants are highly skilled workers, such as IT specialists or scientists – subjects to *brain drain*, what makes up a high deficit of such labour force in Moldova. The social costs of family separations are high, as relations between spouses and between parents and children are seriously affected. The trafficking of women makes a high stake of the total migration, and it is one of the more painful issues for Moldovan society nowadays. A problem very apart is the trafficking in and smuggling of human beings. As reported by the International Organization for Migration, more than one thousand victims were repatriated to Moldova between 2000 and 2003⁶⁵.

The political risks are also considerable, affecting both internal and external relations. The perception of Moldova as a country can be damaged by the behavior of its immigrants, as most of them do not integrate easily in the receiving societies and are often involved in criminal activities⁶⁶.

The presence of such a big number of migrants in Europe will also hinder the process of negotiation of an integrated Moldova – EU border regime. The EU regards Moldova as a source of illegal migration, and as a transit country for migration coming from other geographical areas, especially from CIS and Central Asia⁶⁷. It is also true that Moldova already exhausted much of its capacity of being a source of migration (it is still hard to believe that *half* of its population will leave the country), and its main homework today is to ensure efficient control on both Eastern and Western borders and to sign readmission agreements with EU in order to fight against the negative effects of migration.

⁶³ Tatiana Pyshkina, *Economic Consequences of the Migration of Labour from the Republic of Moldova*, Academy of Economic Studies of Moldova, Chisinau. Available at: <http://www.wider.unu.edu/conference/conference-2002-3/conference%20papers/pyshkina.pdf>, May, 9, 2006.

⁶⁴ Anatoli Dirun, *op. cit.*, note 46.

⁶⁵ Michael Jandl, *op. cit.*, note 44.

⁶⁶ Anatoli Dirun, *op. cit.*, note 46.

⁶⁷ Evghenia Sleptova, *op. cit.*, note 46.

WHICH POLICY TO DEAL WITH MASS EMMIGRATION?

Moldovan government has to be very active in preventing the phenomenon of mass emmigration if it wants to get a more open border regime with the European Union. The efforts must concentrate on the social and economic reforms, on attracting foreign direct investments, and parallel projects for the management of the borders must be envisaged. EU already addressed Moldova on the need of structural changes, and a range of suggestions are laid in the EU-Moldova Action Plan (AP). The AP will be analyzed further in our work, as well as its implementation in the fields relevant to the movement of persons.

Considering these realities, the Moldovan government created in 2001 a State Service for Migration. According to a Governmental decision, the Service has the authority to carry the state policy in the domain of the migration. A Concept of the Migration Policy of the Republic of Moldova was drafted by the Service, asking for more drastic judicial reglementation of illegal migration, smuggling and trafficking in human beings. It emphasized the problem of the transperence of the Moldovan-Ukrainian border, which is considered to be one of the main sources of illegal migration⁶⁸.

Moldova should enhance the cooperation with other states on issues related to migration. Present achievements are modest in this regard. It seems that a sustained dialogue was achieved only with Italy⁶⁹. The Italian Government offered a quota of 500 workers per year to be legally employed, and further agreements between Italian regions and Moldova increased this number to 1,500 annually⁷⁰. An Agreement for the reglementation of the situation of Moldovan workers in Portugal was also sent to the Moldovan Government by the Portuguese authorities⁷¹. Relations with other countries are at an incipient stage or totally inexistent.

In 2001 Moldova acceded to the 1951 Geneva Convention relating to the Status of Refugees and its protocols. The Law on Refugee Status was adopted in 2002⁷², and in the same year Moldova signed a Cooperation Accord with the International Organization for Migration⁷³.

⁶⁸ Valeriu Munteanu, *op. cit.*, note 46.

⁶⁹ Ion Loghin, *op. cit.*, note 54.

⁷⁰ Tanja El-Cherkeh and others, *op. cit.*, note 46, p.74.

⁷¹ Ion Loghin, *op. cit.*, note 54.

⁷² Michael Jandl, *op. cit.*, note 44.

⁷³ Ion Loghin, *op. cit.*, note 54.

Further step are still to be done, and particularly:

- To coordinate migration policies and bilateral agreements in order to assure beneficial effects for all countries involved.
- To create a favorable working environment and new employment opportunities inside the country
- To fight against illegal migration, ensuring in the same time the respect of the freedom of movement and other fundamental rights
- To segregate data related to migratory flows between Moldova and its neighbours, in order to have a more objective picture of migration tendencies
- To implement a database regarding emigrant workers, with information related to their employment, contracts and endorsements.
- To ensure the legality of employment in other countries and to favour the activity of legitimate firms providing employment abroad⁷⁴
- Migrants should be motivated to return by opening opportunities for investments and simplifying the deployment of small enterprises⁷⁵.

⁷⁴ For the moment there are less than one hundred such firms in Moldova, employing less than 2,000 Moldovans annually. Valeriu Munteanu, *op. cit.*, note 46.

⁷⁵ Several suggestions were inspired from the comprehensive analysis Institute for Public Policy, *Migration Policies in the Republic of Moldova*, Chisinau, 2004. Available at: http://www.ipp.md/public/biblioteca/88/en/Politici%20migrationala_EN_12_11_04.zip, May, 9, 2006.

CHAPTER III

MOLDOVAN BORDERS IN THE SOUTH EASTERN EUROPEAN CONTEXT

THE MOLDOVAN WALL IN THE SOUTH EASTERN EUROPE

Moldova is keeping an extremely restrictive border regime. The citizens of all countries, excepting Romania and CIS countries, are asked for a visa to travel to Moldova⁷⁶. Comparing to Romania, which has open border regimes with 41 countries, Moldova is allowing citizens of only 12 countries to enter its territory without visas (we are not considering diplomatic and service passport holders)⁷⁷.

For the moment Romania is the only country situated at West where Moldovans can travel without visas. For some obvious reasons, Moldovan citizens cannot go to EU without a visa (except if they hold Romanian or Bulgarian passports – this issue is discussed further in our work). Moreover, after the introduction of Romanian visas, Moldova will be the single country in the South Eastern European area whose citizens will be unable to travel without visas in the region. It is thus interesting to set the South East European context, comparing Moldovan border openness to those of other neighbours. Analyzing the state of affairs in relations between ten countries (we considered five EU Members and candidate countries: Hungary, Cyprus, Romania, Bulgaria, Croatia, and five other countries: Moldova, FYROM, Bosnia-Herzegovina, Serbia and Montenegro, and Albania⁷⁸), one could find out that:

⁷⁶ Project Visa, “Visa Information for Moldova”. Available at: <http://projectvisa.com/countryinfo.asp?countrycode=md>, May, 9, 2006.

⁷⁷ Ministry of Foreign Affairs, “List of States Whose Citizens Are Exempted From Visa Requirement by Romania”. Available at: http://www.mae.ro/poze_editare/2006.04.12_Vize_Anexa1en.pdf, May, 9, 2006.

⁷⁸ For Moldova data retrieved from: The Official Site of the Department of Tourism Development, “Entry Formalities (Visa Regime). Available at: <http://www.turism.md/eng/section/66>, May, 9, 2006.

For Albania: Ministry of Foreign Affairs, “Citizens of Which Countries enter the Republic of Albania without a Visa”. Available at: <http://www.mfa.gov.al/english/viza1.asp>, May, 9, 2006.

For Bosnia-Herzegovina: Ministry of Foreign Affairs, “List of Countries Whose Nationals Do Not Require Visas to Enter Bosnia and Herzegovina”. Available at: <http://www.mvp.gov.ba/HTML/Viznirezim.doc>, May, 9, 2006.

For Bulgaria: Project Visa, “Visa Information for Bulgaria”. Available at: <http://projectvisa.com/countryinfo.asp?countrycode=bg>, May, 9, 2006.

For Croatia: Ministry of Foreign Affairs and European Integration, “Visa Requirements Overview”. Available at: <http://www.mvp.hr/MVP.asp?pcpid=1615>, May, 9, 2006.

For Cyprus: Project Visa, “Visa Information for Cyprus”. Available at: <http://projectvisa.com/countryinfo.asp?countrycode=cy>, May, 9, 2006.

For Hungary: Consulate General of Hungary in Sydney, “List of Countries Whose Nationals Do Not Need a Visa to Hungary”. Available at: <http://www.hunconsydney.com/vizum/novisalist.htm>, May, 9, 2006.

- Moldova asks visas from 8 countries – in fact, all except Romania;
- Bosnia-Herzegovina, Bulgaria, Cyprus and Hungary have visa requirements for 5 countries, Romania and Albania for 4, Macedonia for 3 and Croatia for 2;
- Serbia and Montenegro has a flexible visa regime, allowing most of the countries to enter at least the territory of Montenegro or to transit without visa. Only Moldovan citizens are required visas for any purpose.

In the same time:

- Moldovans need visas to go to 8 countries, the only one where they can still go without a visa being Romania. The case of Albania is similar – Albanians can travel without visas only to Montenegro;
- Serbia and Montenegro and Bosnia-Herzegovina citizens need visas to travel in 6 countries, Macedonians in 5, Cypriots in 3, while Hungarians and Bulgarians need visas in 2 countries. Romanians need visas only for Macedonia and, with the exception of some transit routes, for Serbia and Montenegro;
- Croats need visas only for going to Moldova.

It appears obvious that Moldova is by far the most isolated country in the region. While Albania faces the same number of border regimes imposed for its citizens, the Tirana authorities did not answer by totally locking the borders of their own country, allowing 5 out of 9 countries to enter its territory without a visa by paying a border fee of \$10⁷⁹.

It is also interesting to observe that unlike Moldova, all other 9 countries have asymmetrical visa policies. In fact, there are two main categories:

- *The 5 EU Members and accession countries* regarded in our analysis have *more access to other countries than they provide for their own territory*. For instance, Hungarians and Bulgarians need visas for only 2 countries, but impose visas on 5; Cypriots need visas for 3 countries, asking them from 5; Romanians need visas for Macedonia and in certain conditions for Serbia and Montenegro, but demand visas from 4 countries; finally, Croats need visas only for Moldova, and impose visas on Moldovans and Albanians.

For Macedonia: Ministry of Foreign Affairs, “Visa Regime of The Republic of Macedonia towards Other Countries, Special Administrative Regions and Entities and Territorial Authorities That Are Not Recognized as States”. Available at: <http://www.mfa.gov.mk/upload/dokumenti/VizenRezim2003.doc>, May, 9, 2006.

For Romania: Ministry of Foreign Affairs, *op. cit.*, note 77.

For Serbia: Ministry of Foreign Affairs, “Countries Whose Nationals May Enter Serbia and Montenegro without a Visa”. Available at: http://www.mfa.gov.yu/Visas/f_without_visa.htm, May, 9, 2006.

⁷⁹ Albanian Ministry of Foreign Affairs, *op. cit.*, note 78.

- *Other states have an inverse policy:* while Albanians are asked for visas by 8 countries, they impose them only on 4; citizens of Bosnia-Herzegovina and Serbia and Montenegro need visas to go to 6 countries, but their governments ask visas from 5 and respectively 3 countries; Macedonians need visas for 5 countries, but request them from only 3⁸⁰.

We can see that the asymmetrical type of border regimes is not an unusual fact. Indeed, if not taking into consideration Moldova, 14 out of 36 bilateral relations analyzed are based on asymmetrical visa regimes (See Table below). In its future negotiations with Romania and EU, Moldova should consider this aspect, and possibly withdraw much of its visa requirements. Ukraine, which is facing a similar position as Moldova, has already unilaterally abolished its visa requirements for EU citizens.

Figure 2. Visa regimes between South Eastern European States

	MOL	ALB	BOS	BUL	CRO	CYP	HUN	MAC	ROM	SCG
Moldova		Y	Y	Y	Y	Y	Y	Y	N	Y
Albania	Y		Y	N (10\$)	N (10\$)	N (10\$)	N (10\$)	Y	N (10\$)	Y
Bosnia and Herz-na	Y	Y		Y	N	Y	Y	N	N	N
Bulgaria	Y	Y	Y		N	Y	N	N	N	Y
Croatia	Y	Y	N	N		N	N	N	N	N
Cyprus	Y	Y	Y	N	N		N	Y	N	Y
Hungary	Y	Y	Y	N	N	N		Y	N	Y
Macedonia	Y	Y	N (3m)	N (30d)	N (3m)	N (90d)	N (90d)		Y (3m)	N (60d)
Romania	N	Y	Y	N (30d)	N (30d)	N (90d)	N (90d)	Y		Y
Serbia and Mon-gro	Y	N (Mtn)	N (Mtn)	N (30d)	N (Mtn)	N (Mtn)	N (90d)	N (60d)	N (Tr)	

The rows show the visa requirement imposed on the countries of the columns, as follow

Y – visas are needed

N – no visas required

In brackets we show additional conditions:

10\$ - Albanian border authorities permit the crossing of the border without a visa with a pay of 10\$

Mtn – only accession to Montenegro with tourist purposes in allowed

Tr – transit without visa is allowed for certain destinations

d – the maximum duration of stay without or with a visa in days

m – the maximum duration of stay without or with a visa in months

N/Y – the black type letters indicate the bilateral asymmetrical regimes

⁸⁰ Some asymmetrical visa regimes are:

CHAPTER IV

FACING NEW BORDER REGIME WITH ROMANIA

SETTING THE CONTEXT

Moldova is already pressing Brussels to open negotiations on a facilitated visa regime⁸¹. This came after Ukraine started such talks with the Union, as its border regime with Poland was affected by the enlargement. The envisaged accession of Romania had already its input on Moldova, and the sense of urgency determined the Chisinau government to act⁸². But on the part of the EU there are no clear signs on when and how these negotiations will take place.

Instead, Romania showed clearly that the implementation of the *Schengen acquis* is a priority of the country and visas to Moldovans will be introduced even prior to the formal accession to the EU. On the other hand, this implementation of a new visa policy towards Moldova is not an easy dish to swallow. Both Romanian citizens and Romanian politicians are concerned about preserving close ties with what they consider to be a “historical part of Romania”. The Bucharest authorities will thus look at the experiences of other new member states in dealing with their non-EU neighbours. The special treatment of Russia, Ukraine or Serbia and Montenegro by some EU freshmen will thus serve as a starting point in considering the future of a Romanian – Moldovan border regime.

It makes a dual approach that Moldova will have to face. The Moldovans will surely negotiate on a bilateral basis with Romanians the border regime on Prut, but this will have big repercussions on the more general right of movement of Moldovans in European Union, as EU - Romanian borders will progressively become permeable. As far as EU is not ready to offer Moldova a more favorable treatment and regards this country as blacklisted⁸³, the border regime with Romania, even if liberalized, will not automatically result into a facilitated EU – Moldova border regime. This is why Moldova has to conduct negotiations both with Romania and EU on the issue of basically the same border policy.

⁸¹ Andrew Beatty, “Moldova Shrugs Off Sleazy Image to Plead for Visa Deal”, in: *European Voice*, November, 23-24.

⁸² George Dura, *A Tale of Two Visa Regimes - Repercussions of Romania's accession to the EU on the freedom of movement of Moldovan citizens*, in: UNISCI Discussion Papers, CEPS, January 2006. Available at: <http://www.ucm.es/info/unisci/UNISCI10Dura.pdf>, May, 9, 2006.

⁸³ European Council, Council Regulation (EC) No 539/2001, *op. cit.*, note 40.

Basically, one can distinguish two main processes that take place simultaneously. On the one hand, New Member States tend to preserve their “open border” policies towards non-EU Eastern neighbours, while on the other these neighbours themselves are trying to negotiate a generalized visa facilitation regime with the EU as a whole⁸⁴.

WHAT KIND OF ROMANIAN – MOLDOVAN BORDER REGIME?

Romania has very close historical ties with the Republic of Moldova. Up to 65% of the Moldovan population speaks Romanian language⁸⁵, even if this one is called “Moldovan” in the Moldovan Constitution. A considerable part of this population identify itself as Romanians, and Romanians regard the whole Romanian-speaking majority of Moldovans as Romanians. The region was formerly a part of the Principality of Moldova, one of the three historical Romanian Principalities. Between First and Second World Wars the territory of the present Republic of Moldova was part of the Great Romania, and lot of people expected that Moldova was going to join Romania after the collapse of the Soviet Union, pretty much in the spirit of the German reunification. It is not the purpose of our thesis to analyze why this did not occur, but the fact that Romanians have special feelings concerning Moldova is obvious. In 2005, the Romanian President Traian Basescu referred to Moldovan population as a part of the Romanian people⁸⁶.

Considering these strong historical and cultural ties, Romania will be looking to preserve much of the present liberalized visa regime with Moldova. After Moldova’s independence in 1991, there was no period in which Romania requested visas from Moldovans in order to enter its territory. But the European accession seems to be a much stronger foreign policy option, and both Romanian authorities and Romanian citizens are ready to make some concessions to this rule and to introduce visas for Moldovans. According to a recent opinion poll on Romania’s foreign policy, 42% of the respondents agreed that the introduction of visas for Moldovans should be respected if demanded by the European Union, and a further 16% consider that Romania has to impose visas on its Eastern neighbour even without an EU request. Only 23% declared to be against such a measure. On the other hand, the same poll shows that the Romanians perceive in negative terms the policies conducted by their government towards Moldova: only 3% agreed that the policies were *good*, while the immense majority consider it

⁸⁴ George Dura, *op. cit.*, note 82.

⁸⁵ National Geographic, Moldova: “Country Profile”. Available at: <http://plasma.nationalgeographic.com/mapmachine/profiles/md.html>, May, 9, 2006.

⁸⁶ Boris Vieru, “Interview with the Romanian President Traian Basescu”, in: *Gazeta Romaneasca*, 3 July 2005.

very poor (4%), poor (26%), not so good (49%), or inexistent, as 18% answered that they *don't have an opinion* on this issue⁸⁷. This shows that Romanians generally consider that their government unreasonably abandoned Moldovans on the foreign policy agenda. Furthermore, it is interesting to see the solutions proposed by Romanian citizens, much of them addressing directly the freedom of Moldovans in Romania:

- 60% consider that Romania should continue providing scholarships for Moldovan students
- 54% say that Romania shall support Moldova in its Euro-Atlantic integration bid
- 41% favour the privileged granting of Romanian citizenship to Moldovan citizens
- 37% support the facilitation of the access of Moldovans to the Romanian labour market⁸⁸

This shows clear signs that Romanians generally see the introduction of visas for Moldovans only as a necessary step in the process of European integration, a step that shall not hinder Romanian-Moldovan relations. Even if not asked directly in the poll, we consider that Romanians would answer positively to a *liberalized* visa regime with Moldova. This is what apparently the Romanian government itself is trying to erect.

However, the new visa regime will be anyway a more restrictive than the present one. For the moment Moldovans are only required to show a valid passport while crossing the border. Before July 1, 2002, they could travel to Romania on the basis of an ID card. The introduction of the passport requirement was at the moment seen as a serious impediment to the Moldovans' freedom of movement⁸⁹, and Romania agreed to offer financial aid in order to overcome the situation - one million Dollars was given by the Bucharest government, and a similar amount by Brussels⁹⁰.

Yet, the fact is that a wall is already being erected at the Moldovan-Romanian border. While crossing the border, Moldovans have to show that they have the necessary amount of money in order to subsist in Romania. As there is no official requirement on the exact sum that must be

⁸⁷ Romanian Institute for Public Policy, *Perceptia Opiniei Publice din Romania asupra Politicii Externe si a Relatiilor Internationale [The Perception of The Romanian Public Opinion on the Foreign Policy and International Relations]*, Bucharest, October 2005, p. 48-51.

⁸⁸ *Idem.*

⁸⁹ Moldovan average salary is around 30\$, while the costs of a passport are ranging from 20\$ to 100\$. Only 40% of the Moldovan population held passports in 2002, see Eugen Tomiuc, "Romania: Officials Introduce Passport Controls for Moldovans", RFE/RL, April, 25, 2001. Available at: <http://www.b-info.com/tools/miva/newsview.mv?url=news/2001-04/text/apr25a.rfe>, May, 9, 2006.

⁹⁰ Guy-Pierre Chomette, *op. cit.*, note 45.

shown, border officials ask every Moldovan citizen to show from 50 to 100 euros⁹¹. Considering that the average salary in Moldova is around 30 euros, this can be much of a burden for a number of Moldovans crossing the Romanian border. Still, Romania is for the moment the only country to the West to where Moldovans can go without a visa. For the moment Bucharest and Chisinau authorities are negotiating the introduction of a facilitated visa regime that will be introduced with Romania's formal accession to the EU⁹².

But why should Romania impose a visa regime on Moldova? The fact is that the *Schengen acquis* is regarded as an integral part of the *acquis communautaire* that countries have to fulfill in order to become EU members. Unlike some old members, as United Kingdom or Ireland, there is no opt out possibility for the new acceding countries. This is clearly stated in the Article 8 of the Protocol of the Treaty of Amsterdam incorporating *Schengen acquis* in the *acquis communautaire*: "For the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen acquis and further measures taken by the institutions within its scope shall be regarded as an *acquis* which must be accepted in full by all States candidates for admission"⁹³. Technically, the accession of one country to the Schengen area follows two stages. During the first stage, after the accession to the EU, the country has to implement the incumbent measures of the Schengen framework. The second stage means the full accession to the Schengen area, and is expected to follow several years after one country's accession to the EU. The sole fact that the procedure is conceived in two steps proves that the "EU itself has opened the way for certain elements of flexibility"⁹⁴.

Until the moment of its full accession to the Schengen Area, the Romanian authorities will have to implement a flexible visa regime for Moldova, which will be replaced later by a general and probably facilitated EU-Moldova visa regime (this possibility is discussed further in this paper). Moldova has not so far negotiated the border regime with EU, but it is expected that the Romanian-Moldovan regime will be much more flexible than an eventual EU-Moldova visa regime⁹⁵.

⁹¹ Victor Roncea, George Damian, "Romania Baga Vize pentru Sase Milioane de Romani" ["Romania Introduces Visas for Six Million Romanians"], in *Ziua*, Eveniment, February, 1, 2006. Available at: <http://www.rgnpress.ro/content/view/11770>, May, 9, 2006.

⁹² Romanian Premier Catalin Popescu Tariceanu said: "We will have to introduce visas for citizens of countries in the extra-community area, including Moldova". in OSCE News Digest, "Moldovan and Romanian Prime-Ministers Discuss Energy Problems and Not Only", Chisinau, November, 11, 2005.

⁹³ Protocol integrating the Schengen *acquis* into the framework of the European Union. Available at: <http://europa.eu.int/eur-lex/en/treaties/selected/livre313.html>, May, 9, 2006.

⁹⁴ Joanna Apap, Sergio Carrera and Kemal Kirisci, *Turkey in the European Area of Freedom, Security and Justice*, EU-Turkey Working Papers, No. 3, August 2004, CEPS, Brussels.

⁹⁵ George Dura, *op. cit.*, note 82.

“Romania plans to become a Schengen country by 2010”, said the Romanian Interior Minister Vasile Braga in January 2006⁹⁶. A Ministerial communication confirmed this objective of the Romanian government⁹⁷. The Romanian official also stated that Romania is going to improve its border security systems, and the control over its 2 000 km external border⁹⁸. Several weeks later, the Romanian External Affairs Minister, Mihai Razvan Ungureanu, announced that the Moldovan – Romanian visa regime will be introduced on 31 December 2006, but will be a *flexible and relaxed* one. He also affirmed that this measure is taken under the obligations imposed by the European Union, and that the flexibility of this regime will be much of a surprise and that “the fact that there will be visas does not mean that Prut will become the Atlantic Ocean”⁹⁹. Moreover, the Romanian Minister emphasized the fact that Romania is very concerned about the Moldovan future, and that it represents “the chance of the Republic of Moldova is called Romania”¹⁰⁰.

The World Council of Romanians, an organization gathering ethnic Romanians living abroad, expressed its concerns regarding the introduction of visas for Moldovan citizens. It addressed an open letter to the Romanian President Traian Basescu condemning this measure. It also stated that Moldovans are frustrated by the Romanian external policy, and that the fact that the visa regime will be *flexible* is not reassuring at all¹⁰¹.

Thus, the introduction of a visa regime, even if announced officially, remains an open debate, and Romanian authorities have still to answer exactly *what kind* of regime they envisage. The general opinion is that the future regime will be similar to the one functioning between Moldova and Poland¹⁰², which is still very restrictive for Moldovan citizens¹⁰³ (this regime will be examined further in our work). The fact is that Romanian authorities will have to envisage

⁹⁶ Alecs Iancu, “Romania to be part of Schengen area by 2010 says Blaga”, in: *Bucarest Daily News*, January, 12, 2006. Available at: <http://crib.mae.ro/index.php?lang=en&id=31&s=5572&arhiva=true>, May, 9, 2006.

⁹⁷ Ministry of Administration and Interior, “Romania isi propune sa devina stat Schengen pana in 2010” [“Romania aims at becoming Schengen state by 2010”], in: *Buletin Informativ*, Bucarest, January, 11, 2006. Available at: http://www.mai.gov.ro/Documente/Arhiva%20comunicate/BI%20web_9-15%20ian.pdf, May, 9, 2006.

⁹⁸ Alecs Iancu, *op. cit.*, note 96.

⁹⁹ Basa Press, “Romania va aplica de la 31 decembrie 2006 un regim de vize flexibil pentru cetatenii R. Moldova”, [“Romania will apply from December, 31, 2006, a flexible visa regime for the citizens of the Republic of Moldova”], Chisinau, January, 24, 2006. Available at: <http://www.conflict.md/stiri.php?ID=223>, May, 9, 2006.

¹⁰⁰ Idem.

¹⁰¹ World Council of Romanians, “CMR considera ca autoritatile romane ii umilesc pe romanii basarabeni” [“The WCR considers that Romanian authorities humiliate Bassarabian Romanians”], Atlanta, November, 22, 2005. Available at: <http://www.gid-romania.info/IndexSectionst.asp?SectionID=49&SID=245>, May, 9, 2006.

¹⁰² ADEPT e-journal, “In Romania cu Vize”, [„In Romania with Visas“], Chisinau, October, 26 – November, 7, 2005. Available at: <http://www.e-democracy.md/e-journal/20051109/>, May, 9, 2006.

¹⁰³ As expressed by the World Council of Romanians, *op. cit.*, note 101.

an even more flexible regime than that imposed by the Polish authorities. One should also bear in mind that the Romanian-Moldova visa regime will be affected and will affect the broader visa regime between EU and Moldova once Romania becomes a Schengen country, and the flexibility of the Romanian border policy may inspire a more open EU attitude.

THE MODEL OF THE FLEXIBLE VISA REGIME BETWEEN POLAND AND MOLDOVA

Poland introduced a flexible visa regime for its Eastern neighbours Ukraine, Russia, Belarus and Moldova in conformity with the requirements of the *Schengen acquis* prior to the accession to the EU in 2004. The full Schengen procedures will be applied for entry on the Polish territory by late 2007. Poland kept a more liberal border regime as a mean to avoid a radical break in relations with the neighbours and especially with some border regions, with which Poland has close historical, cultural and economic ties¹⁰⁴. Romania finds itself in a pretty similar position concerning Moldova, the difference being that Moldova can be considered a region in itself due to its small size.

The Polish regime is certainly more flexible than the Schengen one. After May 2004 Moldovans can obtain free of charge visas at the Polish Embassy in Chisinau. Before that date a price for a Polish visa was only 10 dollars, which is a considerably smaller amount than the 35 euros asked for a Schengen short-term visa. The Polish-Moldovan regime was inspired from the Polish-Ukrainian visa regime, which is considered a success story by the Polish officials. It is reported that in 2004 some half a million of visa applications for Poland were granted in Ukraine, with only about 0,5% of refusals¹⁰⁵. The percentage of granted applications is roughly similar in Moldova.

The Polish visa regime for Moldova has also some restrictive components. Namely, a Moldovan citizen applying for a Polish visa should have national passport for valid a period of 30 days after the expiry of the visa. The application for a visa is normally processed in a period of 15 days, with some exceptions for more urgent requests being granted in one week. The visas are available only at the Polish Consulate in Chisinau and are not given at the Polish

¹⁰⁴ George Dura, *op. cit.*, note 82, p. 6-7.

¹⁰⁵ *Idem.*

border¹⁰⁶. There were also reported cases when Moldovans could not cross the Polish border, even if they held a valid visa¹⁰⁷.

Considering all the aforementioned aspects, it becomes doubtful that Romanian authorities will implement exactly the same regime as their Polish counterparts. This visa policy will hardly reflect the close ties between the Moldovan and Romanian societies, especially considering that Moldova and Romania are actually direct neighbours. Much of the bureaucratic burden will have to be removed in the Romanian-Moldovan border regime, and a more user friendly visa procedure will have to be envisaged.

George Dura, a researcher from the Center for European Policy Studies proposes in this respect an “improved version of the Polish model”, which shall include the following measures:

- make available visas without an invitation from Romania
- create an on-line application form to ease the procedure for bona fide persons
- set up a general fast-track procedure lasting for no more than 7 days
- enable bona fide persons to get visas on the spot, for instance sticker visas
- provide visas at the border crossings to facilitate local border traffic
- allow frequent travelers to obtain long-term multiple entry visas¹⁰⁸

It is true that the visa regime will especially affect students, businessmen, border area inhabitants, civil activists, journalists and freelancers that often travel to Romania. The procedure of obtention of a long term visa must be envisaged by Romanian authorities in order to keep the people-to-people contacts at the same level as they were prior to the EU accession. Another, a more radical solution that Romania can envisage is to enhance the process of issuing Romanian citizenships to this category of people, a solution that would inevitably generate some reactions in Brussels. This aspect will be analyzed further in our work.

THE HUNGARIAN FLEXIBLE VISA REGIME AND ITS LESSONS FOR ROMANIA

Facilitated type of visa regimes are currently functioning between Hungary and Ukraine, and between Hungary and Serbia and Montenegro. Visas to those two countries are issued free of charge. Moreover, some categories of people, as aviation crews or rescue teams do not need

¹⁰⁶ World Council of Romanians, *op. cit.*, note 101.

¹⁰⁷ Personal experience of the author.

¹⁰⁸ George Dura, *op. cit.*, note 82, p. 6-7.

any visas to go to Hungary. Budapest envisaged these special regimes in order to keep close ties with Hungarian minorities living especially in the border regions. These regimes will be functioning only till Hungary becomes a full member of the Schengen zone¹⁰⁹. Hungary thus benefited from the fact that the issue of national visas is for the moment left at its own discretion.

It has to be observed that the Hungarian regime is actually asymmetric, as citizens from Ukraine or Serbia and Montenegro need visas in order to come to Hungary, while Hungarians do not need visas for going to those two countries. For instance, Ukraine already removed the visa obligation for all European citizens¹¹⁰, which can be a suggestion for the Moldovan government to do the same thing in a near future. The fact that Moldova is keeping visas for EU citizens does not seem to be a very reasonable decision, especially considering its pro-European foreign policy and the fact that EU is not perceived as a source of instability by Moldovans (or at least less than CIS space is).

An amendment of the Hungarian Act XXXIX of 2001 on the “Entry and Stay of Foreign Nationals” makes available multiple entry visas for up to five years to bona fide persons¹¹¹. These visas are especially addressed to the Hungarians living in neighbouring countries and are issued for the persons that are able to prove special social, cultural or economic relations with Hungary. It is worth mentioning that these visas are not provided for students, businessmen or scientists that frequently travel to Hungary but are not ethnically Hungarians¹¹². This model is very interesting for the Romanian-Moldovan case. Romanian authorities should consider an even more enlarged set of areas in which long term multiply entry visas could be issued. The fact that persons speak the same language and share same cultural values, in addition to strong social contacts with Romania should be enough to prove that Moldovans deserve such (very) long term visas.

¹⁰⁹ Idem, p. 7-9.

¹¹⁰ Ministry of Foreign Affairs of Ukraine, “Towards a Visa-free Regime between Ukraine and EU”. Available at: <http://www.mfa.gov.ua/mfa/en/publication/content/4819.htm>, May, 9, 2006.

¹¹¹ Ministry of Foreign Affairs of the Republic of Hungary, “Our Renewed Nation Policy”, November, 2005. Available at: http://www.mfa.gov.hu/kum/en/bal/foreign_policy/nation_policy_affairs, May, 9, 2006. Particularly, this document says: “*We shall issue this special kind of visa to those, who wish to visit Hungary regularly, for longer periods of time, to safeguard their language, cultural and national identity or to cultivate their family relations. [...] This amendment has established a special type of residence permit, the so-called national visa, which is valid for maximum five years (the visa may not be issued for contracting work, and for educational and scientific purposes).*”.

¹¹² Idem.

The Hungarian visa regime, in addition to the Polish one, suggests some additional elements for the future Romanian-Moldovan regime:

- Romania should issue very-long term visas, up to five years, available for those who frequently travel to Romania
- the visas for Moldovan citizens should be free of charge
- the system should be asymmetric, and Romanians should preserve the possibility to travel to Moldova without visas, even if such a rule is not applied for all EU citizens

Moreover, if the Hungarians are only a minority both in Serbia and Montenegro and Ukraine, Romanians and Moldovans are majoritarian in both countries. Therefore, an even more flexible visa regime should be envisaged between those two countries, and a much larger number of Moldovan citizens must be eligible for long term multiply entry visas. The proximity to the Romanian border, given the small size and the ethnic composition of Moldova, must not be regarded as a condition for the issue of such visas. Moreover, a much more comprehensive range of activities must entitle Moldovans to easily travel to Romania, ranging from studies to seasonal agricultural work. A system of maximal longevity visas will also allow avoiding the burden of much bureaucratic and useless work.

THE LESSONS OF THE ESTONIAN – RUSSIAN BILATERALISM

Since the independence of the country, the Eastern border with Russia was regarded by the Tallinn authorities as a very important factor of consolidating statehood. This 339-km border was thus strongly controlled, and a complete visa policy was imposed on Russian citizens. However, this border regime had one particularity that makes it interesting for our study. In fact, a simplified border-crossing regime was available before 2000 for populations living in the border areas. Under this regulation around 20,000 residents living along the border were allowed to cross it without visas. The regime was changed in 2000, as a consequence of the Estonian bid for EU membership. A bilateral agreement with Russia was then signed, allowing each part to issue up to 4000 long term multiple entry visas for the border region residents. Since then, the agreement was reiterated every year, renegotiating the number and the costs for these visas¹¹³. This practice was allowed by the Commission, as it conforms to the “cohesiveness of border communities” objective. Moreover, the Commission suggested the creation of a specific “L-type” (local) visa, which will enable the holder to visit the border area of a specific EU member country for periods no longer than 7 consecutive days. These visas

¹¹³ Eiki Berg and Piret Ehin, *op. cit.*, note 1, pp. 62-63.

should be multiple entry visas with a duration of validity of one to five years. The “border area” is designated as going up to 50 km from the border. The implementation of such visas is left to the discretion of Member States¹¹⁴.

This model of local border traffic visas can be seen as a possible solution for the future Romanian border policy towards Moldova, but with some evident adjustments. Firstly, the 50 km limitation is absolutely irrelevant and completely discriminatory in the Romanian – Moldovan case:

- it is unclear why Moldovans living in Chisinau, situated at 110 km from the Romanian border, and having relatives in Romania should be discriminated against Moldovans living in Nisporeni or Ungheni, both cities situated close to the Romanian border;
- it also appears odd why Moldovan students studying in Iasi, the biggest Romanian city situated at less than 50 km from the border, should have a preferential treatment than those studying in Bucharest, at 420 km, or in Timisoara, at 700 km from Moldova¹¹⁵;
- without any intention to make it sound discriminatory, we will though wonder if Romanians will accept a situation in which a Gagauz¹¹⁶ living at less than 50 km from the Romanian border is treated preferentially as compared to a Moldovan from Transnistria.

It is also true that the “L-type” visa agreements are difficult to manage because of the lack of internal check points, and that persons receiving them could freely go to any European city after crossing the border. This argument seems to be valid, but in the Moldovan case, as we showed, there is much more concern than this. As Moldova is a region in itself, envisaging a “L-type” visa for Moldova is a completely arbitrary and discriminatory measure and should not be considered by the Romanian authorities if the 50-km limit is to be respected¹¹⁷. This 50 km limit will actually cut Moldova in two halves, what appears to be an absurd and hilarious consequence. On the other hand, making all Moldovans eligible and expanding the validity of such visas for the whole Romanian territory could be an acceptable solution.

¹¹⁴ European Council, Proposal 1492/2/03 VISA 189 COMIX for a Council Regulation on the Establishment of a Regime of Local Border Traffic at the External Borders of the Member States, Brussels, January, 30, 2004.

¹¹⁵ For distances between Romanian and some Moldovan cities see <http://www.sosele.com>. Iasi can be taken as a reference point, considering that it is situated at 20 km from the Moldovan border.

¹¹⁶ Gagauz are an ethnic minority in Moldova, speaking the Gagauz language, similar to the Turkish one, but confessing the Orthodox religion. They live compactly in the South of Moldova, not far from the Romanian border, and enjoy autonomy of the region.

¹¹⁷ We discuss the “L-type” visa, as it made the headlines of TV and radio news in Moldova at the beginning of 2006.

THE IMPACT OF THE CITIZENSHIP ISSUE

One aspect that has to be addressed with a special attention in our work is the fact that visas will not represent the unique chance for Moldovans to get into Romania and subsequently into EU after the 2007(8) enlargement. The fact is that there is a huge number of Moldovans already possessing double citizenship and Romanian passports. The process of issuing passports to Moldovan citizens started in early 1991, and was interpreted by the Romanian authorities as a historical obligation to re-establish Moldovans as a part of the Romanian nation. This process also embraced Romanian minorities from Bucovina, a former Romanian territory, presently a part of Ukraine. The discussions on the Romanian-Moldova visa regime cannot avoid tackling the citizenship issue, especially considering that a Romanian passport is much more interesting than a Romanian visa; and this for an obvious reason – the Romanian passport gives access to the whole Schengen area.

The process was not a smooth one. The Law on the Romanian Citizenship nb. 21/1991 allowed the Romanian citizenship to be offered to persons that previously possessed it and ask for the retrieval. This referred also to descendants of Romanians deprived of citizenship¹¹⁸. It was the case of Romanians/Moldovans that suddenly found themselves citizens of the Soviet Union after World War Two. The process was halted for half a year in 2002, and later restarted with modest rhythms in 2003. Discussions over the total number of Romanian citizenships granted to Moldovans are still under way, because no official data is available. Usually numbers from 70,000 to 300,000 are presented. Some sources affirm that 50 percent of Moldovan lawmakers possess Romanian citizenship.¹¹⁹

In a recent article, the Romanian newspaper “Ziua” announced that it conducted a research centralizing data from all the institutions concerned and found out that only 99,883 persons from the Republic of Moldova and Bucovina¹²⁰ regained Romanian citizenship before 2001, and only 1596 after this date. From the total of 99,883 persons, Moldovans constitute the overwhelming majority, as 96,496 Romanian citizenships were granted to them. It is noticeable

¹¹⁸ Victor Roncea, George Damian, *op. cit.*, note 20.

¹¹⁹ The 70,000 figure was presented by Lily Hyde, “Moldova/Romania: Many Obstacles Still Prevent Unity”, RFE/RL, November 23, 2000. Available at: <http://www.b-info.com/tools/miva/newsview.mv?url=news/2000-11/text/nov23e.rfe>, May 9, 2006.

The 300,000 figure and the reference to 50% of lawmakers in Radio Free Europe/ Radio Liberty, “Ukraine: “Creeping Romanianization”, in: *Poland, Belarus and Ukraine Report*, 14 November 2000. Available at: <http://www.minelres.lv/minelres/archive/11152000-09:34:03-4073.html>, May 9, 2006.

The same 300,000 figure in Michael Jandl, *op. cit.*, note 44.

¹²⁰ The double citizenship is forbidden in Ukraine.

that the process was significantly slowed down after 2001, simultaneously with the EU-Romania negotiations for accession. “Ziua” also informs that presently some 25,345 more applications from Moldovans and 685 applications from Bucovinians are submitted to the Romanian Ministry of Justice¹²¹. Altogether, this makes a slightly more modest picture than the one presented by the majority of the specialists.

It has to be mentioned that until recently Moldovan government was not allowing its citizens to have double citizenship. The modification of the Citizenship Law¹²², which allowed them to possess two citizenships, was seen by Moldovans as a sign that they can freely apply for Romanian passports. Sadly, it coincided with the growing reticence on the Romanian side, and queues in front of the Romanian Embassy in Chisinau became endless. The procedure is indeed very long, involving the compilation of a bunch of documents. It is often hindered by bureaucratic barriers and causes corruption at many levels¹²³. Many Moldovans cannot afford this long lasting and very costly procedure, and it remains the avatar of a privileged group. As such, the practice can be considered discriminatory to Moldovan citizens, but this remark will not be shared by everyone, as the possibility of obtaining a Romanian citizenship is seen by many as a supreme generosity of the Romanian government.

The accession of other countries produced or will produced similar effects, but at a considerably smaller scale. In the period of 2001-2003, Hungary received 30,000 applications for citizenship from citizens of other countries¹²⁴, and granted around 4,500 citizenship requests to Serbians of Hungarian origin living in Vojvodina¹²⁵. Around 55% of the requests addressed to Hungarian authorities come from Romania¹²⁶. The Croat minority in Bosnia and Herzegovina is also acquiring Croat citizenship, around 8,140 requests being granted during the 2000-2003 period¹²⁷. The accession of Bulgaria will be equally be saluted by some 4,500

¹²¹ Victor Roncea, George Damian, *op. cit.*, note 91.

¹²² It is supposed that the modification of the Moldovan Citizenship Law came as a consequence of pressures from Russia, as Moscow is concerned about the protection of Russian minorities' rights. Thousands of Moldovans possess Russian citizenship. Michael Jandl presents this number as reaching 140,000. See Michael Jandl, *op. cit.*, note 44.

¹²³ Personal experience of the author.

¹²⁴ The Budapest Sun, “Citizenship Bribes and Falsifying Documents”, Volume XII, Issue 16, April, 15, 2004. Available at:

http://www.budapestsun.com/full_story.asp?ArticleId={A6DD72A4725A425FA8B39C44E0D50AED}&From=News, May, 9, 2006.

¹²⁵ Catalin Gherman, *The Concept of Citizenship at the Borders of the Newly Enlarged European Union*, Draft of a Policy Paper, Un-published Work, CEPS, Brussels.

¹²⁶ Catalin Gherman, “Hungary Arouses Again Ethnic Fears Around”, in *Newropeans Magazine*, November, 12, 2004. Available: at http://www.newropeans-magazine.org/index.php?option=com_content&task=view&id=1355&Itemid=85, May, 9, 2006.

¹²⁷ Catalin Gherman, *The Concept...*, *op. cit.*, note 125.

Macedonians that received Bulgarian citizenship in the period of 2001-2003. There are also several hundreds or even thousands of Moldovans, ethnically Bulgarians, living in the South of the country, around the town of Taraclia, holding Bulgarian passports. A Bulgarian News Agency reports that there were more than 6,000 applications coming from Moldovan citizens by 2004¹²⁸. In 2003, 31% of the citizenship requests granted by the Bulgarian authorities, representing 1,063 in numbers, were addressed to Moldovans¹²⁹.

The dual citizenship poses a range of problems related not only to the movement of people. Laws allowing double citizenship are not clear enough on such issues as revenue collection, military service or pensions. It may pose some problems in negotiations between countries that issue such citizenships and the European Union. Though, the Romanian President Traian Basescu declared recently that his country will continue issuing passports for Moldovan citizens, and that a fast-track procedure will be also considered¹³⁰.

In fact, what is important for our research is that Romania's accession to the EU will create the biggest amount of external EU citizens ever, even if the numbers amount only for 100,000 persons, as presented by "Ziua", and not around 200,000 or 300,000, as it is usually presented. The issue could be addressed in EU-Romania talks, and in the eventuality of a tacit consent from the Union, the numbers can grow even bigger.

¹²⁸ Sofia News Agency, "Foreigners Push for Bulgarian Citizenship", June, 2, 2004. Available at: http://www.novinite.com/view_news.php?id=35339, April, 8, 2006.

Sofia News Agency, "13,000 Foreigners Seek Bulgarian Citizenship", June, 12, 2004. Available at: http://www.novinite.com/view_news.php?id=35741, April, 8, 2006.

¹²⁹ Sofia News Agency, "Mostly Macedonians Push for Bulgarian Citizenship", February, 13, 2004. Available at: http://www.novinite.com/view_news.php?id=30994, April, 8, 2006.

¹³⁰ Boris Vieru, *op. cit.*, note 86.

CHAPTER V

MOVEMENT OF PERSONS IN THE RELATIONS BETWEEN MOLDOVA AND THE ENLARGED EUROPEAN UNION

THE HEADACHE OF OBTAINING SCHENGEN VISAS

Presently, Moldovans have a lot of difficulties in obtaining Schengen visas. These difficulties will grow after the introduction of Romanian visas. From the 76 Embassies accredited for Moldova, only 11 are located in Chisinau, and not all of them are issuing visas¹³¹. Currently, only two Consulates of the Schengen States are functioning in Chisinau, the French and the German, but only the later actually issues Schengen visas, and only for France and Germany. The French Consulate transfers applications to the German Consulate, which ultimately takes decisions concerning the issue of French visas.

In order to obtain a Schengen visa for Italy or Belgium, a Moldovan citizen have to go to the Consulates of these countries in Bucharest. From 2007 on, Moldovans will have to apply first for a Romanian visa in order to get a Schengen visa, and this will represent a serious impediment to their ability of movement. This procedure, visa for visa, is already a common thing for Moldovans. In order to go to Slovenia, for instance, a Moldovan citizen has to queue at the Hungarian Embassy in Chisinau, to pay 60 euros for the visa, then to go to Budapest and to ask for a Slovene visa. Consequently, for the Slovene visa that costs \$40, a Moldovan citizen will have to spend around 550, taking into account the expenses entailed by the trip. After Romania's accession to EU, a Moldovan will have to apply for two visas in order to get the third one. In this situation, several firms offer "visa obtainment" assistance. The prices for a Schengen visa are astronomic (compared to 35 Euros, the price for a legitimate visa):

- for a visa obtained during 2 or 3 months: \$650-\$800
- in one month: \$1600-\$1700
- in two weeks: \$1700-\$1800
- in one week: \$1850-\$1900
- in two days: \$2150¹³²

¹³¹ Valeriu Gheorghiu, *op. cit.*, note 46.

¹³² Idem.

This situation can only contribute to a rise in illegal migration, and EU should do more about easing the procedures of obtaining Schengen visas in order to avoid it. Indeed, it seems unfair to close Romanian borders without ensuring an efficient mechanism of issuing Schengen visas.

Several new EU Member States, such as Hungary, Lithuania, Czech Republic and Poland have embassies functioning in Chisinau. Once these countries will enter the Schengen zone, the situation may improve, but such destinations as Italy, Spain or Portugal will probably remain unreachable directly from Moldova. How does this aspect respect the declared objective of the European Neighbourhood Policy about “bringing neighbours closer to the Union” remains an open question.

THE MOVEMENT OF MOLDOVAN CITIZENS UNDER THE NEW EUROPEAN NEIGHBOURHOOD POLICY

It is interesting to see if the European Union has prepared some new remedies to the situation seen in the previous section. In order to balance the continuing process of EU expansion and to temper neighboring countries accession aspiration, Brussels authorities envisaged a completely new system of sticks and carrots for the EU neighbourhood, labeled European Neighbourhood Policy. For the time being, it is not clear whether this new framework will bring closer neighbours to the Union and thus will facilitate their further integration or will keep them forever at the gates of the Fortress Europe. As it is stated in the founding document of the policy, the Communication of the Commission on the Wider Europe (2003)¹³³, the ENP intends to create a “ring of friends” surrounding the Union, and to integrate these friends in the Internal Market, offering them the four freedoms but no participation in the institutions. These four freedoms include the freedom of movement of persons, but at a closer look the Action Plans (the instruments of implementation of the ENP agreed between the Union and every individual country) it becomes evident that the Union is not actually opening its borders. Quite the contrary, as countries are in several instances asked to enhance control over their border or to sign readmission agreements with the Union¹³⁴. An inevitable question arises whether the

¹³³ European Commission, Communication from the Commission to the Council and the European Parliament, “*Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*”, March, 11, 2003. Available at: http://ec.europa.eu/comm/world/enp/pdf/com03_104_en.pdf, April, 27, 2006.

¹³⁴ Elspeth Guild, *What is a Neighbour? Examining the EU Neighbourhood Policy from the Perspective of Movement of Persons*, Western NIS Forum for Refugee-Assisting NGOs, Yalta, June 2005. Available at: <http://www.ecre.org/research/What%20is%20a%20NeighbourEGuild.pdf>, May, 9, 2006.

governments of these countries, lacking a very strong internal legitimacy, will go against the interests of their own citizens in order to please the Union.

In the wording of the Commission Communication, the free movement of neighbouring countries nationals is regarded as a “long term” objective. This is largely due to the ageing of the European population, the need for skilled labour force and the demographic pressures that the Union is expected to face in a foreseeable future:

“The impact of ageing and demographic decline, globalisation and specialisation means the EU and its neighbours can profit from putting in place mechanisms that allow workers to move from one territory to another where skills are needed most – although the free movement of people and labour remains the long-term objective. Significant additional opportunities for cultural and technical interchange could be facilitated by a long-stay visa policy on the part of the EU member states.”¹³⁵

Nonetheless, among all the countries that ENP addresses, only Israel is not blacklisted by the Schengen Area¹³⁶. The Communication seems to prove good will, as sets several objectives in the field of movement of people:

- to integrate a long stay visa policy in order to facilitate cultural and scientific exchanges
- to facilitate the movement of neighbouring countries’ nationals for participation in EU programmes
- to provide for an eased small border traffic
- to offer visa free access to persons holding diplomatic or service passports
- to promote the integration of foreign citizens in the receiving countries, with a special attention to neighbouring countries’ nationals.
- to assist neighbouring countries in policies related to the fight against illegal migration
- to conclude readmission agreements with the neighbors¹³⁷

The conclusion of the readmission agreements comes at the end of this “good will list”, but is nonetheless one of the most sensible aspects both for EU and third countries. EU is willing to limit the volume of the illegal migration, while the neighbouring countries’ governments find themselves in a tricky position between the interests of their own citizens and the cooperation on JHA issues with the EU.

¹³⁵ European Commission, “*Wider Europe...*” *op. cit.*, note 133, p. 11.

¹³⁶ European Council, Council Regulation (EC) No 1683/95, *op. cit.*, note 41.

¹³⁷ European Commission, “*Wider Europe...*”, *op. cit.*, note 133, pp. 11-12.

Concrete actions are to be implemented by the countries under the framework of individual Action Plans agreed with the Commission. These Action Plans are not legally binding documents, so their implementation is fully at the discretion of neighbouring countries. The Commission stated that it will “report periodically on progress accomplished. On the basis of this evaluation, the EU, together with partner countries, will review the content of the Action Plans and decide on their adaptation and renewal”¹³⁸. The legal framework of the relations between EU and these countries are still set up by the Association Agreements or Partnership and Cooperation Agreements.

The AA and PCA have three major types of provisions related to the movement of people:

- *the establishment*: several Agreements provide the right for establishment of the persons or companies on the territory of the other country on the basis of legal contracts. Still, the right for establishment of natural persons, implying a free move and search for employment in other state, was not offered to the actual ENP countries, being the privilege of Romania and Bulgaria prior to the accession. On the other hand, some AA and PCA provide the right of establishment for companies, which normally are extended to the companies’ staff and workers. In some agreements the provisions on establishment have been recognized as having direct effect.
- *equal treatment and social security for workers*: these provisions are retrieved in merely all the AA and PCA. The ECJ ruled that they have direct effect, but can be applied only if workers have the right of residence, which has to emanate from some other provisions.
- *immigration and asylum*: these are general and more abstract provisions on issues related to repatriation, illegal migration, smuggling and trafficking in human beings. These provisions do not impose readmission agreements and have a limited legal power¹³⁹.

The Action Plans agreed under the ENP are very heterogeneous in terms of provisions related to the movement of people. While some include a wide range of such provisions, as the AP for Israel, others do not mention anything at all, as for instance the AP for the Palestinian Authority¹⁴⁰. Overall, there are six headings under which the freedom of persons is addressed: legal migration, illegal migration, readmission agreements, visas, asylum and border

¹³⁸ European Commission, *European Neighbourhood Policy Strategy Paper*, May, 12, 2005. Available at: <http://www.dellbn.cec.eu.int/en/pev/strategy.htm>, May, 9, 2006.

¹³⁹ For a more in depth analysis: Elspeth Guild, *op. cit.*, note 134.

¹⁴⁰ Idem.

management. We will address these aspects while analyzing the EU – Moldova Action Plan. The movement of service providers is an unclear aspect that is to be regulated by the commitments negotiated under the General Agreement on Trade in Services of the WTO, and thus will not be specifically considered in this work.

THE PCA OF MOLDOVA AND RELEVANT PROVISIONS ON THE MOVEMENT OF PERSONS

The Partnership and Cooperation Agreement between European Union and Moldova entered into force in 1998 and is valid for 10 years. Provisions on establishment are stipulated under Articles 29-38. These provisions do not refer to natural persons. The EU ensures equal treatment with other third country companies regarding the establishment of companies or branches, and equal treatment with Community companies regarding the establishment of subsidiaries¹⁴¹. Though, an Annex to the PCA makes it clear that the equal treatment does not refer to the acquisition of agricultural lands and forests, gambling and lottery activities or banking services¹⁴². Moreover, the Article 30 limits the right of establishment of Moldovan companies in fields related to air transport, inland waterways transport and maritime transport. Under Article 34, the established companies can send their key personnel to a Member State, a provision that effectively creates the right for individuals to settle and work in the Community via their employers.

The Articles 23 and 24 of the PCA provide the right of equal treatment for workers concerning social security and working conditions. But the wording of the Article 23 related to the equal treatment does not generate direct effect, as it says that

“the Member States *shall endeavour to ensure* that the treatment accorded to Moldovan nationals legally employed in the territory of a Member State shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals”¹⁴³ [the italics are ours]

Similarly, the provisions related to the social security are not comprehensive, as they only mention that further agreement shall be established, making it clear that no direct effect is

¹⁴¹ The Partnership and Cooperation Agreement between the European Union and Moldova, Full text signed on November, 28, 1994. Available at: http://ec.europa.eu/comm/external_relations/ceeca/pca/pca_moldova.pdf, May, 9, 2006.

¹⁴² Annex V to *The Partnership and Cooperation Agreement between the European Union and Moldova*, Idem. Moldovan reservations in accordance with Article 29(2)(a).

¹⁴³ The relevant Articles of the *PCA* are Articles 23-38.

implied by these provisions. The immigration and asylum aspects are not referred to in the PCA.

To conclude, a very limited right of establishment is provided to Moldovan citizen through the PCA, and only in cases of “key personnel” of the established companies. The further provisions on the treatment of workers are vague and do not bind on neither parts, while some other important issues as immigration or asylum are not at all addressed.

THE PROVISIONS RELATED TO THE MOVEMENT OF PEOPLE UNDER THE EU – MOLDOVA ACTION PLAN

The EU – Moldova Action Plan is more explicit in the issues related to the movement of people than the PCA. Still, the AP is not a binding document, so one should be very careful in estimating the impact of its provisions. The Moldovan Action Plan addresses six main aspects related to the movement of people: short stay visas, readmission agreements, legal migration, irregular immigration, asylum and border management.

As we already mentioned, excepting Israel, all the countries embraced by the ENP are on the Schengen black list. This means that the citizens of these countries have to follow a usually long and humiliating procedure in order to obtain a visa for a short visit on the territory of the European Union. In many cases, these procedures cause sentiments of discontent on the EU as a whole and jealousy between neighbour countries that enjoy different treatment. The Moldovan Action Plan addresses the problem of short stay visas in these terms:

“Pursue a dialogue concerning cooperation on visa policy

- Exchange of views on Schengen procedures and initiate a dialogue on the possibilities of visa facilitation in compliance with the *acquis*
- Dialogue and exchange of views on visa co-operation (criteria and the procedure or the issue of visas)
- Dialogue on document security”¹⁴⁴

The wording is clearer than in other Action Plans, and explicitly designates that the facilitation of the issue of visas is one of the main objectives. The EU is also declaring its readiness to discuss the terms and the procedures needed in terms to achieve this objective. This is a considerable step forward, as EU is generally very abstract in its declarations regarding the facilitation of the issue of visas. The experience in negotiating facilitated travel document

¹⁴⁴ EU-Moldova Action Plan, Art. 2.5. Cooperation in Justice and Home Affairs, p. 21. Available at: http://ec.europa.eu/comm/world/enp/pdf/action_plans/Proposed_Action_Plan_EU-Moldova.pdf, April, 27, 2006

procedure with Kaliningrad Oblast may have had an impact on the dialogue between Moldova and EU¹⁴⁵.

The Moldovan Action Plan does not make an open link between the signature of an eventual readmission agreement and the facilitation of the issue of visas, as it is the case of the Ukrainian Action Plan¹⁴⁶. It is clear that Ukraine is a much more important source of illegal migration, serving as a transit country for immigrants from Central Asian countries, and readmission agreements suppose the return not only of citizens, but also of third country nationals having crossed the territory of the other party. Though in the case of Moldova EU does not link the facilitation of the issue of visas to the signature of a readmission agreement, the conclusion of such an agreement is demanded by the Union on several occasions, including in the Priorities for Action drawn at the beginning of the Action Plan¹⁴⁷. The European Union seems to give a special importance to these agreements, as it previously did in the case of the accession candidates during the enlargement process¹⁴⁸.

Regarding the legal migration, the Moldovan Action Plan is somehow ambiguous. It suggests that there was some inefficiency in the implementation of the right of establishment of Moldovan companies provided by the PCA:

“Ensure full application of the best endeavour standstill clause so that the conditions for establishment of companies are not more restrictive than when the PCA was concluded.”¹⁴⁹

The “best endeavour” wording is equally used in the part referring to the social security measures and the non-discrimination of workers:

“Ensure full application of the best endeavour clause by abolishing all discriminatory measures based on nationality which affect migrant workers, as regards working conditions, remuneration or dismissal.”¹⁵⁰

The fact that the wording of the Action Plan is much similar to that of the PCA suggests that the EU could have had the intention to temperate eventual claims that these provisions may

¹⁴⁵ Elspeth Guild, *op. cit.*, note 134.

¹⁴⁶ The EU – Ukraine Action Plan reads: “*In the context of EU enlargement and the European Neighbourhood Policy, a constructive dialogue on visa facilitation between the EU and Ukraine will be established, with a view to preparing for future negotiations on a visa facilitation agreement, taking into account of the need for progress on the ongoing negotiations for an EC-Ukraine readmission agreement*”. EU-Ukraine Action Plan, Art. 2.4. Cooperation in Justice and Home Affairs, p. 20. Available at: http://ec.europa.eu/comm/world/enp/pdf/action_plans/Proposed_Action_Plan_EU-Ukraine.pdf, May, 9, 2006.

¹⁴⁷ EU-Moldova Action Plan, Priorities for Action, pp. 2-3.

¹⁴⁸ Elspeth Guild, *op. cit.*, note 134.

¹⁴⁹ EU-Moldova Action Plan, Art. 2.4.2 Right of Establishment and Company Law, p. 15.

¹⁵⁰ EU-Moldova Action Plan, Art. 2.4.4. Movement of persons, including movement of workers and co-ordination of social security, p. 16.

have direct effect. A provision on the coordination of social security is also part of the AP, but it only suggests to “continue [the] process of concluding Agreements with Member States on the full application of provisions on coordination of social security”¹⁵¹. Consequently, it becomes evident that the AP does not go much further than the PCA. It does not suggest that an eventual right of establishment of natural persons may be offered to Moldova, as it was alluded in the Ukrainian AP, which intended to “remove progressively restrictions on establishment”¹⁵².

The Moldovan AP is though very concerned about irregular migration issues. Particularly, it proposes an enhanced cooperation on assessing the scale of the irregular migration of Moldovans in the EU. It also suggests the creation of an electronic database in order to monitor border traffic in general. A further alignment of Moldovan legislation with EU standards is required, especially concerning the criminalisation of the illegal migration. EU is ready to offer financial aid and expertise in order to implement these policies. A Moldova’s National Action Programme on Migration and Asylum Issues is seen as the future framework for the monitoring of migration issues¹⁵³.

In the perspective of the fight against illegal migration, the AP emphasize on the importance of readmission agreements. This is expected to be a hot issue in the future negotiations between Moldova and EU on the visa liberalization, as it is presently the case of Ukraine. In this sense, the AP not only asks Moldova to sign a readmission agreement with EU, but also recommends the conclusion of such agreements with “the main countries of origin and transit”¹⁵⁴. Moldova is also invited to take part in EU-led programmes on migration issues, such as ARGO and AENEAS¹⁵⁵. However, these programmes are only aiming research and monitoring and will not help migrants in any way, nor enhance legal migration¹⁵⁶.

It is interesting to observe that Ukraine is formally more advanced in dealing with illegal migration with EU. A special Action Plan on Justice and Home Affairs was negotiated between Ukraine and EU in 2001¹⁵⁷. This Action Plan in JHA includes a Scoreboard and provides strict

¹⁵¹ *Idem*.

¹⁵² EU-Ukraine Action Plan, Art. 2.3.2. Right of establishment; company law and services, p. 14.

¹⁵³ EU-Moldova Action Plan, Art. 2.5. Cooperation in Justice and Home Affairs, p. 21.

¹⁵⁴ *Idem*.

¹⁵⁵ *Idem*.

¹⁵⁶ Elspeth Guild, *op. cit.*, note 134.

¹⁵⁷ EU Action Plan on Justice and Home Affairs Concerning Ukraine, December, 6, 2001. Available at: <http://www.ukraine-eu.mfa.gov.ua/eu/en/publication/content/2233.htm>, May, 9, 2006.

deadlines for implementation. The Ukrainian AP under the ENP is thus enhancing previous cooperation on migration issues and makes further pressures on the Ukrainian government. It has to be noted that the implementation of these restrictive measures on migration is a highly sensible issue for the neighbouring governments, as these practices directly affect the interests of their own people. It is not clear whether these governments will put on stake their internal legitimacy in order to preserve good relations with the EU.

The Moldovan AP is quite explicit regarding asylum. It calls on the approximation of the national legislation to the Geneva Convention, and addresses particularly the respect of the principle of non-refoulement¹⁵⁸. This principle protects refugees from being returned to places where their physical integrity or their freedoms can be threatened¹⁵⁹. Moreover, the AP proposes to develop an electronic network for information exchange between police authorities, border guards, Migration Departments and other bodies. Advices on the functioning of Eurodac Regulation and Eurodac system will be also provided to Moldovan relevant authorities¹⁶⁰. Eurodac is actually a centralized database of fingerprints maintained by the European Commission in the framework of the Dublin II Regulation. It permits to compare finger prints of any person seeking asylum in a country with those who previously asked it in other countries¹⁶¹. Though the fact that the EU is interested in obtaining such kind of information from Moldovan authorities is a sign that Brussels intends to progressively integrate Moldova in its asylum allocation system, it is not clear how will it be legally achieved under the Dublin II Regulation, which does not include Moldova as a part of the system¹⁶². It thus appears curious that EU extends the fingerprint obligation to Moldova without eventually having such an objective in its own regulation. It becomes even odder as no such intention is presented under the Ukrainian Action Plan, nor under other APs agreed so far¹⁶³.

¹⁵⁸ EU-Moldova Action Plan, Art. 2.5. Cooperation in Justice and Home Affairs, p. 21.

¹⁵⁹ Jessica Rodger, “*Defining the Parameters of the Non-Refoulement Principle*”, Faculty of Law, Victoria University of Wellington, 2001. Available at: <http://www.refugee.org.nz/JessicaR.htm>, May, 9, 2006.

¹⁶⁰ EU-Moldova Action Plan, Art. 2.5. Cooperation in Justice and Home Affairs, p. 21.

¹⁶¹ European Council, Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L 316 , December, 15, 2000. P. 0001 – 0010. Available at: <http://www.accompanydetainees.org/docs/Eurodac%20reg%201.doc>, May, 9, 2006.

¹⁶² European Council, Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 50/1, February, 25, 2003. Available at: <http://www.uvi.fi/download.asp?id=Dublin+II+asetus+eng;979;%7B8C0EC6FC-E189-4ED9-88C1-FC4132E6E978%7D>, May, 9, 2006.

¹⁶³ Elspeth Guild, *op. cit.*, note 134.

Finally, a last set of provisions address the border management issue. The Moldovan AP is also considerably more explicit in this respect than the APC. It envisages building a comprehensive state border management, embracing the Transnistrian region as well. In order to achieve this goal, the Action Plan calls Moldovan government to:

- ”– Implement the Concept on Border Control adopted on 4 December 2003, in particular the transformation of the Border Guards into a law enforcement agency, and make necessary amendments to national legislation.
- Enhance inter-agency co-operation (among authorities involved in state border management) as well as co-operation with neighbouring countries, including border demarcation and the conclusion of co-operation agreements.
- Start developing a comprehensive education and training strategy on state border management, including improved understanding of Schengen rules and standards.
- Enhance equipment and develop infrastructure for efficient state border management.”¹⁶⁴

Generally, this Action Plan emphasizes on the importance of the cross border cooperation between Moldova and its two neighbours, Ukraine and Romania. In the framework of these provisions, Brussels has already launched an unprecedented Border Assistance Mission on Moldovan – Ukrainian border, as a response to a joint letter of Moldovan and Ukrainian presidents to EU¹⁶⁵. Even if criticisms were expressed, especially regarding to the size and the budget of this mission – a personnel of around 50 people and a budget of 7 million Euros for a two-year period of monitoring the 2000 km long border -, this project places high objectives as fight against smuggling and other forms of illegal traffic, and had already caused some frustration on the Transnistrian side¹⁶⁶.

To conclude this analysis on the movement of people under the provisions of ENP Action Plans, it must be said that in terms of legal migration there is little that EU is ready to offer in addition to what Moldova had under previous agreements. Some advancement is though to be observed in the field of short term visas, and a dialogue on liberalization is openly announced by the EU. Some rights or half-rights previously granted to Moldovan citizens under APC seem to reappear as “carrots” under AP, but there is no much of evolution in terms of reassuring the equal treatment of workers, for instance. Instead, there is more emphasis on the

¹⁶⁴ EU-Moldova Action Plan, Art. 2.5. Cooperation in Justice and Home Affairs, p. 22.

¹⁶⁵ Vladimir Socor, “EU Launches Unprecedented Mission on Ukraine-Moldova Border”, in: *Eurasia Daily Monitor*, 13 October 2005. Available at:

http://www.jamestown.org/edm/article.php?volume_id=407&issue_id=3490&article_id=2370332, May, 9, 2006.

¹⁶⁶ Andrew Rettman, “Moldova instability could get worse”, May, 3, 2006. Available at: <http://euobserver.com/19/21488/?rk=1>, May, 9, 2006.

fight against illegal migration, border control and monitoring of asylum seekers, which altogether will do nothing but to limit the movement of Moldovan citizens in the European Union. On the other hand, Moldova is a very specific case because of its Transnistrian unsolved issue. Chisinau is willing to enhance cooperation with Brussels in order to ensure efficient control on the Eastern border. It will thus have to accept subsequent measures imposed by the Union.

IMPLEMENTATION OF THE EU-ACTION PLAN ON ISSUES RELATED TO THE MOVEMENT OF PEOPLE

At the beginning of 2006, a group of Moldovan independent experts made a comprehensive evaluation of the achievements under the EU-Moldova Action Plan. The issued document entitled “Euromonitor”¹⁶⁷ critically assesses the implementation of the AP, and is of a particular interest in the light of our research. In the following lines, we will present several achievements and delays signaled by the authors of the study.

The analysis emphasized on the fact that the process of modernizing the Border Service must be accelerated. Moldovan government drafted a new Law on the centralization of the Border Service, but has not yet implemented it. On the other hand, some successes were achieved regarding the enhanced cooperation with border management agencies from neighbouring countries, especially due to the shift in political climate in Ukraine. A Protocol of Cooperation was signed in this respect between the relevant Moldovan and Ukrainian bodies. Furthermore, the signature of the Memorandum of Understanding that laid the foundations of the Border Assistance Mission (BAM) on the Moldovan-Ukrainian border was a touchable breakthrough in this respect. The new BAM is expected to contribute to the fight against organized crime and the resolution of the Transnistrian crisis¹⁶⁸.

Some achievements were also remarkable in the Romanian-Moldovan relations. A Bilateral Agreement regulating the travel regime was discussed between Moldovan and Romanian authorities, and a Protocol on the exchange of information was signed between the border management agencies of the two countries. There are signs that a Common Contact Center for

¹⁶⁷ Valeriu Prohntichi, Alexandru Oprunenco, Igor Botan, Iurie Gotisan, *Euromonitor, Planul de Actiuni Uniunea Europeana – Republica Moldova: Evaluarea Progresului in 2005 [Euromonitor, The EU – Moldova Action Plan: The Evaluation of the Progress in 2005]*, Expert-Grup and Adept, No. 1, February 2006. Available at: http://www.expert-grup.org/pub/raport_preliminar_map.pdf, May, 9, 2006.

¹⁶⁸ *Ibid.*, pp. 48-49.

Romanian, Moldovan and Ukrainian border authorities could be instituted in the Romanian city of Galati. Also, some progresses in cooperation with Latvian and Slovak authorities were signaled¹⁶⁹.

Moldova is going to implement a national strategy for the formation of customs officials, in order to ensure the efficient implementation of the “Soderkoping Process”. This process intends to build internal and external networks for the exchange of information related to migration and asylum issues¹⁷⁰.

The fight against organized crime and the traffic in human beings is addressed with special attention in the EU-Moldova AP. Indeed, Moldova is one of the countries the most affected by these phenomena. The evaluation of the independent experts showed some important achievements in the legislative field and the judicial prosecution of criminals. On the other hand, the informational and financial resources were pointed out as insufficient¹⁷¹.

In order to improve the monitoring of migration, an Information Centre was created in cooperation with the International Organization for Migration. Nonetheless, the efforts of the government in order to align migration legislation to the European standards were evaluated as “anemic”. Moreover, even if presented as a major objective under the AP, the adoption of a National Action Programme for the problems related to migration and asylum is still delayed¹⁷².

There are some good signs, as a series of readmission agreements were signed with EU countries, namely with Czech Republic, Italy, Lithuania, Poland, and Hungary. The negotiations for readmission agreements with France, Germany, Slovak Republic, Ireland, Great Britain and the Benelux countries are under way. The signature of these readmission agreements are a component of the Legislative Programme of the Moldovan Parliament, and are scheduled for completion for the end of 2007¹⁷³. Under such agreements every Contracting

¹⁶⁹ Ibid.

¹⁷⁰ The “Soderkoping Process” was initiated in 2001 in order to respond to the challenges of extending the European Union to the East. The participant countries are: Belarus, Estonia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Slovakia and Ukraine. It is financed by the European Commission, the Swedish Migration Board, UNHCR, and the International Organization for Migration.

See Soderkoping Process website, “Who We Are?”. Available at: <http://soderkoping.org.ua/site.php/page108.html?SESSID=47f177c414cebd3d85f43e2d678ed1af>, May, 9, 2006.

¹⁷¹ Valeriu Prohntichi et al., *op. cit.*, note 167, pp. 55-56.

¹⁷² Idem.

¹⁷³ Idem.

Part, at the demand of the other Contracting Part and without additional formalities, is obliged to readmit on its territory every person that does not comply with the conditions of residence in the soliciting country, if it is proved or presumed that this person is a citizen of the solicited country, or entered the another country through its territory. The readmission agreements signed by the Republic of Moldova specify that the soliciting country carries the transport costs till the border of the solicited country, even if in between there are transit countries. Moreover, the soliciting country carries the eventual charges of a refusal of readmission by the solicited country¹⁷⁴. However, Moldova has not yet started talks on a readmission agreement with EU as a whole.

In addition to the readmission agreements, dialogues were continued with the governments of Italy and Portugal in order to ease the employment of Moldovan emigrants. Finally, the last sentence of the “Euromonitor” evaluation points out the progresses achieved under the visa facilitation agreements with Poland and Lithuania, presenting them as a necessary impetus for a further Moldovan-EU flexible visa regime¹⁷⁵.

AFTER RUSSIA AND UKRAINE, TIME CAME FOR EU-MOLDOVA TALKS ON A FACILITATED VISA REGIME

European Union does not have an integrated visa policy towards the Western CIS. This stems from the different bilateral relations established between the Union and these countries. For the moment, only Moldova and Ukraine have agreed Action Plans with EU, and their relations with the EU are subject of the new Neighbourhood Policy. However, this does not seem to be the unique framework for obtaining a visa facilitation agreement, as Russia is the first country to get such a deal. The facilitation agreement on visas is done on a *quid pro quo* basis, as Russia had to sign a readmission agreement with the Union in return. These agreements are expected to entry into force by the end of 2006¹⁷⁶.

It is of a particular interest for other countries seeking visa facilitations to look at the provisions of the EU-Russia agreement. Generally, this agreement will make short-term visas easier to obtain. The processing time of applications will be reduced to 10 days, instead of

¹⁷⁴ Gheorghe Astrahan, *Politica Republicii Moldova cu privire la Migratiune [The Policy of the Republic of Moldova towards Migration]*, Ministry of Internal Affairs of Moldova, Chisinau, 2002. Available at: <http://www.ipp.md/files/Publicatii/2002/frontiere/17~Strainii.doc>, May, 9, 2006.

¹⁷⁵ Valeriu Prohntichi et al., *op. cit.*, note 166, p. 59.

¹⁷⁶ Lucia Kubosova, “Moscow Gets EU Visa Deal”, in *EU Observer*, October, 5, 2005. Available at: <http://www.kaliningradexpert.org/node/1745>, May, 9, 2006.

several weeks or even months, as it used to be before. The demands for documentation will be reduced accordingly. Special facilitated procedures will be available for the issuing of multiple entry visas, addressed to certain categories of people, such as students, journalists, businessmen and lorry drivers. The costs of visas will be reduced from 60 to 35 euros, while students, close relatives and disabled people will receive free of charge visas¹⁷⁷.

As estimated by a specialist from the Centre for European Policy Studies, the importance of the Russia-EU deal is primarily symbolic, as it will affect only a limited group of people. More important is that the two sides demonstrated the capacity to conduct a constructive dialogue in spite of the tensions manifested last years. In a long term, these agreements could play an important role of bringing Russia closer to the EU¹⁷⁸.

Ukraine is also currently discussing a visa facilitation regime with the European Union. In November 2005 a first round of negotiations took place in Brussels, after Ukraine unilaterally abolished visas for the citizens of the EU. Ukrainians hope to get a deal on simplified visa procedures and possibly free of charge visas and even visa-free entries for certain categories of people, as well as long term multiple entry visas¹⁷⁹. The negotiation on visa facilitation with Ukraine started after several rounds of negotiations on a readmission agreement, and will directly depend on a positive conclusion of these talks¹⁸⁰. Finally, despite tense relations with EU, Belarus had also expressed its willingness to negotiate visa-free procedures. The objective was set in the 2006-2010 Program on Social and Economic Progress, but regarded only as a “long view” possibility¹⁸¹.

Unlike the other three countries, Moldova is not yet a direct neighbour of the EU. The situation will change in 2007(8), with the projected accession of Romania. But, as George Dura argues, “geography has certainly not been the overarching element in the EU’s unwillingness

¹⁷⁷ Europa.eu.int, „EU-Russia Relations: Next Steps towards Visa Facilitation and Readmission Agreement“, the EU Relations with Russia, 12 October 2005, Luxembourg. Available at:

http://europa.eu.int/comm/external_relations/russia/intro/ip05_1263.htm, May, 9, 2006.

The Readmission Agreement refers to nationals of Russia and EU country, and will affect third-country nationals or stateless persons only after a transition period of 3 years.

¹⁷⁸ Marius Vahl, *Landmark Deal between EU and Russia*, Un-published paper, CEPS, Brussels, 2005.

¹⁷⁹ Ministry of Foreign Affairs of Ukraine, “Towards a Visa-free Regime between Ukraine and EU”. Available at: <http://www.mfa.gov.ua/mfa/en/publication/content/4819.htm>, May, 9, 2006.

¹⁸⁰ Mission of Ukraine to European Communities, “Another Round of Negotiations on Visa Facilitation and Readmission in Brussels Took Place on February 27, 2006”, February, 27, 2006. Available at: <http://www.ukraine-eu.mfa.gov.ua/eu/en/news/detail/1680.htm>, May, 9, 2006.

¹⁸¹ Kommersant, “Belarus Advocates Visa-Free Procedures with EU”, January, 5, 2006. Available at: <http://www.kommersant.com/page.asp?idr=500&id=-7875>, May, 9, 2006.

hitherto to initiate a dialogue with Moldova on a facilitated visa agreement”¹⁸². What are then the reasons of the Union’s reluctance towards Moldova? One can underline three main causes:

- Moldova is seen by the EU as a source of illegal migration, traffic in human beings and as a transit country for migrants from Central Asia and other regions;
- The country has a low level of economic development and faces high rates of unemployment and other social problems;
- The unresolved Transnistrian conflict is as a source of organized crime, smuggling and trafficking.

The recent terrorist attacks in Europe aggravate the general picture, having an indirect, but important effect on the willingness of the EU to open its borders. The context is not the most favourable for Moldova to seek a visa free regime with the EU, but some improvements to the current situation could definitely be brought.

The reality is that EU seems to be willing to ensure the safety of Moldovan borders before opening talks on a facilitated visa regime. The Border Assistance Mission set on the Moldovan-Ukrainian frontier proves this intention of the EU¹⁸³. The ENP Action Plan for Moldova sets a number of provisions for the improvement of border management and fight against related negative phenomena such as illegal migration, traffic in human beings and smuggling. Consequently, a general trend towards “preparing” Moldova for a more open border policy can be observed in the EU actions. Furthermore, the visa issue could be used as a “carrot” for promoting further alignment of Moldova to EU standards.

In this respect, it is of a particular interest to follow the Ukrainian example, as there are considerable similarities between the two countries: both Moldova and Ukraine are ENP countries and both openly declared their aspirations of becoming EU members. At first glance, it may seem surprising that EU started talks with a country of 48 million inhabitants, compared to one of only 4 million. But there are some objective reasons for that¹⁸⁴:

¹⁸² George Dura, *op. cit.*, note 82, p. 12.

¹⁸³ For more information about the EU Border Assistance Mission visit <http://www.eubam.org>, the official site of the BAM.

¹⁸⁴ For a more comprehensive analysis of the Ukrainian-EU relation see George Dura, *op. cit.*, note 82, p. 13-14.

- Firstly, Ukrainian Action Plan expressly states the intention of the parties to open negotiations on the issue of visas, while the Moldovan one is quite vague in these respect;
- Secondly, the cooperation on JHA issues between Ukraine and EU started as early as in 2001, when the EU-Ukraine Action Plan in Justice and Home Affairs was adopted, providing a scoreboard and strict implementation deadlines;
- Thirdly, Ukraine is already negotiating a readmission agreement with the EU, which seems to be a *sine qua non* condition for starting talks on visa facilitation;
- Finally, the EU received a strong political signal from the actual Ukrainian government, which unilaterally withdrew the visa obligation for EU citizens.

Moldovan authorities must particularly consider the aforementioned last two points, if they want to see EU at the negotiating table. Starting talks on readmission agreements, combined with a good-will proof entailed by the removal of visa requirement for EU citizens, could give a decisive impetus for further negotiations on a more relaxed EU border regime towards Moldova.

Moreover, Moldova has to be very cooperative and proactive in the reform of the border management and the implementation of migration policies. It should also prove to be a stable democracy, and ensure that Transnistria is no longer a reason for worries. In other words, the Moldovan government has to overpass its “Transnistrian complex”, and build on a more convincing and powerful discourse. Arguments as “we are no longer a source of migration, because all our migrants are already in Europe” must be left behind, and replaced by credible signals of commitment.

The European Union must be aware that any regime it will impose at the Moldovan border will be perceived by Moldovan authorities as an answer to their integrationist aspirations. A liberal regime is likely to boost Moldovan reforms concerning the application of the *acquis*, while a too restrictive border could generate Euro-pessimistic reactions and hinder the alignment of Moldova to EU standards. On the other hand, the fact that the EU border policy is EU-designed but state-controlled will reserve an important role to play for Romania, which is likely to be cooperative enough with the Moldova. It is indeed expected that Romanian authorities will emphasize on the Cohesion and Expansion paradigms (presented in the Chapter I), treating Moldova as a region in itself, with high chances to integrate into the area of freedom and justice built by the Union.

RECOMMENDATIONS FOR A FUTURE EU BORDER POLICY TOWARDS MOLDOVA

As it was presented earlier in our work, the obtention of Schengen visas is a long and disagreeable process for Moldovan citizens. There is a complete lack of transparency and sometimes visas are refused to completely legitimate applicants¹⁸⁵. Moreover, the applicants do not know to whom they can address if their application is denied. From the past experiences, there seem to be unofficial quotas established by some Schengen countries for the numbers of visas granted to Moldovans. This last part of this research will propose a set of measures to be taken by the European Union in order to improve the situation and to erect a more user friendly system¹⁸⁶.

- *Opening more Schengen consulates in Chisinau*

The only authority presently issuing Schengen visas in Moldova is the German Consulate. It is entitled to offer visas for France and Germany. With the accession of the CEE countries to the Schengen area, the number of Schengen consulates will grow to six (France, Germany, Hungary, Lithuania, Czech Republic and Poland). Yet, it will not be enough for ensuring an adequate supply of visas, as Moldovans need also visas for Italy, Portugal, Greece or Spain. The EU shall also regard the possibility of entitling the existing consulates to grant visas for other countries. There is of course a more ambitious possibility of opening Euroconsulates, as the Turkish example suggests (see page 7).

- *Upgrading consular services*

Considering the magnitude of the demand for visas, which could be easily deduced from the usual queues in front of the German Consulate in Chisinau, Schengen countries shall consider hiring more consular staff or providing for new application procedures, such as on-line

¹⁸⁵ There were cases when the Symphonic Orchestra of the Moldovan National Television was refused visas and thus disrupted pre-arranged tours in Italy. Personal experience of the author.

¹⁸⁶ The proposals made in this part are partially inspired by the following works:

Joanna Apap and others, *Friendly Schengen Borderland Policy on the New Borders of an Enlarged EU and Its Neighbours*, CEPS Policy Brief No. 7, November, 2001. Available at: <http://aei.pitt.edu/2004/01/PB07.pdf>, May, 9, 2006.

International Crisis Group, *EU Visas and the Western Balkans*, Europe Report No. 168, November, 29, 2005. Available at: <http://www.crisisgroup.org/home/index.cfm?l=1&id=3809> (on registration), May, 9, 2006.

Piotr Kazmierkiewicz, *Schengen Integration as a Challenge to Polish Visa Policy towards Eastern Neighbours*, Analyses and Opinions, Institut Spraw Publicznych, No. 42, 2005. Available at: <http://www.isp.org.pl/files/6646515790185283001123581990.pdf?PHPSESSID=ef53517aa2dbf97c2268fe7850899cd3>, May, 9, 2006.

Joanna Apap, Angelina Tchorbadjiyska, *What about the Neighbours? The Impact of Schengen along the EU's External Borders*, CEPS Working Document, No. 210, October, 2004. Available at: <http://kms.isn.ch/serviceengine/FileContent?serviceID=PublishingHouse&fileid=ABE62D27-CB1F-694B-0FBF-7DF9639BF33C&lng=en>, May, 9, 2006.

application forms, for instance. Other solutions can be electronic numbered appointments, which will substantially reduce the amount of people queuing without the certainty of getting into the Consulate.

- *Improving treatment of the applicants*

Consular staff shall be trained in order to give adequate treatment to the applicants. The present situation shows that those who apply for Schengen visas have to prove their innocence in front of the Consular officials, and sometimes interviews address very personal issues and thus touch on the human dignity of the applicants. These practices have to be watered down and replaced by more impartial attitudes. The applicants shall be asked to prove their innocence only if previous irregularities are recorded.

- *Reducing the costs of visas*

The prices for Schengen visas start presently from \$35 and go up to \$2150 (in cases when special agencies are offering this service). In many cases the price of a visa is bigger than the price of the travel. This situation must be overcome, as it is harmful to many citizens and affects the image of the EU in Moldova. The Polish example of issuing free of charge visas could be considered. If not, a more rational price could be set around \$5-\$10 for a short term visa, or \$10-\$20 for a longer duration or a multiply enter visa. In other words, the visas must not be regarded as merchandises, and their price must reflect only the procedural costs. A low price visa will be also regarded by Moldova as a proof of good will from the part of the EU.

- *Lightening the bureaucratic burden*

The present application required by the German Embassy for a short visit in Germany represents a long list of different documents, including employment certificates, travel documents and health insurance. The process of collecting all these documents takes time, and a lot of applications are refused for being incomplete. This generates a big bureaucratic work for Consulate's officials and slows down the process of issuing visas. Certain categories of bona fide persons could be exempted from providing thick folders, and general fast track procedures must be envisaged.

- *Diversification of visas*

More long term multiply entry visas should be made available for certain categories of people. Students, scholars, businessmen, social activists, persons visiting their families, inhabitants of

border region who travel often and respect visa requirements, must be considered *bona fide* persons and given the possibility to acquire annual multiply entry visas. Short term national visas could also be provided by the Member States, with the requirement that the person receiving it does not visit the territory of other states than the one which issued it.

- *New type of visas for neighbours*

In the light of the Moldovan-Romanian relation, it is relevant to consider the issue of a new type of Schengen visas for neighbouring countries, as Romania intends to enter the Schengen zone by 2010. A mixed type of visa could be used in this case, inspired from the visas of limited territorial validity (VLTV) and long-term national visas (LTNV)¹⁸⁷. The VLTV are visas valid only for the state that issued them, and for other specifically named countries. This visa does not give the right to transit or visit other Schengen states. Until now, these visas were only seldomly used. However, according to the *Schengen acquis*, the VLTV can be used in the national interests¹⁸⁸. The LTNV are multiply entry visas with annual validity for the territory of a Member State. As Moldova is bordering Romania, a mixed type of VLTV/LTNV visa could be envisaged in order to grant long term access to the Romanian territory only to bona fide persons¹⁸⁹.

- *Improved management of EU external border crossings*

Training of the Customs officials must be also a priority of the Union, as well as for the neighbouring countries. Implementation of Community projects must aim at improving the infrastructure of the border crossings. An integrated information system will reduce risks at the external border and will make checking more efficient and rapid. Moreover, the formation of the border guards must inspire an open attitude towards third country nationals, especially those coming from underdeveloped countries.

- *Modification of the black list as long term goal*

EU could show its good intentions by accepting negotiations on a facilitated visa regime. As the Russian example shows, a flexible regime does not put much migratory pressure on EU, as it is addressed mainly to a select group of people. Facilitation of the visa regime must not thus

¹⁸⁷ Joanna Apap, Angelina Tchordadjyska, *op. cit.*, note 186.

¹⁸⁸ European Commission, The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. Available at: [http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=42000A0922\(02\)&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=42000A0922(02)&model=guichett), May, 9, 2006.

¹⁸⁹ George Dura, *op. cit.*, note 82, p. 9-10.

be regarded as the ultimate achievement of the EU policy towards Moldova. A more progressive approach will be to aim at the complete removal of Moldova from the black list.

- *Possibility to obtain visas on border as an element of flexibility*

An eventual agreement between Moldova and EU on the border regime must not be regarded in the light of present procedures. Reducing visa prices and easing the application procedures will be undoubtedly very welcomed, but some more progressive solutions could be equally envisaged. Issuing visas on the borders, in the form of stickers, can be such a solution, especially for the Moldovan-Romanian duo after Romania's full accession to the Schengen area.

- *Proactive policy towards immigrants*

EU should envisage policies of integration of the immigrants. Moldovan immigrants should no more hide somewhere in European countries, which is detrimental to both EU and Moldova. They should be given the chance to surface, and to further integrate in the society. More openness to dialogue on the legalization of the emigrants could restore the good image of Moldova in the EU, and lead to a more open border policy towards this country.

All these measures on the part of the EU could be considered as a reward for the possible effective implementation of the EU – Moldova Action Plan. Moldova should also start talks on a readmission agreement with the EU if it wants to convince the European Union to sit at the negotiating table for a liberalized visa regime. Removing visa requirement for EU citizens could be an additional advantage. Generally, Moldova shall review its border policy based on complete reciprocity and be more open towards asymmetrical relations. In other words, Moldova has to do the first step towards an EU liberalized visa regime.

CONCLUSIONS

The European Union does not have for the moment a clearly formulated policy on the movement of persons. The EU is lead by opposing paradigms, oscillating between the cohesion to the security rationales. This fact impedes third countries to negotiate with the Union in a clear and transparent framework on possible border liberalized regimes.

Moldova is presently in a much more complicated situation than other countries. It was the source of a massive migration to the EU, which affected the country both internally and externally. The fact that Moldova does not have a coherent policy in dealing with this problem is only an aggravating effect.

For strictly political reasons, Moldova is still keeping its borders closed. With such a bad external reputation, this does not seem to be the right choice for a country that has to work a lot on its image. Opening the borders to other countries nationals will surely be a strong political message, and possibly a chance to develop Moldovan tourism and to attract FDI. Moreover, a country that wants a visa liberalization regime from the EU cannot keep its borders locked. As we have seen, the EU is very sensible to strong political messages. An efficient implementation of the Action Plan, backed by the removal of the visa requirement for the EU citizens and the start of negotiations for a readmission agreement, will surely entail a reaction from the Union.

Moldovan government wants to be regarded by the EU in a South Eastern perspective, but keeps it borders closed for the countries from this region. This is a structural incoherence that should be removed by withdrawing the principle of reciprocity in border regimes towards at least the most developed countries.

On the other hand, the Moldovans have full right to complain. The functioning of the Schengen Consulates in Chisinau is completely unsatisfactory. In this respect, EU should unilaterally envisage a lot of modernizing measures that do not necessarily mean “liberalizing visa regime”.

The relations between Moldova and Romania and the future border regime will be decisive for the future Moldovan regime with the whole Schengen area. But it is more than that, as countries have strong historical and cultural ties. A maximally liberalized regime must be

envisaged, and this is recognized by both parts. Moldovans shall preserve their freedom of movement to Romania, as this is the gate to the West for the country. The European orientation of Moldova could suffer if this condition is not fulfilled. Romanian authorities already declared that they will envisage issuing more Romanian passports to Moldovan citizens, but the obsessive question “but what will the Union say?” is still in the air. It is also expected that in the following years, Romania will have the leading role in backing Moldova in Brussels.

Moldova seem to have acknowledged the Romanian intention to support its European bid. The response should be a first-ever asymmetric border regime, at it is indeed highly probable that Moldova will not impose visas on Romanians.

In the same time, if Moldova is really serious about its pro-European aspirations, it has to implement a lot of reforms internally. Attractive investment initiatives, efforts on increasing employment, educational and scientific projects, the improvement of infrastructure and the development of tourism are urgent measures to be undertaken by the Moldovan government. Moldova will have troubles in speaking to the EU as long as it is treated as “the poorest country in Europe”. Moreover, it has to chase the “Transnistrian ghost” that marked all its foreign policy lately.

The final conclusion of our research is that if Moldova continues to promote a proactive and pro-European foreign policy, to keep in good terms with Romania, and to address its internal problems with the same seriousness, it has very good chances to get a more open border regime, and even to be removed from the black list of the European Union. Moldova will be than not only a country *in* Europe, but also a country *of* Europe.

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